COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 43

RIN 3038–AD08

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

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rule.

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

DATES: *Effective date:* July 30, 2013.

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I. Background

A. The Dodd-Frank Act

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

Section 727 of the Dodd-Frank Act created section 2(a)(13) of the CEA, which authorizes and requires the Commission to promulgate regulations for the real-time public reporting of swap transaction and pricing data.[4] Section 2(a)(13)(A) provides that ''real-time public reporting'' means reporting ''data relating to a swap transaction, including price and volume, as soon as technologically practicable after the time at which the swap transaction has been executed.''[5] Section 2(a)(13)(B) states that the purpose of section 2(a)(13) is ''to authorize the Commission to make swap transaction and pricing data available to the public in such form and at such times as the Commission determines appropriate to enhance price discovery.''

In general, section 2(a)(13) of the CEA directs the Commission to prescribe regulations providing for the public availability of transaction and pricing data for certain swaps. Section 2(a)(13) places two other statutory requirements on the Commission that are relevant to this final rule. First, sections 2(a)(13)(E)(ii) and (iii) of the CEA respectively require the Commission to prescribe regulations specifying ''the criteria for determining what constitutes a large notional swap transaction (block trade) for particular markets and contracts'' and ''the appropriate time delay for reporting large notional swap transactions (block trades) to the public.''[6] In promulgating regulations under section 2(a)(13), section 2(a)(13)(E)(iv) directs the Commission to take into account whether public disclosure of swap transaction and pricing data ''will materially reduce market liquidity.''[7]

The second statutory requirement relevant to this final rule is found in sections 2(a)(13)(E)(i) and 2(a)(13)(C)(iii) of the CEA. Through these sections, Congress sought to ''ensure that the public reporting of swap transaction and pricing data [would] not disclose the names or identities of the parties to [swap] transactions.''[8] Accordingly, § 2(a)(13)(E)(i) of the CEA requires the Commission to protect the identities of counterparties to mandatorily-cleared swaps, swaps excepted from the mandatory clearing requirement, and voluntarily-cleared swaps. Section 2(a)(13)(C)(iii) of the CEA requires the Commission to prescribe rules that maintain the anonymity of business transactions and market positions of the counterparties to an uncleared swap.[9]

In order to carry out the requirements of section 2(a)(13), including among other things the two statutory requirements regarding blocks and anonymity described above, the Commission issued a notice of proposed rulemaking on December 7, 2010 (the ''Initial Proposal''). On January 9, 2012, the Commission issued a final rule regarding Real-Time Public Reporting of Swap Transaction Data adopting several provisions contained in the Initial Proposal (the ''Real-Time Reporting Final Rule''). The Real-Time Reporting

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

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

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

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

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

[6] Section 2(a)(13)(E) explicitly refers to the swaps described only in sections 2(a)(13)(C)(i) and 2(a)(13)(C)(ii) of the CEA (*i.e.,* clearable swaps, including swaps that are exempt from clearing). As noted in the Commission's Initial Proposal (as defined below), its Real-Time Reporting Final Rule (as defined below), and its Further Block Proposal (as defined below), the Commission, in exercising its authority under CEA section 2(a)(13)(B) to ''make swap transaction and pricing data available to the public in such form and at such times as the Commission determines appropriate to enhance price discovery,'' is authorized to prescribe rules similar to those provisions in section 2(a)(13)(E) to uncleared swaps described in section 2(a)(13)(C)(iii) and (iv) of the CEA.

[7] CEA section 2(a)(13)(E)(iv). Section 5h(f)(2)(C) of the CEA imposes a similar directive upon registered swap execution facilities (''SEF'') by requiring that they set forth rules for block trades for swap execution purposes.

[8] 156 Cong. Rec. S5921 (daily ed. July 15, 2010) (Statement of Sen. Blanche Lincoln).

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

Final Rule, however, did not adopt most of the provisions in the Initial Proposal pertaining to appropriate block sizes and anonymity. Instead, the Commission issued a further notice of proposed rulemaking regarding Procedures to Establish Appropriate Minimum Block Sizes for Large Notional Off-Facility Swaps and Block Trades on March 15, 2012 (the ''Further Block Proposal'').[10] Each of these issuances is described more fully below.

B. The Initial Proposal

1. Overview

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

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

In the Initial Proposal, the Commission acknowledged that swaps that are executed on or pursuant to the rules of a SEF or DCM do not raise the same level of concerns in protecting the identities, business transactions or market positions of swap counterparties since these swaps generally lack customization.[20] As a result, the Commission provided that SEFs and DCMs should tailor the description required by proposed § 43.2(e) depending on the asset class and place of execution of each swap.

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

[10] *See* Procedures to Establish Appropriate Minimum Block Sizes for Large Notional Off-Facility Swaps and Block Trades, 77 FR 15,460, Mar. 15, 2012.

[11] *See* Real-Time Public Reporting of Swap Transaction Data, 75 FR 76139, Dec. 7, 2010, as corrected in Real-Time Public Reporting of Swap Transaction Data Correction, 75 FR 76930, Dec. 10, 2010. Interested persons are directed to the Initial Proposal for a full discussion of each of the proposed part 43 rules.

[12] The Initial Proposal defined the term ''large notional swap.'' *See* proposed § 43.2(l), 75 FR 76171. The Real-Time Reporting Final Rule finalized the term as ''large notional off-facility swap,'' to denote, in relevant part, that the swap is not executed pursuant to a SEF or designated contract market's (''DCM'') rules and procedures. *See* § 43.2, 77 FR 1182, 1244, Jan. 9, 2012. Specifically, the Real-Time Reporting Final Rule defined the term as an ''off-facility swap that has a notional or principal amount at or above the appropriate minimum block size applicable to such publicly reportable swap transaction and is not a block trade as defined in § 43.2 of the Commission's regulations.'' *Id.* Throughout this final rulemaking, the Commission uses the term ''large notional off-facility swap'' as adopted in the Real-Time Reporting Final Rule.

The Initial Proposal's definition of ''block trade'' was similar to the final definition in the Real-Time Reporting Final Rule. *See* proposed § 43.2(f), 75 FR 76171. The Real-Time Reporting Final Rule defines the term ''block trade'' as a publicly reportable swap transaction that: ''(1) [i]nvolves a swap that is listed on a SEF or DCM; (2) [o]ccurs away from the [SEF's or DCM's] trading system or platform and is executed pursuant to the [SEF's or DCM's] rules and procedures; (3) has a notional or principal amount at or above the appropriate minimum block applicable to such swap; and (4) [i]s reported subject to the rules and procedures of the [SEF or DCM] and the rules described in [part 43], including the appropriate time delay requirements set forth in § 43.5.'' *See* § 43.2, 77 FR 1243.

[13] *See* proposed § 43.5, 75 FR 76174–76.

[14] Proposed § 43.5(k)(1) in the Initial Proposal provided that the time delay for the public dissemination of data for a block trade or large notional off-facility swap shall commence at the time of execution of such trade or swap. *See* 75 FR 76176. Proposed § 43.5(k)(2) provided that the time delay for standardized block trades and large notional off-facility swaps (*i.e.,* swaps that fall under CEA Section 2(a)(13)(C)(i) and (iv)) would be 15 minutes from the time of execution. *Id.* The Initial Proposal did not provide specific time delays for large notional off-facility swaps (*i.e.,* swaps that fall under Section 2(a)(13)(C)(ii) and (iii)). Instead, proposed § 43.5(k)(3) provided that the time delay for such swaps shall be reported subject to a time delay that may be prescribed by the Commission. *Id.*

The Real-Time Reporting Final Rule established time delays for the public dissemination of block trades and large notional off-facility swaps in § 43.5. *See* 77 FR 1247–49.

[15] The distribution test, described in proposed § 43.5(g)(1)(i) of the Initial Proposal, required that an SDR take the rounded transaction sizes of all trades executed over a period of time for a particular swap instrument and create a distribution of those trades. An SDR would then determine the minimum threshold amount as an amount that is greater than 95 percent of the notional or principal transaction sizes for the swap instrument for an applicable period of time. *See* 75 FR 76175.

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

[17] *See* proposed § 43.2(y), 75 FR 76172.

[18] *See* 75 FR 76176.

[19] *See* 75 FR 76174.

[20] *See* 75 FR 76151 (''In contrast, for those swaps that are executed on a swap market, the Commission believes that since such contracts will be listed on a particular trading platform or facility, it will be unlikely that a party to a swap could be inferred based on the reporting of the underlying asset and therefore parties to swaps executed on swap markets must report the specific underlying assets and tenor of the swap.'').

[21] *See* 75 FR 76150–51.

[22] *See* 75 FR 76174.

in a manner too specific so as to divulge the identity of a swap counterparty. The Commission, however, did not set forth a specific manner in which SDRs should carry out this requirement.[23]

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

The Commission issued the Initial Proposal for public comment for a period of 60 days, but later reopened the comment period for an additional 45 days.[25] After issuing the Initial Proposal, the Commission received 105 comment letters and held 40 meetings with interested parties regarding the proposed provisions.[26]

2. Public Comments in Response to the Initial Proposal

The commenters to the Initial Proposal provided general and specific comments relating to the proposed provisions regarding the determination of appropriate minimum block sizes and anonymity protections for the identities, business transactions and market positions of swap counterparties.[27] The comments submitted regarding the Initial Proposal's provisions regarding appropriate minimum block sizes and anonymity protections are summarized in detail in the Further Block Proposal.[28]

Following the close of the comment period for the Initial Proposal, the Commission took several actions in consideration of the comments received regarding the proposed methodology to determine appropriate minimum block sizes, the proposed anonymity protections and the proposed implementation approach.[29] A discussion of the Commission's actions and their impact on the Further Block Proposal is set out immediately below.

C. Issuance of the Real-Time Reporting Final Rule

In consideration of the public comments submitted in response to the Initial Proposal, the Commission obtained and analyzed swap data in order to better understand the trading activity of swaps in certain asset classes.[30] The Commission also reviewed additional information, including a study pertaining to the mandatory trade execution requirement and post-trade transparency concerns that arose out of two of the Commission's proposed rulemakings,[31] as well as a report issued by two industry trade associations on block trade reporting in the swaps market.[32] In addition, the Commission and the Securities and Exchange Commission (''SEC'') held a two-day public roundtable on Dodd-Frank Act implementation on May 2–3, 2011 (''Public Roundtable'').[33] During the Public Roundtable and in comment letters submitted in support thereof, interested parties recommended that the Commission adopt a phased-in approach with respect to establishing block trade rules.

On January 9, 2012, the Commission issued the Real-Time Reporting Final Rule, finalizing several provisions that were proposed in the Initial Proposal.[34] Those provisions implement, among other things: (1) Several definitions proposed in the Initial Proposal relevant to this final rule, including ''asset class''; [35] (2) the scope of part 43; (3) the reporting responsibilities of the parties to each swap; (4) the requirement that SDRs publicly disseminate swap transaction and pricing data; (5) the data fields that SDRs will publicly disseminate; (6) the time-stamping and recordkeeping requirements of SDRs, SEFs, DCMs and the ''reporting party'' to each swap; [36] (7) the interim time delays for public dissemination and the time delays for public dissemination of large notional off-facility swaps and block trades; and (8) interim notional cap sizes for all swaps that are publicly disseminated.[37] Based on commenters' recommendations, however, the Commission did not adopt proposed § 43.5 and stated its intent to re-propose a calculation methodology for appropriate minimum block sizes based on additional data and analysis in a separate rulemaking.[38]

D. Further Block Proposal

On March 15, 2012, the Commission issued for comment the Further Block Proposal.[39] Based on the public comments received in response to the Initial Proposal, and in order to successfully implement the real-time public reporting regulatory framework

[23] *See* 75 FR 76150. The Initial Proposal further provided that the requirement in proposed § 43.4(e)(2) was separate from the requirement that a reporting party report swap data to an SDR pursuant to section 2(a)(13)(G) of the CEA. See 75 FR 76174.

[24] *See* 75 FR 76152.

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

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

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

[28] *See* Further Block Proposal at 77 FR 15463–66.

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

[30] A detailed discussion of Commission staff's review and analysis process is set out below in sections II.A.1.b.i. and c.i.

[31] *See* ISDA, Costs and Benefits of Mandatory Electronic Execution Requirements for Interest Rate Products, 24 (ISDA Discussion Paper No. 2, Nov. 2011), available at *http://www2.isda.org/attachment/Mzc0NA==/ISDA%20Mandatory%20Electronic%20Execution%20Discussion%20Paper.pdf*. This paper cited the Commission's notice of proposed rulemaking with respect to SEFs (Core Principles and Other Requirements for Swap Execution Facilities, 76 FR 1214, 1220, Jan. 7, 2011) and the Initial Proposal.

[32] *See* ISDA and SIFMA, Block trade reporting over-the-counter derivatives markets, 6 (Jan. 2011), available at *http://www.isda.org/speeches/pdf/Block-Trade-Reporting.pdf*.

[33] *See* Joint Public Roundtable on Issues Related to the Schedule for Implementing Final Rules for Swaps and Security-Based Swaps Under the Dodd-Frank Wall Street Reform and Consumer Protection Act, 76 FR 23211, Apr. 26, 2011. A copy of the transcript is accessible at: *http://www.cftc.gov/ucm/groups/public/@newsroom/documents/file/csjac_transcript050211.pdf*.

[34] *See* 77 FR 1182.

[35] The Real-Time Reporting Final Rule includes final definitions for the following terms: (1) block trade; (2) large notional off-facility swap; (3) appropriate minimum block size; and (4) asset class. As noted above, the Real-Time Reporting Final Rule did not define the term swap instrument. This final rule adopts a new term, swap category, which groups swaps for the purpose of determining whether a swap transaction qualifies as a large notional off-facility swap or block trade. *See* note 17 supra.

[36] *See* § 43.2 of the Commission's regulations. 77 FR 1244. The Real-Time Reporting Final Rule finalized the definition of ''reporting party'' as a ''party to a swap with the duty to report a publicly reportable swap transaction in accordance with this part [43] and section 2(a)(13)(F) of the [CEA].'' 77 FR 1244.

[37] *See* 77 FR 1244.

[38] *See* 77 FR 1185.

[39] *See* 77 FR 15460.

established in the Real-Time Reporting Final Rule, the Commission proposed provisions in the Further Block Proposal that: (1) Specify the criteria for determining swap categories and methodologies for determining the appropriate minimum block sizes for large notional off-facility swaps and block trades; and (2) provide increased protections to the identities of swap counterparties to large swap transactions and certain other commodity swaps, which were not fully addressed in the Real-Time Reporting Final Rule.[40]

1. Policy Goals

In section 2(a)(13) of the CEA, Congress intended that the Commission consider both the benefits of enhanced market transparency and the effects such transparency would have on market liquidity.[41] Section 2(a)(13)(E)(iv) of the CEA places constraints on the requirements for the real-time public reporting of swap transaction and pricing data by mandating that the Commission shall ''take into account whether the public disclosure [of swap transaction and pricing data] will materially reduce market liquidity.''[42] While the Commission anticipates that the public dissemination of swap transaction and pricing data will generally reduce costs associated with price discovery and prevent information asymmetries between market makers and end-users,[43] it also believes that the benefits of enhanced market transparency are not boundless, particularly in swap markets with limited liquidity.

The Commission understands that the publication of detailed information regarding ''outsize swap transactions''[44] could expose swap counterparties to higher trading costs.[45] In this regard, the publication of detailed information about an outsize swap transaction may alert the market to the possibility that the original liquidity provider to the outsize swap transaction will be re-entering the market to offset that transaction.[46] Other market participants might be alerted to the liquidity provider's need to offset risk and therefore would have a strong incentive to exact a premium from the liquidity provider. As a result, liquidity providers possibly could be deterred from becoming counterparties to outsize swap transactions if swap transaction and pricing data is publicly disseminated before liquidity providers can offset their positions. The Commission anticipates that, in turn, this result could negatively affect liquidity in the swaps market.

In consideration of these potential outcomes, the Further Block Proposal sought to provide maximum public transparency, while taking into account the concerns of liquidity providers regarding possible reductions in market liquidity. To do so, the Further Block Proposal established the following more detailed criteria: (1) Swap categories (relative to the definition of swap instrument in the Initial Proposal); (2) a phased-in approach to determining appropriate minimum block sizes for block trades and large notional off-facility swaps; and (3) anonymity provisions for the public reporting of transaction data. A summary of the Commission's proposed approach is provided below.

2. Summary of Proposed Approach

The Commission proposed a two-period, phased-in approach to implement regulations for determining appropriate minimum block sizes.[47] Specifically, the Commission proposed phasing-in minimum block sizes during an initial period and setting them thereafter on an ongoing basis (*i.e.,* the post-initial period) so that market participants could better adjust their swap trading strategies to manage risk, secure new technologies and make necessary arrangements in order to comply with part 43 reporting requirements. The Commission proposed two provisions relating to the Commission's determination of appropriate minimum block sizes: (1) Initial appropriate minimum block sizes under proposed § 43.6(e); and (2) post-initial appropriate minimum block sizes under proposed § 43.6(f).

In proposed § 43.6(e), the Commission proposed establishing initial appropriate minimum block sizes for each category of swaps within the interest rate, credit, foreign exchange (''FX'') and other commodity asset classes.[48] The Commission listed the prescribed initial appropriate minimum block sizes in proposed appendix F to part 43 based on these swap categories.[49] For interest rate and credit swaps, the Commission reviewed actual market data and prescribed initial appropriate minimum block sizes for swap categories in these asset classes

[40] In several places in the Real-Time Reporting Final Rule, the Commission stated that it planned to address these requirements in a separate, forthcoming release. *See, e.g.,* 77 FR 1185, 1191, 1193 and 1217. The Further Block Proposal was that release.

[41] In considering the benefits and effects of enhanced market transparency, the Commission notes that the ''guiding principle in setting appropriate block trade levels [is that] the vast majority of swap transactions should be exposed to the public market through exchange trading.'' Congressional Record—Senate, S5902, S5922 (July 15, 2010).

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

[43] *See e.g.,* CEA section 2(a)(13)(B) (''The purpose of this section is to authorize the Commission to make swap transaction and pricing data available to the public in such form and at such times as the Commission determines appropriate to enhance price discovery.'').

[44] As used in the Further Block Proposal and this final rule, an ''outsize swap transaction'' is a transaction that, as a function of its size and the depth of the liquidity of the relevant market (and equivalent markets), leaves one or both parties to such transaction unlikely to transact at a competitive price.

[45] Consistent with this final rule, the Commission clarified in the SEF final rule that a swap transaction qualifies as a block trade based on the size of the swap transaction, not based on whether the swap is subject to the trade execution requirement under section 2(h)(8) of the CEA. *See* Core Principles and Other Requirements for Swap Execution Facilities, p. 72 (May 16, 2013)]. In § 37.200 of the Commission's regulations, the Commission has codified the statutory text of SEF Core Principle 2 under section 5h(f)(2)(C) of the CEA, which requires a SEF to establish rules governing the operation of its trading facility, including trading procedures for block trades. 17 CFR 37.200(c). Similarly, the Commission's proposed rulemaking regarding core principles and other requirements for DCMs under § 38.504 of the Commission's regulations, the Commission requires DCMs to adopt rules that comply with all of the provisions of part 43, including the block trade provisions finalized herein. Core Principles and Other Requirements for Designated Contract Markets, 75 FR 80572, 80617 (Dec. 22, 2010).

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

[47] The Commission proposed the same phased-in approach for determining cap sizes, which help to protect the anonymity of counterparties' market positions and business transactions as required in the CEA. For a more detailed discussion of the Commission's proposed approach with respect to cap sizes, *see* section III.B.

The two-period, phased-in approach would become effective after the implementation of the part 43 provisions in the Real-Time Reporting Final Rule. Until the date on which the proposed provisions in the Further Block Proposal become effective, all swaps would be subject to a time delay pursuant to the provisions in part 43.

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

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

based on that data. For the other asset classes, the Commission did not have access to relevant market data. As such, during the initial period, the Commission proposed using a methodology based on whether a swap or swap category is ''economically related'' to a futures contract.[50] Swaps and swap categories that are not economically related to a futures contract would remain subject to a time delay (*i.e.,* treated as block trades or large notional off-facility swaps, as applicable, regardless of notional amount) during the initial period.

In proposed § 43.6(f)(1), the Commission provided that the duration of this initial period would be no less than one year after an SDR started collecting reliable data for a particular asset class as determined by the Commission. During the initial period, the Commission would review reliable data for each asset class. For the purposes of this proposed provision, reliable data would include all data collected by an SDR for each asset class in accordance with the compliance chart in the adopting release to part 45 of the Commission's regulations.[51]

The Commission stated in the Further Block Proposal and is currently of the view that data is per se reliable if it is collected by an SDR for an asset class after the respective compliance date for such asset class as set forth in part 45 of the Commission's regulations or by other Commission action. The Commission notes that SDRs have been collecting data pursuant to the compliance dates for certain market participants and asset classes since December 2012. DCMs and Swap Dealers (''SDs'') began reporting swap transactions in the interest rate and credit default swap asset classes on December 31, 2012.[52] DCMs and SDs began reporting swap transactions in the FX, equity, and other commodity asset classes on February 28, 2013.[53] Major Swap Participants (''MSPs'') began reporting swap transactions in all five asset classes on February 28, 2013.[54] Financial Entities began reporting swap transactions in the interest rate and credit default swap asset classes on April 10, 2013.[55] Financial Entities begin reporting swap transactions for swaps executed starting April 10, 2013, in the FX, equity, and other commodity asset classes on May 29, 2013.[56] Non-SDs, non-MSPs, and non-Financial Entities begin reporting swap transactions for swaps executed starting April 10, 2013, in the interest rate and credit default swap asset classes on July 1, 2013.[57] Non-SDs, non-MSPs, and non-Financial Entities begin reporting swap transactions for swaps executed starting April 10, 2013, in the FX, equity, and other commodity asset classes on August 19, 2013.[58] Accordingly, the Commission and SDRs will have one year of reliable data as of April 10, 2014.

The proposed initial period would expire following the publication of a Commission determination of post-initial appropriate minimum block sizes in accordance with the publication process set forth in proposed § 43.6(f)(4) and (5). Thereafter, the Commission would set post-initial appropriate minimum block sizes for swap categories no less than once each calendar year using the calculation methodology set forth in proposed § 43.6(c)(1).[59]

The Commission also proposed special rules for determining appropriate minimum block sizes in certain instances. In particular, in proposed § 43.6(d), the Commission prescribed special rules for swaps in the equity asset class. In proposed § 43.6(h), the Commission proposed establishing special rules for determining appropriate minimum block sizes in certain circumstances including, for example, rules for converting currencies and rules for determining whether a swap with optionality qualifies for block trade or large notional off-facility swap treatment.[60]

In the Further Block Proposal's proposed amendments to § 43.4(h) and 43.4(d)(4), the Commission also prescribed measures to fulfill the CEA's anonymity requirements in connection with the public dissemination of publicly reportable swap transactions. The Commission proposed adopting the practices used by most federal agencies when releasing to the public company-specific information—by removing obvious identifiers, limiting geographic detail (*e.g.,* disclosing general, non-specific geographical information about the delivery and pricing points) and masking high-risk variables by truncating extreme values for certain variables (*e.g.,* capping notional values).[61]

3. Overview of Comments Received

The Commission received comments from 35 interested parties representing a broad range of interests including: financial end-users, swap dealers, asset managers, industry groups/associations, potential SEFs, and a DCM.[62] Some commenters expressed general support for the Further Block Proposal's provisions regarding minimum block sizes and anonymity; others objected to particular aspects of the Further Block Proposal and/or offered recommendations for clarification or modification of specific proposed regulations.

In addition to a general solicitation for comment on all aspects of the Further Block Proposal, the Commission requested comment on a number of specific, focused questions related to particular provisions. For example, commenters were asked to address issues related to: (i) The appropriate criteria for determining swap categories in the five asset classes; (ii) the appropriate methodology for determining appropriate minimum block sizes for swaps in the five asset classes; (iii) whether and how a phase-in of block thresholds should be implemented; (iv) special rules with respect to swaps with optionality, swaps with composite reference prices, physical commodity swaps, currency conversions, and successor currencies; (v) the role of SEFs and DCMs in

[50] *See infra* notes 169–174 and accompanying text.

[51] *See* Swap Data Recordkeeping and Reporting Requirements, 77 FR 2136, 2196, Jan. 13, 2012.

[52] *See* ''Commission Q & A—On the Start of Swap Data Reporting'' (Oct. 9, 2012).

[53] *See* ''No-Action Relief for Swap Dealers from Certain Swap Data Reporting Requirements of Part 43, Part 45, and Part 46 of the Commission's Regulations Due to Effects of Hurricane Sandy,'' Commission Letter No. 12–41 (Dec. 5, 2012).

[54] *See id.*

[55] *See* ''Time-Limited No-Action Relief for Swap Counterparties that are not Swap Dealers or Major Swap Participants, from Certain Swap Data Reporting Requirements of Parts 43, 45 and 46 of the Commission's Regulations,'' Commission Letter No. 13–10 (Apr. 9, 2013).

[56] *See id.*

[57] *See id.*

[58] *See id.*

[59] In particular, the Commission proposed a 67-percent notional amount calculation, which is discussed in more detail in section II.B.3.

[60] *See infra* Section II.B.6. for a discussion of the special rules.

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

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

determining appropriate minimum block sizes for swaps that they list; (vi) the process by which the Commission would notify the public of appropriate minimum block sizes; (vii) the process through which a qualifying swap transaction would be treated as a block trade or large notional off-facility swap; (viii) the appropriate methodology for determining the maximum limit of the principal, notional amount of a swap that is publicly disseminated; (ix) appropriate anonymity protections for the public dissemination of publicly reportable swap transactions in the other commodity asset class.

The Commission also requested comment with respect to the cost-benefit considerations in the Further Block Proposal and specifically requested commenters to provide a feasible alternative approach to establishing minimum block sizes that would impose less regulatory burden on swap market participants and the general public. Commenters also were expressly invited to provide data regarding the direct and indirect quantifiable costs with the proposed criteria for establishing minimum block thresholds.

4. Additional Proposal Regarding Aggregation of Blocks

Among the requirements contained in the Initial Proposal, proposed § 43.5(b)(1) provided that eligible parties to a block trade (or large notional swap) must be Eligible Contract Participants (''ECPs''), except that a DCM may allow a Commodity Trading Advisor (''CTA''), investment advisor, or foreign person meeting certain criteria to transact block trades for customers who are not ECPs. Further, proposed § 43.5(m) prohibited aggregation of orders for different trading accounts in order to satisfy the appropriate minimum block size requirement, except if done so on a DCM by a CTA, investment adviser, or foreign person meeting certain criteria.

After it issued its Further Block Proposal, the Commission determined that the aggregation provision and the provision that specified the eligible parties to a block trade, including the proposed requirement that persons transacting block trades on behalf of customers must receive prior written consent to do so, were inadvertently omitted from the Further Block Proposal. These provisions were then the subject of a separate notice of proposed rulemaking issued on June 27, 2012 (''Proposed Aggregation Rule'').[63]

The Commission received a total of nine comment letters in response to the proposed rules regarding eligible parties to a block trade and aggregation of orders. Four of the letters responded to the Initial Proposal and five letters responded to the Proposed Aggregation Rule. Many of the comments received applied equally to the same provisions contained in both proposed § 43.6(h)(6) and 43.6(i), which address the aggregation of orders and the eligible parties to a block trade.

II. Procedures To Establish Appropriate Minimum Block Sizes for Large Notional Off-Facility Swaps and Block Trades—Final Rules

A. Criteria for Distinguishing Among Swap Categories in Each Asset Class

In the Further Block Proposal, the Commission proposed to use the term ''swap category'' to convey the concept of a grouping of swap contracts that would be subject to a common appropriate minimum block size.[64] Specifically, the Commission proposed specific criteria for defining swap categories in each asset class. As adopted in the Real-Time Reporting Final Rule, § 43.2 of the Commission's regulations defines ''asset class'' as ''a broad category of commodities, including, without limitation, any 'excluded commodity' as defined in section 1a(19) of the [CEA], with common characteristics underlying a swap.''[65] Section 43.2 also identifies the following five swap asset classes: Interest rates;[66] equity; credit; FX;[67] and other commodities.[68]

The proposed swap category criteria are intended to address the following two policy objectives: (1) Categorizing together swaps with similar quantitative or qualitative characteristics that warrant being subject to the same appropriate minimum block size; and (2) minimizing the number of the swap categories within an asset class in order to avoid unnecessary complexity in the determination process.[69] In the Commission's view, balancing these policy objectives and considering the characteristics of different types of swaps within an asset class are necessary in establishing appropriate criteria for determining swap categories within each asset class. The five asset classes established by the Commission in the Real-Time Reporting Final Rule are discussed briefly in the paragraph below, followed by a discussion of the proposed swap category criteria for each asset class.

In the Further Block Proposal, the Commission proposed breaking down each asset class into separate swap categories to determine appropriate minimum block sizes for such categories. During the initial and post-initial periods, the Commission would group swaps in the five asset classes into the prescribed swap categories as set forth in proposed § 43.6(b).

[63] Rules Prohibiting the Aggregation of Orders to Satisfy Minimum Block Sizes or Cap Size Requirements, and Establishing Eligibility Requirements for Parties to Block Trades, 77 FR 38229, June 27, 2012.

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

[65] *See* § 43.2, 77 FR 1243.

[66] In the Real-Time Reporting Final Rule, the Commission determined that cross-currency swaps are a part of the interest rate asset class. *See* 77 FR 1193. The Commission noted that this determination is consistent with industry practice.

[67] The U.S. Department of the Treasury (''Treasury'') has issued a Final Determination, pursuant to sections 1a(47)(E)(i) and 1b of the CEA, that exempts FX swaps and FX forwards from the definition of ''swap'' under the CEA. Therefore, the requirements of section 2(a)(13) of the CEA would not apply to those transactions, and such transactions would not be subject to part 43 of the Commission's regulations. *See* Determination of Foreign Exchange Swaps and Foreign Exchange Forwards under the Commodity Exchange Act, 77 FR 69694, Nov. 20, 2012. Nevertheless, section 1a(47)(E)(iii) of the CEA provides that FX swaps and FX forwards transactions still are not excluded from regulatory reporting requirements to an SDR. Further, the Commission notes that Treasury's final determination excludes FX swaps and FX forwards, but does not apply to FX options or non-deliverable FX forwards. As such, FX instruments that are not covered by Treasury's final determination are subject to part 43 of the Commission's regulations.

[68] The Real-Time Reporting Final Rule defines the term ''other commodity'' to mean any commodity that is not categorized in the other asset classes as may be determined by the Commission. *See* 77 FR 1244. The definition of asset class in § 43.2 also provides that the Commission may later determine that there are other asset classes not identified currently in that section. *See* 77 FR 1243.

[69] These objectives are specific to the determination of appropriate swap category criteria and are intended to promote the general policy goals described above in section I.D.1.

Twenty-one commenters addressed the Further Block Proposal's use of swap categories.[70] The vast majority of the comments did not question the use of swap categories generally, and focused on the specific criteria proposed for determining swap categories within each asset class instead. Better Markets and ICI expressly supported the Commission's proposed use of swap categories.[71] Better Markets stated that ''the concept of a 'swap category' is useful, in that it allows greater granularity than the far broader notion of 'asset class.' '' [72] ICI ''support[ed] the CFTC's proposal to establish categories of swaps within different asset classes that would be subject to a common appropriate minimum block size to better calibrate the block thresholds to the relative liquidity of the swap categories in each asset class.'' [73] ICAP, however, disagreed with the Commission's use of swap categories and stated that ''the Commission's proposal is mistaken in its use of 'swap categories' . . . as opposed to using the standard liquid tenors of swap contracts.'' [74]

After consideration of the comments related to the use of swap categories, the Commission is adopting swap categories as proposed in § 43.6, with certain modifications based upon both general concerns expressed by commenters in regard to the use of swap categories, specific concerns raised in regard to the criteria for determining swap categories within each asset class, and other relevant market developments.[75] The following sections address the comments regarding specific asset classes and set out, where appropriate, the Commission's responsive modifications of the swap categories approach.

1. Interest Rate and Credit Asset Classes

a. Background

The Commission was able to obtain and review non-public swap data to make inferences about patterns of trading activity, price impact and liquidity in the markets for swaps in the interest rate and credit asset classes. Based on that review, the Commission proposed criteria for determining swap categories in these two asset classes. Specifically, the Commission proposed defining swap categories for: (1) Interest rate swaps based on unique combinations of tenor [76] and currency; and (2) credit default swaps (''CDS'') based on unique combinations of tenor and conventional spread.[77]

The Commission obtained transaction-level data for these asset classes from two third-party service providers with the assistance of the Over-the-Counter Derivatives Supervisors Group (''ODSG'').[78] Established in 2005, the ODSG is chaired by the Federal Reserve Bank of New York and is comprised of domestic and international supervisors of representatives from major OTC derivatives market participants.[79] In particular, the ODSG coordinated with the ''G–14 banks'' in order to gain written permission to access the non-public swap data.[80]

MarkitSERV [81] provided the interest rate swap data set. The interest rate swap data set covered transactions confirmed on the MarkitWire platform between June 1, 2010 and August 31, 2010 where at least one party was a G–14 Bank.[82]

The Warehouse Trust Company LLC (''The Warehouse Trust'') provided the CDS data set.[83] The CDS data set covered CDS transactions for a three-month period beginning on May 1, 2010 and ending on July 31, 2010.[84]

The Commission filtered both data sets in order to analyze only transaction-level data corresponding to ''publicly reportable swap transactions,'' as defined in § 43.2 of the Real-Time

[70] *See generally* CL–AFR; CL–AII; CL–Barclays; CL–Better Markets; CL–CME; CL–FIA; CL–GFMA; CL–ICAP; CL–ICAP Energy; CL–ICI; CL–ISDA/SIFMA; CL–Kinetix; CL–MFA; CL–Morgan Stanley; CL–Parascandola; CL–Parity; CL–Pierpont; CL–SDMA; CL–SIFMA; CL–WMBAA; CL–Vanguard.

[71] CL–Better Markets at 5; CL–ICI at 4.

[72] CL–Better Markets at 5.

[73] CL–ICI at 4.

[74] CL–ICAP at 8.

[75] The Commission is using the term ''swap category'' instead of ''swap instrument'' in this final rule. Although the Commission is not adopting a definition of ''swap category,'' the Commission believes that this term groups swap contracts that would be subject to the same appropriate minimum block size based on asset class with common quantitative or qualitative characteristics, *i.e.,* risk and liquidity profiles.

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

Two commenters addressed how the Commission should determine tenor for backdated swaps. AFR stated that backdating a swap is the equivalent of a swap with a date of its inception, but with a price that includes an adjustment for the backdating feature of the transaction; AFR wrote that tenor should be determined accordingly. CL–AFR at 5–6. Similarly, ISDA/SIFMA requested that the Commission determine the tenor of a back dated swap as the time from the date of execution of the swap (as opposed to the start date) to the maturity date of the swap. CL–ISDA/SIFMA at 10. After consideration of these comments, the Commission maintains the same approach from the Further Block Proposal.

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

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

[79] *See* OTC Derivatives Supervisors Group—Federal Reserve Bank of New York, *http://www.ny.frb.org/markets/otc_derivatives_supervisors_group.html* (last visited May 6, 2013). The ODSG was formed ''in order to address the emerging risks of inadequate infrastructure for the rapidly growing market in the credit derivatives . . . .'' The ODSG works directly with market participants to plan, monitor and coordinate industry progress toward collective commitments made by firms.

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

[81] MarkitSERV is a post-trade processing company wholly owned by Markit. From its formation in 2009 until April 2013, MarkitSERV was jointly owned by Markit and The Depository Trust & Clearing Corporation (''DTCC'').

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

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

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

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

Reporting Final Rule.[85] As such, the Commission excluded from its analysis duplicate and non-price forming transactions.[86] The Commission also converted the notional amount of each swap transaction into a common currency denominator, the U.S. dollar.[87]

b. Interest Rate Swap Categories

i. Interest Rate Swap Data Summary

The filtered transaction records in the interest rate swap data set contained 166,847 transactions with a combined notional value of approximately $45.4 trillion dollars.[88] These transactions included trades with a wide range of notional amounts, 28 different currencies, eight product types, 57 different floating rate indexes and tenors ranging from under one week to 55 years. Summary statistics of the filtered interest rate swap data set are presented in Table 1.[89]

[85] ''Publicly reportable swap transaction'' means, unless otherwise provided in part 43: (1) Any executed swap that is an arm's-length transaction between two parties that results in a corresponding change in the market risk position between the two parties; or (2) any termination, assignment, novation, exchange, transfer, amendment, conveyance, or extinguishing of rights or obligations of a swap that changes the pricing of the swap. Examples of an executed swap that do not fall within the definition of publicly reportable swap transaction may include: (1) Certain internal swaps between 100-percent-owned subsidiaries of the same parent entity; and (2) portfolio compression exercises. These examples represent swaps that are not transacted at arm's length, but that do result in a corresponding change in the market risk position between two parties. *See* 77 FR 1244.

[86] The excluded records represented activities such as option exercises or assignments for physical, risk optimization or compression transactions, and amendments or cancellations that were assumed to be mis-confirmed. A transaction was assumed to be mis-confirmed when it was canceled without a fee, which the Commission has inferred was the result of a confirmation correction. The Commission also excluded interest rate transactions that were indicated as assignments, terminations, and structurally excluded records since the Commission was unable to determine if these records were price-forming. The Commission also excluded CDS transactions that were notated as single name transactions. The data sets also included transaction records created for workflow purposes (and therefore redundant), duplicates and transaction records resulting from name changes or mergers.

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

[88] The Commission only reviewed relevant transaction records in the interest rate swap data set. As noted above, the Commission excluded duplicate and non-price forming transactions from its review. *See supra* note 86 for a list of excluded transaction records.

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

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

	Number of transactions	Percentage of total transactions [90]	Notional amount (billions of USD)	Percentage of total notional amount (%)
Product Type:				
Single Currency Interest Rate Swap	128,658	77	16,276	36
Over Night Index Swap (OIS)	12,816	8	16,878	37
Forward Rate Agreement (FRA)	5,936	4	7,071	16
Swaption	11,042	7	2,256	5
Other	8,395	5	2,909	6
Currency:				
European Union Euro Area euro (EUR)	46,412	28	18,648	41
United States dollar (USD)	50,917	31	11,377	25
United Kingdom pound sterling (GBP)	16,715	10	7,560	17
Japan yen (JPY)	19,502	12	4,253	9
Other	33,301	20	3,553	8
Floating Index:				
USD–LIBOR–BBA	48,651	29	9,411	21
EUR–EURIBOR–Reuters	39,446	24	9,495	21
EUR–EONIA–OIS–COMPOUND	6,517	4	9,122	20
JPY–LIBOR–BBA	19,194	12	4,010	9
GBP–LIBOR–BBA	12,835	8	2,419	5
GBP–WMBA–SONIA–COMPOUND	2,014	1	5,123	11
Other	38,190	23	5,809	13
Tenor: [91]				
1 Month	3,171	2	11,859	26
3 Month	10,229	6	11,660	26
6 Month	2,822	2	1,701	4
1 Year	9,522	6	3,484	8
2 Year	16,450	10	3,347	7
3 Year	9,628	6	1,488	3
5 Year	26,139	16	2,712	6
7 Year	6,599	4	661	1
10 Year	34,000	20	2,746	6
30 Year	9,616	6	448	1
Other	38,671	23	5,284	12
Sample Totals	166,847	100	45,390	100

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

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

[In millions of USD]

	Mean notional amount	Percentiles						
		5th	10th	25th	50th	75th	90th	95th
Product Type:								
Single Currency Interest Rate Swap	127	4	9	23	52	117	252	438
OIS	1,293	6	13	63	341	1,261	3,784	5,282
FRA	1,168	90	133	266	631	1,039	2,000	3,018
Swaption	204	3	20	50	100	226	500	642
Other	346	*	1	23	89	250	631	1,132
Currency:								
EUR	400	6	15	38	91	249	631	1,617
USD	221	5	12	31	89	200	500	1,000
GBP	435	1	1	15	57	167	755	1,698
JPY	221	11	13	28	57	124	339	790
Other	108	4	6	13	30	78	175	308
Floating Index:								
USD–LIBOR–BBA	192	5	12	30	76	180	500	803

[90] The percentages were rounded to the nearest whole number. Due to the rounding, the total percentages for the listed categories do not add up to exactly 100%.

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

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

[In millions of USD]

	Mean notional amount	Percentiles						
		5th	10th	25th	50th	75th	90th	95th
EUR–EURIBOR–Reuters	241	8	17	38	79	189	416	757
EUR–EONIA–OIS–COMPOUND	1,385	4	10	61	315	1,261	3,784	6,306
JPY–LIBOR–BBA	211	11	12	28	57	113	339	658
GBP–LIBOR–BBA	181	1	4	23	54	151	377	755
GBP–WMBA–SONIA–COMPOUND	2,450	75	113	283	1,509	3,018	6,037	9,055
Other	152	2	4	12	31	88	264	500
Tenor: [92]								
1 Month	3,523	37	252	1,251	2,522	3,784	7,546	12,074
3 Month	1,081	11	38	208	604	1,250	2,000	3,018
6 Month	581	19	49	150	377	747	1,261	1,892
1 Year	348	20	31	70	151	341	755	1,261
2 Year	205	10	16	39	111	243	453	631
3 Year	154	10	16	44	95	169	315	500
5 Year	107	5	9	25	63	113	226	316
7 Year	105	7	13	29	57	113	221	315
10 Year	83	5	10	23	50	95	175	252
30 Year	47	4	7	18	26	50	95	132
Other	249	2	4	15	50	126	340	883

The Commission also analyzed the interest rate swap data set to classify the counterparties into broad groups.[93] The Commission's analysis of the interest rate swap data set revealed that approximately 50 percent of the transactions were between buyers and sellers who were both identified as G–14 banks and that these transactions represented a combined notional amount of approximately $22.85 trillion, or 50 percent of the relevant IRS data set's total combined notional amount.

ii. Summary of Proposed Rule

Based upon the data described above, the Commission proposed § 43.6(b)(1) establishing swap categories in the interest rate asset class based on tenor and underlying currency.

The Commission proposed interest rate swap tenor groupings based on two observations regarding the data in the interest rate swap data set. First, the Commission observed that points of concentrated transaction activity along the yield curve correspond with specific tenors (*e.g.,* three months, six months, one year, two years, etc.). Second, the Commission observed a tendency for the transacted notional amounts to decrease as tenor increased (*e.g.,* longer-dated tenors in the data set generally had lower average notional sizes). Based on these observations, table 3 below details the eight proposed tenor groups for the interest rate asset class.

TABLE 3—PROPOSED TENOR GROUPS FOR INTEREST RATES ASSET CLASS [94]

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

Similarly, through its analysis of the interest rate swap data set, the Commission found that the currency referenced in a swap explains a significant amount of variation in notional size and, hence, can be used to categorize interest rate swaps [95] The

[92] In producing Table 2, the Commission counted tenors for swaps with an end date within four calendar days of a complete month relative to the swap's start date as ending on the nearest complete month.

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

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

[95] The Commission considered alternative approaches of using the individual floating rate indexes or currencies to determine swap categories in the interest rate asset class. These alternative approaches would have the benefit of being more correlated to an underlying curve than the adopted currency and tenor groupings. The data contained 57 floating rate indexes and 28 currencies, which would result in 456 and 224 categories respectively, after sorting by the eight identified tenor groups. The Commission anticipates, however, that grouping swaps using individual rates or currencies

Commission proposed currency groupings after considering: (1) The swap transaction total notional amounts and transaction volumes of currency groups based on the number of transactions; and (2) the average transaction notional amounts and lack of evidence of large transacted notional amounts or substantial volume of currency groups. After considering these factors, the Commission proposed three currency categories for the interest rate asset class: (1) Super-major currencies, which are currencies with large volume and total notional amounts; [96] (2) major currencies, which generally exhibit moderate volume and total notional amounts; [97] and (3) non-major currencies, which generally exhibit moderate to very low volume and total notional amounts.[98]

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

TABLE 4—PROPOSED CURRENCY CATEGORIES FOR INTEREST RATES ASSET CLASS

Currency category	Component currencies
Super-Major Currencies	United States dollar (USD), European Union Euro Area euro (EUR), United Kingdom pound sterling (GBP), and Japan yen (JPY).
Major Currencies [99]	Australia dollar (AUD), Switzerland franc (CHF), Canada dollar (CAD), Republic of South Africa rand (ZAR), Republic of Korea won (KRW), Kingdom of Sweden krona (SEK), New Zealand dollar (NZD), Kingdom of Norway krone (NOK) and Denmark krone (DKK).
Non-Major Currencies	All other currencies.

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

TABLE 5—SAMPLE CHARACTERISTICS OF PROPOSED INTEREST RATE SWAP CATEGORIES [100]

Currency category	Tenor group	Number of transactions	Percent of transactions (%)	Notional (billions of USD)	Percent of total notional (%)
Super-major	1	11,394	7	22,347	50
Super-major	2	2,563	2	1,813	4
Super-major	3	6,277	4	3,302	7
Super-major	4	12,395	7	3,420	8
Super-major	5	32,148	19	4,818	11
Super-major	6	42,675	26	4,220	9
Super-major	7	24,237	15	1,433	3
Super-major	8	1,857	1	56	0
Major	1	2,305	1	1,818	4
Major	2	445	0	124	0
Major	3	2,113	1	302	1
Major	4	2,639	2	226	1
Major	5	5,380	3	293	1
Major	6	3,707	2	129	0
Major	7	704	0	19	0
Major	8	<200	.....	.....	.....
Non-Major	1	403	0	64	0
Non-Major	2	247	0	26	0
Non-Major	3	2,073	1	165	0
Non-Major	4	3,354	2	256	1
Non-Major	5	5,873	4	116	0
Non-Major	6	3,935	2	41	0
Non-Major	7	<200	.....	.....	.....
Non-Major	8	<200	.....	.....	.....

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

would not substantially increase the explanation of variations in notional amounts, while it could result in cells with relatively few observations in some currency-tenor categories. Hence, the Commission does not believe there would be a significant benefit to offset the additional compliance burden that a more granular approach would impose on market participants.

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

[97] Major currencies represent about 6 percent of the total notional amount and about 10 percent of the total transactions in the data set. Some of these currencies host liquid futures markets for interest rates, and all exhibit liquid FX markets.

[98] Non-major currencies represent less than two percent of the total notional amount and about 10 percent of the transactions in the data set. These currencies typically do not have corresponding interest rate and FX futures markets.

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

[100] Tables 5 and 6 do not include sample characteristics for swap categories with less than 200 transactions in order to preserve the anonymity of the parties to these transactions.

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

[In millions of USD]

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

The Commission received twelve comments regarding the use of tenor to establish swap categories in the interest rate swap asset class. Five commenters expressed support for the Further Block Proposal's suggested tenor buckets.[101] Five other commenters recommended nine tenor buckets straddling the most liquid tenor points as follows: 0–3 months, 3–6 months, 6–18 months, 18 months-3 years, 3–7 years, 7–12 years, 12–20 years, 20–30 years, and more than 30 years.[102] These commenters suggested that these nine tenor groupings would provide greater granularity and avoid grouping together swaps with different levels of liquidity. Similarly, ICI suggested that narrower tenor groupings would provide greater granularity.[103] Kinetix also expressed concern with the proposed tenor buckets, stating that they grouped together products with sharply different trading volumes.[104]

In addition to the comments received regarding the Further Block Proposal, the Commission also considered the research in the Federal Reserve Bank of New York's March 2012 staff report entitled ''An Analysis of OTC Interest Rate Derivatives Transactions: Implications for Public Reporting'' (the ''Federal Reserve Staff Analysis''). In that report, Federal Reserve staff tested for a relationship between tenor and trade size. The Federal Reserve staff identified nine tenor buckets, as opposed to the eight identified by the Commission. The tenor buckets identified by the Federal Reserve staff were the same as those proposed by the Commission in the Further Block Proposal, with a further division of the Commission's 0–3 month bucket into a 0–1 month bucket and a 1–3 month bucket.[105]

After consideration of the comments received and the Federal Reserve Staff Analysis, the Commission is adopting § 43.6(b)(1) with one modification—the addition of another tenor grouping at the shorter end of the interest rate yield curve. The Commission notes, as an initial matter, that commenters generally supported the use of tenor buckets to establish swap categories in the interest rate asset class. Commenters, however, disagreed with the proposed tenor buckets.

In the Further Block Proposal, tenor buckets were proposed based on observations of the distributions of notional sizes and volume with the objectives of grouping swaps with similar characteristics while maintaining a manageable number of swap categories. The tenor buckets proposed by the Commission were associated with concentrations of liquidity at commonly recognized points along the interest rate yield curve. In general, the Commission observed that transactions in the data set (and presumed market liquidity) tended to cluster at certain tenors.

In establishing the categories, the Commission proposed groupings that placed actively traded tenors at the upper boundary of the category groupings because the calculation of the minimum block threshold in a category will be most influenced by the notional amounts of the most heavily traded swaps in a category, *i.e.,* those at the active tenor points. Hence, the minimum block thresholds for shorter dated swaps in a category will tend to be set based on the typical notional value of longer dated swaps. Since the longer dated swaps tend to trade in smaller notional amounts, establishing

[101] CL–AFR at 5; CL–Better Markets at 5; CL–MFA at 4; CL–Pierpont at 3; CL–SDMA at 8 (''The CFTC categories are . . . appropriate and accurate in terms of currency, index, and tenor.'')

[102] CL–AII at 8; CL–Barclays at 7; CL–ISDA/SIFMA at 10; CL–SIFMA at 7; CL–Vanguard at 5.

[103] *See* CL–ICI at 5.

[104] Kinetix stated that ''[t]he major flaw comes from including in a bucket products with sharply different trading volumes.'' Kinetix recommended bucketing products by average trade volume, product type, and tenor, but did not suggest specific tenor buckets. CL–Kinetix at 2.

[105] The Federal Reserve staff specifically found that ''when [they] reduced the number of buckets at the short end of the trading curve (by merging the 0–1 month and 1–3 month buckets into a 0–3 month bucket), the explanatory power of [their] regression declined 24%.'' Federal Reserve Staff Analysis at 16.

the categories in this manner will tend to result in a more conservative (*i.e.,* smaller) minimum block threshold for shorter tenored swaps within the category. In addition, because the shorter-dated swaps within an established swap category may experience less liquidity, due to smaller trading volumes, these swaps may also benefit from the setting of a lower minimum block threshold.

The narrower tenor buckets recommended by commenters, in contrast, tend to straddle the liquid tenor points. If the Commission were to establish tenor buckets straddling the liquid tenor points (rather than having a liquid tenor point be the upper boundary of a tenor bucket), then the minimum block threshold for swaps within a category would be more heavily influenced by swaps centrally located in the category. Thus, longer dated swaps in a category, which tend to trade in smaller notional sizes, would be subject to higher minimum block thresholds, meaning fewer would be eligible for the block trade exemption.

To illustrate the impact of placing the liquid tenor point at the top of the category, consider the impact on a seven-year interest rate swap that is proposed to be grouped in a tenor bucket with swaps having a tenor greater than 5 years and less than or equal to 10 years. The most liquid tenor point (*i.e.,* the tenor point with the greatest number of observations) within this bucket would be the 10-year interest rate swap; thus, the 10-year interest rate swap would be the primary driver in determining the minimum block threshold for swaps in the 5 to 10-year tenor bucket. Table 7 is a subset of the information from Table 1 that illustrates this point. Specifically, there are 6,599 swaps with a tenor of seven years, yielding an average notional amount of $100 million (USD) and 34,000 swaps with a tenor of ten years yielding an average notional size of $81 million (USD). By combining these into the same category, the Commission is adopting a conservative approach in setting block sizes for the less liquid tenors.

Under the commenters' approach, however, the seven-year interest rate swap is grouped in the same tenor bucket with the 5-year tenor interest rate swaps. In this scenario, the liquid tenor point within the bucket is the 5-year interest rate swap; thus, the 5-year interest rate swap, with more than 26,000 transactions yielding an average notional amount of $104 million (USD), is the primary driver in determining the minimum block threshold for the tenor bucket and results in a larger block size for the 7-year tenor interest rate swaps than under the currently proposed swap category.

The Commission is of the view that the tenor with the most transactions in the swap category, and thus having the most weight in the block calculations, should be at the high end of the tenor grouping for the swap category. Given the tendency for average notional size to decrease as tenor increases as shown in Table 7 below, the Commission views this as a more conservative approach to setting minimum block thresholds, which results in lower block sizes for swap transactions at tenors that may experience less liquidity.

TABLE 7—SUMMARY STATISTICS FOR THE INTEREST RATE SWAP DATA SET BY TENOR [106]

Tenor [107]	Number of transactions	Notional amount (billions of USD)	Average notional amount (billions of USD)
1 Month	3,171	11,859	3.740
3 Month	10,229	11,660	1.140
6 Month	2,822	1,701	0.603
1 Year	9,522	3,484	0.366
2 Year	16,450	3,347	0.203
3 Year	9,628	1,488	0.155
5 Year	26,139	2,712	0.104
7 Year	6,599	661	0.100
10 Year	34,000	2,746	0.081
30 Year	9,616	448	0.047
Other	38,671	5,284	0.137

In response to comments generally calling for narrower tenor buckets, the Commission is adopting an additional tenor bucket in order to provide greater granularity as requested by commenters. The Commission is splitting the first tenor group in the Further Block Proposal (0–3 months) into two tenor groups (0–46 days, and greater than 46 days to less than or equal to 3 months). While the Commission did not receive any comments specifically discussing the less than 46 day tenor, the Commission received numerous comments recommending greater granularity. Based upon the comments received requesting nine tenor buckets and the Federal Reserve Staff Analysis identifying nine tenor buckets, the Commission has determined to add a less than 46 day tenor group. This would provide greater granularity and establish notional swap groupings that account more precisely for the effects of increased transparency on liquidity for swaps of a shorter tenor.

Accordingly, the Commission is adopting the following tenor buckets:

[106] In producing Table 7, the Commission counted tenors for swaps with an end date within four calendar days of a complete month relative to the swap's start date as ending on the nearest complete month.

[107] Tenor groups include swaps having tenors within 4 calendar days of a complete month, plus or minus, of the stated tenor. All other swaps are included in the ''Other'' category.

TABLE 8—TENOR GROUPS FOR INTEREST RATES ASSET CLASS [108]

Tenor group	Tenor greater than	And tenor less than or equal to
1		46 days.
2	46 days	Three months (107 days).
3	Three months (107 days)	Six months (198 days).
4	Six months (198 days)	One year (381 days).
5	One year (381 days)	Two years (746 days).
6	Two years (746 days)	Five years (1,842 days).
7	Five years (1,842 days)	Ten years (3,668 days).
8	Ten years (3,668 days)	30 years (10,973 days).
9	30 years (10,973 days)	

The Commission received eleven comments regarding whether interest rate swaps should be categorized into the super-major, major, and non-major currency groupings as proposed. Five commenters supported the currency groupings proposed in the Further Block Proposal.[109] Four commenters urged the Commission to establish a separate swap category for each individual currency in determining block thresholds.[110] Two more commenters specifically recommended that each of the four super-major currencies should be categorized separately, rather than as a group, in determining block thresholds.[111]

After consideration of the comments received, the Commission is adopting § 43.6(b)(1)(i) as proposed in regard to currency categories. The currencies were grouped into the three categories in the Further Block Proposal based upon the swap transaction total notional amounts and transaction volumes of currency groups based on the number of transactions, and the average transaction notional amounts of currency groups. The commenters who requested that all currencies be categorized by individual currency mainly focused on differences in liquidity among the four super-major currencies, particularly when comparing interest rate swaps in USD and EUR to those in JPY and GBP. Similarly, the commenters who specifically requested that the Commission establish separate swap categories for each of the super-major currencies focused on perceived differences in liquidity. While USD and EUR interest rate swaps feature the highest liquidity, the Commission is of the view that, based upon all of the criteria mentioned above, the super-major currencies are most similar to each other (and different from major [112] and non-major currencies) to warrant treatment as a group, rather than separately.

The Commission considered alternative approaches of using the individual currencies to determine swap categories in the interest rate asset class. While these alternative approaches would have provided greater correlation to an underlying curve than the adopted groupings, the Commission believes that this would not substantially increase the explanation of variations in notional amounts, but rather would result in categories with too few observations. Hence, the Commission does not believe that there would be a significant benefit to offset the additional compliance burden that a more granular approach would impose on market participants. The Commission notes that adoption of the proposed currency categories establishes 27 separate swap categories for interest rate swaps. Separate categorization of all currencies would result in nearly 200 separate swap categories. Separate categorization of the super-major currencies alone would result in 54 swap categories. The Commission believes that the 27 separate swap categories contained in the rule achieves the objectives of grouping swaps with similar characteristics while maintaining a manageable number of swap categories.

The Commission also received a number of comments recommending that interest rate swaps should be categorized based on criteria other than tenor and currency. Four commenters suggested a range of additional interest rate swap categories for the purposes of establishing block thresholds.[113] Two other commenters suggested grouping swaps by product type in addition to tenor and currency groupings.[114] Another commenter, Kinetix, recommended grouping products by average trade volume, as well as by product type and tenor.[115] Of the four commenters who expressed support for the proposed tenor and currency groupings,[116] two of them argued that further granularity would cause some swaps to be subject to lower block thresholds than are appropriate.[117]

After consideration of the comments received, the Commission is adopting § 43.6(b)(1)(i) as proposed and § 43.6(b)(1)(ii) with the modifications discussed above. Although some level of

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

[109] CL–AFR at 5; CL–Better Markets at 5; CL–MFA at 4; CL–Pierpont at 3; CL–SDMA at 8 (''The CFTC categories are . . . appropriate and accurate in terms of currency, index, and tenor.'')

[110] CL–AII at 8; CL–ICI at 5; CL–SIFMA at 8–9; CL–Vanguard at 6.

[111] CL–Barclays at 7; CL–ISDA/SIFMA at 7–8. While ISDA/SIFMA supported separate categories for super-major currencies, their comment also suggests separate categorization for each individual currency. Similarly, SIFMA's comment, while requesting separate categorization generally, states that dividing the four proposed super-major currencies is most important. CL–SIFMA at 8–9.

[112] The Commission notes that the difference between the total notional and transactional volume of swaps referencing Japanese yen—the lowest among those swaps in the super-major currency category—and of swaps referencing the Australian Dollar—the highest among those swaps in the major currency category—is significantly larger than such differences between swaps within each adopted currency category. This observation supports adopting the Commission's approach in assigning certain swaps in the super-major currency category against the major currency category.

[113] Barclays suggested unique block levels for each of the following swap categories: each super major currency, swaps against standard floating rate indices, basis swaps, inflation swaps, swaptions, caps and floors, cross-currency swaps, and structured swaps. CL–Barclays at 7–8. ISDA/SIFMA suggested the following additional swap categories: fixed versus non-benchmark floating rate indexes and basis swaps, inflation swaps (a specified inflation rate index), options (swaption and cap/floor markets); cross-currency swaps (each leg denominated by different currency), and exotics. CL–ISDA/SIFMA at 9. SIFMA and Vanguard suggested swap categorization based on optionality or other characteristics such as distinctions between ''plain vanilla,'' ''interest rate options,'' and ''other,'' as well as separate categories for major floating rate indices. CL–SIFMA at 8–9; CL–Vanguard at 5–6.

[114] CL–ICI at 5; CL–MFA at 5.

[115] CL–Kinetix at 2.

[116] CL–AFR at 5; CL–Better Markets at 5; CL–Pierpont at 3; CL–SDMA at 8 (''The CFTC categories are . . . appropriate and accurate in terms of currency, index, and tenor.'')

[117] CL–AFR at 5; CL–Better Markets at 5.

categorization of swaps is useful to capture different levels of trading activity and hedging potential, where a number of different swaps could be used to hedge the same risk, the over-identification of swap categories will eventually lead to a dilution of observations within categories. Categories having small numbers of observations could be subject to highly volatile minimum block sizes over time. Over-identification also would be expected to lead to underestimations of the ability to offset risks using related swap instruments. The Commission believes that it has struck a balance between over- and under-categorizing swaps that will result in more stable minimum block sizes and allow for adequate risk offsets using instruments within a category. The modification described above in regard to tenor will provide some further granularity at the short end of the yield curve, as suggested by commenters above, while still achieving the objectives of grouping swaps with similar characteristics and reducing unnecessary complexity for market participants in determining whether their swaps are classified within a particular swap category.

c. Credit Swap Categories

i. Credit Swap Data Summary

The CDS data set contained 98,931 CDS index records that would fall within the definition of publicly reportable swap transactions,[118] with a combined notional value of approximately $4.6 trillion dollars.[119] The CDS data set contained transactions based on 26 broad credit indexes.[120] Of those indexes, both the iTraxx Europe Series and the Dow Jones North America investment grade CDS indexes (''CDX.NA.IG'') served as the basis for over 20 percent of the total number of transactions and over 33 percent of the total notional value in the relevant CDS data set. Table 9 sets out summary statistics of the CDS data set for CDS indexes with greater than five transactions per day on average.

TABLE 9—SUMMARY STATISTICS BY CDS INDEX NAME

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

ii. Credit Swap Data Analysis

As noted above, the Commission proposed using tenor and conventional spread criteria to define swap categories for CDS indexes. The Commission proposed the following six broad tenor groups in the credit asset class: (1) Zero to two years (0–746 days); (2) over two to four years (747–1,476 days); (3) over four to six years (1,477–2,207 days) (which include the five-year tenor); (4) over six to eight-and-a-half years (2,208–3,120 days); (5) over eight-and-a-half to

[118] *See* note 85 supra.

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

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

12.5 years (3,121–4,581 days) and (6) greater than 12.5 years (4,581 days).[121]

With respect to the conventional spread criterion, the Commission determined ranges of spread values based on a review of the distribution of spreads in the entire CDS data set.[122] In particular, the Commission observed that the relevant CDS data set partitioned at the 175 basis points (''bps'') and 350 bps levels.[123] The Commission found that significant differences existed in the CDS data set between CDS indexes with spread values under 175 bps and those in the other two CDS categories (spread values between 175 to 350 bps; spread values above 350 bps). Accordingly, the Commission proposed three separate conventional spread levels: (1) CDS indexes with spread values under 175 bps; (2) CDS indexes with spread values between 175 and 350 bps; and (3) CDS indexes with spread values above 350 bps. Table 9 shows the summary statistics of the proposed criteria to determine swap categories for swaps in the credit asset class.[124]

TABLE 9—CDS INDEX SAMPLE STATISTICS BY PROPOSED SWAP CATEGORY CRITERIA

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

The Commission sought comment on this proposed approach, a series of alternative criteria to be used, and alternative categories. The Commission received eight comments regarding the proposed swap categories for CDS. Five of the comments focused on the proposed tenor buckets in the Further Block Proposal. SIFMA and Vanguard suggested that the 4–6 year tenor bucket be divided into four buckets: 4 to 4.5 years, 4.5 to 5 years, 5 to 5.5 years, and 5.5 to 6 years.[125] AII and ICI also recommended narrowing the tenor categories for CDS.[126] MFA generally supported the Commission's proposed grouping by tenor.[127]

Two of the comments focused on the proposed conventional spread criteria. ISDA/SIFMA expressed support for the proposed use of spread criteria, but also suggested that the Commission should clarify that the spread for a CDS transaction will be based on the traded spread, rather than on the fixed coupon.[128] Barclays, however, commented that traded spreads should not be used for categorizing CDS because swaps may move daily between threshold buckets as spreads can move substantially over short periods, which would create an unacceptable level of operational risk for market participants in trying to achieve compliance.[129]

In addition to the comments regarding the tenor and conventional spread criteria proposed, commenters also provided a number of recommendations regarding other potential swap categories for CDS. Three commenters suggested separate swap categories for individual CDX index series.[130] Better Markets, however, argued that using individual CDX index series to create swap categories would be too granular and recommended that CDS be divided into single-name and index categories, with indexes further subdivided into five groups: sovereign, corporate, municipal, mortgage-backed securities, and other.[131] Four commenters recommended that tranches of indices receive their own unique swap category.[132] Two commenters suggested grouping CDS by different product type.[133] MFA recommended separate swap categories for indexes and options (as well as tranches).[134] Finally, eight commenters suggested differentiating between on-the-run and off-the-run CDS

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

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

[122] *See supra* note 77 for a definition of ''conventional spread.''

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

[124] The Commission found that these categories were good predictors of notional size. This finding was based on an analysis which used the tenor and spread categories in Table 9 as explanatory variables in a least squares regression, where the logged value of the notional amount of the swap was the dependent variable.

[125] CL–SIFMA at 7–8 (''We believe that such groupings would better approximate sets of swaps with similar liquidity characteristics''); CL–Vanguard at 5.

[126] CL–AII at 8; CL–ICI at 5.

[127] CL–MFA at 5.

[128] CL–ISDA/SIFMA at 6 (''swap categories should be based on the current spread of a transaction in order to reflect . . . changes in liquidity'').

[129] CL–Barclays at 8.

[130] CL–AII at 8; CL–Barclays at 8; CL–ISDA/SIFMA at 6.

[131] CL–Better Markets at 6.

[132] CL–AII at 8; CL–Barclays at 8; CL–ISDA/SIFMA at 6; MFA at 5.

[133] CL–ICI at 5; CL–ISDA/SIFMA at 6.

[134] CL–MFA at 5.

indices.[135] MFA specifically suggested separate minimum block sizes for the current 5-year on-the-run CDS indices for CDX.NA.IG, CDX.NA.HY, iTraxx Europe, and iTraxx Europe Crossover.[136]

After consideration of the comments received, the Commission is adopting § 43.6(b)(2) as proposed. In general, the Commission believes that the proposed criteria—tenor and conventional spread—provide an appropriate way to group swaps with economic similarities and to reduce unnecessary complexity for market participants in determining whether a particular swap is classified within a particular swap category. In regard to ISDA/SIFMA's suggested clarification, the Commission clarifies that the spread for a CDS transaction will be based on the traded spread, rather than on the fixed coupon.

Specifically, the Commission believes that the proposed tenor and conventional spread categories sufficiently capture the variation in notional size that is necessary for setting appropriate minimum block sizes and that refining these categories as suggested by commenters will not improve the clustering of swaps in order to better set appropriate minimum block sizes. For example, the Commission notes that the tenor buckets contained in the adopted rule generally result in separate categorization for on-the-run and off-the-run indexes for swaps in the CDS data set. On-the-run indexes, for example, comprised the vast majority of swaps in the 4–6 year tenor bucket, while off-the-run indexes were the vast majority of swaps in the 0–2, 2–4, and 6–8.5 year tenor buckets.

The Commission determined these swap categories based on the way activity in the CDS data set clustered towards the center of each tenor band. While the majority of transactions in the CDS data set consisted of on-the-run corporate credit default index swaps with a five-year tenor, the Commission found that significant trading of corporate credit default index swaps also occurred in other tenor ranges.[137] The Commission believes that its approach is appropriate since CDS on indexes other than corporate indexes (*e.g.,* asset backed indexes, municipal indexes, sovereign indexes) also trade at tenors other than five years.[138]

The Commission, however, decided not to use ''on-the-run'' or ''off-the-run'' designations for grouping CDS indexes into categories for the following reasons: (i) The underlying components of swaps with differing versions or series based on the same named index are broadly similar, if not the same, and are indicative of economic substitutability across versions or series; (ii) differences in the average notional amount across differing versions or series were explained by differences in tenor; and (iii) using versions or series as the criterion for defining CDS swap categories may result in an unnecessary level of complexity.[139] Hence, the Commission believes that while on-the-run and off-the-run indexes may differ in terms of available liquidity, they nonetheless are economically related to each other within the categories proposed by the Commission; therefore, on-the-run indexes could be used to offset much of the risk associated with off-the-run indices. Moreover, while the off-the-run swaps generally had less trading activity, and presumably less liquidity, than the on-the-run swaps, off-the-run index swaps had larger notional sizes, on average, than on-the run swaps in the same category. Hence, the more liquid, on-the-run swaps will drive the block size in a category and will result in lower block sizes for the less liquid swaps in the category.[140] The Commission feels that this is a more conservative approach to setting block sizes for less liquid swaps.

In response to the commenters that specifically requested a differentiation between on-the-run and off-the-run CDS indexes, the Commission believes that while on-the-run and off-the-run indexes may differ in terms of available liquidity, they nonetheless are economically related to each other within the categories proposed by the Commission such that on-the-run indexes could be used to offset much of the risk associated with off-the-run indexes. The Commission also notes that the tenor buckets contained in the adopted rule generally result in separate categorization for on-the-run and off-the-run indexes. For the CDS data set, the vast majority of swaps in the 4–6 year tenor bucket were on-the-run indexes, while the vast majority of swaps in the 0–2, 2–4, and 6–8.5 year tenor buckets were off-the-run.

In response to commenters that specifically recommended separate swap categorization for tranches, the Commission believes that the proposed swap categorization based upon conventional spread criteria will result in separate categorizations related to tranches where appropriate.[141] For example, tranches having significantly different levels of risk will potentially have spreads traded at levels that differ enough from the underlying index so as to be placed in categories that would receive a different block trade size. The conventional spread reflects the risk of the underlying transaction and the Commission believes that the risk associated with the transaction will be the primary determinant of how difficult a transaction is to hedge. Thus, the Commission believes that categorization of CDS by conventional spread will capture differences related to tranches where appropriate.

The Commission notes that the adopted § 43.6(b)(2) establishes 18 separate swap categories for CDS swaps. While none of the commenters provided suggestions as to precisely how to categorize CDS by tranche, the Commission believes that creating additional swap categories for tranches would result in swap categories totaling a multiple of the proposed 18 swap categories, as each CDS index has multiple tranches. Establishing swap categories based upon tenor and

[135] MFA specifically suggested separate minimum block sizes for the current 5-year on-the-run CDS indices for CDX.NA.IG, CDX.NA.HY, iTraxx Europe, and iTraxx Europe Crossover. CL–MFA at 5; CL–AII at 8; CL–Barclays at 8; CL–ICAP at 7; CL–ISDA/SIFMA at 5–6; CL–SIFMA at 8; CL–Vanguard at 5.

[136] CL–MFA at 5.

[137] For example, based on the observed CDS data set, corporate CDS indexes traded in all but the longest of the tenor groups. The vast majority of transactions outside of the 4–6 year tenor group were off-the-run series.

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

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

[140] This is similar to the example provided for the tenor groupings in interest rate swaps in Section II.A.1.

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

conventional spread criterion as in adopted § 43.6(b)(2) meets the objectives of grouping swaps with economic similarity and reducing confusion for market participants in determining whether their swaps are classified within a particular swap category.

The Commission believes that this approach will mitigate the administrative burden to both market participants and to the Commission by limiting the number of swap categories for which appropriate minimum block sizes need to be calculated. In regard to Barclay's concern that swaps would move between categories, the Commission believes that instances where a given swap will move daily between spread levels will be limited given the small number of spread categories and the observed distribution of trades. Additionally, the quantitative nature of the block category calculation should limit the operational risk by providing clarity and ease of notice to market participants as to what the minimum block sizes are, even if they are subject to change.

If market participants reach the conclusion that the Commission has determined specific swap categories in a way that will materially reduce market liquidity, then those participants are encouraged to submit data to support their conclusion. If, through its own surveillance of swaps market activity, the Commission becomes aware that a specific swap categorization for determination of appropriate minimum block levels would reduce market liquidity, then the Commission may exercise its legal authority to take action by rule or order to mitigate the potential effects on market liquidity with respect to swaps in that swap category.

2. Swap Category in the Equity Asset Class

The Commission proposed a single swap category for swaps in the equity asset class. The Commission proposed this approach based on: (1) The existence of a highly liquid underlying cash market for equities; (2) the absence of time delays for reporting block trades in the underlying equity cash market; (3) the small relative size of the equity index swaps market relative to the futures, options, and cash equity index markets; and (4) the Commission's goal to protect the price discovery function of the underlying equity cash market and futures market.

The Commission received six comments regarding swap categories in the equity asset class. AFR supported the single swap category proposed for the equity asset class.[142] Five other commenters recommended that the Commission treat equity swaps similarly to the other asset classes and establish swap categories based upon a range of criteria.[143] AII recommended that equity swaps should be treated as blocks based on liquidity, and urged the Commission to consider linking equity swap categories to the liquidity of the underlying index.[144] Barclays recommended that swap categories should be established for equity swaps taking into account transaction volume by index and equity asset class type, and that broad-based indices should have separate block levels based upon futures market levels.[145] ICI recommended closer study of data on equity swap transactions due to potential differences in liquidity in the underlying equity cash market.[146] ISDA/SIFMA recommended categorizing equity swaps on the basis of underlying index or basket, product type, notional size, and tenor.[147] SIFMA stated that the Commission should establish equity swap block categories based upon liquidity of the underlying indices.[148]

After consideration of the comments received, the Commission is adopting § 43.6(b)(3) as proposed. While a number of the commenters point out differences in liquidity in the underlying equity indices to support separate swap categories within the equity asset class and establishment of block sizes in equities, these differences do not undermine the premises underlying the Commission's proposal. Even taking into account differences in liquidity, (1) there is still a highly liquid underlying cash market for equities; and (2) the equity index swaps market is small relative to the futures, options, and cash equity index markets. These characteristics, combined with the fact that there are no time delays for reporting block trades in the underlying equity cash market, makes establishment of swap categories, and therefore minimum block thresholds, for equity swaps inappropriate.[149] The Commission notes that establishing time delays for reporting block trades in the swaps market when no time delays exist could negatively impact the price discovery function of the underlying equity cash market and futures market. Accordingly, the Commission is adopting § 43.6(b)(3) as proposed.[150]

3. Swap Categories in the FX Asset Class

The Commission proposed establishing swap categories for the FX asset class based on unique currency combinations, with § 43.6(b)(4)(i) distinguishing futures-related swaps [151] from swaps that are not futures-related (covered under proposed § 43.6(b)(4)(ii)). Distinguishing futures-related swaps from other swaps would allow the Commission to set initial appropriate minimum block sizes for certain swaps based on DCM block sizes for FX futures contracts.

The Commission based its approach on the assumption that FX swaps and futures contracts based upon the same currency draw upon the same liquidity pools. The Commission proposed in §§ 43.6(b)(4)(i) and (b)(4)(ii) to distinguish FX swaps and instruments based on the existence of a related futures contract. Liquidity in the underlying futures market for the currency combinations established in proposed § 43.6(b)(4)(i) suggested sufficient liquidity in the swaps market for these currency combinations.

The Commission proposed establishing swap categories for futures-related swaps under proposed § 43.6(b)(4)(i) based on the unique currency combinations between the currency of each of the following: the United States, European Union, United Kingdom, Japan, Australia, Switzerland, Canada, Republic of South Africa, Republic of Korea, Kingdom of Sweden, New Zealand, Kingdom of Norway, Denmark, Brazil, China, Czech Republic, Hungary, Israel, Mexico, New

[142] CL–AFR at 6.

[143] CL–AII at 9; CL–Barclays at 9; CL–ICI at; ISDA/SIFMA at 10–11; SIFMA at 5.

[144] CL–AII at 9.

[145] CL–Barclays at 9.

[146] CL–ICI at 5.

[147] CL–ISDA/SIFMA at 10–11.

[148] CL–SIFMA at 5.

[149] *See infra* Section II.B(5)(b). In the event that time delays are established for reporting block trades in the underlying equity cash market, the Commission may consider establishing swap categories and minimum block thresholds for equity swaps.

[150] The Securities and Exchange Commission (''SEC'') has proposed general criteria that it would consider to set appropriate minimum block trade sizes for security-based swaps. The SEC, however, has not proposed specific numerical thresholds at this time, but rather intends to propose such thresholds upon the adoption of Regulation SBSR—Reporting and Dissemination of Security-Based Swap Information. 75 FR 75208, 75228 (Dec. 2, 2010). On May 1, 2013, the SEC reopened the comment period regarding this proposed rule. *See* Reopening of Comment Periods for Certain Rulemaking Releases and Policy Statement Applicable to Security-Based Swaps Proposed Pursuant to the Securities Exchange Act of 1934 and the Dodd-Frank Wall Street Reform and Consumer Protection Act (May 1, 2013).

[151] Under § 43.2, a futures-related swap is defined as a swap (as defined in section 1a(47) of the Act and as further defined by the Commission in implementing regulations) that is economically related to a futures contract. *See infra* notes 169–174 and accompanying text. Under § 43.6(b)(4)(i), a futures-related swap is a swap where one of the underlying currencies of the swap is the subject of a futures contract listed on a DCM.

Zealand, Poland, Russia, and Turkey.[152] Hence, proposed § 43.6(b)(4)(i) would establish a separate swap category for each of the 231 unique currency combinations between these currencies. In proposed § 43.6(b)(4)(ii), the Commission would establish an additional swap category based on unique currency combinations not included in proposed § 43.6(b)(4)(i).[153]

The Commission received six comments regarding the proposed swap categories for the FX asset class based on unique currency combinations. Two commenters recommended additional swap categories for the FX asset class.[154] Barclays suggested that EUR- and USD-denominated transactions should be categorized separately from less liquid transactions and that distinct block levels should apply to the following product categories: Forwards, non-deliverable forwards, non-deliverable options, vanilla options, and other more complex options.[155] GFMA recommended more granular swap categories that would group specific instruments according to similarity of liquidity profile.[156] AFR, however, commented that the governing principle in establishing swap categories should be the reasonable relationship of swaps within a category to a liquid class of swaps or futures that are potential hedges for that category and expressed concern that adding any additional granularity might violate this principle.[157] AII and ICI urged the Commission to remove block trading thresholds so that all transactions would be treated as blocks for the FX asset class during the initial period, and allow for collection and analysis of SDR data during this period to determine appropriate swap categories for the post-initial period.[158]

The Commission notes that, since the Further Block Proposal, Treasury has issued a Final Determination, pursuant to sections 1a(47)(E)(i) and 1b of the CEA, that exempts FX swaps and FX forwards from the definition of ''swap'' under the CEA. Therefore, the requirements of section 2(a)(13) of the CEA would not apply to those transactions, and such transactions would not be subject to part 43 of the Commission's regulations.[159] Nevertheless, section 1a(47)(E)(iii) of the CEA provides that FX swaps and FX forwards transactions still are not excluded from regulatory reporting requirements to an SDR. Further, the Commission notes that Treasury's final determination excludes FX swaps and FX forwards, but does not apply to FX options or non-deliverable FX forwards. As such, FX instruments that are not covered by Treasury's final determination are subject to part 43 of the Commission's regulations.

After consideration of the comments received and the complexity of the proposed approach, the Commission is adopting § 43.6(b)(4) with modifications. The Commission is modifying proposed § 43.6(b)(4)(i) to establish swap categories based on the unique currency combinations between one super-major currency paired with one of the following: (1) Another super major currency [160]; (2) a major currency [161]; or (3) a currency of Brazil, China, Czech Republic, Hungary, Israel, Mexico, New Zealand, Poland, Russia, or Turkey. This approach differs from the proposal in that the adopted swap categories will not include the unique currency combinations between major currencies and other major currencies, between major currencies and each of the ten additional enumerated non-major currencies, and between the ten additional enumerated non-major currencies. Under § 43.6(b)(4) as adopted, all swap transactions subject to part 43 [162] in these unique currency combinations may be treated as blocks.[163]

The changes to § 43.6(b)(4) will significantly reduce the number of swap categories, hence reducing complexity, but will still ensure coverage of the most liquid currency combinations.[164]

While not affording block treatment to all swaps in the FX asset class subject to part 43, these modifications will increase the number of currency combinations which will be eligible to be blocks, many of which have limited liquidity.[165] Yet, this modified approach still allows the Commission to set initial appropriate minimum block sizes for the most liquid categories based on the block trade size thresholds set by DCMs for economically-related futures contracts, as enumerated under adopted § 43.6(b)(4)(i). The Commission believes that the categories established by proposed § 43.6(b)(4)(i) and kept under adopted § 43.6(b)(4)(i) provide the separate classification for EUR- and USD-denominated transactions recommended by Barclays.[166]

[152] For example, the euro (EUR) and the Canadian dollar (CAD) combination would be one swap category; whereas, the Swedish krona (SEK) and the Korean won (KRW) combination would be a separate swap category.

[153] Under proposed § 43.6(e)(2), swaps having currency combinations described in § 43.6(b)(4)(ii) would all be eligible to be treated as a block trade or large notional off-facility swap. Only in the post-initial period would the proposed rules set an appropriate minimum block size for this category of FX swaps. *See infra* Section II.B(5)(c)(ii).

[154] CL–Barclays at 10; CL–GFMA at 2–3.

[155] CL–Barclays at 10.

[156] CL–GFMA at 2–3. GFMA also suggested that (1) FX swaps should be distinguished by tenor, and that (2) block size thresholds should vary based on time of day, in order to take into account liquidity across time zones.

[157] CL–AFR at 6.

[158] CL–AII at 3; CL–ICI at 5.

[159] *See* Determination of Foreign Exchange Swaps and Foreign Exchange Forwards under the Commodity Exchange Act, 77 FR 69,694, Nov. 20, 2012.

[160] As set out in Section II.A.1., the super-major currencies are the United States dollar (USD), European Union Euro Area euro (EUR), United Kingdom pound sterling (GBP), and Japan yen (JPY).

[161] As set out in Section II.A.1., the major currencies are the Australia dollar (AUD), Switzerland franc (CHF), Canada dollar (CAD), Republic of South Africa rand (ZAR), Republic of Korea won (KRW), Kingdom of Sweden krona (SEK), New Zealand dollar (NZD), Kingdom of Norway krone (NOK) and Denmark krone (DKK).

[162] As stated above, this section only applies to FX options and non-deliverable FX forwards. Treasury has exempted FX swaps and FX forwards from the definition of ''swap'' under the CEA. *See* Determination of Foreign Exchange Swaps and Foreign Exchange Forwards under the Commodity Exchange Act, 77 FR 69,694, Nov. 20, 2012.

[163] See Table 10 for the enumerated swap categories established by § 43.6(b)(4)(i).

[164] According to the BIS Triennial Central Bank Survey: Foreign Exchange and Derivatives Market Activity in April 2010 (preliminary results, dated September 2010), the currency combinations enumerated under adopted § 43.6(b)(4)(i) comprise more than 80% of global FX market turnover.

According to the Survey of North American Foreign Exchange Volume in October 2012, the proposed categories established by § 43.6(b)(4)(i) cover more than 86% of the notional value of total monthly volume of FX swaps that are priced or facilitated by traders in North America. The Survey of North American Foreign Exchange Volume is conducted by the Foreign Exchange Committee, which includes representatives of major financial institutions engaged in foreign currency trading in the United States and is sponsored by the Federal Reserve Bank of New York. The survey is designed to measure the level of turnover in the foreign exchange market. Turnover is defined as the gross value in U.S. dollar equivalents of purchases and sales entered into during the reporting period. The data covers a one-month period in order to reduce the likelihood that very short-term variations in activity might distort the data and include all transactions that are priced or facilitated by traders in North America (United States, Canada, and Mexico). Transactions concluded by dealers outside of North America are excluded even if they are booked to an office within North America. The survey also excludes transactions between branches, subsidiaries, affiliates, and trading desks of the same firm. The October 2012 data can be located at *http://www.newyorkfed.org/fxc/2012/octfxsurvey2012.pdf.*

[165] For example, the unique currency combination of the Australian Dollar (AUD) and the Canadian Dollar (CAD) had a minimum block threshold of 10,000,000 CAD in the Further Block Proposal. Under adopted § 43.6(b)(4), all trades in this unique currency combination will be eligible for block treatment.

[166] The Commission emphasizes that the swap categories for the FX asset class are unique currency combinations between each of the super-major currencies, major currencies, and additional currencies listed. The classification of EUR and

Continued

The Commission will also modify § 43.6(b)(4)(ii) to establish one swap category for the currency combinations not included in § 43.6(b)(4)(i). This category will encompass the other currency combinations proposed, but not adopted, by the Commission, as well as other non-futures related currency swaps. With the modifications to § 43.6(b)(4), the euro (EUR) and the Canadian dollar (CAD) combination will still be one swap category as in the original proposal pursuant to § 43.6(b)(4)(i). However, the Swedish krona (SEK) and the Korean won (KRW) combination will be grouped with all the other swaps covered by § 43.6(b)(4)(ii) into one swap category. As a further example, a swap of the Czech koruna (CZK) and the Brazilian real (BRL) will be in the same category as the SEK–KRW swap. While the swaps grouped into one category by § 43.6(b)(4)(ii) may have different liquidity levels, these swaps will all be subject to the time delays provided to block trades and large notional off-facility swaps in both the initial and post-initial periods.

The Commission notes that the adopted § 43.6(b)(4)(i) establishes 78 unique currency combinations, covering a vast majority of the notional value of FX swaps concluded by traders in North America. Creating additional swap categories, as suggested by Barclays and GFMA,[167] would result in swap categories totaling a multiple of this already large number without drastically increasing the number of swaps that will be subject to real-time reporting without a delay. Establishing swap categories based upon unique currency combinations as in adopted § 43.6(b)(4)(i) meets the objectives of grouping swaps with economic similarity and reducing confusion for market participants in determining whether their swaps are classified within a particular swap category. The Commission believes that these changes will reduce the administrative burden to both market participants and to the Commission by reducing the number of swap categories for which appropriate minimum block sizes need to be calculated.[168]

TABLE 10—SWAP CATEGORIES ESTABLISHED UNDER § 43.6(b)(4)(i)

	Super-major currencies			
	Euro (EUR)	British pound (GBP)	Japanese yen (JPY)	U.S. dollar (USD)
British Pound (GBP)	EUR–GBP			
Japanese Yen (JPY)	EUR–JPY	GBP–JPY		
U.S. Dollar (USD)	EUR–USD	GBP–USD	JPY–USD	
Australian Dollar (AUD)	AUD–EUR	AUD–GBP	AUD–JPY	AUD–USD
Canadian Dollar (CAD)	CAD–EUR	CAD–GBP	CAD–JPY	CAD–USD
Swiss Francs (CHF)	CHF–EUR	CHF–GBP	CHF–JPY	CHF–USD
Denmark Krone (DKK)	DKK–EUR	DKK–GBP	DKK–JPY	DKK–USD
Korean Won (KRW)	KRW–EUR	KRW–GBP	KRW–JPY	KRW–USD
Swedish Krona (SEK)	SEK–EUR	SEK–GBP	SEK–JPY	SEK–USD
Norwegian Krone (NOK)	NOK–EUR	NOK–GBP	NOK–JPY	NOK–USD
New Zealand Dollar (NZD)	NZD–EUR	NZD–GBP	NZD–JPY	NZD–USD
South African Rand (ZAR)	ZAR–EUR	ZAR–GBP	ZAR–JPY	ZAR–USD
Brazilian Real (BRL)	BRL–EUR	BRL–GBP	BRL–JPY	BRL–USD
Czech Koruna (CZK)	CZK–EUR	CZK–GBP	CZK–JPY	CZK–USD
Hungarian Forint (HUF)	HUF–EUR	HUF–GBP	HUF–JPY	HUF–USD
Israeli Shekel (ILS)	ILS–EUR	ILS–GBP	ILS–JPY	ILS–USD
Mexican Peso (MXN)	MXN–EUR	MXN–GBP	MXN–JPY	MXN–USD
Polish Zloty (PLN)	PLN–EUR	PLN–GBP	PLN–JPY	PLN–USD
Chinese Renminbi (RMB)	RMB–EUR	RMB–GBP	RMB–JPY	RMB–USD
Russian Ruble (RUB)	RUB–EUR	RUB–GBP	RUB–JPY	RUB–USD
Turkish Lira (TRY)	TRY–EUR	TRY–GBP	TRY–JPY	TRY–USD

4. Swap Categories in the Other Commodity Asset Class

The Commission proposed to determine swap categories in the other commodity asset class based on three sets of groupings. The first two sets of groupings create categories of swaps which are economically related to specific futures contracts (*i.e.,* futures-related swaps [169]) or swap contracts under proposed §§ 43.6(b)(5)(i) and (ii). The third set of groupings creates categories based on swaps sharing a common product type under proposed § 43.6(b)(5)(iii).

The Commission proposed defining ''economically related'' [170] in § 43.2 as a direct or indirect reference to the same commodity at the same delivery location or locations,[171] or with the

USD as super-major currencies simply means that both currencies are individually eligible for inclusion among the unique currency combinations used for swap categorization. In the FX asset class, there is no separate bucket for super-major currencies (such as the buckets in the interest rate swap asset class described above).

[167] CL–Barclays at 10; CL–GFMA at 2–3.

[168] In the Further Block Proposal, every unique currency combination would be considered a unique swap category, which means there would be hundreds of different swap categories for the FX asset class. Proposed § 43.6(b)(4)(i) alone established 231 swap categories. Many additional categories would have been established under proposed § 43.6(b)(4)(ii). The adopted § 43.6(b)(4) creates 78 categories requiring the calculation of appropriate minimum block sizes in the post-initial period.

[169] Proposed § 43.2 defines a futures-related swap as a swap (as defined in section 1a(47) of the Act and as further defined by the Commission in implementing regulations) that is economically related to a futures contract. The Commission is adopting this definition as proposed.

[170] In the Real-Time Reporting Final Rule, the Commission explained: ''For the purposes of part 43, swaps are economically related, as described in § 43.4(d)(4)(ii)(B), if such contract utilizes as its sole floating reference price the prices generated directly or indirectly from the price of a single contract described in appendix B to part 43.'' 77 FR 1211. Further, the Commission explained that ''an 'indirect' price link to an Enumerated Physical Commodity Contract or an Other Contract described in appendix B to part 43 includes situations where the swap reference price is linked to prices of a cash-settled contract described in appendix B to part 43 that itself is cash-settled based on a physical-delivery settlement price to such contract.'' *Id.* at n.289.

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

same or substantially similar cash market price series.[172] The Commission noted that this definition would (1) ensure that swap contracts with shared reference price characteristics indicating economic substitutability (*i.e.,* swaps in the category can be used to offset some or all of the risks associated with positions in the underlying commodity) are grouped together within a common swap category;[173] and (2) provide further clarity as to which swaps are described in § 43.4(d)(4)(ii)(B), which was previously finalized under the Real-Time Reporting Final Rule.[174]

The first set of swap categories, covered under proposed § 43.6(b)(5)(i), would establish separate swap categories for swaps that are economically related to one of the contracts listed in appendix B to part 43. Therefore, proposed § 43.6(b)(5)(i) would establish one swap category for each contract listed in appendix B to part 43. The Real-Time Reporting Final Rule previously finalized appendix B to part 43, which lists 29 Enumerated Physical Commodity Contracts and Other Contracts (*i.e.,* Brent Crude Oil (ICE)).[175] In the Further Block Proposal, the Commission proposed to add 13 electricity and natural gas swap contracts to appendix B to part 43.[176] Therefore, proposed § 43.6(b)(5)(i) would establish 42 swap categories such that each contract would be the basis for its own other commodity swap category, and all swaps that are economically related to that contract would be included in that swap category.

The Commission has separately enumerated these contracts since it previously has identified these commodity contracts as: (1) Having high levels of open interest and significant cash flow; and (2) serving as a reference price for a significant number of cash market transactions. Moreover, the Commission has also previously determined that any swap that references or is economically related to these contracts (along with the Brent Crude Oil (ICE) contract or any contract that is economically related to it) has sufficient liquidity to ensure that the public dissemination of swap transaction and pricing data for swaps based on this reference asset poses little risk of disclosing identities of parties, business transactions, or market positions.[177]

The second set of swap categories, covered under proposed § 43.6(b)(5)(ii), would establish swap categories based on swaps in the other commodity asset class that are: (1) Not economically related to one of the futures or swap contracts listed in appendix B to part 43; and (2) economically related to a relevant futures contract that is subject to the block trade rules of a DCM. Proposed § 43.6(b)(5)(ii) listed the 18 futures contracts to which these swaps are economically related, and hence, establishes 18 swap categories.[178] These swap categories would include any swap that is economically related to such contracts. The swap categories established by proposed § 43.6(b)(5)(i) differ from the swap categories established by proposed § 43.6(b)(5)(ii) in that the former may be economically related to futures or swap contracts that are not subject to the block trade rules of a DCM, whereas the latter are economically related to futures contracts that are subject to the block trade rules of a DCM.[179]

The third set of swap categories, covered under proposed § 43.6(b)(5)(iii), would establish swap categories for all other commodity swaps that are not categorized under proposed § 43.6(b)(5)(i) or (ii). These swaps are not economically related to any of the contracts listed in appendix B to part 43 or any of the contracts listed in proposed § 43.6(b)(5)(ii). For these other commodity swaps, the Commission would determine the appropriate swap category based on the product types described in appendix D to part 43 to which the underlying asset(s) of the swap would apply or otherwise relate. Proposed appendix D to part 43 establishes ''Other Commodity Groups'' and certain ''Individual Other Commodities'' within those groups. To the extent that there is an ''Individual Other Commodity'' listed, the Commission would deem the ''Individual Other Commodity'' as a separate swap category. For example, regardless of whether the underlying asset to an off-facility swap is ''Sugar No. 14'' or ''Sugar No. 5,'' the underlying asset would be grouped as ''Sugar.'' The Commission thereafter

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

[173] The Commission proposed to amend § 43.2 to define ''reference price'' as a floating price series (including derivatives contract and cash market prices or price indices) used by the parties to a swap or swaption to determine payments made, exchanged or accrued under the terms of a swap contract. The Commission proposed to use this term in connection with the establishment of a method through which parties to a swap transaction may elect to apply the lowest appropriate minimum block size applicable to one component swap category of such swap transaction. *See infra* Section II.B(6)(b). The Commission is adopting this definition as proposed.

[174] The Real-Time Reporting Final Rule previously finalized § 43.4(d)(4)(ii)(B), which requires a registered SDR to publicly disseminate any publicly reportable swap transaction in the other commodity asset class that is ''economically related'' to one of the contracts described in appendix B to part 43, but did not define ''economically related.'' This definition, as proposed and to be adopted here, would apply to the use of this term throughout all of part 43 of the Commission's regulations.

[175] As noted by the Commission in the Real-Time Reporting Final Rule, the 28 Enumerated Physical Commodity Contracts are traded on U.S. DCMs, while Brent Crude Oil (ICE) futures contracts are primarily traded in Europe. 77 FR 1211 n. 288.

[176] *See infra* Section II.B5(d)(i). The Commission had previously issued orders deeming these contracts as ''significant price discovery contracts'' in connection with trading on exempt commercial markets (''ECMs''), based on, among other factors, their material liquidity and price discovery function. *See infra* Section III.C(4)(a). These contracts included: AECO Financial Basis Contract (''AEC'') traded on the IntercontinentalExchange, Inc. (''ICE'') (*See* 75 FR 23697); NWP Rockies Financial Basis Contract (''NWR'') traded on ICE (*See* 75 FR 23704); PG&E Citygate Financial Basis Contract (''PGE'') traded on ICE (*See* 75 FR 23710); Waha Financial Basis Contract (''WAH'') traded on ICE (*See* 75 FR 24655); Socal Border Financial Basis Contract (''SCL'') traded on ICE (*See* 75 FR 24648); HSC Financial Basis Contract (''HXS'') traded on ICE (*See* 75 FR 24641); ICE Chicago Financial Basis Contract (''DGD'') traded on ICE (*See* 75 FR 24633); SP–15 Financial Day-Ahead LMP Peak Contract (''SPM'') traded on ICE (*See* 75 FR 42380); SP–15 Financial Day-Ahead LMP Off-Peak Contract (''OFP'') traded on ICE (*See* 75 FR 42380); PJM WH Real Time Peak Contract (''PJM'') traded on ICE (*See* 75 FR 42390); PJM WH Real Time Off-Peak Contract (''OPJ'') traded on ICE (*See* 75 FR 42390); Mid-C Financial Peak Contract (''MDC'') traded on ICE (*See* 75 FR 38469); Mid-C Financial Off-Peak Contract (''OMC'') traded on ICE (*See* 75 FR 38469).

As discussed further below, as of October 12, 2012, ICE withdrew its listing of these contracts as a result of converting its cleared OTC swap contracts and related options to futures listed at ICE Futures U.S. and ICE Futures Europe. Accordingly, ICE converted these contracts into economically equivalent futures contracts and has listed them for trading. *See* ICE—Swaps to Futures Transition, *https://www.theice.com/S2F.jhtml* (last visited May 7, 2013). Therefore, as discussed further below, the Commission has determined in this final rule to add the converted contracts to appendix B to part 43, such that each contract will serve as a basis for an other commodity swap category. *See infra* Section II.A(4).

[177] 77 FR 1211.

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

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

would set the appropriate minimum block size for each of the swap categories listed in appendix D to part 43.

In circumstances where a swap does not apply or otherwise relate to a specific ''Individual Other Commodity'' listed under the ''Other Commodity Group'' in appendix D to part 43, the Commission would categorize such swap as falling under the respective ''Other'' swap categories. For example, an emissions swap would be categorized as ''Emissions,'' while a swap in which the underlying asset is aluminum would be categorized as ''Base Metals—Other.'' Additionally, in circumstances where the underlying asset of swap does not apply or otherwise relate to an ''Individual Other Commodity'' or an ''Other'' swap category, the Commission would categorize such swap as either ''Other Agricultural'' or ''Other Non-Agricultural.''

Comments on the proposed swap categories in the other commodity asset class varied. CME Group agreed with the proposed approach to establishing swap categories in the other commodity asset class in the initial period because it would allow appropriate minimum block level sizes to be set based on the minimum block sizes set by DCMs.[180] ICI, however, recommended that the Commission obtain and analyze trading data from SDRs first before determining whether the proposed swap categories are appropriate.[181]

Several commenters commented on the granularity of the proposed swap categories. Some commenters recommended more granular categories to account for the differences in liquidity and execution risk between shorter- and longer-dated contracts.[182] Similarly, Barclays also commented that swap categories in the other commodity asset class should consider that products typically experience a reduction in liquidity beyond the first or second year.[183] Other commenters, however, opposed the proposed categories as too narrow and recommended broadening the definition of ''economically related'' and reducing the number of swap categories to reflect increasing price correlation between different categories of commodities as well as existing hedging practices by market participants.[184]

Parity Energy requested that the Commission establish a separate category for swaps that are economically related to crude oil options because transactions in crude oil options are typically fewer and larger in size than transactions in crude oil futures contracts.[185] Parity Energy also agreed with the proposed distinction in swap categories between swaps that are economically related to natural gas swaps and swaps that are economically related to natural gas swap options.[186]

The Commission is adopting the definition of ''economically related'' as proposed. The Commission believes that broadening the definition, as suggested by some commenters, would reduce the precision with which swaps in the other commodity asset class can be properly categorized. As proposed, the definition of ''economically related'' is sufficient in that it (1) ensures that swap contracts with shared reference price characteristics (indicating economic substitutability) are grouped together within a common swap category and (2) provides further clarity as to which swaps are described in § 43.4(d)(4)(ii)(B).

Furthermore, the Commission believes that its general approach to establishing swap categories under § 43.6(b)(5)(i)–(iii) is appropriate and is adopting the text of § 43.6(b)(5)(i)–(iii) largely as proposed, with the exception of some proposed swap categories in § 43.6(b)(5)(ii).[187] With the conversion of the 13 electricity and natural gas swap contracts proposed to be added to appendix B to part 43 into DCM-listed, economically equivalent futures contracts,[188] the Commission is making one modification by establishing swap categories and adopting initial appropriate minimum block sizes corresponding to those set by a DCM for those futures contracts. With respect to the swap categories established under § 43.6(b)(5)(i), the Commission believes that establishing categories for swaps that are economically related to one of the referenced futures contracts is appropriate because these contracts have previously been identified as (1) having high levels of open interest and significant cash flow; and (2) serving as a reference price for a significant number of cash market transactions.

With respect to the swap categories established under § 43.6(b)(5)(i)–(ii), the Commission is establishing swap categories and adopting initial appropriate minimum block sizes which correspond with those set by a DCM for economically related futures contracts in the initial period.[189] Hence, to the extent possible, the Commission is relying upon the DCMs' knowledge of and experience with liquidity in related futures markets until additional data becomes available. With respect to the swap categories established under § 43.6(b)(5)(iii), the Commission believes that setting swap categories by product type would allow the Commission to set appropriate minimum block sizes for groups of transactions that have similar underlying physical commodity market characteristics. Accordingly, the Commission does not believe that establishing swap categories that are broader than proposed is necessary to enhance market transparency.

[180] CL–CME 3–4. Proposed § 43.6(e)(1) established appropriate minimum block sizes in the initial period for swap categories in proposed § 43.6(b)(5)(i)–(ii) based on the block sizes for related futures contracts set by DCMs, except for natural gas and electricity swaps proposed to be added to appendix B of part 43.

[181] CL–ICI at 5.

[182] CL–ICAP Energy at 4; CL–fia at 3.

[183] CL–Barclays at 9.

[184] CL–Better Markets at 6–7; CL–AFR at 6–7.

[185] CL–Parity at 4–5.

[186] *Id.* As proposed, the initial minimum block size for swaps that are economically related to Henry Hub Natural Gas futures was set at 1,000,000 mmBtu; the initial minimum block size for Henry Hub Natural Gas options was set at 5,500,000 mmBtu.

[187] The Commission is not adopting separate swap categories that it proposed in the Further Block Proposal for swaps that are economically related to the following NYMEX futures contracts: Gulf Coast Gasoline; Gulf Coast Ultra Low Sulfur Diesel; and New York Harbor Ultra Low Sulfur Diesel. As of October 15, 2012, NYMEX eliminated block trading in these contracts because they have no open interest. The Commission is also removing the swap category for swaps that reference or are economically related to Non-Farm Payroll futures contract, the International Skimmed Milk Powder, and Wood Pulp as these contracts are no longer listed for trading.

[188] *See supra* note 176.

[189] *See infra* Section II.B(5)(d).

Furthermore, the Commission is not using additional criteria to create more granular swap categories in the other commodity asset class. While commodity swaps within a particular swap category may feature different liquidity and risk profiles based on their tenor, the Commission is not aware of any data that would warrant additional swap categories. As swaps trading data becomes available, the Commission will examine such data to determine whether establishing additional swap categories would be appropriate.

The other main modification to the swap categories established under § 43.6(b)(5) is that the Commission is not adopting separate swap categories for swaps that are economically related to the options contracts listed in appendix F of the Further Block Proposal.[190] Consistent with the Commission's definitions of ''economically-related'' and ''futures-related swap,'' the Commission considers such swaps, which feature an optionality component, to be economically related to the corresponding futures contracts adopted in appendix F of this final rule for purposes of determining swap categories. This approach to categorizing such swaps is consistent with the Commission's methodology to establish initial appropriate minimum block size for swaps with optionality for all asset classes.[191] Under this methodology, the notional size of swaps with optionality in the initial period will be equal to the notional size of the swap component without the optional component. As discussed further below, the Commission is adopting this methodology as proposed, and therefore will not consider optionality in the determination of a swap contract's notional size—allowing block sizes to be established based on the block sizes set by DCMs for options contracts would contradict this approach.

[190] These options contracts listed in proposed Appendix F, which are subject to a minimum DCM block size rule, included Cocoa (ICE); Coffee (ICE); Cotton No. 2 (ICE); Frozen Concentrated Orange Juice (ICE); Gold (COMEX and NYSE Liffe); New York Harbor No. 2 Heating Oil (NYMEX); Silver (COMEX and NYSE Liffe); Sugar #11 (ICE); and Sugar #16 (ICE).

[191] *See infra* Section II.C.

5. Comments Regarding Swap Categories Across Asset Classes

The Commission received a number of comments suggesting that, for all asset classes, the Commission establish separate swap categories, with separate appropriate minimum block sizes, for infrequently traded or illiquid swaps. Javelin and SDMA did not think infrequently-traded swaps posed an obstacle and recommended swap categorization that would account for hedging for illiquid swaps through synthetic/portfolio hedging through liquidity of economically equivalent swaps.[192] Barclays suggested that all swaps made available to trade that trade less than three times a day should be treated as blocks, as market makers otherwise will be reluctant to quote prices.[193] Alternatively, Barclays suggested removing such swaps from the ''available to trade'' category and thereby exempting them from post-trade reporting.[194] ISDA/SIFMA requested block treatment for all infrequently traded swaps and suggested a benchmark tied to precise daily trading frequency including a time delay for illiquid products generally.[195] To support this approach, ISDA/SIFMA cited a Commission study showing that market participants prefer off-exchange bilateral execution for illiquid instruments because of liquidity concerns.[196] ISDA/SIFMA suggested that a single transaction, regardless of size, in such infrequently-traded or illiquid swaps may move the market.[197] GFMA suggested treating all infrequently-traded swaps as blocks and defines such transactions as exhibiting all or some of the following features: (1) The constituent swap or swaps to which they are economically related are not executed on, or pursuant to the rules of, a SEF or DCM; (2) few market participants have transacted in these swaps or in economically-related swaps; or (3) few swap transactions are executed during a historic period in these swaps or in economically-related swaps.[198] Parascandola recommended block treatment for small notional and odd-lot trades, particularly in index products where the notional amount is below $10 million.[199] Kinetix suggested that transactions in any product with fewer than 250 transactions annually should receive treatment as block trades.[200] Vanguard urged a more granular approach to swap categories and thresholds to ''recognize distinct liquidity pools.''[201] Vanguard and SIFMA suggested that swaps that trade fewer than 14 trades per day should be blocks.[202] AII suggested block treatment for swaps that trade less than 5 times per day.[203]

After consideration of the comments received, the Commission is adopting the swap categories described in the sections above. The Commission believes that the trade frequency of a single instrument is but one measure of liquidity for such a swap and does not factor in the pool of instruments that are capable of providing an economically equivalent position, either individually or on a portfolio basis.

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

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

[192] CL–Javelin at 5–6; CL–SDMA at 6.

[193] CL–Barclays at 4.

[194] *Id.*

[195] ISDA/SIFMA recommended that every transaction (regardless of size) in a swap category for which there are no more than 14 swaps traded per business day receive block treatment for a period of 1 year. CL–ISDA/SIFMA at 12.

[196] According to ISDA/SIFMA, ''[f]orcing the same transparency standards on market participants for both liquid and illiquid products will be detrimental. Instantaneous trade disclosure for highly illiquid products, combined with the potential for SEF or DCM execution, is likely to erode their liquidity further and to do severe damage to the safety and soundness of the system as a whole.'' *Id.*

[197] *Id.*

[198] CL–GFMA at 3.

[199] CL–Parascondola at 1.

[200] CL–Kinetix at 1.

[201] CL–Vanguard at 5.

[202] CL–SIFMA at 10; CL–Vanguard at 7.

[203] CL–AII at 6.

1. Phase-In of Appropriate Minimum Block Sizes

As discussed in Section I.C.2. above, the Commission proposed a phase-in of its regulations regarding appropriate minimum block size methodologies so that market participants could better adjust their swap trading strategies to manage risk, secure new technologies, and make necessary arrangements to comply with part 43. Thus, the Commission proposed two provisions relating to the Commission's determination of appropriate minimum block sizes: (1) Initial appropriate minimum block sizes under proposed § 43.6(e); and (2) post-initial appropriate minimum block sizes under proposed § 43.6(f).

The Commission received ten comments regarding the proposed phase-in of its appropriate minimum block size methodologies. Four commenters, AII, EEI, SIFMA, and Vanguard, requested that the Commission apply block status to all swaps during the initial period.[204] AII stated that removing (or lowering) block thresholds would appropriately transition the market and avoid harming liquidity.[205] SIFMA recommended collecting SDR data during the initial period and gradually and iteratively phasing in block thresholds.[206] Vanguard also expressed concern regarding the liquidity impacts of setting block thresholds without more data.[207]

Eight commenters suggested that the Commission establish a more conservative threshold during the initial period. AII recommended that the Commission either remove block trading thresholds during the initial period or lower the thresholds below the proposed levels to appropriately transition the market and avoid unnecessarily harming liquidity.[208] Barclays recommended introducing block levels that allow for empirical analysis of the transaction data and sequentially increasing block sizes until such point as the desired equilibrium between transparency and liquidity is reached.[209] GFMA stated that, if the Commission used a percentage notional test, then it should introduce it in a phased manner to assess the impact on the market over time and ensure it has sufficient flexibility to amend the notional percentage.[210] ICAP Energy proposed specific initial block thresholds for PJM at 50 MW/Hr and for SP–15 and Mid-C at 30 MW/Hr, and for natural gas basis swaps at 2500 MMBTUs/day.[211] ICI, while supporting a 50 percent notional amount calculation, urged the Commission to phase-in the calculation for very illiquid instruments (less than 3 or 4 trades per week) by first implementing a 25 percent notional amount calculation, in order to alleviate potential harmful effects of disclosure of large block sizes on liquidity, particularly in illiquid swaps markets.[212] ISDA/SIFMA stated that the Commission should phase in the block threshold in order to allow trading on SEFs and DCMs to develop and suggested setting the threshold based on a 25-percent notional amount calculation.[213] SIFMA proposed a multi-phase process for establishing block levels, starting with a one-year data collection phase, followed by an initial period with low block levels.[214] The block levels would then be decreased if the Commission found that liquidity significantly decreased or bid-ask spreads significantly increased over the quarter for swaps close to, but below, the block threshold.[215] WMBAA encouraged the Commission to implement lower block trade thresholds while the post-trade reporting requirements are implemented and market participants begin providing data to SDRs for cleared and uncleared swaps.[216]

After consideration of the comments above, the Commission is adopting a phased-in approach as proposed, but with modifications in response to the comments above regarding phasing, as more fully described below.

2. Overview of Proposed Approach

The chart below summarizes swap categories and calculation methodologies that the Commission proposed for each asset class in both the initial period and the post-initial period.

[204] CL–AII at 3; CL–EEI at 5; CL–SIFMA at 3; CL–Vanguard at 7.

[205] CL–AII at 3.

[206] CL–SIFMA at 3.

[207] CL–Vanguard at 7.

[208] CL–AII at 3.

[209] CL–Barclays at 11.

[210] CL–GFMA at 3.

[211] CL–ICAP Energy at 3.

[212] CL–ICI at 7.

[213] CL–ISDA/SIFMA at 13.

[214] CL–SIFMA at 3.

[215] *Id.*

[216] CL–WMBAA at 4.

PROPOSED APPROACH

Asset class	Swap category criteria	Initial implementation period	Post-initial implementation period [217]
Interest Rates	By unique currency and tenor grouping [218]	67-percent notional amount calculation by swap category [219]	67-percent notional amount calculation by swap category [220]
Credit	By tenor and conventional spread grouping [221]		
FX	By numerated FX currency combinations (*i.e.,* futures related) [222]	Based on DCM futures block size by swap category [223]	
	By non-enumerated FX currency combinations (*i.e.,* non-futures related) [224]	All trades may be treated as block trades [225]	
Other Commodity	By economically-related Appendix B to part 43 contract if the swap is (1) futures related and (2) the relevant futures contract is subject to DCM block trade rules [226]	Based on DCM futures block size by swap category [227]	
	By economically-related Appendix B to part 43 contract if the swap is: (1) futures related and (2) the relevant futures contract is *not* subject to DCM block trade rules [228]	No trades may be treated as blocks [229]	
	By economically-related Appendix B to part 43 contract if the swap is (1) a listed natural gas or electricity swap contract and (2) the relevant Appendix B contract is not futures related [230]	Appropriate minimum block size equal to $25 million [231]	
	By swaps that are economically related to the list of 18 contracts listed in § 43.6(b)(5)(ii) [232]	Based on DCM futures block size by swap category [233]	
	By Appendix D to part 43 commodity group, for swaps not economically related to a contract listed in Appendix B to part 43 or to the list of 18 contracts listed in § 43.6(b)(5)(ii) [234]	All trades may be treated as block trades [235]	
Equity	All equity swaps [236]	No trades may be treated as blocks [237]	

3. The 67-Percent Notional Amount Calculation for Determination of Appropriate Minimum Block Sizes

The Commission proposed using a 67-percent notional amount calculation to determine initial and post-initial appropriate minimum block sizes for swaps in the interest rate and credit asset classes pursuant to proposed §§ 43.6(c)(1), 43.6(e)(1), and 43.6(f)(1).[238] The Commission also proposed using a 67-percent notional amount calculation to determine post-initial appropriate minimum block sizes for swaps in the FX and other commodity asset classes pursuant to § 43.6(f)(1).

The 67-percent notional amount calculation as proposed is a methodology under which the Commission would: (Step 1) select all of the publicly reportable swap transactions within a specific swap category using a rolling three-year window of data beginning with a minimum of one year's worth of data and adding one year of data for each calculation until a total of three years of data is accumulated;[239] (step 2) convert to the same currency or units and use a ''trimmed data set'';[240] (step 3) determine the sum of the notional amounts of swaps in the trimmed data set; (step 4) multiply the sum of the notional amount by 67 percent; (step 5) rank order the observations by notional amount from least to greatest; (step 6) calculate the cumulative sum of the observations until the cumulative sum is equal to or greater than the 67-percent notional amount calculated in step 4; (step 7) select the notional amount associated with that observation; (step 8) round the notional amount of that observation to two significant digits, or if the notional amount associated with that observation is already significant to two digits, increase that notional amount to the next highest rounding

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

[218] *See* proposed § 43.6(b)(1).

[219] *See* proposed § 43.6(c)(1).

[220] *See* proposed § 43.6(f)(2).

[221] *See* proposed § 43.6(b)(2).

[222] *See* proposed § 43.6(b)(4)(i).

[223] *See* proposed § 43.6(e)(1).

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

[225] *See* proposed § 43.6(e)(2).

[226] *See* proposed § 43.6(b)(5)(i).

[227] *See* proposed § 43.6(e)(1).

[228] *See* proposed § 43.6(b)(5)(i).

[229] *See* proposed § 43.6(e)(3).

[230] *See* proposed § 43.6(b)(5)(i).

[231] *See* proposed § 43.6(e)(3).

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

[233] *See* proposed § 43.6(e)(1).

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

[235] *See* proposed § 43.6(e)(2).

[236] *See* proposed § 43.6(b)(3).

[237] *See* proposed § 43.6(d).

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

[239] *See* note 85 supra for the definition of publicly reportable swap transaction. Since the Commission proposed to determine all appropriate minimum block sizes based on reliable data for all publicly reportable swap transactions within a specific swap category, the Commission does not view the fact that more than one SDR may collect such data as raising any material concerns.

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

point of two significant digits;[241] and (step 9) set the appropriate minimum block size at the amount calculated in step 8. An example of how the Commission would apply this proposed methodology is set forth in section VII of this final rule.

Twenty-eight commenters provided general comments on the resulting proposed block sizes or on the general approach of using a notional amount calculation. Out of the 28 commenters, 14 opposed the 67 percent notional amount calculation and/or supported lower appropriate minimum block sizes,[242] 12 supported the 67 percent notional amount calculation and/or supported higher appropriate minimum block sizes,[243] 1 commenter felt unable to comment on the 67 percent notional amount calculation without actual swap data,[244] and 1 commenter opposed the 67 percent notional calculation for the other commodity asset class, but also felt that the 50 percent notional calculation was too low for interest rates.[245]

Of the 14 commenters who opposed the 67 percent notional amount calculation and/or supported lower appropriate minimum block sizes, two commenters, CME and Barclays, opposed the notional amount calculation generally, but not necessarily the resulting block sizes.[246] CME stated that the rule is arbitrary and unrelated to the explicit goals of Dodd-Frank with respect to setting appropriate minimum block sizes.[247] Barclays stated that the calculation is not based on any analysis of the impact that these thresholds will have on liquidity or on the corresponding costs to market participants.[248] The other commenters in this group generally expressed concern that the appropriate minimum block sizes were too large and would reduce liquidity and/or disrupt markets. For example, AII stated that ''we believe that if the CFTC utilizes the 67 percent notional calculation required under the Proposed Rules, the CFTC will sacrifice liquidity for certain swap products and alter the proper functioning of the marketplace in the name of transparency.''[249]

Several of the commenters who opposed the 67 percent notional amount calculation and/or supported lower appropriate minimum block sizes specifically discussed the 50 percent notional amount calculation. These commenters generally expressed concern that the 67 percent notional amount calculation resulted in appropriate minimum block sizes that are too high and would result in reduced liquidity in these markets. Freddie Mac and ICI expressly supported a 50 percent notional amount calculation.[250] Pierpont and WMBAA recommended a notional amount calculation of no greater than 50 percent.[251] ICAP Energy and SIFMA recommended a notional amount calculation below 50 percent, but preferred a 50 percent notional amount calculation to a 67 percent notional amount calculation.[252] AII and ICAP recommended not using a notional amount calculation at all, but preferred a 50 percent notional amount calculation to a 67 percent notional amount calculation.[253]

Some of the commenters who opposed the 67 percent notional amount calculation and/or supported lower appropriate minimum block sizes did so conditionally. MFA preferred the 50 percent notional amount calculation over the 67 percent primarily in the initial period—''if swap categories are not properly distinguished, and the Commission cannot ensure a calibration of the initial minimum block sizes to current market conditions, we hesitate to endorse the 67 percent notional amount calculation in the final rulemaking and prefer instead that the Commission use a 50 percent notional amount calculation, particularly in the initial period, with a phase-in to a 67 percent notional amount calculation over time.''[254] Two other commenters supported the 50 percent notional amount calculation, but in the context of specific asset classes—Freddie Mac for the interest rate asset class and ICAP Energy for the other commodity asset class ''for year two and beyond.''[255]

Of the 12 commenters who supported the 67 percent notional amount calculation and/or higher appropriate minimum block sizes, several argued that lower appropriate minimum block sizes were inconsistent with congressional intent. Barnard and SDMA specifically stated that a 50 percent notional amount calculation would not constitute a ''vast majority'' of swap transactions as intended by Congress.[256] Moreover, commenters also suggested that the 67 percent notional amount calculation supported the statutory requirements of section 2(a)(13) of the CEA as well as congressional intent. For example, Arbor stated that ''the 67% rule and the Market Depth test are consistent with [c]ongressional [i]ntent, promotes transparency and trading of SEFs, provides better market data, and is a conservative approach given the market's size.''[257] CRT and Currenex stated that the 67 percent notional amount calculation would achieve a proper balance between market transparency and market liquidity.[258] Jefferies stated that the 67 percent notional amount calculation was consistent with congressional intent.[259]

Seven commenters expressed a preference for the 67 percent notional amount calculation, but also supported another alternative.[260] ODEX, RJ O'Brien, and Spring Trading expressed support for the 67 percent notional amount calculation, but also suggested that a higher notional amount calculation would be preferable, particularly in the post-initial period.[261] AFR, Better Markets, Javelin, and SDMA all recommended a 75 percent or higher notional amount calculation and a market depth and market breadth test.[262]

A number of commenters also expressed concern regarding imposing the proposed 67 percent notional amount calculation prior to analysis of swap data collected by SDRs. AII recommended lowering or eliminating block thresholds until complete data has been reported to SDRs so as not to

[241] For example, if the observed notional amount is $1,250,000, the amount should be increased to $1,300,000. This adjustment is made to assure that at least 67 percent of the total notional amount of transactions in a trimmed data set are publicly disseminated in real time.

[242] Commenters in this category include AII, Barclays, CME, Freddie Mac, ICAP Energy, ICAP North America, ICI, ISDA/SIFMA, MFA, Morgan Stanley, Pierpont, SIFMA, Vanguard, WMBAA.

[243] Commenters in this category include Arbor, AFR, Barnard, Better Markets, CRT, Currenex, Javelin, Jefferies, ODEX, RJ O'Brien, SDMA, Spring Trading.

[244] CL–GFMA at 3.

[245] CL–FIA at 2–3.

[246] CL–CME at 2; CL–Barclays at 10.

[247] CL–CME at 2.

[248] CL–Barclays at 10.

[249] CL–AII at 2.

[250] CL–Freddie at 2; CL–ICI at 6–7.

[251] CL–Pierpont at 3; CL–WMBAA at 3.

[252] CL–ICAP Energy at 3; CL–SIFMA at 10.

[253] CL–AII at 6; CL–ICAP Energy at 4.

[254] CL–MFA at 3–4.

[255] CL–Freddie at 2; CL–ICAP Energy at 3.

[256] The ''guiding principle in setting appropriate block trade levels [is that] the vast majority of swap transactions should be exposed to the public market through exchange trading.'' Congressional Record—Senate, S5902, S5922 (July 15, 2010); CL–Barnard at 3; CL–SDMA at 2.

[257] CL–Arbor at 1.

[258] CL–CRT at 1–2; CL–Currenex at 2.

[259] CL–Jefferies at 1–2.

[260] CL–AFR at 8–9; CL–Better Markets at 7–8; CL–Spring Trading at 2; CL–ODEX at 1; CL–RJ O'Brien at 1; CL–AFR at 8–9; CL–Better Markets at 7–8; CL–Javelin at 2; CL–SDMA at 2.

[261] CL–ODEX at 1; CL–RJ O'Brien at 1; CL–Spring Trading at 2.

[262] CL–AFR at 8–9; CL–Better Markets at 7–8; CL–Javelin at 2; CL–SDMA at 2. For a discussion of market depth and market breadth, *see infra* note 271 and accompanying text.

impair market liquidity.[263] Barclays recommended introducing block levels that allow for empirical analysis of the transaction data and sequentially increasing block sizes until such point as the desired equilibrium between transparency and liquidity is reached.[264] Better Markets suggested transitioning to a market depth and market breadth test after the Commission has collected a year of SDR data.[265] GFMA could not comment on the 67 percent notional amount calculation in the absence of swap data.[266] ICAP Energy stated that once post-implementation swap data is obtained, then the Commission and industry will be in better position to assess liquidity and propose block levels.[267] ICI stated that, for those asset classes where no data is available, it is impossible to determine whether the Commission has identified the most relevant criteria for swap categories.[268] ISDA/SIFMA suggested that for new interest rate swap products the Commission should allow for block treatment until sufficient data is available.[269] Vanguard stated that block thresholds cannot be established absent an adequate data source and time for assessment.[270]

In the Further Block Proposal, the Commission specifically requested comment regarding other potential methods for determining appropriate minimum block thresholds. While the Commission received numerous comments regarding the efficacy of a notional amount calculation and the appropriate percentage to use in making such a calculation, the Commission only received significant comments regarding one other method. The Commission received a number of comments regarding whether the Commission should use a market depth and market breadth test, instead of the 67 percent notional amount calculation methodology, to calculate the relevant initial minimum block sizes and the post-initial minimum block sizes.[271]

Many commenters expressed support for adopting the market depth test[272] and other commenters additionally supported utilizing the market breadth test.[273] Several commenters stated that such tests would provide a more accurate depiction of overall liquidity in specific markets, and thus would produce more appropriate minimum block sizes.[274] Other commenters stated that employing the tests would be consistent with congressional intent expressed in the Dodd-Frank Act.[275] MFA, however, cautioned that current market depth may be an unreliable indicator because it may vary over time and be subject to manipulation.[276]

Several commenters supported using the market depth and market breadth test in conjunction with the proposed notional amount calculation methodology and proposed different approaches. Some commenters recommended using the market depth test during the initial period as a cross-check against the Commission's notional amount calculations.[277] SDMA and Javelin argued that a market depth and market breadth analysis would justify adoption of a 75-percent notional amount threshold in the initial period;[278] AFR suggested, however, that such a threshold could be set as a floor, with higher thresholds available based on liquidity levels.[279] Spring Trading suggested using the market depth test on a quarterly basis to refine the 67-percent threshold during the initial period.[280] Jefferies recommended using the test in the post-initial period to complement the 67-percent notional amount calculation in the initial period for interest rate and credit swaps.[281]

Some commenters noted the need for available and sufficient data to adopt the market depth and market breadth tests. AFR commented that sufficient data was already available based on information provided on trading screens of trading venues.[282] Other commenters, however, stated that additional market data would allow the tests to produce a more adequate snapshot of liquidity.[283] For example, SDMA recommended adopting the tests after obtaining six months of data; Vanguard and Better Markets recommended a year.[284]

After consideration of the comments received in regard to phasing-in the appropriate minimum block size and the 67-percent notional amount calculation, the Commission is adopting § 43.6(e)(1) with the following modifications. For the initial period, the Commission is adopting the 50 percent notional amount calculation to determine appropriate minimum block sizes in the interest rate swaps and credit asset classes. The Commission is of the view that this approach provides for a more gradual phase-in of minimum block sizes as recommended by numerous commenters. Moreover, this will allow SDRs to collect at least one year of reliable data for each swap category prior to the application of the higher 67-percent notional amount calculation to determine appropriate minimum block sizes in the post initial period, which the Commission is adopting as discussed below.

For the post-initial period, the Commission is adopting § 43.6(f)(1) as proposed. The 67-percent notional amount calculation is intended to ensure that within a swap category, approximately two-thirds of the sum total of all notional amounts are reported on a real-time basis. This approach would ensure that market participants have a timely view of a substantial portion of swap transaction and pricing data to assist them in determining, inter alia, the competitive

[263] CL–AII at 6.

[264] CL–Barclays at 11.

[265] CL–Better Markets at 9–10.

[266] CL–GFMA at 3.

[267] CL–ICAP Energy at 2.

[268] CL–ICI at 4.

[269] CL–ISDA/SIFMA at 14.

[270] CL–Vanguard at 7.

[271] Market depth and market breadth was proposed to be calculated as follows: (step 1) Identify swap contracts with pre-trade price transparency within a swap category; (step 2) calculate the total executed notional volumes for each swap contract in the set from step 1 and calculate the sum total for the swap category over the look back period; (step 3) collect a market depth snapshot of all of the bids and offers once each minute for the pre-trade price transparency set of contracts identified in step 1; (step 4) identify the four 30-minute periods that contain the highest amount of executed notional volume each day for each contract of the pre-trade price transparency set identified in step 1 and retain 120 observations related to each 30-minute period for each day of the look-back period; (step 5) determine the average bid-ask spread over the look-back period of one year by averaging the spreads observed between the largest bid and executed offer for all the observations identified in step 3; (step 6) for each of the 120 observations retained in step 4, calculate the sum of the notional amount of all orders collected from step 3 that fall within a range, calculate the average of all of these observations for the look-back period and divide by two; (step 7) to determine the trimmed market depth, calculate the sum of the market depth determined in step 6 for all swap contracts within a swap category; (step 8) to determine the average trimmed market depth, use the executed notional volumes determined in step 2 and calculate a notional volume-weighted average of the notional amounts determined in step 6; (step 9) using the calculations in steps 7 and 8, calculate the market breadth based on the following formula: market breadth = averaged trimmed market depth + (trimmed market depth − average trimmed market depth) × .75; (step 10) set the appropriate minimum block size equal to the lesser of the values from steps 8 and 9. 77 FR 15,482.

[272] CL–CME at 2; CL–ODEX at 2; CL–Spring Trading at 2; CL–MFA at 7; CL–FIA at 2.

[273] CL–Arbor at 1; CL–AFR at 8–9; CL–Jeffries at 2; CL–SDMA at 3–6; CL–Javelin at 4–6; CL–RJ O'Brien at 1; CL–Better Markets at 9–10; CL–CRT at 2; CL–FIA at 2.

[274] CL–AFR at 9; CL–Spring Trading at 2; CL–FIA at 2; CL–SDMA at 8.

[275] CL–Arbor at 1; CL–CME at 2; CL–AFR at 3.

[276] CL–MFA at 7.

[277] CL–MFA at 7; CL–SDMA at 7; CL–Spring Trading at 2.

[278] CL–SDMA at 5; CL–Javelin at 2.

[279] CL–AFR at 9.

[280] CL–Spring Trading at 2.

[281] CL–Jefferies at 3.

[282] CL–AFR at 9.

[283] CL–Jefferies at 2; CL–Javelin at 6; CL–Arbor at 1; CL–RJ O'Brien at 1; CL–CRT at 2.

[284] CL–Better Markets at 10; CL–SDMA at 7; CL–Vanguard at 7.

price for swaps within a relevant swap category. The Commission anticipates that enhanced price transparency would encourage market participants to provide liquidity (*e.g.,* through the posting of bids and offers), particularly when transaction prices move away from the competitive price. The Commission also anticipates that enhanced price transparency would improve market integrity and price discovery, while reducing information asymmetries enjoyed by market makers in predominately opaque swap markets.[285]

In the Commission's view, using the 67-percent notional amount calculation in the post-initial period also would minimize the potential impact of real-time public reporting on liquidity risk. The Commission views this calculation methodology as an incremental approach to achieve real-time price transparency in swaps markets. The Commission believes that its methodology, in conjunction with the 50-percent notional amount calculation during the initial period, represents a tailored approach towards achieving the goal of subjecting ''a vast majority'' of swap transactions to real-time public reporting.[286]

As noted above, CEA section 2(a)(13)(E)(iv) directs the Commission to take into account whether the public disclosure of swap transaction and pricing data ''will materially reduce market liquidity.'' [287] If market participants conclude that the Commission has set appropriate minimum block sizes for a specific swap category in a way that will materially reduce market liquidity, then those participants are encouraged to submit data to support their conclusion. In addition, through its own surveillance of swaps market activity, the Commission may become aware that an appropriate minimum block size would reduce market liquidity for a specific swap category.[288] In response to either a submission or its own surveillance of swaps market activity the Commission may exercise its legal authority to take action by rule or order to mitigate the potential effects on market liquidity with respect to swaps in a particular swap category.

With respect to the market depth and market breadth test, the Commission is declining to adopt this approach to determine appropriate minimum block sizes at this time. The Commission considers the test a viable alternative to the notional amount calculation methodology, but also recognizes several prerequisites to implementing such a test. For example, the Commission would need to determine which contracts within a swap category offer pre-trade price transparency—electronically displayed and executable bids and offers as well as displayed available volumes for execution. As noted by commenters, adequate market trading data also must be available to collect a market depth snapshot of all of the bids and offers for the pre-trade price transparency set of applicable contracts. The Commission is also cognizant of MFA's concerns regarding the potential for manipulation of market depth. Given the time needed for trading infrastructure to develop and the significant time and cost considerations involved in collecting such data from SEFs and DCMs, the Commission will continue to examine the merits of adopting the market depth and market breadth test.

The Commission is currently of the view that data is per se reliable if it is collected by an SDR for an asset class after the respective compliance date for such asset class as set forth in part 45 of the Commission's regulations or by other Commission action. The Commission notes that SDRs have been collecting data pursuant to the compliance dates for certain market participants and asset classes since December 2012. DCMs and Swap Dealers (''SDs'') began reporting swap transactions in the interest rate and credit default swap asset classes on December 31, 2012.[289] DCMs and SDs began reporting swap transactions in the FX, equity, and other commodity asset classes on February 28, 2013.[290] Major Swap Participants (''MSPs'') began reporting swap transactions in all five asset classes on February 28, 2013.[291] Financial Entities began reporting swap transactions in the interest rate and credit default swap asset classes on April 10, 2013.[292] Financial Entities begin reporting swap transactions for swaps executed starting April 10, 2013, in the FX, equity, and other commodity asset classes on May 29, 2013.[293] Non-SDs, non-MSPs, and non-Financial Entities begin reporting swap transactions for swaps executed starting April 10, 2013, in the interest rate and credit default swap asset classes on July 1, 2013.[294] Non-SDs, non-MSPs, and non-Financial Entities begin reporting swap transactions for swaps executed starting April 10, 2013, in the FX, equity, and other commodity asset classes on August 19, 2013.[295] Accordingly, the Commission and SDRs will have one year of reliable data as of April 10, 2014.

The Commission notes that in response to either a submission or its own surveillance of swaps market activity, the Commission may exercise its legal authority to take action by rule or order to delay the imposition of post-initial appropriate minimum block sizes, particularly with respect to swap categories in the other commodity asset class.

4. Data for Determination of Appropriate Minimum Block Sizes in the Post-Initial Period

As referenced above in § 43.6(f)(2), the Commission proposed determining post-initial appropriate minimum block sizes utilizing a three-year rolling window (beginning with a minimum of one year and adding one year of data for each calculation until a total of three years of data is accumulated) of swap transaction and pricing data.

The Commission received eight comments regarding the use of a three-

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

[286] *See* note 41 supra. This phased-in approach seeks to improve transparency while not having a negative impact on market liquidity.

[287] 7 U.S.C. 2(a)(13)(E)(iv).

[288] The Commission received two comments supporting the Commission's authority to set appropriate minimum block sizes outside of the proposed annual look-back period. MFA argued that the Commission's goal to balance transparency and liquidity would be better achieved with the flexibility to adjust minimum block sizes quickly to respond to material market changes. CL–MFA at 8. MFA recommended that the Commission should have the authority to update post-initial minimum block sizes in extraordinary circumstances and on a case-by-case basis, based on SDR data that it receives for individual or across multiple swap categories. *Id.* GFMA stated that if the Commission establishes a notional calculation test, then it should ensure that it has sufficient flexibility to amend minimum block sizes. CL–GFMA at 4. GFMA recommended that the Commission should be able to ''swiftly alter'' block trade levels to enable some trading to be conducted in a newly illiquid market, without the benefit of reference to a data set. *Id.* The Commission notes that § 43.6(f)(1) provides that the Commission shall update post-initial appropriate minimum block levels ''[n]o less than once each calendar year.'' Accordingly, the Commission notes that it has the ability to adjust post-initial minimum block sizes under the types of extraordinary circumstances raised by commenters.

[289] *See* ''Commission Q & A—On the Start of Swap Data Reporting'' (Oct. 9, 2012).

[290] *See* ''No-Action Relief for Swap Dealers from Certain Swap Data Reporting Requirements of Part 43, Part 45, and Part 46 of the Commission's Regulations Due to Effects of Hurricane Sandy,'' Commission Letter No. 12–41 (Dec. 5, 2012).

[291] *See id.*

[292] *See* ''Time-Limited No-Action Relief for Swap Counterparties that are not Swap Dealers or Major Swap Participants, from Certain Swap Data Reporting Requirements of Parts 43, 45 and 46 of the Commission's Regulations,'' Commission Letter No. 13–10 (Apr. 9, 2013).

[293] *See id.*

[294] *See id.*

[295] *See id.*

year rolling window of data. AII believed it would be more prudent for the Commission to base block trading thresholds on a shorter time frame, using newer data. AII recommended that the Commission should only use the highest of the three-year, one-year, or one-quarter data collected in the determinations.[296] GFMA stated that the three-year rolling data set is unlikely to be sensitive enough to shorter term changes in market liquidity and therefore risks setting block sizes that do not reflect current market conditions.[297] ICI believed that a three-year window may not provide an appropriate data set to calculate the block threshold, and encouraged the Commission to look at a one-year set of data and a one-quarter set of data to determine whether the calculation would produce more accurate results.[298] ISDA/SIFMA recommended a 6-month window for determining appropriate minimum block sizes, as a three-year rolling window is over-inclusive, particularly in CDS.[299] Kinetix expressed concern that historical data may not be indicative of current market conditions.[300] MFA was concerned that the three-year window would constrain the ability to shorten the look-back period if material changes in market conditions warranted a smaller data set, and recommended retaining the option to shorten the look-back window for the observed data set.[301] SIFMA believed that block reassessments should look to data on swaps executed since the previous reassessment, rather than from a three-year data window as proposed by the Commission.[302] Vanguard believed the assessment should be made on the basis of data recorded over a rolling three-month period for each swaps category.[303]

After consideration of the comments received, the Commission is adopting § 43.6(f)(2) with modifications. Based upon the numerous comments recommending a data set covering a shorter time frame, the Commission will determine post-initial appropriate minimum block sizes under § 43.6(f)(2) utilizing a one-year window of swap transaction and pricing data. This approach will allow the Commission to better calibrate block thresholds to changes in market liquidity, while at the same time providing enough data to smooth out fluctuations in data such as those that may result from, for example, seasonality.

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

The Commission received five comments regarding the proposed use of a trimmed data set. Three commenters supported the use of a trimmed data set, but suggested alternative approaches. ISDA/SIFMA opposed the proposed methodology and believed that it would establish a threshold that is too high to exclude large transactions.[304] Therefore, ISDA/SIFMA recommended that the Commission look instead at the raw block size (calculated based on all transactions in the relevant swap category) and eliminate any trades more than five times larger than the block threshold.[305] ISDA/SIFMA alternatively recommended that the Commission only exclude transactions that are three standard deviations beyond the mean because the proposed methodology (excluding transactions that are four standard deviations beyond the mean) would capture large transactions that would otherwise skew the data.[306] For purposes of applying a market depth and market breadth test, Javelin and SDMA recommended trimming each data set to focus only on bids or offers at the ''current price''—the Commission would (1) determine the mid-point of the bid-offer spread; (2) capture orders between the bid and this value; and (3) capture orders between the offer and this value.[307]

Two commenters opposed data trimming on the grounds that it is irrelevant to the purpose of determining minimum block trade sizes. AFR and Better Markets believed that trimming the data set would ultimately skew minimum block size calculations, such that certain-sized trades would be classified as block trades.[308] Better Markets stated that the Commission should disclose the discrepancies between using a trimmed data set versus an unfiltered data set to calculate the block size threshold because the public lacks the data to make this determination on its own.[309]

After consideration of the comments received, the Commission is adopting § 43.2 as proposed and applying the concept of a trimmed data set in § 43.6(c) as proposed. The Commission believes that removing the largest transactions, but not the smallest transactions, may provide a better data set for establishing the appropriate minimum block size, given that the smallest transactions may reflect liquidity available to offset large transactions. Moreover, in the context of setting a block trade level (or large notional off-facility swap level), a method to determine relatively large swap transactions should be distinguished from a method to determine extraordinarily large transactions; the latter may skew measures of the central tendency of transaction size (*i.e.,* transactions of usual size) away from a more representative value of the center.[310] Therefore, trimming the data set increases the power of these statistical measures. In response to the commenters who oppose data trimming, the Commission emphasizes that trimming the data set is necessary to avoid the skewing of these measures, which could lead to the establishment of inappropriately high minimum block sizes.

5. Methodology for Determining the Appropriate Minimum Block Sizes by Asset Class

a. Interest Rate and Credit Default Swaps

As described above, the Commission proposed using a 67-percent notional amount calculation to determine appropriate minimum block sizes for swaps in the interest rate and credit asset classes in both the initial and post-initial periods pursuant to §§ 43.6(c)(1), 43.6(e)(1), and 43.6(f)(1). There was an exception to the use of the 67-percent notional amount calculation for the initial period in three swap categories in the interest rate and credit asset classes which contained less than 30 transactions that would meet the definition of publicly reportable swap transaction: (1) Interest rate swap

[296] CL–AII at 11.

[297] CL–GFMA at 4.

[298] CL–ICI at 7–8.

[299] CL–ISDA/SIFMA at 14.

[300] CL–Kinetix at 1.

[301] CL–MFA at 8.

[302] CL–SIFMA at 6–7.

[303] CL–Vanguard at 7.

[304] CL–ISDA/SIFMA at 14.

[305] *Id.*

[306] *Id.*

[307] CL–Javelin at 5; CL–SDMA at 8.

[308] CL–AFR at 7; CL–Better Markets at 9.

[309] CL–Better Markets at 9.

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

category—major currency/30 years +; (2) interest rate swap category—non-major currency/30 years +; and (3) CDScategory—350 bps +/6 to 8.5 years. If the Commission were to use the proposed 67 percent notional calculation method, then two of the three swap categories would have resulted in appropriate minimum block sizes higher than those proposed. The remaining swap category contained no data. Accordingly, for these three swap categories in the initial period, the Commission proposed using the lowest appropriate minimum block size for their respective asset classes based on the respective data set.[311] In the interest rate asset class, the swap category with the lowest block size was the non-major currency/5 to 10 years, with an appropriate minimum block size of $22 million (USD). In the credit asset class, the swap category with the lowest block size was the category 350 bps +/8.5 to 12.5 years, with an appropriate minimum block size of $21 million (USD). Hence, the appropriate minimum block size was proposed to be set at $22 million (USD) for the two interest rate swap categories with insufficient data and at $21 million (USD) for the corresponding CDS category.

For interest rate swaps specifically, the Commission received eight comments regarding the application of the 67 percent notional amount calculation to determine initial and post-initial minimum block sizes. Jefferies supported the Commission's proposal, stating that the 67 percent notional amount calculation was consistent with congressional intent and observed liquidity.[312] FIA did not explicitly support the 67 percent notional amount calculation, but stated that a 50 percent notional amount calculation for interest rate swaps would be significantly too low.[313] Javelin, ODEX, SDMA, and Spring Trading all recommended that the Commission maintain the proposed 67 percent notional amount calculation or raise the threshold higher.[314] Javelin and SDMA both suggested a 75 percent notional amount calculation in conjunction with a market breadth and market depth approach.[315] Other commenters, however, suggested lower values for the notional amount calculation—Freddie recommended a 50 percent notional calculation in the absence of more comprehensive data about liquidity and depth of swaps markets.[316] Pierpont commented that, for instances where one counterparty to a swap is not a registered swap dealer, the Commission should determine block levels based on a 25 percent notional amount calculation.[317]

For credit default swaps, the Commission received four comments regarding the application of the 67 percent notional amount calculation to determine initial and post-initial minimum block sizes. Jefferies supported the Commission's proposal, stating that the 67 percent notional amount calculation was consistent with congressional intent and observed liquidity.[318] Javelin recommended that the Commission maintain the proposed 67 percent notional amount calculation or raise the threshold higher, to a 75 percent notional amount calculation.[319] Four commenters supported a market depth and market breadth test for CDS.[320]

The Commission also received seven comments specifically regarding the interest rate swaps and CDS data sets used for determining swap categories and establishing appropriate minimum block thresholds in the initial period. AII commented that the data for interest rate swaps and CDS is no longer reflective of the market, nor is it reflective of the market that will result once the Commission's regulations are implemented in full, and urged the Commission not to rely on minimal and outdated data.[321] ICI stated that the historical data on which the Commission relies may not be reflective of the swaps market once the Dodd-Frank Act requirements are fully implemented.[322] Freddie stated that the interest rate data set may not be comprehensive enough to form the basis of the proposed minimum block sizes, particularly where the proposed post-initial appropriate minimum block sizes are determined after transaction and pricing data has been collected for a year.[323] ICAP recommended that, if the Commission relies on historical market data, then it should use data that is more current and demonstrated to be representative of the market.[324] MFA stated that, given limitations related to the size, composition, and timeliness of the data set that the Commission used for the initial period, the Commission should calibrate initial minimum block sizes against current market conditions.[325] Vanguard stated that block thresholds cannot be established absent an adequate data source and time for assessment.[326] WMBAA believed that, in basing rules on three months of data from over two years ago, the Commission has failed to ''examine the relevant data and articulate a satisfactory explanation for its action including a rational connection between the facts found and the choices made'' as well as ''determine as best it can the economic implications of the rule.'' [327]

As described more fully above, in response to comments regarding the data sets used for interest rate and credit default swaps, the use of an incremental approach, and the comments regarding phasing and the 67-percent notional amount calculation regardless of asset class, the Commission is adopting a phased-in approach to notional amount calculation. The Commission is adopting § 43.6(e)(1) and (f)(1) as proposed, with modifications. In the initial period, the Commission is adopting the 50-percent notional amount calculation to determine appropriate minimum block sizes in the interest rate and credit asset classes. The Commission believes that this approach provides for a more gradual phase-in of minimum block sizes, as explained more fully above.[328]

The Commission did not receive any comments regarding the exception to the 67 percent notional amount calculation for swap categories containing fewer than 30 transactions. Accordingly, the Commission will continue to apply this exception in instances where the a Interest Rate or Credit swap category contains fewer than 30 transactions in calculating appropriate minimum block thresholds for the initial period.

b. Equity

The Commission proposed under § 43.6(d) that all swaps in the equity asset class would not qualify for treatment as a block trade or large notional off-facility swap (*i.e.,* these swaps would not be subject to a reporting time delay under part 43). As noted above, the Commission proposed this approach based on (1) the existence of a highly liquid underlying cash market; (2) the absence of time delays for reporting block trades in the underlying equity cash market; (3) the

[311] 77 FR at 15480.

[312] CL–Javelin at 1–2.

[313] CL–FIA at 2.

[314] CL–Javelin at 2; CL–ODEX at 1; CL–SDMA at 2; CL–Spring Trading at 2.

[315] CL–Javelin at 2; CL–SDMA at 2.

[316] CL–Freddie at 2.

[317] CL–Pierpont at 3.

[318] CL–Javelin at 1–2.

[319] CL–Javelin at 2.

[320] CL–CRT at 1–2; CL–Javelin at 5–6; CL–Jefferies at 2; CL–SDMA at 2–7.

[321] CL–AII at 7.

[322] CL–ICI at 5.

[323] CL–Freddie at 2.

[324] CL–ICAP at 8.

[325] CL–MFA at 6–7.

[326] CL–Vanguard at 7.

[327] CL–WMBAA at 4–5.

[328] *See supra* Section II.B(3).

small relative size of the equity swaps market relative to the futures, options and cash equity index markets; and (4) the Commission's goal to protect the price discovery function of the underlying equity cash market and futures market.

The Commission received six comments regarding swap categories in the equity asset class. One commenter, AFR, felt that no block trade treatment is appropriate as proposed for the equity asset class.[329] Five other commenters recommended that the Commission treat equity swaps similarly to the other asset classes and establish swap categories based upon a range of criteria.[330]

AII disagreed with the Commission's proposal that no equity swaps should be treated as blocks and suggested harmonization with the SEC's approach for large equity trades.[331] Barclays also disagreed with disallowing block levels for all equity swaps and recommended that the equity asset class should be treated similarly to the other asset classes, such that broad based indices should have separate block levels based upon futures market levels.[332] Barclays also suggested that the Commission coordinate with the SEC in setting minimum block levels.[333] ICI recommended interim time delays for all equity swaps until a closer study of data on equity swap transactions is completed, due to potential differences in liquidity in the underlying equity cash market.[334] ISDA/SIFMA requested that the Commission reconsider its proposal and suggested that the Commission establish block sizes based on the consideration of total trading volume of swaps linked to the relevant underlying index or basket of equity securities.[335] SIFMA stated that the Commission should establish appropriate minimum block sizes for equity swaps based upon liquidity of the underlying indices.[336]

After consideration of the comments received, the Commission is adopting § 43.6(d) as proposed. While a number of the commenters pointed out differences in liquidity in the underlying equity indices as a justification for swap categorization, these differences do not alter the premises underlying the Commission's proposal. Even taking these differences into account, there is still (1) a highly liquid underlying cash market; and (2) a small equity swaps market relative to the futures, options, and cash equity index markets. These characteristics, combined with the fact that there are no time delays for reporting block trades in the underlying equity cash market, makes establishment of swap categories and block thresholds for equity swaps inappropriate.[337] Accordingly, the Commission is adopting § 43.6(d) as proposed.

c. FX

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

i. Initial Period Methodology

The Commission proposed under § 43.6(e)(1) to set the appropriate minimum block sizes for swaps in the FX asset class during the initial period based on whether such swap is economically related to a futures contract, *i.e.,* a futures-related swap.[338] For futures-related swaps in the FX asset class, proposed § 43.6(e)(1) provides that the Commission would establish the appropriate minimum block sizes based on the block trade size thresholds set by DCMs for economically-related futures contracts.[339] The Commission set forth the initial appropriate minimum block sizes in proposed appendix F to part 43 of the Commission's regulations.[340] For non-futures related swaps in the FX asset class in the initial period, the Commission proposed under § 43.6(e)(2) that all such swaps would qualify to be treated as block trades or large notional off-facility swaps (*i.e.,* these swaps would be subject to a time delay under part 43 of the Commission's regulations). The Commission expected that this provision, as provided, only would apply to the most illiquid swaps.

The Commission received three comments specifically related to the proposed methodology for determining appropriate minimum block sizes for swap categories in the FX asset class during the initial period. SDMA supported the Commission's proposed block trade thresholds for the FX asset class.[341] AII, however, urged the Commission to consider removing the block trading threshold during the initial period for the FX asset class, so as to allow the Commission to use SDR data to properly evaluate the market.[342] ICAP recommended an initial block level of $10 million in the 1-month contract on a variety of FX non-deliverable forward contracts.[343]

The Commission notes that, since the Further Block Proposal, Treasury has issued a Final Determination, pursuant to sections 1a(47)(E)(i) and 1b of the CEA, that exempts FX swaps and FX forwards from the definition of ''swap'' under the CEA. Therefore, the requirements of section 2(a)(13) of the CEA would not apply to those transactions, and such transactions would not be subject to part 43 of the Commission's regulations.[344] Nevertheless, section 1a(47)(E)(iii) of the CEA provides that FX swaps and FX forwards transactions still are not excluded from regulatory reporting requirements to an SDR. Further, the Commission notes that Treasury's final determination excludes FX swaps and FX forwards, but does not apply to FX options or non-deliverable FX forwards. As such, FX instruments that are not covered by Treasury's final determination are subject to part 43 of the Commission's regulations.

After consideration of the comments received, the Commission is adopting § 43.6(e)(1) and (2) as proposed. However, given the changes to proposed § 43.6(b)(4)(i), which significantly reduce the number of swap categories, the Commission believes that this approach encompasses the most liquid FX swaps and instruments, including all

[329] CL–AFR at 6.

[330] CL–AII at 9; CL–Barclays at 9; CL–ICI at; ISDA/SIFMA at 10–11; SIFMA at 5.

[331] CL–AII at 9.

[332] CL–Barclays at 9.

[333] *Id.*

[334] CL–ICI at 5.

[335] CL–ISDA/SIFMA at 10–11.

[336] CL–SIFMA at 5.

[337] In the event that time delays are established for reporting block trades in the underlying equity cash market, the Commission may consider establishing swap categories and block thresholds for equity swaps.

[338] *See supra* note 169.

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

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

[341] CL–SDMA at 2.

[342] CL–AII at 3 n.10.

[343] CL–ICAP at 10.

[344] *See* Determination of Foreign Exchange Swaps and Foreign Exchange Forwards under the Commodity Exchange Act, 77 FR 69694, Nov. 20, 2012.

super-major currency combinations, as well as all super-major and major currency combinations. This approach further encompasses many important super-major and non-major currency combinations, many of which already have block trade size thresholds set by DCMs for economically-related futures contracts.[345] The Commission believes that this approach is appropriate during the initial period in the absence of actual swap data. The approach during the initial period would draw upon the experience of DCMs in considering the potential impacts on liquidity risk that enhanced transparency may cause in connection with futures contract execution.[346] The Commission understands that DCMs have set block sizes primarily in consideration of the objectives of enhancing pre-trade transparency and reducing liquidity risk.[347] The Commission notes that DCMs are required to set block sizes for futures in compliance with relevant core principles (including Core Principle 9)[348] and Commission regulations.[349]

ii. Post-Initial Period Methodology

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

The Commission received three comments specific to the proposed methodology for determining appropriate minimum block sizes for swap categories in the FX asset class during the post-initial period. SDMA supported the Commission's proposed block trade thresholds for the FX asset class.[350] Barclays and GFMA, however, expressed concern that the 67 percent notional amount calculation was proposed without actual swap data regarding the FX asset class.[351]

After consideration of the comments received, the Commission is adopting § 43.6(f)(2) with the modification that only those swap categories established in § 43.6(b)(4)(i) will have minimum block sizes set using this methodology in the post-initial period, while the remainder of the swaps covered by § 43.6(b)(4)(ii) will continue to be treated as blocks. The Commission believes that applying the 67 percent notional amount calculation will ensure that the vast majority of swap transactions are subject to real-time reporting.[352] In addition, applying the 67 percent notional amount calculation to all five asset classes in the post-initial period provides a consistent, bright-line rule regarding how appropriate minimum block thresholds will be calculated, thus providing clarity to market participants engaging in swap transactions. By allowing all swaps covered by § 43.6(b)(4)(ii) to be treated as blocks, the Commission is being conservative in its approach in potentially less liquid markets where the impacts to market participants of inappropriate block trades could be substantial. The Commission believes that this approach provides additional time to analyze data in order to establish improved swap categories as suggested by commenters.

d. Other Commodity

The Commission proposed using different methodologies for the initial and post-initial periods to determine appropriate minimum block sizes for swaps categories in the other commodity asset class. The proposed methodology for determining the appropriate minimum block sizes in the initial period differs based on the three types of other commodity swap categories: (1) Those swaps based on contracts listed in appendix B to part 43 of the Commission's regulations;[353] (2) swaps that are economically related to certain futures contracts;[354] and (3) other swaps.[355] With regards to (1), the Commission proposed setting initial appropriate minimum block sizes for publicly reportable swap transactions in which the underlying asset directly references or is economically related to the natural gas or electricity swap contracts listed in appendix B to part 43 of the Commission's regulations.[356] The proposed methodology for determining the appropriate minimum block sizes for other commodity swaps in the post-initial period follows the same methodology—the 67 percent notional amount methodology—used for determining the post-initial appropriate minimum block sizes in the interest rate, credit and FX asset classes. A more detailed description of the methodologies during the initial and post-initial periods, as well as the rules for the special treatment of listed natural gas and electricity swaps are presented in the subsections below.

i. Initial Period Methodology

With respect to swaps that reference or are economically related to one of the futures contracts listed in appendix B to part 43[357] or in § 43.6(b)(5)(ii), the Commission proposed to set the appropriate minimum block size based on the block sizes for related futures

[345] *See* Q18 of the Further Block Proposal, which sets forth an alternative approach to proposed swap categories based on unique currency combinations. 77 FR 15476.

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

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

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

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

[350] CL–SDMA at 2.

[351] CL–Barclays at 10; CL–GFMA at 3.

[352] *See supra* note 256.

[353] *See* proposed § 43.6(b)(5)(i). The Commission is adopting most of the proposed categories in this final rule, subject to some modifications. *See supra* note 190 and accompanying text.

[354] As proposed under § 43.6(b)(5)(ii), these futures contracts were: CME Cheese; CBOT Distillers' Dried Grain; CBOT Dow Jones-UBS Commodity Index Excess Return; CBOT Ethanol; CME Frost Index; CME Goldman Sachs Commodity Index (GSCI) (GSCI Excess Return Index); NYMEX Gulf Coast Gasoline; Gulf Coast Sour Crude Oil; NYMEX Gulf Coast Ultra Low Sulfur Diesel; CME Hurricane Index; CME International Skimmed Milk Powder; NYMEX New York Harbor Ultra Low Sulfur Diesel; CBOT Nonfarm Payroll; CME Rainfall Index; CME Snowfall Index; CME Temperature Index; CME U.S. Dollar Cash Settled Crude Palm Oil; and CME Wood Pulp. The Commission is adopting most of the proposed categories in this final rule, subject to some modifications. *See supra* note 187.

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

[356] The Commission notes that pursuant to proposed § 43.6(b)(5)(i), each of the listed natural gas and electricity swap contracts proposed to be listed in appendix B to part 43 would be considered its own swap category. As discussed further above, the Commission is adopting these categories in this final rule. *See supra* Section II.A(4).

[357] The futures contracts that are currently listed on appendix B to part 43 are the 28 Enumerated Reference Contracts plus Brent Crude Oil (ICE). The 13 electricity and natural gas swap contracts that the Commission had proposed to add to appendix B to part 43 of the Commission's regulations were not futures contracts. As noted above, however, these contracts have been converted into economically equivalent futures contracts that are listed on a DCM. *See supra* note 176.

contracts set by DCMs.[358] Similar to its rationale with respect to setting initial appropriate minimum block sizes for swaps in the FX asset class, the Commission believed that this approach would utilize the experience of DCMs in considering liquidity effects of enhancing pre-trade transparency in setting block sizes for these contracts. For swaps that reference or are economically related to a futures contract listed in appendix B to part 43 that is not subject to a DCM block trade rule, the Commission proposed in § 43.6(e)(3) to disallow treatment as a block trade or large notional off-facility swap. The Commission based this approach on an inference that DCMs have not set block trade rules for certain futures contracts because of the degree of liquidity in those futures markets.

In the initial period, the Commission proposed in § 43.6(e)(2) to treat all non-futures-related swaps [359] in the other commodity asset class as block trades or large notional off-facility swaps (*i.e.,* these swaps would be subject to a reporting time delay under part 43, irrespective of notional amount). The Commission believed that non-futures-related swaps in the other commodity asset class generally have lower liquidity in contrast to the more liquid interest rate, credit and equity asset classes, as well as other commodity swaps that are economically related to liquid futures contracts (*i.e.,* those futures contracts listed in appendix B to part 43).

The Commission also proposed to amend appendix B to part 43 of the Commission's regulations to add 13 natural gas and electricity swap contracts, which the Commission previously has determined to be liquid contracts serving a price discovery function,[360] with each contract serving as the basis for a swap category in the other commodity asset class. The Commission further proposed to set the initial appropriate minimum block size for each of these categories to $25 million (USD), which would apply to natural gas and electricity swaps that reference or are economically related to these natural gas and electricity swap contracts.[361]

SDMA expressed support for the proposed methodology for swaps in the other commodity asset class.[362] With respect to the swaps in which the underlying asset references or is economically related to one of the natural gas or electricity swaps listed in appendix B to part 43, EEI also expressed support for denominating the minimum block size in U.S. dollars, rather than by a quantity such as Mwh.[363] EEI argued that denominating minimum block sizes in U.S. dollars would promote standardization across the various trading hubs in the electricity and natural gas markets.[364]

Several commenters, however, objected to certain aspects of the proposed $25 million (USD) initial appropriate minimum block size. Two commenters recommended setting the block sizes based on mmBtu/day and MW/hr for natural gas and electricity swaps, respectively, rather than setting the block sizes based on notional amount.[365] ICAP Energy commented in particular that adopting the latter approach would be inappropriate, given that prices for such commodities fluctuate due to peak season usage or delivery location.[366] ICAP Energy also commented that it was not clear as to how the notional value of swaps with optionality would be calculated; calculating notional value based on the premium of the option, for example, would adversely affect low-premium options such as out-of-the-money calls and puts.[367]

Two commenters opposed the proposed $25 million (USD) initial minimum block size with respect to the swap categories for the electricity swaps added to appendix B to part 43. ICAP Energy and EEI argued that the proposed limits were too high given the relative illiquidity of these markets.[368] ICAP Energy recommended the following minimum block sizes: PJM WH (on-peak and off-peak)—50 MW/hr; SP–15 Financial Day-Ahead LMP (on-peak and off-peak)—30/MW/hr; Mid-C Financial (on-peak and off-peak—30 MW/hr).[369] EEI requested that the Commission treat all electricity swaps transactions as block trades during the initial period or, in the alternative, set the initial minimum block size at no higher than $3 million.[370]

ICAP Energy and EEI also opposed the proposed $25 million initial minimum block size with respect to the swap categories for the natural gas swaps proposed to be added to appendix B to part 43. EEI requested that the Commission treat all natural gas swaps transactions as block trades during the initial period because of their relatively illiquid markets.[371] In the alternative, EEI recommended setting the initial minimum block size at no higher than $3 million, which would approximately equate the proposed initial block size for the Henry Hub Natural Gas futures contract.[372] ICAP Energy recommended setting the initial minimum block size at 2500 mmBtu.[373]

Parity Energy commented on the ambiguity of the term ''economically related'' and requested clarification that natural gas swaps with optionality that reference or are economically related to the Henry Hub Natural Gas options would be subject to the initial minimum block size proposed for that particular swap category (5,500,000 mmBtu), rather than the block size for Henry Hub Natural Gas futures (1,000,000 mmBtu).[374]

Parity Energy opposed the proposed initial minimum block size of 100,000 bbl. to crude oil swaps with optionality as too low and recommended that the Commission establish a separate initial minimum block size for such swaps at 1,000,000 bbl., which would be consistent with CME's minimum block size for Light Sweet Crude Oil options.[375]

ICAP Energy commented that swaps that reference or are economically

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

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

[360] *See supra* Section II.A(4).

[361] For swaps in which the underlying asset references or is economically related to one of the natural gas or electricity swaps, the Commission proposed to treat such natural gas and electricity swaps differently than other publicly reportable swap transactions in the other commodity asset class when setting the initial appropriate minimum block sizes. The Commission recognized that traders typically offset their positions in the natural gas and electricity markets through trading OTC forward contracts, swaps, plain vanilla options, non-standard options and other customized arrangements since existing futures contracts listed on DCMs only cover a limited number of electricity delivery points. The proposed $25 million initial minimum block level corresponded to the level of the interim and initial cap sizes. For a discussion of interim and initial cap sizes, *see supra* section III.A of the Further Block Proposal.

[362] CL–SDMA at 2 n.1.

[363] CL–EEI at 11 n. 29.

[364] *Id.*

[365] CL–ICAP Energy at 4; CL–Barclays at 9.

[366] CL–ICAP Energy at 4.

[367] *Id.*

[368] CL–ICAP Energy at 5; CL–EEI at 5.

[369] CL–ICAP Energy at 5.

[370] CL–EEI at 8.

[371] CL–EEI at 8.

[372] According to EEI, the proposed initial minimum block size of 1,000,000 mmBtu for the Henry Hub Natural Gas futures contract is approximately equal to a minimum block size of $3 million. EEI Comment Letter at 8–9.

[373] CL–ICAP Energy at 5.

[374] CL–Parity at 3.

[375] *Id.* at 4–5.

related to the NYMEX New York Harbor RBOB Gasoline futures contract, for which the Commission has not set an initial minimum block size under proposed appendix F, should be subject to a block size that is consistent with the one set by DCMs for the related futures contract.[376]

The Commission has considered the comments above regarding the appropriate unit of measurement and initial appropriate minimum block size for the natural gas and electricity swap categories in the other commodity asset class. Based on those comments and the other commodity swap categories adopted by the Commission in this final rule that are based on the converted natural gas and electricity futures contracts,[377] the Commission is setting the appropriate minimum block sizes for these categories in the initial period based on the block sizes set by DCMs for these futures contracts. The Commission is adopting this approach for several reasons. This approach is consistent with the Commission's approach for swaps that reference or are economically related to one of the futures contracts previously listed in appendix B to part 43 or adopted § 43.6(b)(5)(ii), which utilizes the experience of DCMs in setting block sizes for these contracts. The Commission also believes this approach is more conservative than the proposed $25 million initial minimum block size, which might adversely affect market liquidity for the electricity and natural gas swaps markets. Further, this approach responds to comments by setting the initial minimum block sizes based on underlying units, rather than notional amount, and would be more appropriate to avoid price fluctuations and to establish consistency with post-initial calculation methodology.

In response to Parity Energy and consistent with the Commission's adopted approach to swaps categories in the other commodity asset class under § 43.6(b)(5)(i)–(ii), the Commission is not establishing initial appropriate minimum block sizes based on DCM block sizes for swaps that reference or are economically related to the options contracts listed in proposed appendix F.[378] The Commission is establishing initial appropriate minimum block size for such swaps based on the adopted methodology for swaps with optionality, as discussed further below.[379] The notional size of swaps with optionality in the initial period will be equal to the notional size of the swap component without the optional component; accordingly, the appropriate minimum block size will be based on the block sizes for economically related futures contracts set by DCMs.[380]

The Commission is otherwise adopting the rule generally as proposed under § 43.6(e) with respect to swaps in the other commodity asset class, but also is updating initial appropriate minimum block sizes proposed in appendix F, consistent with block sizes set by DCMs for the relevant related futures contract.[381] In response to ICAP Energy's request, the Commission is also setting an initial minimum block size for swaps that reference or are economically related to the NYMEX New York Harbor RBOB Gasoline futures contract that is based on the DCM block size set for that contract.

ii. Post-Initial Period Methodology

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

Several commenters opposed the 67-percent notional amount calculation methodology for swaps in the other commodity asset class in the post-initial period.[382] CME and WMBAA characterized the proposed methodology as overbroad and recommended a more tailored approach based on the trading profiles of each particular market.[383] Barclays commented that the Commission has no data or evidence demonstrating that such a notional amount would properly balance liquidity and transparency considerations.[384] ICAP Energy recommended a lower post-initial notional amount—either 33 or 50 percent—that would account for the illiquid nature of the electricity and natural gas basis swaps market.[385] Based on the non-standardized and bespoke nature of many electricity and natural gas swap transactions, EEI recommended that the Commission eliminate post-initial minimum block sizes for the electricity and natural gas swap categories for the swaps added to appendix B to part 43.[386] EEI also recommended that the Commission eliminate minimum post-initial block sizes for the electricity swap category under appendix D.[387] In the alternative, EEI recommended that the Commission set the minimum block sizes for each of these categories at no greater than $3 million.[388]

After consideration of the comments received, the Commission is adopting § 43.6(f)(1) as proposed for swap categories in the other commodity asset class for the post-initial period. The reasons stated by the Commission above in support of this methodology in the post-initial period also apply to swaps in this asset class. The Commission believes that this methodology will ensure that the vast majority of swap transactions are subject to real-time reporting.[389] In addition, applying the same post-initial notional amount calculation to the other commodity asset class provides a consistent, bright-line rule regarding how appropriate minimum block thresholds will be calculated, thus providing clarity to market participants engaging in swap transactions.

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

The Commission recognizes the complexity of the swaps market may make it difficult to determine appropriate minimum block sizes for particular types of swaps under the methodologies discussed above. For that reason, the Commission proposed § 43.6(h), which sets out a series of special rules that apply to the determination of the appropriate minimum block sizes for particular types of swaps. The Commission proposed special rules with respect to: (a) Swaps with optionality; (b) swaps with composite reference prices [390]; (c)

[376] CL–ICAP Energy at 1–2.

[377] *See supra* note 176.

[378] *See supra* note 187 and accompanying text.

[379] *See infra* Section II.C.

[380] *See infra* Section II.B.

[381] The Commission is also amending the initial minimum block size for swaps that reference or are economically related to the GSCI Excess Return Index, Dow Jones-UBS Commodity Index, Gulf Coast Sour Crude Oil, and Palladium futures contract. The Commission is also removing the initial minimum block size for swaps that reference or are economically related to the Non-Farm Payroll, International Skimmed Milk Powder, and Wood Pulp futures contracts, as these contracts are no longer listed for trading. *See supra* note 187.

[382] CL–Barclays at 10; CL–CME at 2, 4; CL–WMBAA at 2–3.

[383] CL–CME at 4; CL–WMBAA at 2–3.

[384] CL–Barclays at 10.

[385] CL–ICAP Energy at 3.

[386] CL–EEI at 8–9.

[387] *Id.* at 9.

[388] EEI requested that the Commission delay the adoption of minimum block sizes for the swaps in these categories for at least one year until it has obtained at least one year of data from an SDR; in the interim, all relevant transactions would be eligible for block trade treatment. CL–EEI at 11.

[389] *See* note 41 *supra.*

[390] In the Further Block Proposal, the Commission proposed amending § 43.2 to define ''swaps with

''physical commodity swaps'' [391]; (d) currency conversions; and (e) successor currencies. Each of these special rules is discussed in the subsections below.

a. Swaps With Optionality

A swap with optionality highlights special concerns in terms of determining whether the notional size of such swap would be treated as a block trade or large notional off-facility swap. Proposed § 43.6(h)(1) addressed these concerns by providing that the notional size of swaps with optionality would equal the notional size of the swap component without the optional component. For example, a LIBOR 3-month call swaption with a calculated notional size of $9 billion for the swap component—regardless of option component, strike price, or the appropriate delta factor—would have a notional size of $9 billion for the purpose of determining whether the swap would qualify as a block trade or large notional off-facility swap.[392]

The Commission received two comments regarding proposed § 43.6(h)(1). FIA stated that the approach failed to recognize potential differences in liquidity between the swap and an underlying swaption.[393] FIA also pointed out that the Further Block Proposal did not explicitly address how to handle combinations of options.[394] With respect to options transactions involving swaps in the electricity, natural gas, and crude oil swap categories that are used to carry out complex strategies, ICAP Energy recommended treating all such transactions, as well as related swap hedges, as block trades.[395] ICAP Energy cited the complex nature of these transactions and the common involvement of an intermediary in carrying them out as reasons for across-the-board treatment as block trades.[396] ICAP Energy, however, supported the proposed approach of adopting the block sizes set by DCMs for natural gas and electricity outright options.[397]

After consideration of the comments received, the Commission is adopting § 43.6(h)(1) as proposed. In response to ICAP Energy, the Commission believes that the proposed approach provides an easily calculable method for market participants to ascertain whether their swaps with optionality features would qualify as a block trade or large notional off-facility swap. The Commission is aware that this approach does not take into account the risk profile of a swap with optionality compared to that of a ''plain-vanilla swap,'' but believes that this approach is reasonable to minimize complexity.

b. Swaps With Composite Reference Prices

Swaps with two or more reference prices (*i.e.,* composite reference prices) raise concerns as to which reference price market participants should use to determine whether such swap qualifies as a block trade or large notional off-facility swap.[398] Proposed § 43.6(h)(2) provides that the parties to a swap transaction with composite reference prices (*i.e.,* two or more reference prices) may elect to apply the lowest appropriate minimum block size applicable to any component swap category. This provision also would apply to: (1) Locational or grade-basis swaps that reflect differences between two or more reference prices; and (2) swaps utilizing a reference price based on weighted averages of component reference prices.[399]

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

The Commission received one comment regarding proposed § 43.6(h)(2). AFR recommended that transactions that are composites of swaps that are economically equivalents of futures contracts should be disaggregated and separately priced for the purpose of determining applicability of the block rules. AFR also recommended that the Commission be vigilant of the use of composite swaps by counterparties in order to ''evade the purpose of Section 727 and the Proposed Rules.'' [400]

With respect to spread transactions, ICAP Energy recommended that the minimum block size limit be based upon the lowest limit leg of the transaction, in a manner consistent with the proposed approach to setting minimum block size limits for the mixed asset swap class.[401]

Based upon the comments received, the Commission is adopting § 43.6(h)(2) with certain clarifications based upon general concerns expressed by commenters regarding the use of composite swaps to evade minimum block sizes. The Commission is of the view that this rule provides market participants with a straightforward and uncomplicated way in which to determine whether such swap would qualify as a block trade or large notional off-facility swap, but that a clarification is needed to avoid the risk of evasion raised by commenters. In response to ICAP Energy's comments, the Commission highlights to provide clarity that ''any component swap category'' as used above in the methodology applies to swaps with a single Unique Swap Identifier (''USI'') for the combination of swaps identified with a single Unique Product Identifier (''UPI'') and not to groups of different swaps each with separate USIs transacted on or near the same time.[402] Further, the reference to ''any component swap category'' does not

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

[391] In the Further Block Proposal, the Commission proposed to amend § 43.2 of the Commission's regulations by defining the term ''physical commodity swap'' as a swap in the other commodity asset class that is based on a tangible commodity. The Commission is adopting this definition as proposed.

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

[393] CL–FIA at 3.

[394] *Id.*

[395] CL–ICAP Energy at 6.

[396] *Id.*

[397] CL–ICAP Energy at 7.

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

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

[400] CL–AFR at 5.

[401] CL–ICAP Energy at 6.

[402] The real-time public reporting rules would apply to each of the separate USIs as previously finalized in part 43. 17 CFR 45.5.

limit the application of this standard to those composite reference swaps comprised of only multiple asset classes and instead should be understood to apply more broadly to composite swaps of multiple asset classes (*i.e.,* a mixed asset swap), intra asset classes, and intra swap category composite reference prices.

To provide further clarity and clarification in response to AFR's comment, the Commission provides the following additional example of determining whether a composite reference price swap transaction would qualify as a block trade or large notional off-facility swap. For example, assume that the appropriate minimum block size for swap category E is $50 million and for swap category F is $200 million. If a single swap transaction with a corresponding singular reporting obligation is based on a composite reference price that itself is based on the weighted average of (1) one component in swap category E; (2) a second component in swap category E; and (3) a component in swap category F (33% equal weightings for each), and the notional size of the swap is $75 million (*i.e.,* $25 million for each component swap), then the swap would not qualify as a block trade or large notional off-facility swap based on either the swap category E or the swap category F appropriate minimum block size.

c. Physical Commodity Swaps

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

The Commission received no comments regarding proposed § 43.6(h)(3). The Commission is adopting § 43.6(h)(3) as proposed.

d. Currency Conversion

Under proposed § 43.6(h)(4), the Commission provided that when determining whether a swap transaction denominated in a currency other than U.S. dollars qualifies as a block trade or large notional off-facility swap, swap counterparties and registered entities may use a currency exchange rate that is widely published within the preceding two business days from the date of execution of the swap transaction in order to determine such qualification. This proposed approach would enable market participants to use a currency exchange rate that they deem to be the most appropriate or easiest to obtain.

The Commission received no comments regarding proposed § 43.6(h)(4). The Commission is adopting § 43.6(h)(4) as proposed.

e. Successor Currencies

As noted above, the Commission proposed using currency as a criterion to determine swap categories in the interest rate asset class.[403] The Commission also proposed to classify the euro (EUR) as a super-major currency, among other currencies.[404] Proposed § 43.6(h)(5) provides that for currencies that succeed a super-major currency, the appropriate currency classification for such currency would be based on the corresponding nominal gross domestic product (''GDP'') classification (in U.S. dollars) as determined in the most recent World Bank World Development Indicator at the time of succession. This proposed provision is intended to address the possible removal of one or more of the 17 EU member states that use the euro.[405]

Proposed § 43.6(h)(5)(i)–(iii) further specifies the manner in which the Commission would classify a successor currency for each country that was once a part of the predecessor currency. Specifically, the Commission proposes to use GDP to determine how to classify a successor currency. For countries with a GDP greater than $2 trillion, the Commission would classify the successor currency to be a super-major currency.[406] For countries with a GDP greater than $500 billion but less than $2 trillion, the Commission would classify the successor currency as a major currency.[407] For nations with a GDP less than $500 billion, the Commission would classify the successor currency as a non-major currency.[408]

The Commission received no comments regarding proposed § 43.6(h)(5). The Commission is adopting § 43.6(h)(5) as proposed.

C. Procedural Provisions

1. Sec. 43.6(a) Commission Determination

The Commission proposed that it determine the appropriate minimum block size for any swap listed on a SEF or DCM, and for large notional off-facility swaps. Proposed § 43.6(a) specifically provides that the Commission would establish the appropriate minimum block sizes for publicly reportable swap transactions based on the swap categories set forth in proposed § 43.6(b) in accordance with the provisions set forth in proposed §§ 43.6(c), (d), (e), (f) and (h), as applicable.

The Commission received eight comments regarding determination of appropriate minimum block sizes for swaps listed on a SEF or DCM. Four commenters favored allowing SEFs and DCMs to set appropriate minimum block sizes for the swaps they list. CME stated that the Commission would be better served by retaining the ability to set block levels in the private, bilateral swaps market and deferring to the expertise of SEFs and DCMs to set the levels in their markets.[409] ICAP suggested that the Commission utilize the same approach as for the futures markets, where futures exchanges set their own block sizes, and allow SEFs to set block sizes since they have an incentive to provide as much information about trading interest as possible without hurting liquidity.[410] Morgan Stanley suggested that the Commission could allow DCMs and SEFs to set appropriate block sizes, subject to Commission approval, as DCMs and SEFs would benefit from setting block sizes in a way that maximizes liquidity.[411] WMBAA stated that the Commission should authorize SEFs to analyze ongoing swaps market

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

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

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

[406] *See* proposed § 43.6(h)(6)(i).

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

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

[409] CL–CME at 3.

[410] CL–ICAP at 5–6.

[411] CL–Morgan Stanley at 3.

trading activity and trade data to determine uniform thresholds that distinguish transactions that move markets from those that do not, and work to ensure that block trade regimes for swaps executed on SEFs and DCMs are as consistent as possible to avoid arbitrage.[412]

Four commenters supported the Commission's proposal that the Commission set minimum block levels. Three of those commenters recommended that SEFs and DCMs should not be able to set minimum block thresholds above the level mandated by the Commission. Javelin asserted that the CFTC should set block trade rules and not SEFs, so as to avoid a race to the bottom that would harm transparency and threaten competition.[413] SIFMA stated that the Commission should set minimum block trade size thresholds and argued that allowing SEFs and DCMs to set a block size threshold above the minimum level mandated by the Commission without guidance is inconsistent with the Commission's statutory duty ''to specify the criteria for determining what constitutes a large notional swap transaction (block trade) for particular markets and contracts.'' [414] AII also stated that SEFs or DCMs should not have the ability to set block sizes for swaps at higher levels than the appropriate minimum block sizes determined by the Commission, as SEFs in particular have interests that may not be aligned with buy-side firms and may not be incentivized to ensure that market disruption is minimal.[415]

In addition, ICAP Energy stated that SEF block limits for futures equivalent swap contracts should adjust automatically to meet DCM contract limits adjustments between annual revisions of SEF block limits, so that the Commission does not set SEF block levels at levels higher than the block levels set by DCMs.

Based upon the comments received, the Commission is adopting § 43.6(a) as proposed. The Commission agrees with the commenters who recommended that appropriate minimum block thresholds for swaps be set by the Commission, rather than SEFs or DCMs. The Commission concurs with SIFMA that it has a statutory duty ''to specify the criteria for determining what constitutes a large notional swap transaction (block trade) for particular markets and contracts.'' [416] The Commission also agrees with Javelin that allowing SEFs and DCMs to set appropriate minimum block thresholds could lead to a race to the bottom that would harm transparency and reduce competition. In the Commission's view, the Commission's approach is also the least burdensome from a cost-benefit perspective because it significantly reduces the direct costs imposed on registered entities. Moreover, while § 43.6(a) states that the Commission will determine minimum block sizes, as recommended by some of the commenters, the Commission notes that SEFs and DCMs nonetheless will have the discretion to set block sizes for swaps at levels that are higher than the appropriate minimum block sizes determined by the Commission.

2. 43.6(f)(4) and (5) Publication and Effective Date of Post-Initial Appropriate Minimum Block Sizes

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

Several commenters recommended that post-initial appropriate minimum block sizes should be updated more frequently than on an annual basis.[417] ICI, AII and SIFMA recommended a quarterly or at least a semi-annual calculation in order to account for changes in liquidity in the market.[418] Spring Trading and Vanguard recommended a quarterly calculation that would allow block levels to be more responsive to the market.[419] Kinetix, however, recommended that calculations should be carried out on a monthly basis.[420] MFA suggested that the Commission maintain the optional ability to update the minimum block size on a more frequent basis as well as shorten the look-back window for the relevant data set.[421]

Some commenters asserted that the Commission should have the authority to update appropriate minimum block sizes outside of the proposed 1-year set look-back period. GFMA believed that the Commission should have this authority, without reference to a data set, to respond to a market that quickly becomes illiquid.[422] MFA also supported providing this authority, but believed that the Commission should exercise this authority based on SDR data received for individual or multiple swap categories.[423]

Based on its argument that block levels set by SEFs should not be higher than those set by DCMs, ICAP Energy recommended allowing for automatic adjustment to occur during the course of the year.[424]

The Commission is adopting the rule as proposed, with the one modification that proposed § 43.6(f)(3) and (4) will be adopted as § 43.6(f)(4) and (5). The rule as adopted only requires that the Commission to update post-initial minimum block sizes at least once a year and therefore does not preclude the Commission from doing so on a more frequent basis. The Commission anticipates that it will examine and re-calculate such block sizes at regular intervals, but also acknowledges that the liquidity of a swap market may change significantly outside of such intervals. Therefore, the Commission reserves the authority to update minimum block sizes when warranted and as necessary to respond to such circumstances. In response to GFMA and MFA, the Commission agrees with MFA and emphasizes that in all circumstances, minimum block sizes will be updated based on the relevant market data received.

In response to ICAP Energy's recommendation, the Commission notes that adopting such a requirement would potentially create minimum block size re-alignment issues for SEFs, particularly during the initial period for swaps in the other commodity class. Under this requirement, SEFs would be de facto subject to a DCM's own business decisions, i.e., block trade size calculations that are based on trading that does not occur on their own facility or platform. Further, the Commission has noted that SEFs and DCMs may set minimum block sizes that are higher than those prescribed by the Commission; this recommended requirement would otherwise preclude such an ability in certain cases. Accordingly, the Commission declines to adopt this requirement.

3. Sec. 43.6(g) Notification of Election

Proposed § 43.6(g) set forth the election process through which a qualifying swap transaction would be treated as a block trade or large notional

[412] CL–WMBAA at 5.
[413] CL–Javelin at 6.
[414] CL–SIFMA at 11–12.
[415] CL–AII at 10.
[416] CL–SIFMA at 11–12; 7 U.S.C. 2(a)(13)(E)(ii).
[417] CL–GFMA at 3.
[418] CL–ICI at 7; CL–AII at 11; CL–SIFMA at 6–7.
[419] CL–TeraExchange at 2; CL–Vanguard at 7.
[420] CL–Kinetix at 2.
[421] CL–MFA at 8.
[422] CL–GFMA at 4.
[423] CL–MFA at 8.
[424] CL–ICAP Energy at 4.

off-facility swap, as applicable. Proposed § 43.6(g)(1) would establish a two-step notification process relating to block trades. Proposed § 43.6(g)(2) would establish the notification process relating to large notional off-facility swaps.

Proposed § 43.6(g)(1)(i) contained the first step in the two-step notification process relating to block trades. In particular, the parties to a publicly reportable swap transaction that has a notional amount at or above the appropriate minimum block size would be required to notify the SEF or DCM (pursuant to the rules of such SEF or DCM) of their election to have their qualifying publicly reportable swap transaction treated as a block trade.[425] With respect to the second step, proposed § 43.6(g)(1)(ii) provided that the SEF or DCM that receives an election notification would be required to notify the relevant SDR of such block trade election when transmitting swap transaction and pricing data to the SDR for public dissemination.

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

The Commission received no comments regarding proposed § 43.6(g). The Commission is adopting § 43.6(g) as proposed.

4. Sec. 43.7 Delegation of Authority

Under proposed § 43.7(a), the Commission would delegate the authority to undertake certain Commission actions to the Director of the Division of Market Oversight (''Director'') and to other employees as designated by the Director from time to time. In particular, this proposed delegation would grant to the Director the authority to determine: (1) New swap categories as described in proposed § 43.6(b); (2) post-initial appropriate minimum block sizes as described in proposed § 43.6(f); and (3) post-initial cap sizes as described in the proposed amendments to § 43.4(h)(2) of the Commission's regulations.[426] The purpose of the proposed delegation provision would be to facilitate the Commission's ability to respond expeditiously to ever-changing swap market and technological conditions. The Commission is of the view that this delegation would help ensure timely and accurate real-time public reporting of swap transaction and pricing data and further ensure anonymity in connection with the public reporting of such data. Proposed § 43.7(b) provided that the Director may submit to the Commission for its consideration any matter that has been delegated pursuant to this authority. Proposed § 43.7(c) provided that the delegation to the Director would not prevent the Commission, at its election, from exercising the delegated authority.

The Commission received no comments regarding proposed § 43.7(a) and therefore is adopting § 43.7(a) as proposed.

5. Section 43.6(h)(6) Aggregation

Proposed § 43.6(h)(6) would prohibit the aggregation of orders for different trading accounts in order to satisfy the minimum block size or cap size requirements, except that aggregation would be permissible if done on a DCM or SEF by a person who: (i)(A) Is a CTA registered pursuant to Section 4n of the CEA or exempt from such registration under the Act, or a principal thereof, and who has discretionary trading authority or directs client accounts, (B) is an investment adviser who has discretionary trading authority or directs client accounts and satisfies the criteria of § 4.7(a)(2)(v) of this chapter, or (C) is a foreign person who performs a similar role or function as the persons described in (A) or (B) and is subject as such to foreign regulation, and (ii) has more than $25 million in total assets under management. In the Commission's view, such a prohibition would be integral to ensuring the integrity of block trade principles and preserving the basis for the anonymity associated with establishing cap sizes.

The Commission received a number of comments on the proposed aggregation rule, particularly as to the enumerated persons who would otherwise be allowed to aggregate orders from different trading accounts. Barnard supported the rule, noting that it would help ensure that non-block transactions comply with the exchange trading requirements and real-time reporting obligations, thereby increasing transparency and price discovery, promoting market integrity, improving efficiency and competitiveness in the swap markets, and ultimately providing timely information to enable market participants to improve their risk management practices.[427] Barnard suggested that the Commission add an additional requirement—that the ''block trade is suitable for customers of such persons''—on the basis that such a requirement would improve consistency in the rules applicable to swap and futures markets.[428]

ABC and CIEBA stated that qualified investment advisers who are not CTAs should be able to aggregate block trade orders for different trading accounts.[429] Tradeweb commented that CTAs who trade on a SEF should also be permitted to aggregate trades on behalf of their customers for purposes of block trades.[430] JP Morgan commented that this rule appears to reflect a concern that private negotiation affords less protection to unsophisticated investors than trading through the central markets, and that since all entities that transact in the OTC market already must be ECPs, the analogous concern about customer protection in the swaps market is already addressed.[431]

ICI opposed the minimum assets under management requirement in proposed § 43.6(h)(6)(ii) and argued that the Commission did not articulate a rationale or policy reason for this requirement.[432] ICI stated that while advisers to registered funds would typically meet the asset requirement, advisers with less than the proposed

[425] In order to qualify as a block trade, a swap must (1) be listed on a registered SEF or DCM; (2) occur away from the registered SEF's or DCM's trading system or platform and is executed pursuant to its rules and procedures; and (3) have a notional or principal amount at or above the appropriate minimum block size applicable to such swap. *See* § 43.2. By definition, a block trade must occur away from the SEF or DCM's trading system or platform and thus cannot be transacted on the SEF or DCM's trading system or platform. Moreover, the swap must be at or above the appropriate minimum block size at the time that it becomes a publicly reportable swap transaction. Any swap that is executed on a SEF or DCM's trading system or platform, regardless of whether it is for a size at or above the appropriate minimum block size for such swap, is not a block trade under this definition, and, thus, is required to be publicly disseminated in real-time pursuant to § 43.4.

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

[427] CL–Barnard at 2.

[428] CL–Barnard at 2.

[429] CL–ABC/CIEBA at 3.

[430] CL–Tradeweb at 5. Tradeweb's comment was received in response to the Initial Proposal and not the Aggregation Proposed Rule, the latter which allowed for CTAs to aggregate on SEFs. 75 FR at 76174.

[431] CL–JPM at 9, n.13.

[432] CL–ICI at 3.

minimum would also have a valid need to engage in block trades on behalf of the funds they manage.[433] ICI further stated that no relationship exists between the amount of assets managed and the legitimacy of aggregating client orders. ICI also disagreed that an investment adviser seeking to aggregate orders must satisfy the criteria of § 4.7(a)(2)(v) of the Commission's regulations.[434] ICI suggested that the Commission only require an investment adviser to be registered under § 203 of the Investment Advisers Act of 1940 or pursuant to the laws of any state without specifying a minimum registration length or location for deposit of client assets.[435]

Two comments requested clarifications to the proposed rule. WMBAA sought clarification that the Commission did not intend for the Proposed Rule to prevent the use of ''work up'' in over-the-counter swaps.[436] WMBAA stated that a block size calculation should not be performed until the work up period ends, but expressed concern that the work up trades could be considered aggregation.[437] SIFMA noted that proposed § 43.6(h)(6) does not restrict the aggregation prohibition to ''block trades'' and, as a result, ''large notional off-exchange swaps'' could be subject to the aggregation prohibition.[438] SIFMA requested that the Commission add language to clarify that the aggregation prohibition does not apply to large notional off-exchange swaps.[439]

After consideration of the comments received, the Commission is adopting proposed § 43.6(h)(6) as proposed. In response to the comment by ABC and CIEBA, the Commission notes that qualified investment advisers, who are not CTAs, are able to aggregate block trade orders from different trading accounts. Under § 43.6(h)(6)(i)(B) and (ii), investment advisers that satisfy the criteria under § 4.7(a)(2)(v) and have more than $25 million in total assets under management are able to aggregate orders from different accounts. The Commission also agrees that CTAs who trade on a SEF should be permitted to aggregate customer trades, which would be allowed under the rule as adopted, subject to the enumerated conditions.

With respect to JP Morgan's comment, the Commission notes that customers trading swaps on DCMs do not have to be ECPs. As discussed further below, adopted § 43.6(i)(1) allows non-ECP customers to be parties to block trades through a qualifying CTA, investment adviser, or similar foreign person.[440] It is possible, therefore, that those non-ECP DCM customers may not be aware if they received the best terms for their individual swap transactions that are aggregated with other transactions. Protection for such customers is therefore necessary, as it is for unsophisticated customers in other markets.

In response to Barnard's suggested additional requirement,[441] the Commission acknowledges that the same or similar phrase appears in the rules of many exchanges.[442] The Commission, however, does not believe that it is necessary to incorporate such specific language to the rule because persons such as CTAs and investment advisers are already subject to broad anti-fraud prohibitions under their governing statutes.[443] Moreover, adopted § 43.6(i)(2), discussed further below, also requires that any person transacting a block trade on behalf of a customer receive prior written instruction or consent from the customer.

In response to ICI's opposition to the minimum asset threshold under § 43.6(h)(6)(ii), the Commission notes that this threshold reflects common industry practice.[444] CME, for example, has enforced the $25 million threshold in its rules since September 2000.[445] CME has stated that the threshold ''is an effort to establish the professionalism and sophistication of the registrant''[446] while also expanding the number of CTAs and investment advisers eligible to aggregate trades.[447] The Commission believes that the $25 million threshold is an appropriate requirement to ensure that persons allowed to aggregate trades are appropriately sophisticated with these transactions, while at the same time not excluding an unreasonable number of CTAs, investment advisers, and similar foreign persons.

The Commission also disagrees with ICI's contention that investment advisers should not be required to satisfy the criteria under § 4.7(a)(2)(v), which requires an investment adviser to (1) be registered and active as an investment adviser for two years or (2) provide securities investment advice to securities accounts which, in the aggregate, have total assets in excess of $5 million deposited at one or more registered securities brokers.[448] The Commission first adopted provisions similar to current § 4.7(a)(2)(v) in 1992[449] as objective indications that a person had the investment sophistication and experience needed to evaluate the risks and benefits of investing in commodity pools or a portfolio large enough to indicate the same, along with the financial resources to withstand the investment risks.[450] In 2000,[451] the Commission extended the same criteria in current § 4.7(a)(2)(v) to registered investment advisers for the same reasons.[452] The Commission believes that these objective criteria, which demonstrate that an investment adviser possesses the necessary investment expertise, should also apply with respect to allowing such persons to aggregate client orders.

In response to WMBAA, the Commission clarifies that the aggregation prohibition will not affect the work up process. By definition, a block trade occurs away from a DCM or

[433] *Id.*

[434] *Id.* at 4. An investment adviser satisfies the criteria of § 4.7(a)(2)(v) if the investment adviser registers pursuant to § 203 of the Investment Advisers Act of 1940, or pursuant to the laws of any state, and the investment adviser has been registered and active for two years or provides security investment advice to securities accounts which, in the aggregate, have total assets in excess of $5,000,000 deposited at one or more registered securities brokers. 17 CFR 4.7(a)(2)(v).

[435] CL–ICI at 3.

[436] CL–WMBAA at 2. During a work up transaction, a swap price is agreed upon for trading and the trade is then reported to market participants, who then have the opportunity to ''join the trade'' by placing a firm bid or offer to buy or sell a particular quantity. *Id.*

[437] *Id.* at 2–3.

[438] *Id.* at 3.

[439] *Id.*

[440] *See infra* Section II.C(6).

[441] CL–Barnard at 2.

[442] *See, e.g.,* Chicago Mercantile Exchange Rule 526(I). *See also* Chicago Board of Trade Rule 526(I); Eris Exchange, LLC Rule 601(b)(10); and New York Mercantile Exchange, Inc. Rule 526(I).

[443] *See* CEA section 4o (CTAs); Investment Advisors Act of 1940 section 206.

[444] *See, e.g.,* CME Rule 526. *See also* CBOE Futures Exchange LLC Rule 415(a)(i); Chicago Board of Trade Rule 526; Eris Exchange, LLC Rule 601(b)(10); ICE Futures U.S. Rule 4.07; NASDAQ OMX Futures Exchange, Inc. Rule E23; New York Mercantile Exchange, Inc. Rule 526(I); NYSE Liffe US, LLC Rule 423; and OneChicago LLC Rule 417.

[445] *See* CME Submission 00–99 (Sept. 21, 2000) (modifying CME Rule 526 to reduce the threshold from $50,000,000 to $25,000,000). CME originally planned to lower the threshold from $50,000,000 to $5,000,000, but withdrew the submission and instead proposed to lower the threshold to $25,000,000, based on customer suggestions. *See* CME Submission 00–93 (Sept. 1, 2000); CME Submission 00–99 at 5–6.

[446] *Id.* at 6 (quoting letter addressed to Jean A. Webb, Secretary of the Commission from John G. Gaine, President, Managed Funds Association dated April 24, 2000 regarding ''Chicago Mercantile Exchange new Proposed Rule 526'').

[447] *Id.* at 4, 6–7. CME also stated in the filing that it planned to readdress the threshold amount as it gained experience with block trades, but has declined to modify the amount.

[448] 17 CFR 4.7(a)(2)(v).

[449] 57 FR 34853, 34854–55 (Aug. 7, 1992). The final rule reduced the amount on deposit threshold to $5 million from the $10 million required by the proposed rule. *See* 57 FR 3148, 3152 (Jan. 28, 1992).

[450] *See* 57 FR at 34854 (quoting 57 FR at 3152).

[451] 65 FR 11253, 11257–58 (Mar. 2, 2000).

[452] *Id.* at 11257 (quoting 57 FR at 3152).

SEF.[453] The trades that are part of the work up process will occur on a DCM or SEF, and therefore are not block trades and are not subject to the aggregation prohibition.

Finally, as to SIFMA's requested clarification, the Commission notes that that it does intend to include large notional off-facility swaps in the aggregation prohibition under § 43.6(h)(6). The appropriate minimum block size applies to both block trades and large notional off-facility swaps,[454] and thus the aggregation prohibition should be applied to both types of transactions.

6. Section 43.6(i) Eligible Block Trade Participants

Proposed § 43.6(i)(1) provided that parties to a block trade must be ECPs, as defined under Section 1a(18) of the CEA and the Commission's regulations. The proposed rule includes an exception to the ECP requirement by providing that a DCM may allow (i) A CTA registered pursuant to Section 4n of the CEA, or exempt from registration under the CEA, or a principal thereof, who has discretionary trading authority or directs client accounts, (ii) an investment adviser who has discretionary trading authority or directs client accounts and satisfies the criteria the criteria of 4.7(a)(2)(v0 of the Commission's regulations, or (iii) a foreign person who performs a similar role or function to the persons described in (i) or (ii) and is subject as such to foreign regulation, to transact block trades for customers who are not ECPs, if such CTA, investment adviser or foreign person has more than $25 million in total assets under management. Proposed § 43.6(i)(2) further provided that a person transacting a block trade on behalf of a customer must receive prior written instruction or consent from the customer to do so. Such instruction or consent may be provided in a power of attorney or similar document, by which the customer provides the person with discretionary trading authority or the authority to direct the trading in the customer's account.

As discussed above, similar comments regarding the exceptions to the prohibitions against aggregation for certain persons were submitted with respect to the exception to certain persons transacting blocks on a DCM on behalf of non-ECPs. For example, ICI opposed the minimum assets under management requirement in proposed §§ 43.6(i)(1) and similarly argued that the Commission did not articulate a rationale or policy reason for this requirement.[455]

Specific comments were also received on proposed § 43.6(i)(2).[456] ICI requested a clarification that only a person transacting a block trade on behalf of a customer who is not an ECP must receive prior written instruction or consent.[457] ICI argued that written instruction or consent from an ECP is not necessary because these customers can engage in block trades and that investment advisers with discretionary trading authority registered with the SEC already have the ability to aggregate orders on behalf of clients without obtaining separate consent.[458]

SIFMA commented that proposed § 43.6(i)(2) may require asset managers to obtain consent from each client for whom they will engage in block trades.[459] SIFMA contended that this requirement would be costly and unnecessary, and that notice to the customers [460] or a general grant of investment discretion in the investment management agreement, power of attorney, or similar document should be sufficient.[461] SIFMA further commented that proposed § 43.6(i)(2) is unlike rules governing DCMs in the futures context.[462] SIFMA also argued that DCM rules requiring consent for block trades only require the direct members of the DCM to obtain consent from the members' direct customers, not from the customers' customers. Additionally, SIFMA contended that a client consent requirement does not apply to advisers with respect to futures trades and should not apply to advisers with respect to swaps trades.[463]

After consideration of the comments received, the Commission is adopting § 43.6(i) as proposed. The Commission declines to adopt ICI's clarification and notes that § 43.6(i)(2) is intended to ensure that all customers of CTAs, investment advisers, and similar foreign persons, whether the customers are ECPs or not, are fully informed of the use of block trades on their behalf.

The Commission also disagrees with SIFMA's contention regarding the burdens of obtaining consent. This burden consent will be minimal because § 43.6(i)(2) states that the instruction or consent may be provided through a power of attorney or similar document that provides discretionary trading authority or the authority to direct trading in the account. The consent may therefore be included in existing and future customer agreements. The Commission further disagrees that a general grant of investment discretion or notice to the customer should satisfy § 43.6(i)(2). A customer's written instruction or consent is necessary because a customer potentially may not receive the best terms for an individual swap transaction that is part of an aggregation. The written instruction or consent makes the customer aware that block trades may be used on its behalf, allowing the customer to decide whether to allow these transactions.

The Commission notes that a similar consent requirement was included in the Commission's proposed DCM rule.[464] The Commission believes that the customer protection functions of the consent requirement apply, regardless of the degree of separation between the customer and the DCM or SEF. As discussed above, the consent requirement ensures that customers are informed of the use of block trades for their accounts. If a CTA, an investment adviser, or a similar foreign person plans to aggregate customer orders for block trades, then the customers must have the opportunity to evaluate whether the customer agrees to the use of aggregation, as evidenced by the written instruction or consent, regardless of whether the CTA, investment adviser, or similar foreign person is a direct member of a DCM or SEF.

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

A. Policy Goals

Section 2(a)(13)(E)(i) of the CEA directs the Commission to protect the identities of counterparties to swaps subject to the mandatory clearing requirement, swaps excepted from the

[453] Section 43.2 defines a ''block trade'' as a publicly reportable swap transaction that ''occurs away from the registered swap execution facility's or designated contract market's trading system or platform and is executed pursuant to the registered swap execution facility's or designated contract market's rules and procedures.''

[454] Section 43.2 defines a ''large notional off facility swap'' as having ''notional or principal amount at or above the appropriate minimum block size.''

[455] CL–ICI at 3.

[456] CL–ICI at 5; CL–SIFMA at 1–2.

[457] CL–ICI at 5.

[458] *Id.*

[459] CL–SIFMA at 1.

[460] *Id.* at 2.

[461] *Id.*

[462] *Id.* at 1 n.4.

[463] *Id.*

[464] Core Principles and Other Requirements for Designated Contract Markets. 75 FR 80572, Dec. 22, 2010. The final DCM rule, however, did not include this proposed regulation which was promulgated, along with various other regulations, to implement Core Principle 9. As noted in the final rule, given the number of comments received under Core Principle 9, the Commission believed that additional time was appropriate before finalizing the proposed rules for Core Principle 9; it expects to consider the proposed rules at a future date. 77 FR 36643, June 19, 2012.

mandatory clearing requirement, and voluntarily cleared swaps. Similarly, section 2(a)(13)(C)(iii) of the CEA requires that the Commission prescribe rules that maintain the anonymity of business transactions and market positions of the counterparties to an uncleared swap.[465] In proposed amendments to § 43.4(h) and 43.4(d)(4), as described further below, the Commission proposed measures to protect the identities of counterparties and to maintain the anonymity of their business transactions and market positions in connection with the public dissemination of publicly reportable swap transactions. The Commission proposed to follow the practices used by most federal agencies when releasing to the public company-specific information—by removing obvious identifiers, limiting geographic detail (*e.g.,* disclosing general, non-specific geographical information about the delivery and pricing points) and masking high-risk variables by truncating extreme values for certain variables (*e.g.,* capping notional values).[466]

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

1. Policy Goals for Establishing Notional Cap Sizes

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

The proposed cap size provisions are consistent with the two relevant statutory requirements in section 2(a)(13) of the CEA. First, the cap size provisions would help protect the anonymity of counterparties' market positions and business transactions as required in section 2(a)(13)(C)(iii) of the CEA.[467] Second, the masking of extraordinarily large positions also takes into consideration the requirement under section 2(a)(13)(E)(iv) that the Commission take into account the impact that real-time public reporting could have in reducing market liquidity.[468]

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

The Commission proposed an amendment to § 43.2 to define the term ''cap size'' as the maximum limit of the principal, notional amount of a swap that is publicly disseminated. This term applies to the cap sizes determined in accordance with the proposed amendments to § 43.4(h) of the Commission's regulations.

Section 43.4(h) of the Commission's regulations currently establishes interim cap sizes for rounded notional or principal amounts for all publicly reportable swap transactions. In the Real-Time Reporting Final Rule, the Commission finalized § 43.4(h) to provide that the notional or principal amounts shall be capped in a manner that adjusts in accordance with the appropriate minimum block size that corresponds to a publicly reportable swap transaction.[469] Section 43.4(h) further provides that if no appropriate minimum block size exists, then the cap size on the notional or principal amount shall correspond to the interim cap sizes that the Commission has established for the five asset classes.[470] In § 43.4(h) and as described in the Real-Time Reporting Final Rule, the Commission notes that SDRs will apply interim cap sizes until such time as appropriate minimum block sizes are established.[471] The Commission continues to believe that the interim cap sizes for each swap category should correspond with the applicable appropriate minimum block size, to the extent that an appropriate minimum block size exists.[472]

The Commission proposed to amend § 43.4(h) both to establish initial cap sizes for each swap category within the five asset classes and also to delineate a process for the post-initial period through which the Commission would establish post-initial cap sizes for each swap category.[473] The Commission also proposed changing the term ''interim'' as it is used in § 43.4(h) in the Real-Time Reporting Rule to ''initial'' in order to correspond with the description of the initial period in proposed § 43.6(e).

a. Initial Cap Sizes

In the initial period,[474] proposed § 43.4(h)(1) would set the cap size for each swap category as the greater of the interim cap sizes in all five asset classes set forth in the Real-Time Reporting Final Rule (§ 43.4(h)(1)–(5)) or the appropriate minimum block size for the respective swap category.[475] If such appropriate minimum block size does not exist, then the cap sizes shall be set at the interim cap sizes set forth in the Real-Time Reporting Final Rule (§ 43.4(h)(1)–(5)).

For the initial period, AII and ISDA/SIFMA argued that the cap size should be the lower of block size and the interim cap size in § 43.4(h)(1).[476] EEI stated that the cap size of $25 million for both the electricity swap contracts proposed to be added to appendix B and the electricity swaps in the other commodity swap categories in appendix D, which would be based on the interim cap sizes established by the Commission in the Real-Time Reporting Final Rule, is too high. EEI instead recommended both a fixed cap size and a minimum block size of $3 million.[477]

After consideration of the comments received, the Commission is adopting

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

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

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

[468] *See* 7 U.S.C. 2(a)(13)(E)(iv).

[469] *See* 77 FR 1247.

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

[471] *See* 77 FR 1215.

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

[473] The Commission does not intend the provisions in this final rule to prevent a SEF or DCM from sharing the exact notional amounts of a swaps transaction on or pursuant to the rules of its platform with market participants on such platform irrespective of the cap sizes set by the Commission. To share the exact notional amounts of swaps, the SEF or DCM must comply with § 43.3(b)(3)(i) of the Commission's regulations. *See* 77 FR 1245.

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

[475] *See* 77 FR 1249.

[476] CL–AII at 12; CL–ISDA/SIFMA at 15.

[477] CL–EEI at 11–12.

§ 43.4(h)(1) as proposed. EEI recommends a lower cap size for specific swap categories—particularly electricity swaps—but it does not recommend any change to the proposed interplay between cap size and appropriate minimum block size during the interim period. The cap size for the interim period was established by the Real-Time Reporting Final Rule, and the Commission considered the appropriate level for these cap sizes at that time. The Commission did not propose altering the interim cap size in the Further Block Proposal, and thus did not receive comments regarding altering the interim cap size beyond that of EEI. The Commission does not believe that altering the interim cap size would be appropriate under such circumstances.

AII and ISDA/SIFMA recommended that the cap size be set as the lower of the appropriate minimum block size and the interim cap sizes set forth in the Real-Time Reporting Rule. The Commission, however, disagrees with this view of the relationship between block thresholds and cap sizes. All of the information regarding a block trade is reported to the market at the end of the block time delay. Cap sizes, on the other hand, are never expressed to the market. Because this information is not reported to the market in real-time, nor reported to the market at all, the Commission believes that cap sizes should be set at a higher level than block sizes, in order to minimize the amount of information that is never publicly disseminated. Accordingly, the Commission is adopting § 43.4(h)(1) as proposed.

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

Pursuant to proposed § 43.4(h)(2)(ii), the Commission would use a 75 percent notional amount calculation, as proposed in § 43.6(c)(2), to determine the appropriate post-initial cap sizes for all swap categories for the purpose of reporting block trades or large notional off-facility swaps of significant size.[478] This calculation methodology would be different from the 67 percent notional amount calculation methodology that the Commission proposed in § 43.6(c)(1), which would be used to determine appropriate minimum block sizes.[479]

For the 75 percent notional amount calculation, the Commission would determine the appropriate cap size through the following process, pursuant to proposed § 43.6(c)(2): (step 1) select all of the publicly reportable swap transactions within a specific swap category using a rolling three-year window of data beginning with a minimum of one year's worth of data and adding one year of data for each calculation until a total of three years of data is accumulated; (step 2) convert to the same currency or units and use a trimmed data set; (step 3) determine the sum of the notional amounts of swaps in the trimmed data set; (step 4) multiply the sum of the notional amount by 75 percent; (step 5) rank order the observations by notional amount from least to greatest; (step 6) calculate the cumulative sum of the observations until the cumulative sum is equal to or greater than the 75 percent notional amount calculated in step 4; (step 7) select the notional amount associated with that observation; (step 8) round the notional amount of that observation to two significant digits, or if the notional amount associated with that observation is already significant to two digits, increase that notional amount to the next highest rounding point of two significant digits; and (step 9) set the appropriate minimum block size at the amount calculated in step 8.

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

The Commission received 10 comments regarding the 75 percent notional amount calculation for determining post-initial cap sizes. One commenter, Javelin, supported the 75 percent notional amount calculation and stated that it was consistent with the minimum block size threshold established by the Commission.[480]

Seven commenters, however, recommended that the Commission set post-initial cap sizes matching the post-initial minimum block size thresholds established by the Commission. AII recommended setting the post-initial cap size for each swap category at the same level as the post-initial block size threshold and states that the 75 percent notional amount calculation is far too high.[481] GFMA similarly stated that the same rationale should apply to cap and block sizes, as both have potential negative impacts on liquidity.[482] ICI stated that the 75 percent notional amount would be too high for determining cap size because the lack of depth and liquidity in the swaps market could cause public reporting of block sizes to reveal identities, business transactions, and market positions of participants, and recommended a 67 percent notional amount calculation for determining cap size in the post-initial period.[483] ISDA/SIFMA also stated that the added transparency from reporting transaction sizes between 67 percent and 75 percent would not outweigh the harm to liquidity from additional disclosure, and urges the Commission to ensure that the post-initial cap size is always equal to the relevant block size.[484] MFA commented that it is unnecessary for the Commission to establish cap sizes that differ from minimum block sizes as there is not a meaningful transparency benefit that would outweigh the resource burdens on the Commission, SDRs, SEFs, and other market participants.[485] SIFMA recommended that the Commission should set the notional cap size at the block threshold, as the added public dissemination could harm liquidity in the same manner that a higher block trade size threshold might.[486] Vanguard believes that it is essential that the cap match the block trade threshold, as to do otherwise would compromise the liquidity protections afforded by the nuanced assessment of block trade thresholds.[487]

Two other commenters suggested alterations of the Commission's proposed cap sizes. Barclays recommended that the post-initial period cap sizes be introduced at more nuanced levels that reflect the differences between product's traded volumes.[488] EEI recommended a much lower fixed cap size for Electricity Swap Contracts and the Other Commodity Electricity Swap Category.[489]

After consideration of the comments above, the Commission is adopting § 43.4(h)(2)(ii) as proposed. The Commission is of the view that setting post-initial cap sizes above appropriate minimum block sizes would provide additional pricing information with respect to large swap transactions, which are large enough to be treated as block trades (or large notional off-facility swaps), but small enough that they do not exceed the applicable post-

[478] *See* proposed § 43.6(c)(2).

[479] *See* proposed § 43.6(c)(2).

[480] CL–Javelin at 2.

[481] CL–AII at 12.

[482] CL–GFMA at 5.

[483] CL–ICI at 8.

[484] CL–ISDA/SIFMA at 15.

[485] CL–MFA at 8–9.

[486] CL–SIFMA at 12.

[487] CL–Vanguard at 7.

[488] CL–Barclays at 6.

[489] CL–EEI at 11–12.

initial cap size. This additional information may enhance price discovery by publicly disseminating more information relating to market depth and the notional sizes of publicly reportable swap transactions, while still protecting the anonymity of swap counterparties and their ability to lay off risk when executing extraordinarily large swap transactions.

The Commission notes that Section 2(a)(13) tasks the Commission with bringing real-time public reporting to the swaps market. Section 2(a)(13)(E) expressly provides that the Commission determine appropriate time delays for block trades and large notional off-facility swaps. However, these provisions only call for a time delay—they do not provide for information to be kept from the market in perpetuity. All of the information regarding a block trade is reported to the market at the end of the block time delay. Cap sizes, on the other hand, are never expressed to the market. Because this information is not reported to the market in real-time, nor reported to the market at all, the Commission believes that cap sizes should be set at a higher level than block sizes. The 75 percent notional test balances the competing interests of providing meaningful real-time public reporting to the swaps market and protecting the anonymity of swap market participants, while taking into account potential impacts on market liquidity.

If market participants conclude that the Commission has set cap sizes for a specific swap category in a way that will materially reduce market liquidity, then those participants are encouraged to submit data to support their conclusion. In addition, through its own surveillance of swaps market activity, the Commission may become aware that a cap size would reduce market liquidity for a specific swap category. In response to either a submission or its own surveillance of swaps market activity, the Commission has the legal authority to take action by rule or order to mitigate the potential effects on market liquidity of cap sizes with respect to swaps in a particular swap category.

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

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

In the Real-Time Reporting Final Rule, the Commission sets forth general protections for the identities, market positions and business transactions of swap counterparties in § 43.4(d). Section 43.4(d) generally prohibits an SDR from publicly disseminating swap transaction and pricing data in a manner that discloses or otherwise facilitates the identification of a swap counterparty.[490] Notwithstanding that prohibition, § 43.4(d)(3) provides that SDRs are required to publicly disseminate data that discloses the underlying asset(s) of publicly reportable swap transactions.

Section 43.4(d)(4) contains special provisions for swaps in the other commodity asset class. These swaps raise special concerns because the public disclosure of the underlying asset(s) may in turn reveal the identities, market positions and business transactions of the swap counterparties. To address these concerns, § 43.4(d)(4) limits the types of swaps in the other commodity asset class that are subject to public dissemination. Specifically, § 43.4(d)(4)(ii) of the Commission's regulations provides that, for publicly reportable swap transactions in the other commodity asset class, SDRs must publicly disseminate the actual underlying assets only for: (1) those swaps executed on or pursuant to the rules of a SEF or DCM; (2) those swaps referencing one of the contracts described in appendix B to part 43; and (3) those swaps that are economically related to one of the contracts described in appendix B to part 43.[491] Essentially, the Commission has determined that these three categories of swap have sufficient liquidity such that the disclosure of the underlying asset would not reveal the identities, market positions and business transactions of the swap counterparties.

In its Real-Time Reporting Final Rule, the Commission included in appendix B to part 43 a list of contracts that, if referenced as an underlying asset, should be publicly disseminated in full without limiting the commodity or geographic detail of the asset. In the Further Block Proposal, the Commission proposed adding 13 contracts to appendix B to part 43 under the ''Other Contracts'' heading.[492] The Commission believes that since it previously has determined that these 13 contracts have material liquidity and price references, among other things, the public dissemination of the full underlying asset for publicly reportable swap transactions that reference such contracts (and any underlying assets that are economically related thereto) would not disclose the identities, market positions and business transactions of swap counterparties.

Pursuant to the Real-Time Reporting Final Rule, any publicly reportable swap transaction in the other commodity asset class that is excluded under § 43.4(d)(4)(ii) would not be subject to the reporting and public dissemination requirements for part 43 upon the effective date of the Real-Time Reporting Final Rule. The Commission noted in the Real-Time Reporting Final Rule that it planned to address the group of other commodity swaps that were not subject to the rules of part 43 in a forthcoming release.[493] Accordingly, the Commission proposed in the Further Block Proposal to address the public dissemination of swap transaction and pricing data for the group of other commodity swaps that are not covered currently by § 43.4(d)(4)(ii).

The Commission is of the view that given the lack of data on the liquidity for certain swaps in the other commodity asset class, the lack of data on the number of market participants in these other commodity swaps markets, and the statutory requirement to protect the anonymity of market participants,[494] the public dissemination of less specific information for swaps with specific geographic or pricing detail may be appropriate. The Commission believes that the public dissemination of the exact underlying assets for swaps in this group of the other commodity asset class may subject the identities, market positions and business transactions of market participants to unwarranted public disclosure if additional protections are not established with respect to the geographic detail of the underlying asset. For that reason, the Commission proposed that SDRs mask or otherwise disguise the geographic details related to the underlying assets of a swap in connection with the public dissemination of such swap transaction and pricing data.[495]

2. Proposed Amendments to § 43.4

In order to accommodate the policy goals described above, the Commission proposed adding § 43.4(d)(4)(iii) to part 43 to establish rules regarding the

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

[491] Appendix B to part 43 provides a list of 28 ''Enumerated Physical Commodity Contracts'' as well as 1 contract under the ''Other Contracts'' heading. *See* 77 FR 1182 app. B.

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

[493] *See* 77 FR 1211.

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

[495] Limiting the geographical detail is a typical statistical disclosure control used by other federal agencies as described in the Report on Statistical Disclosure Limitation Methodology. *See supra* note 61.

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

The Commission recognizes that requiring the public dissemination of less specific geographic detail for an other commodity swap may, to some extent, diminish the price discovery value of swap transaction and pricing data for such swap. The Commission believes, however, that the public dissemination of such data will still provide the market with useful information relating to market depth, trading activity and pricing information for similar types of swaps.

The Commission also proposed making conforming amendments to § 43.4(d). Specifically, the Commission proposed amending the introductory language to § 43.4(d)(4)(i) by deleting ''§ 43.4(d)(4)(ii)'' and adding in its place ''§ 43.4(d)(4)(ii) and (iii)'' to make clear that SDRs have to publicly disseminate swaps data under § 43.4(d)(4)(iii) in accordance with part 43.[496]

The Commission received no comments regarding § 43.4(d)(4)(i) and (ii). The Commission is adopting § 43.4(d)(4)(i) and (ii) as proposed.

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

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

Subsection (a) below includes a description of the top-coding U.S. regions. Subsection (b) below includes a description of the top-coding non-U.S. regions. Finally, subsection (c) below outlines the proposed system for SDRs to publicly disseminate ''basis swaps.''[497]

a. U.S. Delivery or Pricing Points

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

i. Natural Gas and Related Products

In proposed § 43.4(d)(4)(iii) and proposed appendix E to part 43, the Commission set forth a method to describe the publicly reportable swap transactions that have natural gas or related products as an underlying asset and have a specific delivery or pricing point in the United States. In particular, the proposal required SDRs to publicly disseminate a description of the specific delivery or pricing point based on one of the five industry specific natural gas markets set forth by the Federal Energy Regulatory Commission (''FERC'').[498] The FERC Natural Gas Markets reflect natural deviations found in the spot prices in different markets.[499] The Commission anticipates that a distinction for natural gas is necessary to enhance price discovery while protecting the identities of the parties, business transactions and market positions of market participants.

The proposed five markets for public dissemination of delivery or pricing points for natural gas swaps are as follows: (i) Midwest (including North Dakota, South Dakota, Minnesota, Wisconsin, Michigan, Indiana, Illinois, Iowa, Nebraska, Kansas, Oklahoma, Missouri and Arkansas); (ii) Northeast (including Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, Vermont, Connecticut, New York, Pennsylvania, Kentucky, Ohio, West Virginia, New Jersey, Delaware, Maryland and Virginia);[500] (iii) Gulf (including Louisiana and Texas); (iv) Southeast (including Tennessee, North Carolina, South Carolina, Georgia, Florida, Alabama and Mississippi); and (v) Western (including Montana, Wyoming, Colorado, New Mexico, Idaho, Utah, Washington, Oregon, California, Nevada and Arizona). For any other pricing points in the United States, SDRs would publicly disseminate ''Other U.S.'' in place of the actual pricing or delivery point for such natural gas swaps.

ii. Petroleum and Related Products

In proposed § 43.4(d)(4)(iii) and proposed appendix E to part 43, the Commission set forth a method to describe the publicly reportable swap transactions that have petroleum or related products as an underlying asset and have a specific delivery or pricing point in the United States. In particular, the proposal would require SDRs to publicly disseminate a description of the specific delivery or pricing point based on one of the seven Petroleum Administration for Defense Districts (''PADD'') regions.[501] The PADD regions indicate economically and geographically distinct regions for the purposes of administering oil allocation.

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

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

[498] *See* FERC, National Gas Markets—Overview, *http://www.ferc.gov/market-oversight/mkt-gas/overview.asp* (last viewed May 6, 2013).

[499] *See* FERC, Natural Gas Market Overview: Spot Gas Prices, *http://www.ferc.gov/market-oversight/mkt-gas/overview/ngas-ovr-avg-spt-ng-pr.pdf* (updated Jan.10, 2013). In addition, there is evidence that the spot prices in these markets and the corresponding futures prices are highly correlated. D. Murray, Z. Zhu, ''Asymmetric price responses, market integration and market power: A study of the U.S. natural gas market,'' *Energy Economics,* 30 (2008) 748–65.

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

[501] *See* PADD Map, Appendix A, Petroleum Administration for Defense Districts, *http://www.eia.gov/todayinenergy/detail.cfm?id=4890*, (last viewed May 6, 2013).

The Department of Energy's Energy Information Administration (''EIA'') collects and publishes oil supply and demand data with respect to the PADD regions.[502] Accordingly, to provide consistency with EIA publications and information regarding regional patterns, the Commission proposed that specific delivery or pricing points with respect to such petroleum product swaps are publicly disseminated based on PADD regions.

The PADD regions for public dissemination of delivery or pricing points for such petroleum product swaps are as follows: (i) PADD 1A (New England); (ii) PADD 1B (Central Atlantic); (iii) PADD 1C (Lower Atlantic); (iv) PADD 2 (Midwest); (v) PADD 3 (Gulf Coast); (vi) PADD 4 (Rocky Mountains); and (vii) PADD 5 (West Coast).[503] For any other pricing points in the United States, SDRs would publicly disseminate the term ''Other U.S.'' in place of the actual pricing or delivery point for such petroleum product swaps.

iii. Electricity and Sources

In proposed § 43.4(d)(4)(iii), the Commission also set forth a method to describe publicly reportable swap transactions that have electricity and sources as an underlying asset and have a specific delivery or pricing point in the United States. In particular, the proposal would require SDRs to publicly disseminate the specific delivery or pricing point based on a description of one of the FERC Electric Power Markets.[504]

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

iv. All Remaining Other Commodities

In proposed § 43.4(d)(4)(iii) and proposed appendix E to part 43, the Commission set forth a method to describe any swaps in the other commodity asset class that do not have oil, natural gas, electricity, or petroleum as an underlying asset, but have specific delivery or pricing points in the United States. In particular, the Commission proposed that SDRs publicly disseminate information with respect to these swaps based on the 10 federal regions established by the U.S. Energy Information Administration (''EIA''). The Commission believed that the use of the 10 federal regions would provide consistency among different types of underlying assets in the other commodity asset class with respect to delivery and pricing point descriptions.

The 10 federal regions that SDRs would use for public dissemination under the proposal for all remaining other commodity swaps are as follows: (i) Region I (including Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island and Vermont); (ii) Region II (including New Jersey and New York); (iii) Region III (including Delaware, District of Columbia, Maryland, Pennsylvania, Virginia and West Virginia); (iv) Region IV (including Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina and Tennessee); (v) Region V (including Illinois, Indiana, Michigan, Minnesota, Ohio and Wisconsin); (vi) Region VI (including Arkansas, Louisiana, New Mexico, Oklahoma and Texas); (vii) Region VII (including Iowa, Kansas, Missouri and Nebraska); (viii) Region VIII (including Colorado, Montana, North Dakota, South Dakota, Utah and Wyoming); (ix) Region IX (including Arizona, California, Hawaii and Nevada); and (x) Region X (including Alaska, Idaho, Oregon and Washington).[505]

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

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

The Commission proposed the following international regions for publicly disseminating specific delivery or pricing points of publicly reportable swap transactions described in § 43.4(d)(4)(iii): (i) North America (publicly disseminate ''Canada'' or ''Mexico''); (ii) Central America (publicly disseminate ''Central America''); (iii) South America (publicly disseminate ''Brazil'' or ''Other South America''); (iv) Europe (publicly disseminate ''Western Europe,'' ''Northern Europe,'' ''Southern Europe,'' or ''Eastern Europe''); (v) Russia (publicly disseminate ''Russia'');[506] (vi) Africa (publicly disseminate ''Northern Africa,'' ''Western Africa,'' ''Eastern Africa,'' ''Central Africa,'' or ''Southern Africa''); (vii) Asia-Pacific (publicly disseminate ''Northern Asia,'' ''Central Asia,'' ''Eastern Asia,'' ''Western Asia,'' ''Southeast Asia,'' or ''Australia/New Zealand/Pacific Islands''). The Commission considered whether a more granular approach is necessary for certain regions in order to enhance price discovery while still protecting anonymity. For example, Mexico, Canada and Russia may benefit from a more granular public dissemination of delivery or pricing points given the amount of energy production in those regions.

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

c. Basis Swaps

The Commission proposed requiring SDRs to ensure that specific underlying assets are publicly disseminated for basis swaps that qualify as publicly

[502] *See* U.S. Energy Information Administration (EIA)—Petroleum & Other Liquids, *http://www.eia.gov/petroleum/data.cfm* (last viewed May 6, 2013).

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

[504] See FERC, Electric Power Markets—Overview, *http://www.ferc.gov/market-oversight/mkt-electric/overview.asp* (last viewed May 6, 2013).

[505] *See* U.S. Energy Information Administration, U.S. Federal Region Map, *http://www.eia.gov/electricity/regionsmap/fedregstates.html* (last visited May 6, 2013).

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

reportable swap transactions. The Commission recognizes that basis swaps exist in which one leg of the swap references a contract described in appendix B to part 43 (or is economically related to one such contract) and the other leg of the swap references an asset or pricing point not listed in appendix B to part 43. Currently, § 43.4(d)(4)(ii)(A)–(B) requires an SDR to publicly disseminate the actual underlying asset of the leg of the basis swap that references or is economically related to a contract listed in appendix B to part 43. To the extent that a basis swap is executed on or pursuant to the rules of a SEF or DCM, an SDR would also publicly disseminate the specific underlying asset. With respect to the leg of a basis swap that does not reference a contract in appendix B to part 43, however, the Commission proposed to require SDRs to publicly disseminate the underlying asset of that leg pursuant to proposed § 43.4(d)(4)(iii) and proposed appendix E to part 43, *i.e.,* with top-coding provisions.

d. Comments Received and Commission Determination

The Commission received three comments regarding the masking of specific delivery or pricing detail of energy and power swaps. EEI recommended that the Commission mask data regarding Other Commodity Electricity Swaps according to the North American Electric Reliability Corporation eight regions rather than the FERC regions proposed.[507] Barclays recommended that the Commission use wider geographic regions when publicly disseminating data for commodity swaps with very specific underlying assets and/or delivery points and develop an appropriate process to avoid identifying issuers of debt.[508] Spring Trading supported further measures to prevent public disclosure of identities, business transactions, and market positions of swap market participants, and recommended disclosing a subset of data on a collective basis at a later date.

After consideration of the comments received, the Commission is adopting § 43.4(d)(4)(iii) with the following modification. For publicly reportable swap transactions that have electricity and sources as an underlying asset and have a specific delivery or pricing point in the United States, the Commission is requiring SDRs to publicly disseminate the specific delivery or pricing point based on a description of one of the North American Electric Reliability Corporation (''NERC'') regions for publicly disseminating delivery or pricing points for electricity swaps described in proposed § 43.4(d)(4)(iii). The NERC regions are broader than the FERC regions and include much of Canada. Specifically, the NERC regions are as follows: (i) Florida Reliability Coordinating Council (FRCC); (ii) Midwest Reliability Organization (MRO); (iii) Northeast Power Coordinating Council (NPCC); (iv) ReliabilityFirst Corporation (RFC); (v) SERC Reliability Corporation (SERC); (vi) Southwest Power Pool, RE (SPP); (vii) Texas Regional Entity (TRE); (viii) Western Electricity Coordinating Council (WECC).[509] The Commission is of the view that using these regions as suggested by EEI will provide further masking of specific delivery details and thus further protection against public disclosure of identities, business transactions, and market positions of swap market participants, as recommended by Barclays and Spring Trading.

4. Further Revisions to Part 43

a. Additional Contracts Added to Appendix B to Part 43

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

As noted above, the Commission proposed adding 13 natural gas and electricity contracts under the ''Other Commodity'' heading in appendix B to part 43 that have been de-listed and converted into futures contracts listed on a DCM.[510] Nevertheless, the addition of these 13 contracts to appendix B effectively would require SDRs to publicly disseminate these contracts the same way as the other contracts that are currently listed in appendix B to part 43. That is, an SDR would publicly disseminate the actual underlying asset (and any underlying asset(s) that are economically related) without any limitation of the geographic detail.

The Commission had previously determined that these 13 contracts—as swaps—were significant price discovery contracts (''SPDCs'') in connection with trading on exempt commercial markets (''ECMs'').[511] Each of the 13 contracts had undergone an analysis in which the Commission considered the following five criteria: (i) Price linkage (the extent to which the contract uses or otherwise relies on a daily or final settlement price of a contract listed for trade on or subject to the rules of a DCM); (ii) arbitrage (the extent to which the price of the contract is sufficiently related to the price of a contract listed on a DCM to permit market participants to effectively arbitrage between the two markets); (iii) material price reference (the extent to which, on a frequent and recurring basis, bids, offers or transactions in a commodity are directly based on, or are determined by referencing, the prices generated by contracts being traded or executed on the ECM); (iv) material liquidity (the extent to which volume of the contract is sufficient to have a material effect on other contracts listed for trading); and (v) other material factors.[512]

To the extent that the SPDC contracts have been de-listed and replaced by listed futures contracts, the Commission believes that the latter contracts have similar material liquidity and material price reference, among other things. Therefore, the Commission anticipates that, the public dissemination of the full underlying asset for publicly reportable swap transactions that reference such futures contracts (and any underlying assets that are economically related thereto) would not disclose the identities, market positions and business transactions of market participants and would enhance price discovery in the related markets.[513] The Commission did not receive any other comments, and accordingly, is adopting these additions to appendix B.

b. Technical Revisions to Part 43

In the Real-Time Reporting Final Rule, the Commission states that the

[507] CL–EEI at 12–13.

[508] CL–Barclays at 6.

[509] *See* NERC, Key Players: Regional Entities, *http://www.nerc.com/page.php?cid=1%7C9%7C119* (last visited May 6, 2013).

[510] *See supra* note 176.

[511] *Id.*

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

[513] The Commission notes that it is not adding ''Henry Financial LD1 Fixed Price,'' a listed futures contract that was converted from ''Henry Financial LD1 Fixed Price Swap'' (which was previously deemed by the Commission to be a SPDC), to appendix B to part 43. This contract is economically related to the ''New York Mercantile Exchange Henry Hub Natural Gas,'' which is listed under ''Enumerated Physical Commodity Contracts'' in appendix B to part 43. Therefore, listing this contract again would be redundant.

transactions described § 43.4(d)(4)(ii)(A)–(C), *i.e.,* the instances in which the actual underlying asset for a publicly reportable swap transaction in the other commodity asset class is to be publicly disseminated, are meant to be exclusive of one another. Under these sections, an SDR is required to publicly disseminate the actual underlying asset(s) of a swap in the other commodity asset class, where the swap (1) is executed on or pursuant to the rules of a SEF or DCM; (2) references a contract listed on appendix B to part 43; or (3) is economically related to a contract on appendix B. Accordingly, the Commission proposed a technical clarification to § 43.4(d)(4)(ii)(B) to clarify the intent that these elements are exclusive of one another, as articulated in the preamble to the Real-Time Reporting Final Rule.

The Commission did not receive any comments regarding the technical clarification to § 43.4(d)(4)(ii)(B). Accordingly, the Commission is adopting § 43.4(d)(4)(ii)(B) as proposed.

IV. Paperwork Reduction Act

A. Background

The purposes of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 et seq. (''PRA'') are, among other things, to minimize the paperwork burden to the private sector, ensure that any collection of information by a government agency is put to the greatest possible uses, and minimize duplicative information collections across the government.[514] The PRA applies with extraordinary breadth to all information, ''regardless of form or format,'' whenever the government is ''obtaining, causing to be obtained [or] soliciting'' information, and includes required ''disclosure to third parties or the public, of facts or opinions,'' when the information collection calls for ''answers to identical questions posed to, or identical reporting or recordkeeping requirements imposed on, ten or more persons.'' [515] The PRA requirements have been determined to include not only mandatory but also voluntary information collections, and include both written and oral communications.[516]

To effectuate the purposes of the PRA, Congress requires all agencies to quantify and justify the burden of any information collection it imposes.[517] This requirement includes submitting each collection, whether or not it is contained in a rulemaking, to the Office of Management and Budget (''OMB'') for review. The OMB submission process included completing a supporting statement with the agency's burden estimate and justification for the collection. The information collection established within this rulemaking, which included the agency's burden estimate and justification, was subjected to the rulemaking's public comment process. No public comments were received affecting the information burden and justification.

Section 43.6 and amendments to § 43.4 amend an existing collection of information within the meaning of the PRA in two respects. Accordingly, the Commission submitted the Further Block Proposal to the OMB for review pursuant to 44 U.S.C. 3507(d) and 5 CFR1320.11. OMB has assigned control number 3038–0070 to the existing collection of information, which is titled ''Part 43—Real-Time Public Reporting.'' The Commission invited the public to comment on any aspect of the proposed amendments to existing collections of information. The responses to this amended collection of information are mandatory. The Commission did not receive any comments regarding the proposed amendments. Accordingly, the Commission is not revising the estimates contained in the Further Block Proposal, which are described in the following sections.

B. Description of the Collection

On January 9, 2012, the Commission issued the Real-Time Reporting Final Rule, which includes three collections of information requirements within the meaning of the PRA. The first collection of information requirement under Part 43 imposed a reporting requirement on a SEF or DCM when a swap is executed on a trading facility or on the parties to a swap transaction when the swap is executed bilaterally. The second collection of information requirement under Part 43 created a public dissemination requirement on SDRs. The third collection of information requirement created a recordkeeping requirement for SEFs, DCMs, SDRs and any reporting party (as such term is defined in part 43 of the Commission's regulations).

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

1. § 43.6(g)—Notification of Election

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

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

The Commission estimates that there are 125 SDs and MSPs, and 1,000 other non-financial end-user parties.[518] The Commission estimates that, on average, SD/MSP reporting parties would likely notify a SEF or DCM of a block trade election approximately 1,000 times per year while non-SD/MSP reporting parties likely would notify a SEF or DCM of a block trade election approximately five times per year.[519] Thus, the Commission estimates that there would be 130,000 notifications of a block trade election by reporting parties under § 43.6(g) each year.[520]

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

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

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

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

[518] The Commission has previously estimated that 125 SDs and MSPs will register with the Commission and 1,000 non-financial end-users (i.e., non-SD/non-MSPs) will be required to report swap transactions annually. 77 FR 1229–30.

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

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

The Commission estimates that the burden hours associated with § 43.6(g)(1)(i) would include: (i) 30 seconds on average for parties to a swap to determine whether a particular swap transaction qualifies as a block trade based on the appropriate minimum block size of the applicable swap category; and (ii) 30 seconds on average for the parties to electronically transmit or otherwise communicate their notice of election. SDs, MSPs and reporting parties would use existing traders (or other professionals earning similar salaries) to electronically transmit or otherwise communicate their notice of election. Based on the Securities Industry and Financial Market Association's 2011 Securities Industry Salary Survey, the Commission estimates that these block traders would earn approximately $184.90 per hour in total compensation.[521] Accordingly, the Commission estimates that the total annual burden hour costs associated with the first step in proposed § 43.6(g)(1)(i) would be 2,167 hours[522] or $400,678 in total annual burden hours costs[523] and $11.8 million in total start-up capital costs.[524]

With respect to the second step, proposed § 43.6(g)(1)(ii) provides that the SEF or DCM, as applicable, that receives an election notification is required to notify an SDR of a block trade election when transmitting swap transaction and pricing data to such SDR for public dissemination. As noted above, the Commission anticipates that SEFs and DCMs would use automated, electronic and, in some cases, voice processes to execute swap transactions. The Commission estimates that there will be approximately 58 SEFs and DCMs. Accordingly, the Commission estimates that the total annual burden associated with the second step in § 43.6(g)(1)(ii) would be approximately $610,740 in non-recurring annualized capital and start-up costs.[525] The Real-Time Reporting Final Rule already has addressed the recurring annualized costs for the hour burden.

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

The Commission estimates that the incremental time and cost burden associated with the § 43.6(g)(2) would include: (i) One minute for a reporting party to determine whether a particular swap transaction qualifies as a large notional off-facility swap based on the appropriate minimum block size of the applicable swap category; and (ii) one minute for the reporting party (or its designee) to electronically transmit or communicate through voice processes its notice of election. The Commission estimates that, of the approximately 2,250 hours incurred by 125 SDs/MSPs and 1,000 non-SD/MSPs, all of those hours would be spent by traders and market analysts (or designee).[526] SIFMA's report states that traders and market analysts make $184.90 per hour in total compensation.[527]

The Commission estimates that, on average, each of the estimated 125 SD/MSP counterparties would likely notify an SDR of a large notional off-facility swap election approximately 500 times per year while each of the estimated 1,000 non-SD/MSP counterparties would notify an SDR approximately five times per year. Accordingly, the Commission estimates that there are, on average, approximately 67,500 notifications large notional off-facility swaps under § 43.6 each year. Accordingly, the Commission estimates that the total annual burden associated with § 43.6(g)(2) would be approximately 2,250 annual labor hours or $416,025 in annual labor costs.[528]

[521] The Commission previously has utilized wage rate estimates based on average salary and average prior year bonus information for the securities industry compiled by SIFMA. These wage estimates are derived from an industry-wide survey of participants and thus reflect an average across entities; the Commission notes that the actual costs for any individual company or sector may vary from the average.

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

(1) [(2010 salary + bonus) * (salary growth per professional type, 2010–2011)] = Estimated 2010 total annual compensation. The most recent data provided by the SIFMA report describe the 2010 total compensation (salary + bonus) by professional type, the growth in base salary from 2010 to 2011 for each professional type, and the 2011 base salary for each professional type; therefore, the Commission estimated the 2011 total compensation for each professional type, but, in the absence of similarly granular data on salary growth or compensation from 2011 to 2012 and beyond, did not estimate dollar costs beyond 2011. [(Estimated 2011 total annual compensation)/(1,800 annual work hours)] = Hourly wage per professional type.]

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

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

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

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

[523] The underlying adjusted labor cost estimate of $184.90 per hour used in this estimate is calculated based on the adjusted wages of swap traders. *See* note 521 supra.

[524] The estimated costs are based on the Commission's estimate of the incremental, non-recurring expenditures to reporting entities, including non-SD/non-MSPs (*i.e.,* non-financial end-users) to: (1) update existing technology, including updating its OMS system ($7,170); and (2) provide training to existing personnel and update written policies and procedures ($3,360). *See* section V.D.1. infra. The Commission believes that SDs/MSPs would incur similar non-recurring start-up costs. The Commission has previously estimated that 125 SDs and MSPs will register with the Commission and 1,000 non-financial end-users (*i.e.,* non-SD/non-MSPs) will be required to report in a year. *See* 77 FR 1229–30.

[525] The Commission bases this estimate on 58 projected SEFs and DCMs, each of which will incur costs of investing in update technology, including updating its OMS system ($6,761.20); and training existing personnel and updating written policies and procedures ($3,195.00). *See* section V.D.1. infra.

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

[527] *See* note 521 supra.

[528] The labor hour estimate is calculated as follows: (125 SDs/MSPs × 500 notifications) + (1,000 non-SDs/non-MSPs × 5 notifications) = 67,500 notifications × 2 minutes/notification = 135,000 minutes/60 minutes/hour = 2,250 hours. The labor cost estimate is calculated as follows: 2,250 labor hours × $140.93 per hour total compensation = $317,092. The Commission notes that the calculation in the Further Block Proposal incorrectly listed the labor hour estimate as 2,255 hours (rather than 2,250). The labor cost estimate was then incorrectly listed as $317,797 (rather than $317,092) due to the incorrect labor hour estimate.

In addition, the Commission estimates that § 43.6(g)(2) results in $11.8 million in non-recurring annualized capital and start-up costs.[529] The Real-Time Reporting Final Rule addressed all ongoing operational and maintenance costs.[530]

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

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

In this final rule, the Commission is promulgating a new provision (§ 43.4(d)(4)(iii)), which would develop a system for the public dissemination of exact underlying assets in the other commodity asset class with a ''mask'' based on geographic detail. The Commission is adopting a new appendix to part 43, which contains the geographical top-codes that SDRs would use in masking certain other commodity swaps in connection with such swaps public dissemination of swap transaction and pricing data under part 43. The Commission anticipates that there will be approximately 50,000 additional swaps reported to an SDR each year in the other commodity asset class, which the Commission estimates would be $154,021 in annualized hour burden costs.[531]

The Commission's regulations currently provide a system establishing cap sizes. Section 43.4(h) of the Commission's regulations provides that cap sizes for swaps in each asset class shall equal the appropriate minimum block size corresponding to such publicly reportable swap transaction. If no appropriate minimum block size exists, then § 43.4(h) sets out specific interim cap sizes for each asset class.[532]

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

The Commission estimates that the incremental start-up costs associated with the amendment to §§ 43.4(d)(4) and 43.4(h) for an SDR would include: (1) Reprograming its technology infrastructure to accommodate the masking system and post-initial cap sizes methodology; (2) updating its written policies and procedures to ensure compliance with § 43.4(d)(4)(iii) and the amendment to § 43.4(h); and (3) training staff on the new policies and procedures.[533]

V. Cost-Benefit Considerations

A. Background

Section 15(a) of the Commodity Exchange Act[534] (''CEA'') mandates that the Commission consider the costs and benefits of this rulemaking, which amends portions of part 43 (the Real-Time Reporting Final Rule).[535] Part 43 implements section 727 of the Dodd-Frank Act.[536]

Enacted in the wake of the 2008 financial crisis with the aim of preventing a repeat of the severe harm that crisis caused, Title VII of the Dodd-Frank Act establishes a comprehensive new regulatory framework for swaps and security-based swaps.[537] Among other things, the legislation seeks to promote market integrity, reduce risk, and increase transparency within the financial system as a whole and swaps markets in particular. Consistent with the view that the financial crisis was not attributable to a single weakness, but a combination of several,[538] Title VII does not provide for a single-dimensional fix. Rather, it weaves together a multidimensional regulatory construct designed to ''mitigate costs and risks to taxpayers and the financial system.''[539]

Section 727 concerns a fundamental component in the Dodd-Frank Act construct: public swap transaction reporting. This provision adds section 2(a)(13) to the CEA ''to authorize the Commission to make swap transaction and pricing data available to the public in such form and at such times as the Commission determines appropriate to enhance price discovery.''[540] In addition, the section directs the Commission to promulgate certain rules, including rules that:

- Require ''real-time public reporting''—i.e., ''reporting data related to a swap transaction, including price and volume, as soon as technologically practicable after the time at which the swap transaction has been executed''[541]—of swap transactions[542];
- specify ''the criteria for determining what constitutes a large notional swap transaction (block trade) for particular markets and contracts'' and ''the appropriate time delay for reporting

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

[530] *See* 77 FR at 1232.

[531] The Commission estimates that there will be 5 SDRs, which will collect swaps data in the other commodity asset class. Each SDR would collect swaps data on approximately 10,000 swap transactions in the other commodity asset class. The commission estimates that it will take each SDR on average approximately 1 minute to publicly disseminate swaps data related to these new swap transactions. The number of burden hours for these SDRs would be 833 hours. As referenced in note 523 *supra,* the total labor costs for a swap trader is $140.93. Thus, the total number of burden hour costs equal the total number of burden hours (833 burden hours) × $140.93.

[532] The Real-Time Reporting Final Rule calculated and addressed the total ongoing burden hours and burden hour costs. *See* 77 FR 11232.

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

[534] 7 U.S.C. 19(a).

[535] Real-Time Public Reporting of Swap Transaction Data, 77 FR 1182, Jan. 9, 2012.

[536] Dodd-Frank Wall Street Reform and Consumer Protection Act section 727, Public Law 111–203, 124 Stat. 1376 (2010) (''Dodd-Frank Act'').

[537] Dodd-Frank Act section 701, et seq.

[538] *See, e.g.,* Financial Crisis Inquiry Commission, ''The Financial Crisis Inquiry Report: Final Report of the National Commission on the Causes of the Financial and Economic Crisis in the United States,'' Jan. 2011, at xxiv, available at *http://www.gpo.gov/fdsys/pkg/GPO-FCIC/pdf/GPO-FCIC.pdf* (listing uncontrolled leverage; lack of transparency, capital and collateral requirements; speculation; interconnection among firms; and concentrations of risk in the market as contributing factors).

[539] S. Rep. No. 111–176, at 92 (2010).

[540] CEA section 2(a)(13)(B).

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

[542] CEA section 2(a)(13)(C).

large notional swap transactions (block trades) to the public;'' [543]

• take into account whether public disclosure of swap transaction and pricing data ''will materially reduce market liquidity'' [544];

• protect the identities of counterparties to swaps and maintain the anonymity of business transactions and market positions of swap counterparties.[545]

In January 2012, the Commission adopted the part 43 Real-Time Reporting Final Rule implementing section 2(a)(13)of the CEA.[546] Generally summarized, the Real-Time Reporting Final Rule defined the terms ''block trade'' and ''large notional off-facility swap,'' [547] and established the: (1) Responsibilities of the parties to each swap to report swap transaction and pricing data to a swap data repository (''SDR'') and the types of data they must report [548]; (2) requirements for SDRs to publicly disseminate such data in real-time or, in the case of block trades and large-notional off-facility swaps, subject to a time delay [549]; (3) applicable time delays for public dissemination of block trades and large-notional off-facility swaps data according to asset class [550]; and (4) a system to protect the anonymity of parties to a swap, including interim notional cap sizes for all swaps that are publicly disseminated and the creation of an exception from the real-time public reporting requirement for certain swaps in the ''other commodity'' asset class.[551]

The Real-Time Public Reporting Final Rule as adopted in January 2012, however, deferred its responsibility to promulgate rules that ''specify the criteria for determining what constitutes a large notional [off-facility] swap transaction [or block trade] for particular markets and contracts'' as CEA section 2(a)(13)(E)(ii) requires. Pending the adoption of such supplemental part 43 rules, the Commission adopted ''interim time delays for all swaps.'' [552] Accordingly, at present no swap transaction data is publicly disseminated in real-time; interim time delays are in place for all swaps.[553]

The final rules adopted in this release amend part 43 to establish appropriate minimum block sizes, lift the blanket interim time-delay for all swaps from real-time public reporting, and provide further anonymity provisions to protect the identities of swap counterparties and transactions. More specifically, and as discussed in more detail above, these rules do so by:

• creating ''swap categories'' (i.e., groupings of swaps within the same asset class based on underlying characteristics) to which a common appropriate minimum block size applies [554];

• prescribing a two-period, phased in approach to implement regulations, comprised of an initial period and an on-going (post-initial) period to allow market participants sufficient time for compliance [555];

• establishing initial appropriate minimum block sizes based on the Commission's review and analysis of swap market data across certain asset classes [556];

• obligating set forth a methodology for calculating post-initial appropriate minimum block sizes [557];

• providing a procedure that allows parties to a swap to elect block trade or large notional off-facility swap treatment for a swap transaction; [558] and

• establishing a system to ensure the anonymity of certain swaps in the other commodity asset class,[559] including a methodology for the calculation of initial or post-initial cap sizes.[560]

The rules do not, however, amend part 43 in a manner that alters the appropriate time delays for block trades and large notional off-facility swaps, nor do they require investment in a completely new information infrastructure beyond what is necessary to comply with the existing provisions of part 43.[561] With this release, in conjunction with the separate SEF core principles rulemaking [562] and the made available to trade rulemaking,[563] the Commission is implementing the trade execution mandate of CEA Section 2(h)(8). Due to the clearing mandate, the Final Rule at this time mainly will affect pre-trade transparency only in the interest rate and credit default asset classes. In regard to the foreign exchange and other commodity asset classes, the Commission notes that there is no clearing mandate for foreign exchange swaps and other commodity swaps at this time. Thus, the swaps block rule does not currently affect pre-trade transparency for these asset classes. As these markets evolve, the Commission will continue to monitor developments within each asset class and may exercise its legal authority to take action by rule or order if necessary to address changes in the markets.

This rulemaking requires the Commission to carefully navigate a tension that CEA section 2(a)(13) recognizes: while section 2(a)(13)(C) requires the Commission to promulgate rules to bring real-time public reporting to the swaps market, section 2(a)(13)(E)(iv) requires that in doing so

[543] *See* CEA sections 2(a)(13)(E)(ii) and (iii). Section 2(a)(13)(E) explicitly refers to the swaps described only in sections 2(a)(13)(C)(i) and 2(a)(13)(C)(ii) of the CEA (*i.e.,* clearable swaps, including swaps that are exempt from clearing). The Commission, in exercising its authority under CEA section 2(a)(13)(B) to ''make swap transaction and pricing data available to the public in such form and at such times as the Commission determines appropriate to enhance price discovery,'' is authorized to prescribe rules similar to those provisions in section 2(a)(13)(E) to uncleared swaps described in section 2(a)(13)(C)(iii) and (iv) of the CEA. Thus, the Commission is establishing block thresholds for the swaps described in Sections 2(a)(13)(C)(i) and 2(a)(13)(C)(ii) of the CEA as required by Section 2(a)(13)(E). The Commission is establishing large notional off-facility swap thresholds for swaps described in Sections 2(a)(13)(C)(iii) and 2(a)(13)(C)(iv) pursuant to its authority under Section 2(a)(13)(B).

[544] CEA section 2(a)(13)(E)(iv).

[545] *See* CEA sections 2(a)(13)(E)(i) and 2(a)(13)(C)(iii).

[546] Real-Time Public Reporting of Swap Transaction Data, 77 FR 1182, Jan. 9, 2012.

[547] The Real-Time Reporting Final Rule defines the term ''Block trade'' as a publicly reportable swap transaction that: ''(1) [i]nvolves a swap that is listed on a SEF or DCM; (2) [o]ccurs away from the [SEF's or DCM's] trading system or platform and is executed pursuant to the [SEF's or DCM's] rules and procedures; (3) has a notional or principal amount at or above the appropriate minimum block applicable to such swap ; and (4) [i]s reported subject to the rules and procedures of the [SEF or DCM] and the rules described in [part 43], including the appropriate time delay requirements set forth in § 43.5.'' *See* § 43.2, 77 FR 1243.

The Real-Time Reporting Final Rule defined the term ''Large notional off-facility swap as an ''off-facility swap that has a notional or principal amount at or above the appropriate minimum block size applicable to such publicly reportable swap transaction and is not a block trade as defined in § 43.2 of the Commission's regulations.'' *Id.*

[548] *See* § 43.3, 77 FR 1244.

[549] *See* § 43.4, 77 FR 1246.

[550] *See* § 43.5, 77 FR 1247.

[551] *See* § 43.4 (d) and (h), 77 FR 1,246. Section 43.4(h) states that ''[t]he rounded notional or principal amount that is publicly disseminated for a publicly reportable swap transaction shall be capped. . . . '' If the notional or principal amount of a publicly reportable swap transaction is greater than the cap size, the publicly reported size for the trade will be ''[cap size]+.'' For example, if the relevant cap size is 250 million, the publicly reported size will be ''250+.''

[552] 77 FR 1217; *see also* § 43.5(c).

[553] *See* § 43.5(c)(1).

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

[555] *See* § 43.6(e) and (f).

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

[557] *See* § 43.6(c) and (f).

[558] *See* § 43.6(g).

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

[560] *See* §§ 43.4(h) and 43.6(c).

[561] The costs and benefits attendant to the time delay and development of an infrastructure for block trades and large notional off-facility swaps are discussed in Real-Time Public Reporting of Swap Transaction Data, 77 FR 1182, 1232, Jan. 9, 2012.

[562] *See,* the Core Principles and Other Requirements for Swap Execution Facilities notice of proposed rulemaking, 76 FR 1214 (Jan. 7, 2011).

[563] The Commission separately proposed rules to determine whether a swap is ''made available to trade'' for purposes of the trade execution requirement in CEA section 2(h)(8). Process for a Designated Contract Market or Swap Execution Facility To Make a Swap Available to Trade, 76 FR 77728 (proposed Dec. 14, 2011).

the Commission ''take into account whether the public disclosure will materially reduce market liquidity.'' The Commission has followed both directives. Accordingly, a central focus of the Commission's consideration of costs and benefits of this rulemaking is the interplay between the important benefits of enhanced swap transaction transparency that real-time public dissemination affords [564] and the potential that, in certain circumstances, transparency could reduce swap market liquidity. As evident by commenters' divergent opinions, the optimal point in this interplay, and how to set it, defies precision.[565] Given this fact, these rules reflect the Commission's reasoned judgment of how best to meaningfully effectuate real-time public reporting of swap transactions—and the transparency Congress intended—in a manner that takes into account the impact on market liquidity. Briefly, the Commission will use a 67% percent notional calculation to determine the threshold over which block trades and large notional off-facility swaps will be eligible for block trade treatment, meaning that most swaps will be reported in real-time.[566] At the same time, a phased implementation schedule assures that transparency is introduced incrementally, taking into account whether public disclosure will ''materially reduce market liquidity.'' For example, to cushion potential liquidity impact, the thresholds for swaps in the interest rate and credit assets classes will initially rest conservatively at 50 percent, thus allowing transactions above 50 percent of the notional amount to remain shielded from real-time public reporting, before transitioning to 67 percent in the post-initial period. While this departure from the proposal means that fewer swaps will be subject to real-time transparency during the initial period, it affords the Commission the opportunity to collect and analyze data on the use of block thresholds and to apply that data to its evaluation of the risks attendant to a less transparent market. Simultaneously introducing a conservative, 50 percent threshold also allows the Commission to assess whether there are material reductions in the liquidity for some swaps and take any measures to stave off those reductions, as the rules allow the Commission to review and refine the thresholds as liquidity and transparency needs may warrant in the future.[567]

B. The Statutory Mandate To Consider the Costs and Benefits of the Commission's Action: Section 15(a) of the CEA

Section 15(a) of the CEA [568] requires the Commission to consider the costs and benefits of its actions before promulgating a regulation under the CEA or issuing certain orders. Section 15(a) further specifies that the costs and benefits shall be evaluated in light of the following five broad areas of market and public concern: (1) Protection of market participants and the public; (2) efficiency, competitiveness, and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations. The Commission considers the costs and benefits resulting from its discretionary determinations with respect to the section 15(a) factors.

These amending rules become effective in—and their costs and benefits are considered relative to—the context of the conditions now in place under part 43. That is: all publicly reportable swap transactions are currently subject to a time delay and are not publicly reported in real-time.[569] [570] Unless otherwise indicated, the Commission has looked to a non-financial end-user that already has developed the technical capability and infrastructure necessary to comply with the requirements set forth in part 43 as a reference entity for estimating this rulemaking's direct costs under the assumption that the costs for this particular market participant would represent the maximum degree of compliance costs.[571] The Commission anticipates, however, that in many cases the actual costs to established market participants (including swap counterparties, SDRs and other registered entities) would be lower than for the reference entity—perhaps significantly so, depending on the type, flexibility, and scalability of systems already in place.

Wherever reasonably feasible, the Commission has endeavored to quantify the costs and benefits of this rulemaking. In a number of instances, the Commission lacks the data and information required to precisely estimate costs, owing to the fact that these markets do not yet exist or are not yet fully developed. The Commission requested that commenters provide any data or other information that would be useful in the estimation of the

[564] The benefits of public dissemination of swap transaction and pricing data are detailed in Real-Time Public Reporting of Swap Transaction Data, 77 FR at 1234. As the Commission explained in that release and reaffirms here, swap transaction reporting and public dissemination benefits market participants and the public in a number of respects. Among others discussed in that earlier release, and considered by reference herein, these include enhanced: price discovery, ability to manage risk as a result of improved visibility into swap market risk pricing, and improved swap market price competition. Additionally, the transparency afforded through public dissemination of swap transaction and pricing data ''will enhance the Commission's ability to detect anomalies in the market . . . and provide a check against a reoccurrence of the type of systemic risk build-up that occurred in 2008 when 'the market permitted enormous exposure to risk to grow out of the sight of regulators and other traders [and d]erivatives exposures that could not be readily quantified exacerbated panic and uncertainty about the true financial condition of other market participants, contributing to the freezing of credit markets.' '' *Id.* (quoting Congressional Research Service Report for Congress, The Dodd-Frank Wall Street Reform and Consumer Protection Act: Title VII, Derivatives, by Mark Jickling and Kathleen Ann Ruane (August 30, 2010).

[565] Indeed, CEA section 2(a)(13)(E)(iv), in simply requiring that the Commission ''take into account whether public disclosure will materially reduce market liquidity,'' does not require that the Commission attempt to determine the precise optimal relationship between transparency and liquidity or assure no liquidity loss.

[566] Using the Over-the-Counter Derivatives Supervisors Group (''ODSG'') data for interest rate swaps, the Commission notes that the 67 percent notional amount calculation would result in 94 percent of trades being reported in real-time. A discussion of the ODSG and the data set is set forth in section II.C.1 of this final rule.

[567] *See* § 43.6(f).

[568] 7 U.S.C. 19(a).

[569] *See* § 43.5(c).

[570] Currently, the part 43 requirements are not applicable to swaps in the other commodities asset class that reference underlying assets not included in Appendix B to Part 43. The Real-Time Reporting Rule provides notice that, until such time as the anonymity provisions of this final rule are finalized, those off-facility swaps not listed in appendix B to part 43 are not be required to comply with the real-time reporting and public dissemination requirements under part 43. However, such swaps are subject to the regulatory reporting requirements, described in proposed part 45. According to the BIS report *http://bis.org/publ/qtrpdf/r_qs1209.pdf*, commodities (as a whole and not just the subset identified above) only represent slightly more than one third of one percent (0.36%) of the notional amounts outstanding as a percentage of the global OTC derivatives market for the end of December 2011. For this small subset of other commodity swaps, the starting point for the purposes of the Commission's consideration of the costs and benefits is the same as the starting point for the Commission's consideration of costs and benefits of the Real-Time Reporting Rule. A detailed discussion of the Commission's consideration of those costs and benefits is contained in the Real-Time Reporting Rule. *See* 77 FR at 1232–1240.

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

quantifiable costs and benefits of this rulemaking [572]; no commenters supplied such data or other information. Where it was not feasible to quantify (*e.g.,* because of the lack of accurate data or appropriate metrics), the Commission has considered the costs and benefits of these rules in qualitative terms.

For purposes of considering their costs and benefits, the Commission has organized these rules in three groups: (1) Block trade rules concerning the criteria for determining swap categories and the methodologies to be used to determine the initial and post-initial appropriate minimum block sizes for large notional off-facility swaps and block trades; (2) block trade rules concerning the method by which swap counterparties may elect to treat a qualifying swap transaction as a block trade or a large notional off-facility swap, as applicable, and SEFs and DCMs notify an SDR of a block trade election; and (3) rules concerning anonymity protections. Each group is discussed below.

C. Rules Establishing Determination Criteria and Methodology (§ 43.6(a)–(f) and (h))

Rules 43.6(a)–(f) and (h) specify the Commission's criteria for establishing swap categories and methodology for determining appropriate minimum block sizes. The subsections that follow provide a brief contextual summary description of the rules; identify and discuss the costs and benefits attributable to the rules in light of comments; consider alternatives; and consider costs and benefits relative to factors specified in CEA section 15(a).

1. Rule Summary

Rules 43.6(a)–(f) and (h) are described previously in this release.[573] A summary of each follows:

a. Rule 43.6(a) Commission Determination

Rule 43.6(a) provides that the Commission will determine the appropriate minimum block size for any swap on a SEF or DCM, and for large notional off-facility swaps. The rule also sets forth a schedule whereby the Commission will calculate and publish all appropriate minimum block sizes across all asset classes no less than once each calendar year, following an initial period (as described below).

b. Rule 43.6(b) Swap Category

Rule 43.6(b) specifies the Commission's approach for grouping swaps by asset class based on existing liquidity in underlying cash markets, relevant economic indicators, the underlying asset class, and the Commission's analysis of relevant swap market data supplied to the Commission.[574]

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

Rules 43.6(c)–(f) and (h) prescribe a phased-in approach, with an initial period and a post-initial period for determining appropriate minimum block sizes for each swap category. Appendix F to part 43 contains a schedule of appropriate minimum block sizes effective during the initial period. The schedule reflects a different appropriate minimum block size methodology for the interest rate and credit asset classes than for the equity, FX and other commodity asset classes. The initial appropriate minimum block sizes for the interest rate and credit asset class are derived from data supplied by the ODSG.[575] As set forth in Appendix F to this Final Rule, the Commission is calculating the appropriate minimum block sizes in interest rate and credit asset classes based upon the 50-percent notional amount calculation set forth in § 43.6(c)(1) in the initial period.

Rule 43.6(d) states that swaps in the equity asset class shall not be treated as block trades or large notional off-facility swaps (*i.e.,* equity swaps would not be subject to a time delay as provided in part 43).

With respect to the FX and other commodity asset classes, the appropriate minimum block sizes for swaps during the initial period is divided primarily between swaps that are futures-related swaps and those that are not futures-related.[576] Appendix F to part 43 lists the proposed initial appropriate minimum block sizes for swap categories in the FX and other commodity asset classes. For swaps in the FX and other commodity asset classes that are not listed in appendix F to part 43, § 43.6(e)(2) generally provides that these swaps will be considered block trades or large notional off-facility swaps.

After an SDR has collected reliable data for a particular asset class, § 43.6(f)(1) provides that the Commission shall determine post-initial appropriate minimum block sizes for all swaps in the interest rate, credit, FX and other commodity asset classes based on the 67-percent notional amount calculation. The Commission is also adopting special rules for the determination of appropriate minimum block sizes that would apply to all asset classes, including rules applicable to swaps with optionality, swaps with composite reference prices, physical commodity swaps, currency conversion, and successor currencies.[577]

2. Overview of Comments Received

The Commission received numerous comments regarding the potential costs and benefits to market participants and the public in response to the rules establishing the criteria and methodology for determining block thresholds. Commenters were divided on whether the Commission properly considered costs or misstated or ignored the benefits of the rules. Some commenters touched on the cost benefit considerations directly by promoting various alternatives to the proposed rules.[578] Comments relating to the Commission's consideration of costs and benefits are discussed specifically in the sections below.

3. Costs

a. Direct Costs

Rules 43.6(a)–(f) and (h) will impose recurring costs on swap market participants and registered entities (i.e., SEFs, DCMs, or SDRs) to accommodate the Commission's publication of post-initial appropriate minimum block sizes at least once each calendar year following the initial period. In the Further Block Proposal, the Commission anticipated that in order for registered entities to comply with the rule, they would need to update their existing data systems and that process would entail approximately 40 initial, non-recurring personnel hours at an approximate cost of $2,728 for each registered entity.[579] This estimate included the potential number of burden hours required to

[572] Further Block Proposal Q93(a)–(e), 77 FR at 15507.

[573] *See* section II, *supra.*

[574] Data was supplied to the Commission by MarkitSERV and The Warehouse Trust Company LLC. The data is more fully described in Section II.A.1.a. of this release.

[575] A discussion of the ODSG and the data set is set forth in section II.C.1 of this final rule.

[576] As explained above in section II.C., the Commission believes that the difference in methodology for determining initial appropriate minimum block sizes for swaps in the FX and other commodity asset classes is warranted because: (1) Swaps in these asset classes are closely linked to futures markets; and (2) DCMs have experience in setting block sizes for futures.

[577] *See* proposed rule § 43.6(h).

[578] *E.g.,* CL–AII at 6; CL–SIFMA at 10; CL–WMBAA at 8; CL–CME at 2; CL–Vanguard at 3; CL–Morgan Stanley at 3; CL–ICAP Energy at 3; CL–Barnard at 1; CL–Freddie at 2; CL–Barclays at 10.

[579] The estimate is calculated as follows: (Senior Programmer at 20 hours) + (Systems Analyst at 20 hours). A senior programmer's adjusted hourly wage is $81.52. A systems analyst's adjusted hourly wage is $54.89. *See* note 521 *supra.*

make a one-time adjustment to internal procedures, reprogram systems and implement processes to segregate the data by swap categories and incorporate data on appropriate minimum block sizes as published by the Commission at least once each calendar year.

Market participants other than registered entities, and specifically non-financial end users, expectedly will need to train their existing personnel and update their written policies and procedures to comply with § 43.6(a)–(f) and (h). The Commission estimated that the training and updating of policies and procedures will impose an initial non-recurring burden of approximately 15 personnel hours at an approximate cost of $1,430 for each non-financial end-user.[580] This cost estimate included the number of potential burden hours required to produce and design training materials, conduct training with existing personnel, and revise and circulate written policies and procedures in compliance with the proposed requirements.

The Commission received one comment specifically addressing direct costs. WMBAA disagreed with the Further Block Proposal's projected cost estimates and contended that the Commission's approach ''is overly simplistic and does not contemplate the actual efforts a SEF will have to undertake to implement the block trade regime, including the two-step notification process, the technology upgrades, providing training to existing personnel and updating written policies and procedures, among other necessary actions to comply with the CFTC's proposed rule.'' [581]

Because WMBAA did not provide data to support or monetize its cost concern, the Commission has considered them qualitatively. Further, WMBAA's disagreement with the Further Block Proposal's cost estimates does not concern the incremental cost to augment and maintain systems and processes that the Commission believes entities need have in place to comply with the real time reporting requirement of Section 2(a)(13) of the CEA; rather it concerns the cost to comply with that statutory requirement as prescribed by the existing part 43 implementation regulations. SEFs and DCMs would incur these costs regardless of how the Commission determines block thresholds. Accordingly, the Commission considers WMBAA's criticism of the cost estimates in this rulemaking misplaced. Moreover, the Commission has intentionally structured the requirements of § 43.6(a) to mitigate these costs; this rule's approach seeks to leverage the existing connectivity, infrastructure and arrangements that market participants and registered entities will have already established to comply with the part 43 regulations.

The Commission did not find, nor was it provided, additional information that was sufficient to change the cost basis. Therefore, the Commission is maintaining the Further Block Proposal's approach to calculating the direct costs resulting from the methodology for determining block thresholds. However, the Commission is revising its estimates to reflect wage rate data updated since the Further Block Proposal was published. The Commission estimates that for registered entities to update existing technology as necessary will entail approximately 40 initial, non-recurring personnel hours at an approximate cost of $2,874 for each registered entity.[582] The Commission estimates that training for existing personnel and updating written policies and procedures will impose an initial non-recurring burden of approximately 15 personnel hours at an approximate cost of $1,456 for each non-financial end-user.[583]

b. Indirect Costs

The Commission received numerous comments regarding indirect costs that could result from the establishment of criteria and methodology for setting appropriate minimum block thresholds. The majority of these comments focused on the issue of market liquidity; and many of the comments provided alternatives for either lower notional amount calculation thresholds, and extended phase-in or restricting the asset classes to which thresholds would apply. Eleven commenters suggested that the 67 percent notional amount calculation set forth in proposed § 43.6(c)(1) would have a negative impact on market liquidity.[584]

SIFMA and AII asserted that the 67 percent notional amount calculation is under inclusive for most swap categories and that the Commission should start with low block sizes (or classify all swaps as block trades) until data can be accumulated.[585] Consequences of a high threshold, they maintain, would be reduced liquidity, fragmentation of trading, higher transaction costs and higher swap pricing costs to end users.[586] AII stated that high block sizes would permit front running of swap dealers' hedging activities.[587] SIFMA suggested that the Commission identify minimum liquidity thresholds for certain swaps in each swap category below which all swaps should be treated as blocks.[588] SIFMA stated that 67 percent is too high to prevent liquidity impact; that 20–33 percent of trades should be blocks; and that 50 percent is better than 67 percent.[589]

WMBAA advocated using a 50 percent or lower block level and that the Commission rely on more timely and complete data to avoid impairing liquidity.[590] CME asserted that 67 percent is arbitrary, has no relationship to the explicit goals of Dodd-Frank with respect to block trading of swaps, and would materially reduce market liquidity.[591]

Vanguard commented that block rules bringing transparency may ultimately increase liquidity, but an abrupt change could decrease liquidity.[592] Vanguard instead favored a lower, 25 percent initial notional calculation methodology or perhaps providing block treatment to all swaps for one-year before phasing in notional amount calculation thresholds, maintaining that a lack of data compromises the setting of blocks and risks a negative liquidity impact.[593] Vanguard further urged more swap category granularity by identifying discrete ''liquidity pools'', and asserted that the lack of a sufficient time delay would hamper liquidity providers' ability to enter into off-setting trades.[594]

[580] This estimate is calculated as follows: (Compliance Manager at 10 hours) + (Director of Compliance at 3 hours) + (Compliance Attorney at 2 hours) = 15 hours per non-financial end-user who is a reporting party. A compliance manager's adjusted hourly wage is $77.77. A director of compliance's hourly wage is $158.21. A compliance attorney's hourly wage is $89.43. *See* note 521 *supra.*

[581] CL–WMBAA at 8.

[582] The estimate is calculated as follows: (Senior Programmer at 20 hours) + (Systems Analyst at 20 hours). A senior programmer's adjusted hourly wage is $86.89. A systems analyst's adjusted hourly wage is $56.79. *See* note 521 *supra.*

[583] This estimate is calculated as follows: (Compliance Manager at 10 hours) + (Director of Compliance at 3 hours) + (Compliance Attorney at 2 hours) = 15 hours per non-financial end-user who is a reporting party. A compliance manager's adjusted hourly wage is $74.17. A director of compliance's hourly wage is $169.16. A compliance attorney's hourly wage is $103.18. *See* note 521 *supra.*

[584] CL–AII at 6; CL–SIFMA at 10; CL–WMBAA at 8; CL–CME at 2; CL–Vanguard at 3; CL–Morgan Stanley at 3; CL–ICAP Energy at 3; CL–Barnard at 1; CL–Freddie at 2; CL–Barclays at 10.

[585] CL–AII at 6; CL–SIFMA at 10.

[586] CL–AII at 6; CL–SIFMA at 10.

[587] CL–AII at 6.

[588] CL–SIFMA at 10.

[589] CL–SIFMA at 10.

[590] CL–WMBAA at 8.

[591] CL–CME at 2.

[592] CL–Vanguard at 3.

[593] CL–Vanguard at 3.

[594] CL–Vanguard at 3.

Morgan Stanley, AII, and CME all stated that the approach in the Further Block Proposal would sacrifice liquidity in the name of transparency in contravention of the statute.[595] Specifically, Morgan Stanley commented that the proposed rules would diminish liquidity because the market would know details of transactions that are about to take place; Morgan Stanley also provided examples of IRS swaps under the proposed threshold that might move the market and, without providing further support, stated that application of the 67 percent notional amount calculation in CDS would result in too few trades receiving treatment as blocks and reduce liquidity.[596] Morgan Stanley urged the Commission to lower block thresholds and apply them only to vanilla structures with standard maturities; Morgan Stanley further advocated for DCM/SEFs to set block sizes because they would maximize liquidity.[597]

ICAP and Barnard asserted that the Further Block Proposal fails to evaluate the effect of the block thresholds on liquidity.[598] ICAP stated that the Commission misconstrued the legislative intent of Dodd-Frank Act because the Further Block Proposal 1) proposes a ''results-oriented'' approach; 2) does not determine if the 67 percent methodology would minimize impact on market liquidity; and 3) establishes block size thresholds based on notional size rather than number of transactions.[599] In addition, ICAP stated that the Further Block Proposal failed to identify a ''market moving'' transaction for certain swaps, as intended by Congress and does not propose a methodology.[600] Freddie stated that, in the absence of data, minimum block sizes for Interest Rate swaps are too high and will materially reduce market liquidity.[601]

The Commission also received comments raising potential indirect costs besides market liquidity impact. Barclays stated that mandatory clearing and uncleared margin requirements may compound the costs of increased transparency created by high block trade thresholds.[602] SIFMA stated that the Commission's cost-benefit consideration is insufficient and incorrect in the context of mandatory execution under the proposed SEF rules.[603] SIFMA expressed the concern that ''liquidity seekers' [sic] could provide other market participants with the information needed to front run the successful dealer in the hedge market.''[604] SIFMA concluded that ''the Commission should implement lower block trade size thresholds to avoid significant decreases in liquidity or increases in bid-ask spreads.''[605]

Several commenters objected to the Commission's use of data in the Further Block Proposal. Five commenters[606] asserted that the Further Block Proposal fails to adequately consider costs and benefits and relies upon obsolete data. AII[607] stated that the Commission relies upon inadequate and outdated data, that the rules will impede competition and increase costs, and that the Commission should look to TRACE as a model for more deliberate disclosure implementation.

Vanguard[608] suggested phasing in the requirements because the new rules are a ''paradigm shift,'' and issuing final rules on block trades requires more data collection before implementation.

Several commenters suggest the Commission collect more and better data before setting block levels. They criticize not only the dearth of relevant data but how the Commission has interpolated the data through trimming mechanism. SIFMA suggests that all swaps should be treated as blocks for first year of compliance during which data is collected, then the Commission should take a conservative approach to establish and iteratively modify thresholds based on liquidity and bid-ask spread of swaps that near the established block size threshold.[609]

The Commission also received comments suggesting costs in terms of market liquidity or other factors in setting the appropriate minimum block thresholds too low (or benefits in setting the appropriate minimum block thresholds at 67 percent of notional or higher). Conversely, four commenters expressed support for the Further Block Proposal's 67 percent notional amount calculation methodology or suggested that a lower threshold would result in a decrease in liquidity.[610]

Specifically, Javelin stated that the Commission should set a higher block threshold than the 67 percent notional amount calculation ''where the market is protected from disruption and where greater transparency, competition and liquidity are ensured.''[611] SDMA commented that ''[t]oo low a block threshold and fewer trades will be executed on SEFs as little structural change in swaps execution occurs, increased competition fails to manifest itself and more diverse liquidity is impaired.''[612] AFR asserted that some drop in liquidity was assumed by Congress when it enacted the provision and that ''there is no authoritative study supporting the concept that immediate disclosure would distort prices because of market liquidity.''[613] Similarly, Better Markets argued that any information embargo should be eliminated, stating that ''there is no authoritative study validating the notion that market liquidity would be adversely affected if Block Trade data were fully disclosed.''[614] Better Markets also stated that the public benefits of swap data transparency under the Further Block Proposal greatly outweigh the private costs to the disclosing entities and to the swaps market participants; Better Markets argued that Congress' ultimate objective in the Dodd-Frank Act was to prevent another crisis and avert the massive costs it would inflict upon the public (including all market participants), and that the consideration of costs and benefits should focus on this overriding public interest.[615]

In response to comments advocating for a more gradual phase in of appropriate minimum block thresholds, the Commission is adopting rules establishing a more conservative 50 percent notional amount calculation for determining block thresholds in the Interest Rate Swap and Credit Default Swap categories during the initial period. This will allow for a more gradual phase-in of the 67 percent notional amount calculation for determining block thresholds in the post-initial period than what was proposed. The block trade methodology that will be implemented by the Commission also allows minimum appropriate block trade amounts to change periodically in response to the new data collected in the market.

The Commission believes that this implements the congressional directive

[595] CL–Morgan Stanley at 3; CL–AII at 6; CL–CME at 2.

[596] CL–Morgan Stanley at 3.

[597] CL–Morgan Stanley at 3.

[598] CL–ICAP Energy at 3; CL–Barnard at 1.

[599] CL–ICAP Energy at 3.

[600] CL–ICAP at Energy at 3.

[601] CL–Freddie at 2.

[602] CL–Barclays at 10.

[603] CL–SIFMA at 4.

[604] CL–SIFMA at 4.

[605] CL–SIFMA at 4.

[606] CL–Vanguard at 3; CL–ISDA/SIFMA at 11–13; CL–SIFMA at 10; CL–WMBAA at 8; and CL–AII at 6.

[607] CL–AII at 6.

[608] CL–Vanguard at 3.

[609] CL–SIFMA at 4.

[610] CL–ODEX at 2; CL–SDMA at 3–6; CL–Javelin at 4–6; CL–Arbor at 1.

[611] CL–Javelin at 2.

[612] CL–SDMA at 1.

[613] CL–AFR at 4.

[614] CL–Better Markets at 4.

[615] CL–Better Markets at 4.

for transparency while accounting for possible material reductions in liquidity through the phasing-in of real-time reporting of a portion of the swaps market. In contrast, SIFMA's suggestion of treating all swaps as blocks while the Commission collects data inverts the public policy rationale underlying congressional requirements for transparency through real-time public reporting. The most useful data for determining at what levels blocks would be appropriate is data collected for swaps reported in real-time when market participants have the ability to execute block trades above minimum block thresholds. Data collected prior to the point where real-time reporting and block levels are functioning together is useful (and has been used by the Commission in fashioning block thresholds in the initial period for swaps in the interest rate and credit asset classes), but provides an incomplete picture absent implementation of the real-time reporting regime. The Commission's 67 percent notional amount calculation in the post-initial period is designed to adjust appropriate minimum block levels once this data becomes available.

Notwithstanding the fact that the commenters did not provide data to support or monetize their cost concerns, the Commission has considered their qualitative comments regarding the potential costs that the Commission's appropriate minimum block threshold methodology may have on market liquidity.

The Commission agrees with Vanguard that transparency ultimately promotes increased market liquidity. Transparency afforded through the publication of swap transaction and pricing data is likely to attract more market participants to the market place, thereby increasing market liquidity depth. However, the Commission also understands the tension between achieving greater swap transaction transparency and liquidity: required reporting of large transactions without a time delay (*i.e.,* as soon as technologically practicable) presents potential for downside cost to certain market participants, most particularly market makers providing liquidity. The immediate reporting of swaps that approach, but fall shy of the appropriate minimum block size threshold, may in certain circumstances increase the difficulty, and thus cost, for liquidity providers to lay off attendant price risks in the market. As the commenters suggest, market makers ultimately could pass these costs on to their end-user clients.

Recognizing the potential for such indirect costs, the Commission believes it has designed the criteria and methodology outlined in the rule in a manner that strikes an appropriate balance between the importance of price discovery and transparency, and concerns about potential costs to market participants. By establishing a 67 percent notional amount calculation for appropriate minimum block thresholds in the post initial period, the Commission will bring transparency through real-time reporting to the vast majority of transactions in the swap market.

The Commission believes that the phase-in approach provides swap market participants with adequate time to incrementally adjust their trading practices, technology infrastructure and business arrangements to comply with the new block trade regime. As a result, the rule's approach promotes liquidity since the Commission believes that a transparent market with improved pre-trade price transparency is likely to attract customers. The Commission expects that indirect costs described above will be mitigated through improved price discovery and a decrease in the cost of hedging practices for end users due to improved transparency and competition in the marketplace.

The Commission also considered the potential that different swaps and futures block criteria and methodology might competitively disadvantage SEFs to the extent certain market participants consider swaps and futures products competitive substitutes; thus, in turn, frustrating public interests that Congress, in authorizing SEFs in the Dodd-Frank Act, intended to further. For several reasons, the Commission does not believe this will occur. First, as discussed in the SEF Rulemaking, the Commission has provided SEFs with various functionalities designed to provide flexibility that will promote the trading of swaps on SEFs.[616] Second, by using futures block thresholds as a reference for initially setting the criteria for economically related swaps, the rule, at a minimum, substantially mitigates any such theoretical costs. Further, the Commission has, and will use, corrective tools if experience in these newly-regulated markets indicates potential for differences in swaps and futures block criteria and methodology to harm market users through hindered product competition. These tools include periodical recalibration of swap criteria as anticipated under this rule as well as the Commission's ability to exercise its legal authority to take action by rule or order to mitigate any potential harm due to hindered competition.[617]

4. Benefits

The Commission believes that § 43.6(a)–(f) and (h) will generate several overarching benefits to swap market participants, registered entities and the general public. Most notably, the Commission expects that the criteria and methodologies for setting appropriate minimum block sizes will provide greater price transparency for a substantial portion of swap transactions in a manner carefully calibrated to preserve and promote swaps market liquidity. More specifically, the regulations will provide price transparency by lifting the current part 43 real-time reporting time delay[618] in a measured manner for swap transactions with notional values under specified threshold levels.

At the same time, the Commission's criteria and methodology—including carefully crafted block trade and large-notional off-facility swap categories—are designed to retain time-delay status for those high-notional-value transactions, where doing otherwise could negatively impact market liquidity. In addition to avoiding potential negative market liquidity impact associated with transactions that remain eligible for a reporting time-delay, the Commission also expects the liquidity in the market to increase since a more transparent market is likely to attract more customers. The Commission expects improved transparency and liquidity to have a positive effect on the prices market participants will pay for their swaps as

[616] *See,* the Core Principles and Other Requirements for Swap Execution Facilities notice of proposed rulemaking, 76 FR 1214 (Jan. 7, 2011), for details of functionalities that provide flexibility to promote trading of swaps on SEFs.

[617] Historically (and under a rule proposed in a pending rulemaking concerning Core Principle 9 for Designated Contract Markets (''DCMs'')), DCMs have discretion to set minimum block thresholds for futures trading, the Dodd-Frank Act amended the CEA to require that the Commission specify criteria to determine swap block trades without imposing an equivalent requirement for Commission specification of futures block criteria. *See* Core Principles and Other Requirements for Designated Contract Markets, 75 FR 80572, 80616–17 (Dec. 22, 2010) (Notice of Proposed Rulemaking; proposed § 38.503(a) would require that a board of trade that permits block trade transactions on futures contracts have rules governing such transactions, including rules limiting block trades to large transactions and imposing minimum size requirements, and that block trade size be certified or approved by the Commission); Core Principles and Other Requirements for Designated Contract Markets, 77 FR 36612, 36643 (Final Rule; announces Commission intent to take additional time to consider the proposed rules for block transactions and other aspects of proposed rules under Core Principle 9).

[618] *See* 77 FR 1240.

well as to cause a decrease in the cost of hedging due to improved transparency and competition in the market. The Commission also expects that lower hedging costs and improved transparency will reduce systemic risk potential. A swaps market that is transparent to regulators and the public in real-time, without the interim delays for all transactions imposed in Part 43, provides for a system that will assist the Commission's oversight ability. Finally, the Commission believes that this added transparency will ultimately strengthen the swaps market by affording academics, the media, public and market participants the opportunity to monitor, study, and analyze these previously opaque segments of the economy.

The rules' phased-in implementation will introduce greater transparency in an incremental, measured and flexible manner so that appropriate minimum block sizes can respond to changing markets. Section 43.6(f)(2) permits the Commission to set appropriate minimum block sizes no less than once annually during the post-initial period. If swap market conditions were to change significantly after the implementation of the provisions of this final rule, there is nothing that prevents the Commission from reacting to take action further improving price transparency or mitigating adverse effects on market liquidity. In an effort to add more flexibility to respond to continuing swaps market evolution, the methodology in § 43.6(c)–(f) and (h) will recalibrate appropriate minimum block sizes regularly to ensure that those sizes remain appropriate for, and responsive to, these changing markets.

5. Alternatives

The Commission considered alternatives to the determination criteria and methodology adopted in this rulemaking. The chief alternatives raised by commenters or otherwise considered by the Commission concerned three topics—Commission's determination of minimum block sizes, swap categories, and block methodology—as discussed below.

a. Commission Determination of Minimum Block Sizes

Under § 43.6(a) the Commission will determine minimum block sizes; this approach limits the direct burden on market participants and registered entities relative to an alternative that would require them to engage a quantitative analysis to ascertain appropriate minimum block sizes for themselves. Such an alternative approach is inconsistent with the statutory requirement of CEA section 2(a)(13)(E)(ii) that the Commission ''specify the criteria for determining what constitutes a large notional swap transaction (block trade) for particular markets and contracts.'' [619]

b. Swap Category Alternatives

Commenters [620] noted what they described as a lack of granularity in the Commission's choice of swaps categories, which they cautioned would result in the grouping of liquid swaps together with illiquid swaps in the same swap category. Vanguard [621] suggested a more granular approach to setting swap categories and block sizes according to ''distinct liquidity pools.'' ISDA/SIFMA [622] suggested subjecting a swap to block thresholds as long as the swap has sufficient trading frequency and trades in such volume that allows full hedging in a short period of time and also prevents widening of the spread as a result of public reporting. In support of such a test, the comment cited research and data to suggest that disclosure does not necessarily lead to increased transparency and swaps with varying levels of liquidity will be subject to the same block size. Many commenters expressed that the Commission's determination of swap categories would result in block levels that are insufficiently granular to account for differences between swap asset classes and within swap categories, including the differences in transaction frequency and volume.[623] Some commenters suggested that all infrequently traded swaps, under a specified level, should be treated as block trades.[624] The various swap category alternatives suggested by commenters are more fully discussed and considered in Sections II.A.1–5 of this final rule.

The Commission believes that its approach of establishing specific criteria for grouping swaps into a finite set of defined swap categories is preferable to the alternatives noted; it provides (1) appropriate granularity that mitigates the potential for like risks to trade differently; and (2) a clear organizational framework that avoids administrative burdens for market participants that otherwise could arise from more numerous and/or non-uniform swap categories. The Commission made use of swaps market data, as well as market convention, in making its determination of how best to form swap categories and asset classes as well as buckets within each asset class. Ultimately, the Commission determined that that the best approach was to allow for products with similar characteristics and risk structures to be grouped together, given that in certain circumstances market participants view similar financial products as close substitutes and use them as such for risk mitigating purposes. The Commission has fashioned its swaps categories to, where possible, group together swaps that could be used to hedge the same risk or otherwise establish an equivalent position.

Grouping economically-substitutable swaps together makes the setting of appropriate minimum block sizes on an individual product basis unnecessary and potentially dangerous in that it would allow for like risks to trade differently.

c. Block Methodology Alternatives

The Commission also considered various alternatives to its proposed methodologies for determining appropriate minimum block thresholds in both the initial and the post initial periods. As discussed more fully in Section II.B., the Commission received various comments suggesting alternatives to the phased-in approach contained in the Further Block Proposal. Many commenters compared the 67 percent notional amount calculation to a 50 percent notional amount calculation, as specifically requested by the Commission in Question 33 of the Further Block Proposal. Twelve commenters preferred the 67 percent notional amount calculation to a 50 percent notional amount calculation; whereas, nine commenters preferred the 50 percent notional amount calculation to the 67 percent notional amount calculation. ODEX, RJ O'Brien, and Spring Trading expressed support for the 67 percent notional amount calculation, but also suggested that a higher notional amount calculation would be preferable, particularly in the post-initial period.[625] AFR, Better Markets, Javelin, and SDMA all recommended a 75 percent or higher notional amount calculation and a market depth and market breadth test.[626]

[619] *See also* 111 Cong. Rec. S. 5921 (daily ed., July 15, 2010) (Statement of Sen Lincoln) (the regulators are given authority to establish what constitutes a 'block trade' or 'large notional' swap transaction for particular contracts as well as appropriate time delay in reporting transactions to the public'').

[620] CL–Vanguard at 7; CL–ISDA/SIFMA at 14; CL–SIFMA at 10; and CL–Better Markets at 4.

[621] CL–Vanguard at 7.

[622] CL–ISDA/SIFMA at 14; and CL–SIFMA at 10.

[623] CL–ISDA/SIFMA at 14; CL–Vanguard at 7.

[624] CL–ISDA/SIFMA at 14.

[625] CL–ODEX at 1; CL–RJ O'Brien at 1.

[626] CL–AFR at 8–9; CL–Better Markets at 7–8; CL–Javelin at 2; CL–SDMA at 2.

Nine commenters preferred the 50 percent notional amount calculation to the 67 percent notional amount calculation.

Freddie Mac and ICI expressly supported a 50 percent notional amount calculation.[627] Pierpont and WMBAA recommended a notional amount calculation of no greater than 50 percent.[628] ICAP Energy and SIFMA recommended a notional amount calculation below 50 percent, but preferred a 50 percent notional amount calculation to a 67 percent notional amount calculation.[629] AII and ICAP recommended not using a notional amount calculation at all, but preferred a 50 percent notional amount calculation to a 67 percent notional amount calculation.[630]

AII recommended lowering or eliminating block thresholds until complete data has been reported to SDRs so as not to impair market liquidity.[631] Barclays recommended introducing block levels that allow for empirical analysis of the transaction data and sequentially increasing block sizes until such point as the desired equilibrium between transparency and liquidity is reached.[632] Better Markets suggested transitioning to a market depth/market breadth test after the Commission has collected a year of SDR data.[633]

The Commission also specifically requested comments regarding other potential methods for determining appropriate minimum block thresholds.[634] While numerous comments addressed the efficacy of a notional amount calculation and the appropriate percentage to use in making such a calculation, the comments reveal only one significant alternative methodology to calculating relevant initial and post-initial minimum block thresholds in place of a notional amount calculation: block thresholds based on market depth and market breadth.[635] The Commission received a number of comments regarding whether the Commission should use either market depth or market breadth criteria, instead of the 67-percent notional amount calculation methodology, to calculate the relevant initial minimum block sizes and the post-initial minimum block sizes.[636] Many commenters expressed support for adopting the market depth test[637] and other commenters additionally supported utilizing the market breadth test.[638]

As discussed more fully in Section II.B., for the initial period the Commission is adopting the 50 percent notional amount calculation to determine appropriate minimum block sizes in the interest rate and credit asset classes. This approach provides for a more gradual phase-in of minimum block sizes, as recommended by numerous commenters. The Commission believes that the phase-in approach should provide swap market participants with an adequate amount of time to incrementally adjust their trading practices, technology infrastructure and business arrangements to comply with the new block trade regime.

For the post-initial period, the Commission is adopting § 43.6(f)(1) as proposed. The 67-percent notional amount calculation means that, within a swap category, approximately two-thirds of the sum total of all notional amounts will be reported on a real-time basis. This approach will afford market participants a timely view of a substantial portion of swap transaction and pricing data to assist them in determining the competitive price for swaps within a relevant swap category. The Commission anticipates that this enhanced price transparency will encourage market participants to provide liquidity (*e.g.,* through the posting of bids and offers), particularly when transaction prices move away from the competitive price. The Commission also anticipates that enhanced price transparency thereby will improve market integrity and price discovery, while also reducing information asymmetries enjoyed by market makers in predominately opaque swap markets.[639]

In the Commission's view, using the 67-percent notional amount calculation also would minimize the potential impact of real-time public reporting on liquidity risk compared to other alternatives. The 67 percent notional amount calculation represents a middle ground between the many commenters who supported higher block thresholds and the many commenters who preferred much more conservative thresholds. The Commission believes that its methodology, in conjunction with the 50-percent notional amount calculation during the initial period, represents a tailored and incremental approach for achieving the goal of ''a vast majority'' of swap transactions becoming subject to real-time public reporting.[640]

As noted above, CEA section 2(a)(13)(E)(iv) directs the Commission to take into account whether the public disclosure of swap transaction and pricing data ''will materially reduce market liquidity.''[641] If market participants reach the conclusion that the Commission has set appropriate minimum block sizes for a specific swap category in a way that will materially reduce market liquidity, then those participants are encouraged to submit data to support their conclusion. In addition, the Commission will conduct its own surveillance of swaps market

[627] CL–Freddie at 2; CL–ICI at 6–7.

[628] CL–Pierpont at 3; CL–WMBAA at 3.

[629] CL–ICAP Energy at 3; CL–SIFMA at 10.

[630] CL–AII at 6; CL–ICAP Energy at 4.

[631] CL–AII at 6.

[632] CL–Barclays at 11.

[633] CL–Better Markets at 9–10.

[634] *See* Further Block Proposal, Q32–54.

[635] *See* Note 262 for an in depth description of the market depth and market breadth test.

[636] Market depth and market breadth was proposed to be calculated as follows: (step 1) Identify swap contracts with pre-trade price transparency within a swap category; (step 2) calculate the total executed notional volumes for each swap contract in the set from step 1 and calculate the sum total for the swap category over the look back period of one year; (step 3) collect a market depth snapshot of all of the bids and offers once each minute for the pre-trade price transparency set of contracts identified in step 1; (step 4) identify the four 30-minute periods that contain the highest amount of executed notional volume each day for each contract of the pre-trade price transparency set identified in step 1 and retain 120 observations related to each 30-minute period for each day of the look-back period; (step 5) determine the average bid-ask spread over the look-back period of one year by averaging the spreads observed between the largest bid and executed offer for all the observations identified in step 3; (step 6) for each of the 120 observations retained in step 4, calculate the sum of the notional amount of all orders collected from step 3 that fall within a range, calculate the average of all of these observations for the look-back period and divide by two; (step 7) to determine the trimmed market depth, calculate the sum of the market depth determined in step 6 for all swap contracts within a swap category; (step 8) to determine the average trimmed market depth, use the executed notional volumes determined in step 2 and calculate a notional volume weighted average of the notional amounts determined in step 6; (step 9) using the calculations in steps 7 and 8, calculate the market breadth based on the following formula: market breadth = averaged trimmed market depth + (trimmed market depth − average trimmed market depth) × .75; (step 10) set the appropriate minimum block size equal to the lesser of the values from steps 8 and 9. 77 FR 15482.

[637] CME–CL at 2; ODEX–CLetter at 2; Spring Trading-CL at 2; MFA–CL at 7; FIA–CL at 2.

[638] Arbor-CL at 1; AFR–CL at 8–9; Jeffries-CL at 2; SDMA–CL at 3–6; Javelin-CL at 4–6; RJ O'Brien-CL at 1; Better Markets-CL at 9–10; CRT–CL at 2; FIA–CL at 2.

[639] The proposed calculation stands in contrast to another alternative—the proposed 95th percentile-based distribution test set out in the Initial Proposal. *See* the discussion in section I.B. of the Further Block Proposal. No commenters suggested or supported the distribution test in response to the Further Block Proposal.

[640] The ''guiding principle in setting appropriate block trade levels [is that] the vast majority of swap transactions should be exposed to the public market through exchange trading.'' Congressional Record—Senate, S5902, S5922 (July 15, 2010). As discussed above, this phased-in approach seeks to improve transparency while not having a negative impact on market liquidity.

[641] 7 U.S.C. 2(a)(13)(E)(iv).

activity and how block sizes affect market liquidity in each of the specified swap categories.[642] In response to either a submission or its own surveillance of swaps market activity the Commission may exercise its legal authority to take action by rule or order to mitigate the potential effects on market liquidity with respect to swaps in a particular swap category.

The Commission acknowledges that the market depth and market breadth test is a viable alternative to the notional amount calculation methodology. However, it has several prerequisite conditions that complicate the ability to implement it. For example, the Commission would need to determine which contracts within a swap category offer pre-trade price transparency—electronically displayed and executable bids and offers as well as displayed available volumes for execution. As noted by commenters, adequate market trading data also must be available to collect a market depth snapshot of all of the bids and offers for the pre-trade price transparency set of applicable contracts. The Commission is also cognizant of MFA's concerns regarding the potential for manipulation of market depth. Given the time needed for trading infrastructure to develop and the significant time and cost considerations involved in collecting such data from SEFs and DCMs, the Commission deems it unfeasible to implement at this time; the Commission will continue to examine the merits of doing so in the future.

6. CEA Section 15(a) Factors

a. Protection of Market Participants and the Public

The Commission believes that the criteria and methodology in § 43.6(a)–(f) and (h) will protect swap market participants by extending the delay for reporting for publicly reportable swap transactions, as appropriate, while also accommodating the market participant and public interest with enhanced transparency. By setting appropriate minimum block sizes in a thoughtful and measured manner as contemplated in the final rule, the Commission believes that it has properly balanced the tradeoff between transparency and liquidity interests. As a result, swap market participants will retain a means to offset risk exposures related to their swap transactions at competitive prices. In addition, the phased-in implementation scheme outlined in this rulemaking will introduce greater transparency in an incremental, measured and flexible manner so that appropriate minimum block sizes are responsive to changing markets. Specifically, the Commission expects that the availability of real-time pricing information for carefully enumerated categories of swap transactions will draw increased swap market liquidity through the competitive appeal of improved pricing efficiency that greater transparency affords. More liquid, competitive swap markets, in turn, allow businesses to offset costs more efficiently than in completely opaque markets, thus serving the interests of both market participants and the public who should benefit through lower costs of goods and services.

Another benefit of increasing swaps market transparency to regulators and the public in real-time, without the interim delays for all transactions imposed in Part 43, is better protection of market participants and the public by improving the Commission's oversight ability and by giving academics, the media, public and market participants the opportunity to monitor, study, and analyze these previously opaque segments of the economy.

b. Efficiency, Competitiveness and Financial Integrity of Markets[643]

The criteria and methodology set out in the rules will promote market efficiency, competitiveness and financial integrity of markets in several ways. The Commission acknowledges that because responsibility for specifying swap categories and determining appropriate minimum block sizes is with the Commission rather than registered entities, the administrative burden on swap market participants is minimized. Further, the rules afford flexibility to respond to continuing swaps market evolution, including but not limited to changing industry practices and activities that the Commission foresees occurring as market participants comply with regulations, including part 43, implementing the Dodd-Frank Act regulatory regime. More specifically, the methodology in § 43.6(c)–(f) and (h) will recalibrate appropriate minimum block sizes regularly to ensure that those sizes remain appropriate for, and responsive to, these changing markets. This ability, coupled with the potential for the Commission to adjust futures block requirements in pending and future rulemakings (among other tools) also helps assure that competitive implications that could arise between substitutable swaps and futures as markets evolve are appropriately addressed. The Commission believes that the rules will introduce increased market transparency for swaps in a careful, measured manner that the Commission believes will optimize the balance between liquidity and transparency concerns.[644]

c. Price Discovery

The criteria and methodology set out in the rules will enhance swap market price discovery by eliminating, to the extent appropriate, the time delays for the real-time public reporting. The methodology of this final rule will ensure that an SDR will be able to publicly disseminate data for certain swaps as soon as technologically practicable and the majority of the transactions in the market will be visible to traders as well as the public. Since the majority of trades will be published and visible in real-time, reported prices are likely to be better indicators of competitive pricing. As such, the rules promote improved price discovery.

[642] The Commission received two comments supporting the Commission's authority to set appropriate minimum block sizes outside of the proposed annual look-back period. MFA argued that the Commission's goal to balance transparency and liquidity would be better achieved with the flexibility to adjust minimum block sizes quickly to respond to material market changes. MFA recommended that the Commission should have the authority to update post-initial minimum block sizes in extraordinary circumstances and on a case-by-case basis, based on SDR data that it receives for individual or across multiple swap categories. GFMA stated that if the Commission establishes a notional calculation test, then it should ensure that it has sufficient flexibility to amend minimum block sizes. GFMA recommended that the Commission should be able to ''swiftly alter'' block trade levels to enable some trading to be conducted in a newly illiquid market, without the benefit of reference to a data set. The Commission notes that § 43.6(f)(1) provides that the Commission shall update post-initial appropriate minimum block levels ''[n]o less than once each calendar year.'' Accordingly, the Commission notes that it has the ability to adjust post-initial minimum block sizes under the types of extraordinary circumstances raised by commenters.

[643] The Commission sees no potential impact to the financial integrity of futures markets from the criteria and methodology in its consideration of section 15(a)(2)(B) of the CEA. Although by its terms, section 15(a)(2)(B) applies to futures, the Commission finds this factor useful in analyzing the costs and benefits of swaps regulation, as well.

[644] As noted above, under part 43 of the Commission's regulations (as now promulgated in the Real-Time Reporting Final Rule), all publicly reportable swap transactions are subject to a time delay pending further amending regulation to establish the criteria and methodology to distinguish block trades and large notional off-facility swaps from those swaps that do not meet those definitions. *See* 77 FR 1217. As a result, SDRs as of now are not required to publicly disseminate publicly reportable swap transactions as soon as technologically practicable.

d. Sound Risk Management Practices

As discussed above, the Commission believes that the criteria and methodology set forth in the rules will enhance price discovery since SDRs will publicly disseminate price and other data relevant to valuation as soon as technologically practicable for the swaps for which the time-delay is lifted. This better and more accurate data will enable swap market participants, generally, to better measure risk. An ability to better manage risk at an entity level should translate to improved market participant risk management generally. Improved risk measurement and management potential, in turn, mitigates the risk of another financial crisis by better equipping market participants to value their swap contracts and other assets during times of market instability.

e. Other Public Interest Considerations

The Commission believes that the criteria and methodology in § 43.6(a)–(f) and (h) will allow the majority of swap transactions and prices to be publicly disseminated, giving academics, the media, public and market participants the opportunity to monitor, study, and analyze these previously opaque segments of the economy. This would allow the public to be better informed about swaps markets and analyze publicly available market data disseminated in real-time.

D. Cost-Benefit Considerations Relevant to the Block Trade/Large Notional Off-Facility Swap Election Process (§ 43.6(g))

Section 43.6(g) specifies the process for a market participant to elect that a swap transaction be treated as a block trade or large notional off-facility swap (''the election process''). Section 43.6(g)(1) establishes a two-step notification process relating to block trades. Section 43.6(g)(2) establishes the notification process relating to large notional off-facility swaps.

Section 43.6(g)(1)(i) sets out the first step in the block trade notification process: parties to a swap executed at or above the appropriate minimum block size for the applicable swap category are required to notify the SEF or DCM, as applicable, of their election to have their qualifying swap transaction treated as a block trade. Section 43.6(g)(1)(ii) sets out the second step: the SEF or DCM, as applicable, that receives an election notification is required to notify an SDR of a block trade election when transmitting swap transaction and pricing data to such SDR for public dissemination. The Commission expects SEFs and DCMs to use automated, electronic—and in some cases voice—processes to execute swap transactions; the transmission of the notification of a block trade election, which may occur separately from the execution process, also will be either automated, electronic or communicated through voice processes.

Section 43.6(g)(1)(ii) sets out the second step: the SEF or DCM, as applicable, that receives an election notification is required to notify an SDR of a block trade election when transmitting swap transaction and pricing data to such SDR for public dissemination.

1. Costs Relevant to the Election Process (§ 43.6(g))

Non-financial end-users who are reporting parties, as well as SEFs, DCMs, and SDRs will likely bear the costs of complying with the election process in § 43.6(g). To comply with the real-time reporting requirements of part 43 already in place, these entities will have already invested in technology and personnel as well as established programs for continued systems maintenance, support and compliance; the Commission has previously described and considered these costs in the Real-Time Reporting Final Rule.[645] The Commission specifically designed the election process so that non-financial end-users, SEFs, DCMs, and SDRs would be able to leverage any investments made for compliance with part 43 to also comply with § 43.6(g). Accordingly, the Commission expects non-financial end-users, SEFs, DCMs and SDRs to have the following direct, quantifiable costs: (a) An incremental, non-recurring expenditure to update existing technology to comply with § 43.6(g); (b) an incremental non-recurring expenditure for training existing personnel and updating written policies and procedures for compliance with amendments to part 43; (c) incremental recurring expenses associated with compliance, maintenance and operational support in connection with the election process; and (d) additional incremental, non-recurring expenditures to update existing technology exclusive to SDRs. SDRs also would have incremental, non-recurring expenditures to update existing technology.[646] The Commission also recognizes that the election process in § 43.6(g) is voluntary and that eligible entities would not elect block trade treatment for a swap transaction in circumstances in which they did not perceive a net benefit in doing so. In the paragraphs that follow, the Commission discusses each of these costs.

a. Incremental, Non-Recurring Expenditure to a Non-Financial End-User, SEF or DCM to Update Existing Technology[647]

To comply with the election process in § 43.6(g), a non-financial end-user, SEF, or DCM likely would need to: (1) Update its Order Management System (''OMS'') to capture the election to treat a qualifying publicly reportable swap transaction as a block trade or large notional off-facility swap. In the Further Block Proposal, the Commission

[645] *See* 77 FR 1237. As noted in the Real-Time Reporting Final Rule, non-financial end-users (that do not contract with a third party) will have initial costs consisting of: (i) Developing an internal order management system capable of capturing all relevant data ($26,689 per non-financial end-user) and a recurring annual burden of ($27,943 per non-financial end-user); (ii) establishing connectivity with an SDR that accepts data ($12,824 per non-financial end-user); (iii) developing written policies and procedures to ensure compliance with part 43 ($14,793 per non-financial end-user); and (iv) compliance with error correction procedures ($2,063 per non-financial end-user). *See id.* With respect to recurring costs, a non-financial end-user will have: (i) Recurring costs for compliance, maintenance and operational support ($13,747 per non-financial end-user); (ii) recurring costs to maintain connectivity to an SDR ($100,000 per non-financial end-user); and (iii) recurring costs to maintain systems for purposes of reporting errors or omissions ($1,366 per non-financial end user). *See id.*

SDRs (that do not enter into contracts with a third party) would have incremental costs related to compliance with part 43 beyond those costs identified in the release adopting part 49 of the Commission's regulations. *See* Swap Data Repositories: Registration Standards, Duties and Core Principles, 76 FR 54538 (Sept. 1, 2011). In the Real-Time Reporting Final Rule, the Commission stated that each SDR would have: (i) A recurring burden of approximately $856,666 and an annual burden of $666,666 for system maintenance per SDR; (ii) non-recurring costs to publicly disseminate ($601,003 per SDR); and (iii) recurring cots to publicly disseminate ($360,602 per SDR). *See id.*

In the Real-Time Reporting Final Rule, the Commission assumed that SEFs and DCMs will experience the same or lower costs as a non-financial end-user. *See id.*

[646] SDRs that do not enter into contracts with a third party would have incremental costs related to compliance with part 43 of the Commission's regulations beyond those cost identified in the release adopting part 49 of the Commission's regulations. *See* Swap Data Repositories: Registration Standards, Duties and Core Principles, 76 FR 54538 (Sept. 1, 2011). In the Real-Time Reporting Final Rule, the Commission stated that each SDR would have: (1) A recurring burden of approximately $856,666 and an annual burden of $666,666 for system maintenance per SDR; (2) non-recurring costs to publicly disseminate ($601,003 per SDR); and (3) recurring costs to publicly disseminate ($360,602 per SDR). *See id.*

[647] For the same reasons stated in the Real-Time Reporting Final Rule, the Commission assumes that SEFs and DCMs would experience the same or less costs as a non-financial end-user. *See* 77 FR 1236. Under § 43.6(g)(1), SEFs or DCMs would be required to transmit a block trade election to an SDR only when the SEF or DCM receives notice of a block trade election from a reporting party.

estimated that updating an OMS system to permit notification to an SDR of a block trade or large notional off-facility swap election would impose an initial non-recurring burden of approximately 80 personnel hours at an approximate cost of $6,761 for each non-financial end-user, SEF or DCM.[648] This cost estimate included an estimate of the number of potential burden hours required to amend internal procedures, reprogram systems and implement processes to permit a non-financial end-user to elect to treat their qualifying swap transaction as a block trade or large notional off-facility swap in compliance with the requirements set forth in § 43.6(g). The Commission is revising its estimates based on updated wage rate data. The Commission estimates that updating an OMS system to permit notification to an SDR of a block trade or large notional off-facility swap election would impose an initial non-recurring burden of approximately 80 personnel hours at an approximate cost of $7,171 for each non-financial end-user, SEF or DCM.[649]

b. Incremental, Non-Recurring Expenditure to a Non-Financial End-User to Provide Training To Existing Personnel and Update Written Policies and Procedures

To comply with the election process in § 43.6(g), a non-financial end-user likely would need to provide training to its existing personnel and update its written policies and procedures to account for this new process. In the Further Block Proposal, the Commission estimated that providing training to existing personnel and updating written policies and procedures would impose an initial non-recurring burden of approximately 39 personnel hours at an approximate cost of $3,200 for each non-financial end-user.[650] This cost estimate included the number of potential burden hours required to produce design training materials, conduct training with existing personnel, and revise and circulate written policies and procedures in compliance with the requirements set forth in § 43.6(g). The Commission is revising its estimates based on updated wage rate data. The Commission estimates that providing training to existing personnel and updating written policies and procedures would impose an initial non-recurring burden of approximately 39 personnel hours at an approximate cost of $3,360 for each non-financial end-user.[651]

c. Incremental, Recurring Expenses to a Non-Financial End-User, DCM or SEF Associated With Incremental Compliance, Maintenance and Operational Support in Connection With the Election Process

A non-financial end-user, DCM or SEF likely would incur costs on an annual basis in order to comply with the election process in § 43.6(g). In the Further Block Proposal, the Commission estimated that annual compliance; maintenance and operation support would impose an incremental, recurring burden of approximately five personnel hours at an approximate cost of $340 for each non-financial end-user, DCM or SEF.[652] This cost estimate included the number of potential burden hours required to design training materials, conduct training with existing personnel, and revise and circulate written policies and procedures in compliance with the requirements set forth in § 43.6(g). The Commission is revising its estimates based on updated wage rate data. The Commission estimates the updated approximate cost of designing training materials, conducting training with existing personnel, and revising and circulating written policies and procedures in compliance with the requirements set forth in § 43.6(g) to be $370 for each non-financial end-user, DCM, or SEF.[653]

d. Incremental, Non-Recurring Expenditure to an SDR To Update Existing Technology To Capture and Publicly Disseminate Swap Data for Block Trades and Large Notional Off-Facility Swaps

To comply with the election process in § 43.6(g), an SDR likely would need to update its existing technology to capture elections and disseminate qualifying publicly reportable swap transactions as block trades or large notional off-facility swaps. In the Further Block Proposal, the Commission estimated that updating existing technology to capture elections would impose an initial non-recurring burden of approximately 15 personnel hours at an approximate cost of $1,310 for each SDR.[654] This cost estimate included the number of potential burden hours required to amend internal procedures, reprogram systems, and implement processes to capture and publicly disseminate swap transaction and pricing data for block trades and large notional off-facility swaps in compliance with the requirements set forth in § 43.6(g). The Commission is revising its estimates based on updated wage rate data. The Commission estimates the updated approximate cost required to amend internal procedures, reprogram systems, and implement processes to capture and publicly disseminate swap transaction and pricing data for block trades and large notional off-facility swaps in compliance with the requirements set forth in § 43.6(g) to be $1,390 for each SDR.[655]

[648] This estimate was calculated as follows: (Compliance Manager at 15 hours) + (Director of Compliance at 10 hours) + (Compliance Attorney at 5 hours) + (Senior Systems Analyst at 30) + (Senior Programmer at 20) = 80 hours per non-financial end-user who is a reporting party. A compliance manager has adjusted hourly wages of $77.77. A director of compliance has adjusted hourly wages of $158.21. A compliance attorney has adjusted hourly wages of $89.43. A senior systems analyst has adjusted hourly wages of $64.50. A senior programmer has adjusted hourly wages of $81.52.

[649] This estimate was calculated as follows: (Compliance Manager at 15 hours) + (Director of Compliance at 10 hours) + (Compliance Attorney at 5 hours) + (Senior Systems Analyst at 30) + (Senior Programmer at 20) = 80 hours per non-financial end-user who is a reporting party. A compliance manager has adjusted hourly wages of $74.16. A director of compliance adjusted hourly wages of $169.16. A compliance attorney has adjusted hourly wages of $103.17. A senior systems analyst has adjusted hourly wages of $70.45. A senior programmer has adjusted hourly wages of $86.89.

[650] This estimate is calculated as follows: (Compliance Manager at 5 hours) + (Director of Compliance at 2 hours) + (Compliance Attorney at 2 hours) + (Senior Systems Analyst at 10) + (Senior Programmer at 20) = 39 hours per non-financial end-user who is a reporting party. A compliance manager has adjusted hourly wages of $77.77.

[651] This estimate was calculated as follows: (Compliance Manager at 5 hours) + (Director of Compliance at 2 hours) + (Compliance Attorney at 2 hours) + (Senior Systems Analyst at 10) + (Senior Programmer at 20) = 39 hours per non-financial end-user who is a reporting party. A compliance manager has adjusted hourly wages of $74.16. A director of compliance adjusted hourly wages of $169.16. A compliance attorney has adjusted hourly wages of $103.17. A senior systems analyst has adjusted hourly wages of $70.45. A senior programmer has adjusted hourly wages of $86.89.

[652] This estimate is calculated as follows: (Director of Compliance at 1 hour) + (Compliance Clerk at 3 hours) + (Compliance Attorney at 1 hour) = 5 hours per year per non-financial end-user who is a reporting party. A director of compliance has adjusted hourly wages of $158.21. A compliance clerk (junior compliance advisor) has adjusted hourly wages of $31.22. A compliance attorney has adjusted hourly wages of 89.43.

[653] This estimate is calculated as follows: (Director of Compliance at 1 hour) + (Compliance Clerk at 3 hours) + (Compliance Attorney at 1 hour) = 5 hours per year per non-financial end-user who is a reporting party. A director of compliance's adjusted hourly wage is $169.16. A compliance clerk (junior compliance advisor) has adjusted hourly wages of $33.52. A compliance attorney's adjusted hourly wage is $103.17.

[654] This estimate is calculated as follows: (Sr. Programmer at 8 hours) + (Sr. Systems Analyst at 3 hours) + (Compliance Manager at 2 hours) + (Director of Compliance at 2 hours) = 15 hours per SDR. A senior programmer has adjusted hourly wages of $81.52. A senior systems analyst has adjusted hourly wages of $64.50. A compliance manager has adjusted hourly wages of $77.77. A director of compliance has adjusted hourly wages of $158.21.

[655] This estimate is calculated as follows: (Senior Programmer at 8 hours) + (Senior Systems Analyst

2. Comments Received

The Commission received one comment directly related to the costs of the election process. As discussed more fully above, WMBAA disagreed with the Further Block Proposal projected cost estimates generally and contended that the Commission failed to contemplate the actual efforts a SEF will have to undertake to implement the block trade regime, including the two-step notification process.[656] In addition to the fact that WMBAA did not provide data to support or monetize its position, WMBAA's disagreement with the Further Block Proposal's election process cost estimates does not concern the incremental cost to augment and maintain systems and processes that the Commission believes entities need have in place to comply with the real time reporting requirement of Section 2(a)(13) of the CEA; rather it concerns the cost to comply with that statutory requirement as prescribed by the existing part 43 implementation regulations. SEFs and DCMs would incur these costs regardless of how the Commission determines block thresholds. Accordingly, the Commission considers WMBAA's criticism of the cost estimates in this rulemaking misplaced. Therefore, the Commission is maintaining the Further Block Proposal's approach to calculating the direct costs resulting from the methodology for determining block thresholds, but is revising its estimates based on updated wage rate data.

3. Benefits Relevant to the Election Process (§ 43.6(g))

The Commission has identified two overarching benefits that the election process in § 43.6(g) would confer on swap market participants, registered entities and the general public. First, although § 43.6(g) sets out a purely administrative process with which market participants and registered entities must comply, the Commission views this process as an integral component of the block trade framework in this rulemaking and in part 43. Consequently, this election process will benefit market participants, registered entities and the general public by providing greater price transparency in swaps markets than currently exists under part 43.[657] Since this election process is optional, entities need avail themselves of the process only in circumstances where the attendant benefits warrant.

Second, the Commission believes that the election process will promote market efficiency by creating a standardized process in § 43.6(g) for market participants to designate publicly reportable swap transactions that are eligible for block trade or large notional off-facility swap treatment. In addition, this standardized process will further promote efficiency by allowing market participants and registered entities to leverage their existing technology infrastructure, connectivity, personnel and other resources required under parts 43 and 49 of the Commission's regulations. The Commission believes the final rule avoids imposing duplicative or conflicting obligations on market participants and registered entities.

4. Alternatives

The Commission specifically asked commenters whether there were alternative methods through which a reporting party could elect to treat its qualifying swap transaction as a block trade or large notional off-facility swap. In addition, the Commission asked whether it should require a variation on the proposed election process where SEFs, DCMs, and reporting parties would be required to indicate under which swap category they were claiming block or large notional off-facility swap treatment. Finally, the Commission asked whether it should establish an alternative approach for small end-users when such an end-user is the reporting party to a qualified swap transaction.

No comments were received either proposing or otherwise supporting an alternative approach and as such, the Commission is adopting in § 43.6(g) relative to possible alternatives.

5. Application of the Section 15(a) Factors to § 43.6(g)

a. Protection of Market Participants and the Public

Section 43.6(g) is an essential part of this rulemaking because it provides the mechanism through which market participants will be able to elect to treat their qualifying swap transaction as a block trade or large notional off-facility swap. Consequently, this process contributes to providing greater swap market transparency than what currently exists under part 43 of the Commission's regulations. Market participants, registered entities and the general public benefit from this enhanced swap market price transparency.

b. Efficiency, Competitiveness and Financial Integrity.[658]

As noted above, the election process will promote efficiency by providing market participants and registered entities with a standardized process to delineate which publicly reportable swap transactions are block trades or large notional off-facility swaps. The voluntary nature of this election process will also add to the efficiency of the swaps market since eligible entities will only choose to elect if it is financially beneficial for them to do so. In addition, the proposed election process will promote efficiency by allowing non-financial end-users, SEFs, DCMs and SDRs to leverage their existing technology infrastructure, connectivity, personnel and other resources required under part 43 and part 49 of the Commission's regulations. The use of existing technologies, connectivity, personnel and other resources will create efficiencies for these entities and mitigate the cost to comply § 43.6(g).

The Commission has identified no potential impact on competitiveness and financial integrity that would result from the implementation of the proposed election process.

c. Price Discovery

The Commission has identified no potential material impact to price discovery that would result from the implementation of the election process outside of those discussed in section b. above.

d. Sound Risk Management Practices

The Commission has identified no potential impact on sound risk management practices that would result from the implementation of the election process outside of those discussed in section b. above.

e. Other Public Interest Considerations

The Commission has identified no potential impact on other public interest considerations (other than those identified above) that would result from the implementation of the election process.

at 3 hours) + (Compliance Manager at 2 hours) + (Director of Compliance at 2 hours) = 15 hours per SDR. A senior programmer has adjusted hourly wages of $86.89. A senior systems analyst has adjusted hourly wages of $70.45. A compliance manager has adjusted hourly wages of $74.16. A director of compliance has adjusted hourly wages of $169.16.

[656] CL–WMBAA at 8.

[657] *See* the discussion of benefits in section VI.E.1.e above with respect to § 43.6(a)–(f) and (h).

[658] Although by its terms, section 15(a)(2)(B) of the CEA applies to futures and not swaps, the Commission finds this factor useful in analyzing the costs and benefits of regulating swaps, as well. *See* 7 U.S.C. 19(a)(2)(B).

E. Costs and Benefits Relevant to Anonymity Protections (Amendments to § 43.4(d)(4) and (h))

This section discusses the two amendments to § 43.4. Section 43.4 as now promulgated prescribes the manner in which SDRs must publicly disseminate swap transaction and pricing data. One amendment adds a system for masking the geographical data for certain swaps in the other commodity asset class not currently subject to public dissemination, which provides limited, but not detailed information on the geographic location of the underlying assets of those swaps. The other amendment establishes a methodology to establish cap sizes that masks the size of swap transactions above a certain threshold, which is different from the methodology for determining appropriate minimum block sizes. Both amendments seek to protect the anonymity of the parties and certain identifying information for swaps while also providing increased transparency in swaps markets.

1. Amendments to § 43.4(d)(4)

The Commission addresses the public dissemination of information regarding certain swaps in the other commodity asset class in § 43.4(d)(4). Section 43.4(d)(4)(ii) currently provides that for publicly reportable swaps in this commodity asset class, information identifying the underlying assets of the swap must be publicly disseminated for: (a) those swaps executed on or pursuant to the rules of a SEF or DCM; (b) those swaps referencing one of the contracts described in appendix B to part 43; and (c) any publicly reportable swap transaction that is economically related to one of the contracts described in appendix B to part 43. Pursuant to the Real-Time Reporting Final Rule, any swap that is in the other commodity asset class that falls under § 43.4(d)(4)(ii) will be subject to reporting and public dissemination requirements.

In this final rule, the Commission is adopting a new provision, § 43.4(d)(4)(iii), that prescribes a system for the public dissemination of exact underlying assets in the other commodity asset class with a ''mask'' for sensitive and potentially revealing geographic detail. The Commission also is adopting guidance in the form of a new appendix to part 43 that contains the geographical details that SDRs will be able to use in masking eligible other commodity swaps while maintaining compliance with public dissemination of swap transaction and pricing data.

2. Amendments to § 43.4(h)

Section 43.4(h) establishes cap sizes for ''rounded notional or principal swap amounts'' above which information on swaps transactions is publicly reportable, for the purpose of providing anonymity for transactions where information on the notional or principal amounts alone would likely reveal the identity of the parties to the swap or sensitive business information. In doing so, the Commission notes that the objective of establishing cap sizes differs from that of establishing appropriate minimum block sizes.[659] With respect to the latter, the objective is to ensure that a block trade or large notional off-facility swap can be sufficiently offset during a relatively short reporting delay. The former is strictly for the protection of the counterparties' identity and sensitive business information.

Section 43.4(h) currently requires SDRs to publicly disseminate the notional or principal amounts of a publicly reportable swap transaction represented by a cap size (*i.e.,* $XX+) that adjusts in accordance with the respective appropriate minimum block size for the relevant swap category. Section 43.4(h) further provides that if no appropriate minimum block size exists with respect to a swap category, then the cap size on the notional or principal amount will correspond with interim cap sizes that the Commission has established for the five asset classes.[660]

The amendment to § 43.4(h) will require SDRs to continue to publicly disseminate cap sizes that correspond to their respective appropriate minimum block sizes during the initial period. However, when the Commission publishes the post-initial appropriate minimum block sizes in accordance with § 43.6(f), it will also publish post-initial cap sizes for each swap category by applying a 75-percent notional amount calculation on data collected by SDRs. The Commission will apply the 75-percent notional amount calculation to a one-year rolling window of such data corresponding to each relevant swap category for each calendar year.

3. Costs Relevant to the Amendments to § 43.4(d)(4) and (h)

SDRs will bear some costs of complying with the amendments to § 43.4(d)(4) and (h).[661] The Commission set forth the potential costs of these provisions in the Further Block Proposal and requested comments regarding its estimates. The Commission did not receive any comments regarding its estimates.

The Commission anticipates that these entities already will have made non-recurring expenditures in technology and personnel in connection with the requirements set forth in part 43 and part 49 (which contain rules regarding the registration and regulation of SDRs). As such, SDRs already will be required to pay recurring expenses associated with systems maintenance, support and compliance as described in the cost-benefit discussion in the Real-Time Reporting Final Rule.[662] Notwithstanding these recurring expenses, an SDR will have additional non-recurring expenditures associated with the amendments to § 43.4. Specifically, the Commission estimated that updating existing technology will impose an initial non-recurring burden of approximately 34 personnel hours at an approximate cost of $3,190 for each SDR.[663] This cost estimate included an estimate of the number of potential burden hours required to amend internal procedures, reprogram systems and implement processes to capture and publicly disseminate swap transaction and pricing data for block trades and large notional off-facility swaps in

[659] The Commission received numerous comments suggesting that the block thresholds and cap sizes established by the Commission should be the same. However, block thresholds and cap sizes have different statutory mandates and serve different purposes.

[660] *See* note 470 *supra,* which lists the interim cap sizes set forth in § 43.4(h)(1)–(5).

[661] The Commission anticipates that reporting parties, SEFs and DCMs would not incur any new costs related to the amendments to § 43.4 because this section relates to the data that an SDR must publicly disseminate. Section 43.3 of the Commission's regulations sets out the requirements for reporting parties, SEFs and DCMs in terms of what is transmitted to an SDR.

[662] *See* 76 FR 54572–75. As noted in SDR final rule, SDRs (that do not enter into contracts with a third party) would have incremental costs related to compliance with part 43 beyond those costs identified in the release adopting part 49 of the Commission's regulations. *See* 76 FR 54573. In the Real-Time Reporting Final Rule, the Commission stated that each SDR would have: (i) A recurring burden of approximately $856,666 and an annual burden of $666,666 for system maintenance per SDR; (ii) non-recurring costs to publicly disseminate ($601,003 per SDR); and (iii) recurring cots to publicly disseminate ($360,602 per SDR). *See* 77 FR 1238.

[663] This estimate is calculated as follows: (Sr. Programmer at 20 hours) + (Sr. Systems Analyst at 10 hours) + (Compliance Manager at 2 hours) + (Director of Compliance at 2 hours) = 34 hours per SDR. A senior programmer has adjusted hourly wages of $81.52. A senior systems analyst has adjusted hourly wages of $64.50. A compliance manager has adjusted hourly wages of $77.77. A director of compliance has adjusted hourly wages of $158.21. The total number was calculated incorrectly in the Further Block Proposal. The initial cost to an SDR should have been $2,747, rather than $3,190.

compliance with the requirements set forth in § 43.4(d).

The Commission is revising its estimates based on updated wage rate data. The Commission estimates the updated approximate cost required to amend internal procedures, reprogram systems and implement processes to capture and publicly disseminate swap transaction and pricing data for block trades and large notional off-facility swaps in compliance with the requirements set forth in § 43.4(d) to be $2,930 for each SDR.[664]

In addition, the Commission believes that § 43.4(d)(4)(iii) will result in some incremental, recurring costs for SDRs because they will be required to publicly disseminate other commodity swaps data that were not previously within the scope of the public dissemination requirement in § 43.4. The Commission estimates that there will be approximately 50,000 additional swaps reported to an SDR each year in the other commodity asset class, which the Commission estimates will be $154,021 in annualized costs.[665]

The Commission also anticipates that § 43.4(d)(4)(iii) will result in some indirect costs to the market through reduced information, since notional values of transactions beyond the cap size limits will not be revealed to the public. The Commission lacks data to quantify the costs associated with the reduction of information. However, given the statutory mandate to protect market participant identities, the Commission believes such costs are warranted and contemplated by Congress.

The Commission also received a number of comments regarding potential costs arising from the established level for cap size. GFMA stated that the same rationale should apply to cap and block sizes, as both have potential negative impacts on liquidity.[666] ICI stated that the 75 percent notional amount would be too high for determining cap size because the lack of depth and liquidity in the swaps market could cause public reporting of block sizes to reveal identities, business transactions, and market positions of participants, and recommends a 67 percent notional amount calculation for determining cap size in the post-initial period.[667] ISDA/SIFMA stated that the added transparency from reporting transaction sizes between 67 percent and 75 percent would be outweighed by the harm to liquidity from additional disclosure, and urges the Commission to ensure that the post-initial cap size is always equal to the relevant block size.[668] MFA stated that it is unnecessary for the Commission to establish cap sizes that differ from minimum block sizes as there is not a meaningful transparency benefit that would outweigh the resource burdens on the Commission, SDRs, SEFs, and other market participants.[669] SIFMA stated that the Commission should set the notional cap size at the block threshold, as the added public dissemination could harm liquidity in the same manner that a higher block trade size threshold might.[670] Vanguard stated that it is essential that the cap match the block trade threshold, as to do otherwise would compromise the liquidity protections afforded by the nuanced assessment of block trade thresholds.[671]

The additional information provided to the market regarding the size of block trades that are below the cap size may enhance price discovery by publicly disseminating more information relating to market depth and the notional sizes of publicly reportable swap transactions. This, in turn, promotes increased market liquidity.

In addition, the rule incorporates flexibility to adjust post-initial cap sizes in response to changing markets. Section 43.4(h) will permit the Commission to set cap sizes no less than once annually during the post-initial period. If swap market conditions change significantly after the implementation of the provisions of this rulemaking, then the Commission can react in a timely manner to further improve price transparency or to mitigate adverse effects on market liquidity.[672]

4. Benefits Relevant to the Amendments to § 43.4

The Commission anticipates that the anonymity provisions of § 43.4 will generate several overarching benefits to swap market participants, registered entities and the general public. In the first instance, the Commission anticipates that the cap size amendments to § 43.4(h) will benefit market participants, registered entities and the general public by providing greater price transparency with respect to swaps with notional amounts that fall between the post-initial appropriate minimum block size and post-initial cap size for a particular swap category. During the post-initial period, the Commission will set appropriate minimum block sizes based on the 67 percent notional amount calculation[673] and cap sizes based on the 75-percent notional amount calculation.[674] Although swaps with notional amounts that fall between these two sizes will be subject to a time delay, the exact notional amounts of these swaps eventually will be publicly disclosed. The delayed public disclosure of the notional amount of these swaps will provide market participants, registered entities and the general public with meaningful price transparency.

The masking provisions in the amendment to § 43.4(d)(4) and appendix D to part 43 will further benefit market participants, registered entities and the general public by enhancing price discovery with respect to swaps that currently are not required to be publicly disclosed under part 43. Section 43.4(d)(4) currently requires SDRs to publicly disseminate swap transaction and pricing data for publicly reportable swap transactions that reference or are economically related to the 29 contracts identified in appendix B to part 43. However, the Commission believes there are a significant number of swaps in the other commodity asset class that are not economically related to the 29 contracts identified on this appendix to part 43. The amendment creating new § 43.4(d)(4)(iii) will require the public dissemination of data on these swaps. The real-time public reporting of these swaps will enhance price discovery in the other commodity asset class.

[664] This estimate is calculated as follows: (Sr. Programmer at 20 hours) + (Sr. Systems Analyst at 10 hours) + (Compliance Manager at 2 hours) + (Director of Compliance at 2 hours) = 34 hours per SDR. A senior programmer has adjusted hourly wages of $86.89. A senior systems analyst has adjusted hourly wages of $70.45. A compliance manager has adjusted hourly wages of $74.16. A director of compliance has adjusted hourly wages of $169.16.

[665] The Commission estimates that there will be 5 SDRs, which will collect swaps data in the other commodity asset class. Each SDR would collect swaps data on approximately 10,000 swap transactions in the other commodity asset class. The commission estimates that it will take each SDR on average approximately 1 minute to publicly disseminate swaps data related to these new swap transactions. The number of burden hours for these SDRs would be 833 hours. As referenced in note 523 *supra*, the total labor costs for a swap trader is $184.90. Thus, the total number of burden hour costs equal the total number of burden hours (833 burden hours) × $184.90.

[666] CL–GFMA at 5.

[667] CL–ICI at 8.

[668] CL–ISDA/SIFMA at 15.

[669] CL–MFA at 8–9.

[670] CL–SIFMA at 12.

[671] CL–Vanguard at 7.

[672] This benefit is consistent with one of the considerations for implementation identified by ISDA and SIFMA in their January 18, 2011 report. *See* Block trade reporting for over-the-counter derivatives markets, note 32 supra.

[673] *See* proposed § 43.6(c)(1).

[674] *See* proposed § 43.6(c)(2).

In addition, the rule incorporates flexibility to adjust post-initial cap sizes in response to changing markets. Section 43.4(h) will permit the Commission to set cap sizes no less than once annually during the post-initial period. If swap market conditions change significantly after the implementation of the provisions of this rulemaking, then the Commission can react in a timely manner to further improve price transparency or to mitigate adverse effects on market liquidity.[675]

5. Alternatives

The Commission received numerous comments supporting alternatives to the proposed anonymity provisions in § 43.4(d)(4) and (h). These alternatives fall into two basic categories: (1) Post-initial cap size level; and (2) preventing public disclosure of swap market participant identity. In regard to cap size, seven commenters recommended that the Commission set post-initial cap sizes matching the minimum block size thresholds established by the Commission. AII supported setting the post-initial cap size for each swap category at the same level as the block size threshold and states that the 75 percent notional amount calculation is far too high.[676]

For the initial period, AII and ISDA/SIFMA argued that the cap size should be the lower of block size and the interim cap size in § 43.4(h)(1).[677] Barclays recommended that the post initial period cap sizes be introduced at more nuanced levels that reflect the differences between product's traded volumes.[678] EEI stated that the initial cap size of $25 million for both the Electricity Swap Contracts and the Other Commodity Electricity Swap Category is too high, as is the 75 percent notional amount for the post-initial period. EEI recommended that the Commission adopt a fixed cap size of $3 million for both periods.[679]

The Commission has evaluated these various alternatives concerning post-initial cap size levels against the statutory requirements imposed upon it by Section 2(a)(13): bring real-time public reporting to the swaps market subject to time delays for block trades and large notional off-facility swaps that it determines appropriate.[680] However, the statute only calls for a time delay—it does not provide for information to be kept from the market in perpetuity. All of the information regarding a block trade is reported to the market at the end of the block time delay. Notional or principal amount information above cap sizes, on the other hand, is never expressed to the market. Because the notional amount of the trade is neither reported to the market in real-time, nor reported to the market at all, the Commission believes that cap sizes should be set at a higher level than block sizes. The 75 percent notional test balances the competing interests of providing meaningful real-time public reporting to the swaps market and protecting the anonymity of swap market participants, while taking into account potential impacts on market liquidity.

The additional information provided to the market regarding the size of block trades that are below the cap size may enhance price discovery by publicly disseminating more information relating to market depth and the notional sizes of publicly reportable swap transactions. This, in turn, promotes increased market liquidity.

In regard to alternatives for preventing the public disclosure of the identities of swap market participants, the Commission received three comments regarding the masking of specific delivery or pricing detail of energy and power swaps. EEI recommended that the Commission mask data regarding Other Commodity Electricity Swaps according to the North American Electric Reliability Corporation eight regions rather than the FERC regions proposed.[681] Barclays recommended that the Commission use wider geographic regions when publicly disseminating data for commodity swaps with very specific underlying assets and/or delivery points and develop an appropriate process to avoid identifying issuers of debt.[682] Spring Trading supported further measures to prevent public disclosure of identities, business transactions, and market positions of swap market participants, and recommended disclosing a subset of data on a collective basis at a later date.

After consideration of the alternatives suggested by commenters, the Commission is adopting § 43.4(d)(iii) with the following modification that it believes affords greater anonymity protection relative to the Further Block Proposal, without adversely impacting transparency. The modification is: For publicly reportable swap transactions that have electricity and sources as an underlying asset and have a specific delivery or pricing point in the United States, the Commission is requiring SDRs to public disseminate the specific delivery or pricing point based on a description of one of the North American Electric Reliability Corporation (''NERC'') regions for publicly disseminating delivery or pricing points for electricity swaps described in proposed § 43.4(d)(4)(iii). Using the regions suggested by EEI further masks specific delivery details and thus provides additional protection against public disclosure of identities, business transactions, and market positions of swap market participants, as recommended by Barclays and Spring Trading.

The Commission also considered the alternative of having DCMs and SEFs set cap sizes. The Commission ultimately chose to determine cap sizes itself for the reason that doing so limits the direct burden on registered entities to determine and implement appropriate cap sizes themselves. As such, the chosen approach will promote market efficiency for market participants and registered entities.

6. Application of the Section 15(a) Factors to the Amendments to § 43.4

a. Protection of Market Participants and the Public

The amendments to § 43.4 protect swap counterparty anonymity on an ongoing basis. While cap sizes for some transactions can exceed appropriate minimum block sizes in certain circumstances (resulting in the public dissemination of notional/principal-amount information after a time delay), the Commission believes that for the vast majority of impacted swap transactions, the cap-size process and methodology is sufficient to distinguish correctly between those for which masking of notional or principal amount is required to maintain anonymity and those for which it is not.[683] The Commission believes that setting post-initial cap sizes above appropriate minimum block sizes will provide additional pricing information with respect to large swap transactions, which are large enough to be treated as block trades (or large notional off-facility swaps), but small enough that they do not exceed the applicable post-

[675] This benefit is consistent with one of the considerations for implementation identified by ISDA and SIFMA in their January 18, 2011 report. *See* Block trade reporting for over-the-counter derivatives markets, note 32 supra.

[676] CL–AII at 12.

[677] CL–AII at 12; CL–ISDA/SIFMA at 15.

[678] CL–Barclays at 6.

[679] CL–EEI at 5.

[680] Section 2(a)(13)(E) of the CEA.

[681] CL–EEI at 12–13.

[682] CL–Barclays at 6.

[683] The Commission recognizes that adoption of rules that delineate cap sizes insufficient to provide anonymity could cause prospective counterparties to forego swap transactions, thus adversely impacting market liquidity.

initial cap size. This additional information may enhance price discovery by publicly disseminating more information relating to market depth and the notional sizes of publicly reportable swap transactions, while still protecting the anonymity of swap counterparties and their ability to lay off risk when executing extraordinarily large swap transactions.

b. Efficiency, Competitiveness and Financial Integrity [684]

The Commission believes that amendments to § 43.4(h) promote market efficiencies and competitiveness since the approach will provide market participants with the ability to continue transacting swaps with the protection of anonymity, while promoting greater price transparency.

The Commission does not believe that the implementation of the anonymity protections established in § 43.4(h) will adversely impact the financial integrity of swap markets. The Commission has considered the comments provided regarding impacts on liquidity arising out of the 75 percent notional cap size. The Commission does not agree that the cap size will have a substantial negative impact on market liquidity. As stated above, the additional pricing information available to the market as a result of the 75 percent notional cap size promotes enhanced price discovery by publicly disseminating more information relating to market depth and the notional sizes of publicly reportable swap transactions, while still protecting the anonymity of swap counterparties and their ability to lay off risk when executing extraordinarily large swap transactions. This, in turn, promotes market liquidity.

c. Price Discovery

The cap size amendments to § 43.4(h) should benefit market participants, registered entities and the general public by providing greater price transparency with respect to swaps with notional amounts that fall between the post-initial appropriate minimum block size and post-initial cap size for a particular swap category. During the post-initial period, the Commission will set appropriate minimum block sizes based on the 67 percent notional amount calculation [685] and cap sizes based on the 75-percent notional amount calculation.[686] Although swaps with notional amounts that fall between these two sizes will be subject to a time delay, the exact notional amounts of these swaps will be publicly disclosed after the established time delay for blocks and large notional off-facility swaps.

The masking provisions in the amendment to § 43.4(d)(4) and appendix D to part 43 further benefit market participants, registered entities and the general public by enhancing price discovery with respect to swaps that currently are not required to be publicly disclosed under part 43. The amendment creating new § 43.4(d)(4)(iii) will require the public dissemination of data on these swaps. The Commission expects that the real-time public reporting of these swaps will enhance price discovery in the other commodity asset class.

d. Sound Risk Management Practices

To the extent that the amendments to § 43.4 mask the identity, business transactions and market positions of swap counterparties, the Commission expects that the amendments to § 43.4 provide those traders with the anonymity and time delay they require to manage their market risk efficiently.

e. Other Public Interest Considerations

The Commission does not anticipate that the amendment to § 43.4(h) will have a material effect on public interest considerations other than those identified above.

F. Costs and Benefits Relevant to § 43.6(h)(6)—Aggregation

Section 43.6(h)(6) specifies that, except as otherwise provided, it is impermissible to aggregate orders for different accounts in order to satisfy minimum block trade or cap size requirements. The rule further provides that aggregation may be permitted on a DCM or SEF if done by a person who: (i)(A) is a CTA who is registered pursuant to Section 4n of the Act or is exempt from registration under the Act, or a principal thereof, and has discretionary trading authority or directs client accounts, (B) is an investment adviser who has discretionary trading authority or directs client accounts and satisfies the criteria of § 4.7(a)(2)(v) of the Commission's regulations, or (C) is a foreign person who performs a role or function similar to the persons described in (A) or (B) and is subject as such to foreign regulation, and (ii) has more than $25,000,000 in total AUM.

1. Overview of Comments Received

The Commission received a number of comments with the proposed aggregation rule but none directly addressing the costs and benefits considerations of the rule.

JP Morgan commented that the rule appears to reflect a concern that private negotiation affords less protection to unsophisticated investors than trading through the central markets, and that since all entities that transact in the OTC market already must be ECPs, the analogous concern about customer protection in the swaps market is already addressed.[687]

ICI opposed the minimum assets under management requirement in proposed § 43.6(h)(6)(ii) and argued that the Commission did not articulate a rationale or policy reason for this requirement.[688] ICI also disagreed that an investment adviser seeking to aggregate orders must satisfy the criteria of § 4.7(a)(2)(v) of the Commission's regulations.[689]

With respect to JP Morgan's comment, the Commission notes that customers trading swaps on DCMs do not have to be ECPs. As discussed further below, adopted § 43.6(i)(1) allows non-ECP customers to be parties to block trades through a qualifying CTA, investment adviser, or similar foreign person.[690] It is possible, therefore, that those non-ECP DCM customers may not be aware if they received the best terms for their individual swap transactions that are aggregated with other transactions. Protection for such customers is therefore necessary, as it is for unsophisticated customers in other markets.

In response to ICI's opposition to the minimum asset threshold under § 43.6(h)(6)(ii), the Commission notes that this threshold reflects common industry practice.[691] CME, for example, has enforced the $25 million threshold

[684] Although by its terms, section 15(a)(2)(B) applies to futures and not swaps, the Commission finds this factor useful in analyzing the costs and benefits of swaps regulation, as well. 7 U.S.C. 19(a)(2)(B).

[685] *See* proposed § 43.6(c)(1).

[686] *See* proposed § 43.6(c)(2).

[687] CL–JPM at 9, n.13.

[688] CL–ICI at 3.

[689] *Id.* at 4. An investment adviser satisfies the criteria of § 4.7(a)(2)(v) if the investment adviser registers pursuant to § 203 of the Investment Advisers Act of 1940, or pursuant to the laws of any state, and the investment adviser has been registered and active for two years or provides security investment advice to securities accounts which, in the aggregate, have total assets in excess of $5,000,000 deposited at one or more registered securities brokers. 17 CFR 4.7(a)(2)(v).

[690] *See infra* Section II.C.6.

[691] *See, e.g.,* CME Rule 526. See also CBOE Futures Exchange LLC Rule 415(a)(i); Chicago Board of Trade Rule 526; Eris Exchange, LLC Rule 601(b)(10); ICE Futures U.S. Rule 4.07; NASDAQ OMX Futures Exchange, Inc. Rule E23; New York Mercantile Exchange, Inc. Rule 526(I); NYSE Liffe US, LLC Rule 423; and OneChicago LLC Rule 417.

in its rules since September 2000.[692] CME has stated that the threshold ''is an effort to establish the professionalism and sophistication of the registrant'' [693] while also expanding the number of CTAs and investment advisers eligible to aggregate trades.[694] The Commission believes that the $25 million threshold is an appropriate requirement to ensure that persons allowed to aggregate trades are appropriately sophisticated with these transactions, while at the same time not excluding an unreasonable number of CTAs, investment advisers, and similar foreign persons.

The Commission also disagrees with ICI's contention that investment advisers should not be required to satisfy the criteria under § 4.7(a)(2)(v), which requires an investment adviser to (1) be registered and active as an investment adviser for two years or (2) provide securities investment advice to securities accounts which, in the aggregate, have total assets in excess of $5 million deposited at one or more registered securities brokers.[695] The Commission first adopted provisions similar to current § 4.7(a)(2)(v) in 1992 [696] as objective indications that a person had the investment sophistication and experience needed to evaluate the risks and benefits of investing in commodity pools or a portfolio large enough to indicate the same, along with the financial resources to withstand the investment risks.[697] In 2000,[698] the Commission extended the same criteria in current § 4.7(a)(2)(v) to registered investment advisers for the same reasons.[699] The Commission believes that these objective criteria, which demonstrate that an investment adviser possesses the necessary investment expertise, should also apply with respect to allowing such persons to aggregate client orders.

The Commission believes that the $25 million threshold, as well as requiring investment advisers to satisfy the criteria under § 4.7(a)(2)(v), are both important for certifying that persons allowed to aggregate trades are appropriately sophisticated and important for protection of market participants and public.

2. Costs

The Commission expects that there will be some incremental cost attendant to compliance with § 43.6(h)(6). The Commission believes that the overall benefits to the market of allowing for the aggregation of orders under certain circumstances (*i.e.,* if done on a designated contract market or a swap execution facility by certain CTAs, investment advisers or foreign persons) will mitigate costs of reduced market liquidity that could result from execution of such transactions away from the centralized marketplace. The Commission also expects there to be some advisors who will be prohibited from aggregating orders for different trading accounts in order to satisfy the minimum block size, or cap size requirements. The Commission also believes that as a result of some advisers not being allowed to aggregate, there might be some minimal unquantifiable cost associated with a decrease in competition among such traders in the market.

3. Benefits

The rule is designed, in large part, to prevent circumvention of the exchange trading requirements and of the real-time reporting obligations associated with non-block transactions. Absent this prohibition, the goals of the Commission's regulations regarding block trading, namely increased transaction transparency, better price discovery and improved competitiveness in the markets as well as better risk management, could be frustrated by those whose trades individually fail to meet the minimum block trade threshold (and cap size threshold as a result), but nevertheless achieve the benefits intended for extraordinarily large positions by aggregating those individual trades. In other words, such entities would be able to evade the exchange-trading and reporting obligations that are integral to price transparency.

4. Section 15(a) Factors

a. Protection of Market Participants and the Public

The Commission believes that the rule will protect market participants from unfair practices by preventing trades that do not meet the minimum block trade threshold from enjoying extended reporting times. This means that trades that are not extraordinarily large, and hence, that do not need extra reporting time will not qualify as block trades and will be made public as soon as technologically practicable. Hence, the rule will increase transparency of non-block transactions, and thus, would protect market participants by informing their trading determinations through increased transparency and price discovery.

b. Efficiency, Competitiveness, and Financial Integrity of the Futures Markets

The Commission expects the prohibition of aggregation of trades to improve efficiency and competitiveness in the markets by allowing more trades to be reported without the time delay that is applied to qualifying block trades. This means that a higher number of trades will be eligible for real time reporting, and that will increase market transparency as well as promote competition in the swap markets. The rule also will protect the integrity of the derivatives market by ensuring that smaller trades, which do not qualify as block transactions, are executed on the trading system where there is pre-trade and post-trade transparency.

The Commission also recognizes that advisors who are prohibited from aggregating orders in order to satisfy the minimum block size or cap size requirements might not trade at the most favorable prices in the market, which might have a negative effect on the number of such traders in the market. While the Commission expects that competition in the market may be negatively affected as a result of prohibiting aggregation, the Commission anticipates that the positive effects of the rule on competition outweigh its negative effects.

c. Price Discovery

The Commission expects the rule to improve price discovery in the swap markets by preventing aggregation of trades and as a result promoting more trades to be publicly reported as soon as technologically practicable. This will result in enhanced swap market price discovery, since market participants and the public will be able to observe real-time pricing information for a higher

[692] *See* CME Submission 00–99 (Sept. 21, 2000) (modifying CME Rule 526 to reduce the threshold from $50,000,000 to $25,000,000). CME originally planned to lower the threshold from $50,000,000 to $5,000,000, but withdrew the submission and instead proposed to lower the threshold to $25,000,000, based on customer suggestions. *See* CME Submission 00–93 (Sept. 1, 2000); CME Submission 00–99 at 5–6.

[693] *Id.* at 6 (quoting letter addressed to Jean A. Webb, Secretary of the Commission from John G. Gaine, President, Managed Funds Association dated April 24, 2000 regarding ''Chicago Mercantile Exchange new Proposed Rule 526'').

[694] *Id.* at 4, 6–7. CME also stated in the filing that it planned to readdress the threshold amount as it gained experience with block trades, but has declined to modify the amount.

[695] 17 CFR 4.7(a)(2)(v).

[696] 57 FR 34853, 34854–55 (Aug. 7, 1992). The final rule reduced the amount on deposit threshold to $5 million from the $10 million required by the proposed rule. *See* 57 FR 3148, 3152 (Jan. 28, 1992).

[697] *See* 57 FR at 34854 (quoting 57 FR at 3152).

[698] 65 FR 11253, 11257–58 (Mar. 2, 2000).

[699] *Id.* at 11257 (quoting 57 FR at 3152).

percentage of transactions in the market. In addition, the Commission expects that the rule will enhance price discovery by ensuring that smaller trades, which do not qualify as block transactions, are executed on the trading system where there is pre-trade and post-trade transparency and where buyers and sellers may make informed trading decisions based on the market's transparency.

d. Sound Risk Management Practices

The Commission anticipates that the criteria will likely result in enhanced price discovery as discussed above. With better and more accurate data, swap market participants will likely be better able to measure and manage risk. The Commission believes that if the prohibition of aggregation of trades was not adopted, swap transactions may not be reported to an SDR ''as soon as technologically practicable.'' The Commission also believes that by preventing this delay in the reporting period of a swap transaction to an SDR, the Commission will possess the information it needs to monitor the transfer and positions of risk among counterparties in the swaps market.

e. Other Public Interest Considerations

The Commission has not identified any other public interest considerations regarding the rule.

G. Costs and Benefits Relevant to § 43.6(i)—Eligible Block Trade Parties

1. Overview of Comments Received

The Commission received few comments with respect to the eligible block trade parties rule. As discussed above, similar comments regarding the exceptions to the prohibitions against aggregation for certain persons were submitted with respect to the exception to certain persons transacting blocks on a DCM on behalf of non-ECPs. For example, ICI opposed the minimum assets under management requirement in proposed § 43.6(i)(1) and similarly argued that the Commission did not articulate a rationale or policy reason for this requirement.[700]

The Commission received one specific comment related to costs on proposed § 43.6(i)(2). SIFMA commented that proposed § 43.6(i)(2) may require asset managers to obtain consent from each client for whom they will engage in block trades.[701] SIFMA contended that this requirement would be costly and unnecessary, and that notice to the customers [702] or a general grant of investment discretion in the investment management agreement, power of attorney, or similar document should be sufficient.[703]

The Commission disagrees with SIFMA's contention regarding the burdens of obtaining consent. This burden consent will be minimal because § 43.6(i)(2) states that the instruction or consent may be provided through a power of attorney or similar document that provides discretionary trading authority or the authority to direct trading in the account. The consent may therefore be included in existing and future customer agreements. The Commission further disagrees that a general grant of investment discretion or notice to the customer should satisfy § 43.6(i)(2). A customer's written instruction or consent is necessary because a customer potentially may not receive the best terms for an individual swap transaction that is part of an aggregation. The written instruction or consent makes the customer aware that block trades may be used on its behalf, allowing the customer to decide whether to allow these transactions, through which the rule has the added benefit of protection of market participants and public. The Commission also would like to point out that a cost estimate for that burden has already been presented in the proposed rule and received no direct comments on that cost estimate.

2. Costs

Section 43.6(i)(1) requires that parties to a block trade must be eligible contract participants, as defined under the CEA and Commission regulations, except that a DCM may allow: (i) A CTA registered pursuant to Section 4n of the Act or exempt from registration under the Act, or a principal thereof, and who has discretionary trading authority or directs client accounts, (ii) an investment adviser who has discretionary trading authority or directs client accounts and satisfies the criteria of § 4.7(a)(2)(v) of the Commission's regulations, or (iii) a foreign person who performs a similar role or function to the persons described in (i) or (ii) and is subject as such to foreign regulation, to transact block trades for customers who are not eligible contract participants, if such CTA, investment adviser or foreign person has more than $25,000,000 in total AUM. This rule codifies, in part, the requirement under Section 2(e) of the CEA, which requires that ''[i]t shall be unlawful for any person, other than an eligible contract participant, to enter into a swap unless the swap is entered into on, or subject to the rules of….a designated contract market.'' In addition, the provisions allowing certain entities (as described in this release) to enter into block trades on behalf of their non-ECP customers on DCMs is substantially similar to the existing DCM rules that allow block trading in the futures market.

Section 43.6(i)(2) further provides that no person may conduct a block trade on behalf of a customer unless the person receives prior written instruction or consent to do so. The rule further provides that such instruction or consent may be provided in the power of attorney or similar document by which the customer provides the person with discretionary trading authority or the authority to direct the trading in its account. The Commission is of the view that the cost associated with the written instruction or consent is minimal. The Commission estimates that a prior written instruction or consent requirement would impose an initial non-recurring burden of approximately 2 personnel hours at an approximate cost of $155.54 for each CTA, investment adviser or foreign person.[704]

3. Benefits

The Commission has determined that the benefits of § 43.6(i) are significant. The rule allows customers who are not ECPs to engage in block trade transactions through certain entities as outlined in the rule. By permitting certain CTAs, investment advisers and foreign persons to transact swaps on behalf of non-ECP customers, the rule provides important safeguards for non-ECPs when entering into block transactions in swaps. The Commission believes that access to block trades will allow customers who are not ECPs to diversify their risk or improve their investment strategies. In addition, the Commission also anticipates the access to block trades for non-ECPs to increase their participation in swap markets, increasing liquidity in the markets for everyone.

The Commission acknowledges that § 43.6(i)(2) has the added benefit of protection of market participants and public since the written instruction or consent required in § 43.6(i)(2) of the rule makes the customer aware that block trades may be used on its behalf, allowing the customer to decide whether to allow these transactions.

[700] CL–ICI at 3.

[701] CL–SIFMA at 1.

[702] *Id.* at 2.

[703] *Id.*

[704] The estimate is calculated as follows: Compliance manager at 2 hours. A compliance manager's adjusted hourly wage is $77.77. *See* note 521 *supra.*

4. Section 15(a) Factors

a. Protection of Market Participants and the Public

As discussed above, § 43.6(i)(2), by requiring that no person may conduct a block trade on behalf of a customer unless the person receives prior written instruction or consent to do so, protects the customer by making sure the customer is aware that block trades may be used on its behalf. This means better protection for market participants and the public since no one will be able to conduct a block trade on their behalf without their consent.

b. Efficiency, Competitiveness, and Financial Integrity of the Futures Markets

The Commission expects the rule to improve competitiveness in the markets by allowing customers who are not ECPs to have access to block trades through certain CTAs, investment advisers and foreign persons. The Commission anticipates an increase in competitiveness due to the fact that more customers would use the swap markets as a result of this rule. An increased participation in a market will also serve to increase liquidity, as well as competition, in that market.

c. Price Discovery

The Commission does not anticipate the rule to have any significant effect on price discovery in the market.

d. Sound Risk Management Practices

The Commission does not anticipate the rule to have any significant effect on risk management practices.

e. Other Public Interest Considerations

The Commission has not identified any other public interest considerations regarding the rule.

VI. Regulatory Flexibility Act

The Regulatory Flexibility Act (''RFA'') requires Federal agencies to consider the impact of its rules on ''small entities.'' [705] A regulatory flexibility analysis or certification typically is required for ''any rule for which the agency publishes a general notice of proposed rulemaking pursuant to'' the notice-and-comment provisions of the Administrative Procedure Act, 5 U.S.C. 553(b).[706] With respect to the Further Block Proposal, the Commission provided in its RFA statement that the proposed rule would have a direct effect on a number of entities, specifically DCMs, SEFs, SDs, MSPs, and certain single end-users.[707] In the Further Block Proposal, the Chairman, on behalf of the Commission, certified that the rulemaking would not have a significant economic effect on a substantial number of small entities. Comments on that certification were sought.

In the Further Block Proposal, the Commission provided that it previously had established that certain entities subject to its jurisdiction are not small entities for purposes of the RFA. Specifically, the Commission stated that it had previously determined that SEFs and DCMs are not small businesses.[708] The Commission also stated that it is of the view that SDs and MSPs are not small businesses.[709]

The Commission recognized that the proposed rule could impose direct burdens on parties to a swap, which the Commission has determined previously may include a percentage of small end users that are considered small businesses for the purposes of the RFA.[710]

Notwithstanding the imposition of this burden, however, the determination to certify pursuant to § 605(b) of the RFA that the proposed rule would not have a significant economic effect on a substantial number of small entities was based upon two major considerations. First, Section 43.3 of the Commission's regulations already requires these entities to report their swap transaction and pricing data to an SDR.[711] The Commission is of the view that requiring these entities to include an additional notification or field in conjunction with the reporting of such data would impose, at best, a marginal and incremental cost. Second, the proposed rule was structured so that most swaps that are expected to be executed by an end user would not require notification of the election by the end user, but rather by a party that is subject to Commission registration and regulation.

The Commission did not receive any comments respecting its RFA certification. Accordingly, for the reasons stated in the Further Proposal and set forth above, the Commission continues to believe that the rulemaking will not have a significant impact on a substantial number of small entities. Therefore, the Chairman, on behalf of the Commission, hereby certifies, pursuant to 5 U.S.C. 605(b), that the procedure to establish appropriate minimum block sizes adopted herein will not have a significant economic impact on a substantial number of small entities.

VII. Example of a Post-initial Appropriate Minimum Block Size Determination Using the 67-percent Notional Amount Calculation

The example below describes the steps necessary for the Commission to determine the post-initial appropriate minimum block size based on § 43.6(c)(1) for a sample set of data in ''Swap Category Z.'' For the purposes of this example, Swap Category Z had 35 transactions over the given observation period. The observations are described in table A below and are ordered by time of execution (*i.e.,* Transaction #1 was executed prior to Transaction #2).

TABLE A—SWAP CATEGORY Z TRANSACTIONS

Transaction #1	Transaction #2	Transaction #3	Transaction #4	Transaction #5
5,000,000	25,000,000	50,000,000	1.05	3,243,571

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

[706] *See* 5 U.S.C. 601(2), 603, 604, and 605.

[707] As discussed more fully in the Further Block Proposal, the Commission is of the view that registered entities such as SDs and MSPs are not small businesses.

[708] 77 FR at 15499. *See* 17 CFR part 40 Provisions Common to Registered Entities, 75 FR 67282 (Nov. 2, 2010); *see also* 47 FR 18618, 18619, Apr. 30, 1982 and 66 FR 45604, 45609, Aug. 29, 2001.

[709] 77 FR at 15499.

[710] *See* 77 FR 1240 (''[T]he Commission recognized that the proposed rule could have an economic effect on certain single end users, in particular those end users that enter into swap transactions with another end-user. Unlike the other parties to which the proposed rulemaking would apply, these end users are not subject to designation or registration with or to comprehensive regulation by the Commission. The Commission recognized that some of these end users may be small entities.''). The term reporting party also includes swap dealers and major swap participants.

The Commission previously has determined that these entities do fall within the definition of small business for the purpose of the RFA. *See* 75 FR at 76170.

[711] *See* 77 FR 1240.

TABLE A—SWAP CATEGORY Z TRANSACTIONS—Continued

Transaction #1	Transaction #2	Transaction #3	Transaction #4	Transaction #5
Transaction #6	Transaction #7	Transaction #8	Transaction #9	Transaction #10
100,000,000	525,000,000	10,000,000	15,000,000	25,000,000
Transaction #11	Transaction #12	Transaction #13	Transaction #14	Transaction #15
100,000,000	265,000,000	25,000,000	100,000,000	100,000,000
Transaction #16	Transaction #17	Transaction #18	Transaction #19	Transaction #20
100,000,000	150,000,000	50,000,000	100,000,000	50,000,000
Transaction #21	Transaction #22	Transaction #23	Transaction #24	Transaction #25
75,000,000	82,352,124	100,000,000	1,235,726	60,000,000
Transaction #26	Transaction #27	Transaction #28	Transaction #29	Transaction #30
100,000,000	50,000,000	50,000,000	100,000,000	100,000,000
Transaction #31	Transaction #32	Transaction #33	Transaction #34	Transaction #35
100,000,000	100,000,000	32,875,000	50,000,000	440,000,000

Step 1: Remove the transactions that do not fall within the definition of ''publicly reportable swap transactions'' as described in § 43.2.

In this example, assume that five of the 35 transactions in Swap Category Z do not fall within the definition of ''publicly reportable swap transaction.'' These five transactions, listed in table B below would be removed for the data set that will be used to determine the post-initial appropriate minimum block size.

TABLE B—TRANSACTIONS THAT DO NOT FALL WITHIN THE DEFINITION OF ''PUBLICLY REPORTABLE SWAP TRANSACTION''

Transaction #4	Transaction #13	Transaction #16	Transaction #20	Transaction #21
1.05	25,000,000	100,000,000	50,000,000	75,000,000

Step 2A: Convert the publicly reportable swap transactions in the swap category to the same currency or units.

In order to accurately compare the transactions in a swap category and apply the appropriate minimum block size calculation, the transactions must be converted to the same currency or unit.

In this example, the publicly reportable swap transactions were all denominated in U.S. dollars, so no conversion was necessary. If the notional amounts of any of the publicly reportable swap transactions in Swap Category Z had been denominated in a currency other than U.S. dollars, then the notional amounts of such publicly reportable swap transactions would have been adjusted by the daily exchange rates for the period to arrive at the U.S. dollars equivalent notional amount.

Step 2B: Examine the remaining data set for any outliers and remove any such outliers, resulting in a trimmed data set.

The publicly reportable swap transactions are examined to identify any outliers. If an outlier is discovered, then it would be removed from the data set. To conduct this analysis, the notional amounts of all of the publicly reportable swap transactions remaining after step 1 and step 2A are transformed by Log_{10}. The average and standard deviation (''STDEV'') of these transformed notional amounts would then be calculated. Any transformed notional amount of a publicly reportable swap transaction that is larger than the average of all transformed notional amounts plus four times the standard deviation would be omitted from the data set as an outlier.

In the data set used in this example, none of the observations were large enough to qualify as an outlier, as shown in the calculations described in Table C.

TABLE C—TESTING FOR OUTLIERS IN THE PUBLICLY REPORTABLE SWAP TRANSACTION DATA SET

Log10 Average	7.75	4*STDEV+Average	10.2
Log10 STDEV	0.611359	Omitted Values	None
4* STDEV	2.45		

Step 3: Sum the notional amounts of the remaining publicly reportable swap transactions in the data set resulting after step 2B. Note: The notional amounts being summed in this step are the original amounts following step 2A and not the Log_{10} transformed amounts used for the process in step 2B used to identify and omit any outliers.

Using the equation described immediately below, the notional amounts are added to determine the

sum total of all notional amounts remaining in the data set for a particular swap category. In this example, the notional amounts of the 30 remaining publicly reportable swap transactions in Swap Category Z are added together to come up with a net value of 2,989,706,421.

$$\sum_{i=1}^{30} Ti_{\square} = PRST_{NV}$$

30 = Notional amount of swap transaction

i = Index variable of summation for the set

T_i = Indicator for publicly reportable swap transactions

$PRST_{NV}$ = Sum total of the notional amounts of all remaining publicly reportable swap transactions in the set

$PRST_{NV}$ = 2,989,706,421

Step 4: Calculate the 67 Percent Notional Amount.

Using the resulting amount from step 2B, a 67-percent notional amount value would be calculated by using the equation:

$PRST_{NV} * 0.67 = G$

G = 67 percent of the sum total of the notional amounts of all remaining publicly reportable swap transactions in the set.

G = 2,003,103,302

Step 5: Order and rank the observations based on notional amount of the publicly reportable swap transaction from least to greatest.

The remaining publicly reportable swap transactions having previously been converted to U.S. dollar equivalents must be ranked, based on the notional sizes of such transactions, from least to greatest. The resulting ranking yields the $PRST_{i\square}$. Table D below reflects the ranking of the remaining publicly reportable swap transactions based on their notional amount sizes for this example.

$PRST_i$ = a publicly reportable swap transaction in the data set ranked from least to greatest based on the notional amounts of such transactions.

Step 6A: Calculate the running sum of all $PRST_i$.

A running sum would be calculated by adding together the ranked and ordered publicly reportable swap transactions from step 5 ($PRST_i$) in least to greatest order. The calculations of running sum values with respect to this example are reflected in Table D below.

RS Values = Running sum values

TABLE D—*PRST*$_i$ VALUES AND RS VALUES

	Rank Order #1	Rank Order #2	Rank Order #3	Rank Order #4	Rank Order #5
PRST$_i$ Values	1,235,726	3,243,571	5,000,000	10,000,000	15,000,000
RS Values	1,235,726	4,479,297	9,479,297	19,479,297	34,479,297
	Rank Order #6	Rank Order #7	Rank Order #8	Rank Order #9	Rank Order #10
PRST$_i$ Values	25,000,000	25,000,000	32,875,000	50,000,000	50,000,000
RS Values	59,479,297	84,479,297	117,354,297	167,354,297	217,354,297
	Rank Order #11	Rank Order #12	Rank Order #13	Rank Order #14	Rank Order #15
PRST$_i$ Values	50,000,000	50,000,000	50,000,000	60,000,000	82,352,124
RS Values	267,354,297	317,354,297	367,354,297	427,354,297	509,706,421
	Rank Order #16	Rank Order #17	Rank Order #18	Rank Order #19	Rank Order #20
PRST$_i$ Values	100,000,000	100,000,000	100,000,000	100,000,000	100,000,000
RS Values	609,706,421	709,706,421	809,706,421	909,706,421	1,009,706,421
	Rank Order #21	Rank Order #22	Rank Order #23	Rank Order #24	Rank Order #25
PRST$_i$ Values	100,000,000	100,000,000	100,000,000	100,000,000	100,000,000
RS Values	1,109,706,421	1,209,706,421	1,309,706,421	1,409,706,421	1,509,706,421
	Rank Order #26	Rank Order #27	Rank Order #28	Rank Order #29	Rank Order #30
PRST$_i$ Values	100,000,000	150,000,000	265,000,000	440,000,000	525,000,000
RS Values	1,609,706,421	1,759,706,421	2,024,706,421	2,464,706,421	2,989,706,421

Step 6B: Select first RS Value that is greater than or equal to G.

In this example, G is equal to 2,003,103,302, meaning that the RS Value that must be selected would have to be greater than that number. The first RS Value that is greater than or equal to G can be found in the observation that corresponds to Rank Order #28 (see Table D). The RS Value of the Rank Order #28 observation is 2,024,706,421.

Step 7: Select the $PRST_t$ that corresponds to the observation determined in step 6B.

In this example, the $PRST_t$ that corresponds to the RS Value determined in step 6B (Rank Order #28) is 265,000,000.

Step 8: Determine the rounded notional amount.

Calculate the rounded notional amount under the process described in the proposed amendment to § 43.2. The 265,000,000 amount would be rounded to the nearest 10 million for public dissemination, or 270,000,000.

Step 9: Set the appropriate minimum block size at the amount calculated in step 8.

In this example, the appropriate minimum block size for swap category Z would be 270,000,000 for the observation period.

Post-Initial Appropriate Minimum Block Size = $270,000,000

VIII. List of Commenters Who Responded to the Further Block Proposal

Acronym/Abbreviation	Commenter
Abbott	Abbott, Robert.
AFR	Americans for Financial Reform.
ABC	American Benefits Counsel.
Arbor	Arbor Research & Trading, Inc.
AII	Association of Institutional Investors.
Barclays	Barclays Bank PLC.
Barnard	Barnard, Chris.
Better Markets	Better Markets, Inc.
CIEBA	Committee on the Investment of Employee Benefit Assets.
CME Group	CME Group Inc.

Acronym/Abbreviation	Commenter
CRT	CRT Capital Group LLC.
Currenex	Currenex, Inc.
EEI	Edison Electric Institute.
FIA	Futures Industry Association Principle Traders Group.
Freddie	Freddie Mac.
GFMA	Global Foreign Exchange Division of the Global Financial Markets Association.
ICAP Energy	ICAP Energy LLC.
ICAP	ICAP North America Inc.
ISDA/SIFMA	International Swaps and Derivatives Association and the Securities Industry and Financial Markets Association.
ICI	Investment Company Institute.
Javelin	Javelin Capital Markets, LLC.
Jefferies	Jefferies & Co., Inc.
JPM	J.P. Morgan.
Kearney	Kearney, Timothy.
Kinetix	Kinetix Trading Solutions.
MFA	Managed Funds Association.
Morgan Stanley	Morgan Stanley.
ODEX	ODEX Group.
Parascandola	Parascandola, James.
Parity	Parity Energy, Inc.
Pierpont	Pierpont Securities Holdings LLC.
R.J. O'Brien	R.J. O'Brien & Associates, Inc.
SIFMA	Asset Management Group of the Securities Industry and Financial Markets Association.
SDMA	Swaps & Derivatives Market Association.
Spring Trading	Spring Trading, Inc.
Vanguard	Vanguard.
WMBAA	Wholesale Market Brokers' Association, Americas.
Wolkoff	Wolkoff Consulting Services LLC.

List of Subjects in 17 CFR Part 43

Real-time public reporting, Block trades, Large notional off-facility swaps, Reporting and recordkeeping requirements.

Accordingly, for the reasons discussed in the preamble, the Commodity Futures Trading Commission amends 17 CFR part 43 as follows:

PART 43—REAL-TIME PUBLIC REPORTING

■ 1. The authority citation for part 43 is revised to read as follows:

Authority: 7 U.S.C. 2(a), 12a(5) and 24a, as amended by Pub. L. 111–203, 124 Stat. 1376 (2010).

■ 2. Amend § 43.2 by adding the following definitions in alphabetical order to read as follows:

§ 43.2 Definitions.

* * * * *

Cap size means, for each swap category, the maximum notional or principal amount of a publicly reportable swap transaction that is publicly disseminated.

* * * * *

Economically related means a direct or indirect reference to the same commodity at the same delivery location or locations, or with the same or a substantially similar cash market price series.

* * * * *

Futures-related swap means a swap (as defined in section 1a(47) of the Act and as further defined by the Commission in implementing regulations) that is economically related to a futures contract.

* * * * *

Major currencies means the currencies, and the cross-rates between the currencies, of Australia, Canada, Denmark, New Zealand, Norway, South Africa, South Korea, Sweden, and Switzerland.

Non-major currencies means all other currencies that are not super-major currencies or major currencies.

* * * * *

Physical commodity swap means a swap in the other commodity asset class that is based on a tangible commodity.

* * * * *

Reference price means a floating price series (including derivatives contract prices and cash market prices or price indices) used by the parties to a swap or swaption to determine payments made, exchanged or accrued under the terms of a swap contract.

* * * * *

Super-major currencies means the currencies of the European Monetary Union, Japan, the United Kingdom, and United States.

Swaps with composite reference prices means swaps based on reference prices that are composed of more than one reference price from more than one swap category.

* * * * *

Trimmed data set means a data set that has had extraordinarily large notional transactions removed by transforming the data into a logarithm with a base of 10, computing the mean, and excluding transactions that are beyond four standard deviations above the mean.

* * * * *

■ 3. Amend § 43.4 as follows:

■ A. Revise paragraph (d)(4)(i);

■ B. Revise paragraph (d)(4)(ii)(B);

■ C. Add paragraph (d)(4)(iii);

■ D. Revise paragraph (h).

The revisions and addition read as follows:

§ 43.4 Swap transaction and pricing data to be publicly disseminated in real-time.

* * * * *

(d) * * *

(4) * * *

(i) A registered swap data repository shall publicly disseminate swap transaction and pricing data for publicly reportable swap transactions in the other commodity asset class in the manner described in paragraphs (d)(4)(ii) and (d)(4)(iii) of this section.

(ii) * * *

(B) Any publicly reportable swap transaction that is economically related to one of the contracts described in Appendix B of this part; or

* * * * *

(iii) The underlying assets of swaps in the other commodity asset class that are not described in paragraph (d)(4)(ii) of this section shall be publicly disseminated by limiting the geographic detail of the underlying assets. The identification of any specific delivery point or pricing point associated with the underlying asset of such other commodity swap shall be publicly disseminated pursuant to Appendix E of this part.

* * * * *

(h) *Cap sizes.*

(1) *Initial cap sizes.* Prior to the effective date of a Commission determination to establish an applicable post-initial cap size for a swap category as determined pursuant to paragraph (h)(2) of this section, the initial cap sizes for each swap category shall be equal to the greater of the initial appropriate minimum block size for the respective swap category in Appendix F of this part or the respective cap sizes in paragraphs (h)(1)(i) through (h)(1)(v) of this section. If Appendix F of this part does not provide an initial appropriate minimum block size for a particular swap category, the initial cap size for such swap category shall be equal to the appropriate cap size as set forth in paragraphs (h)(1)(i) through (h)(1)(v) of this section.

(i) For swaps in the interest rate asset class, the publicly disseminated notional or principal amount for a swap subject to the rules in this part shall be:

(A) USD 250 million for swaps with a tenor greater than zero up to and including two years;

(B) USD 100 million for swaps with a tenor greater than two years up to and including ten years; and

(C) USD 75 million for swaps with a tenor greater than ten years.

(ii) For swaps in the credit asset class, the publicly disseminated notional or principal amount for a swap subject to the rules in this part shall be USD 100 million.

(iii) For swaps in the equity asset class, the publicly disseminated notional or principal amount for a swap subject to the rules in this part shall be USD 250 million.

(iv) For swaps in the foreign exchange asset class, the publicly disseminated notional or principal amount for a swap subject to the rules in this part shall be USD 250 million.

(v) For swaps in the other commodity asset class, the publicly disseminated notional or principal amount for a swap subject to the rules in this part shall be USD 25 million.

(2) *Post-initial cap sizes.* Pursuant to the process described in § 43.6(f)(1), the Commission shall establish post-initial cap sizes using reliable data collected by registered swap data repositories, as determined by the Commission, based on the following:

(i) A one-year window of swap transaction and pricing data corresponding to each relevant swap category recalculated no less than once each calendar year; and

(ii) The 75-percent notional amount calculation described in § 43.6(c)(3) applied to the swap transaction and pricing data described in paragraph (h)(2)(i) of this section.

(3) *Commission publication of post-initial cap sizes.* The Commission shall publish post-initial cap sizes on its Web site at *http://www.cftc.gov*.

(4) *Effective date of post-initial cap sizes.* Unless otherwise indicated on the Commission's Web site, the post-initial cap sizes shall be effective on the first day of the second month following the date of publication.

■ 4. Add § 43.6 to read as follows:

§ 43.6 Block trades and large notional off-facility swaps.

(a) *Commission determination.* The Commission shall establish the appropriate minimum block size for publicly reportable swap transactions based on the swap categories set forth in paragraph (b) of this section in accordance with the provisions set forth in paragraphs (c), (d), (e), (f) or (h) of this section, as applicable.

(b) *Swap categories.* Swap categories shall be established for all swaps, by asset class, in the following manner:

(1) *Interest rates asset class.* Interest rate asset class swap categories shall be based on unique combinations of the following:

(i) Currency by:

(A) Super-major currency;

(B) Major currency; or

(C) Non-major currency; and

(ii) Tenor of swap as follows:

(A) Zero to 46 days;

(B) Greater than 46 days to three months (47 to 107 days);

(C) Greater than three months to six months (108 to 198 days);

(D) Greater than six months to one year (199 to 381 days);

(E) Greater than one to two years (382 to 746 days);

(F) Greater than two to five years (747 to 1,842 days);

(G) Greater than five to ten years (1,843 to 3,668 days);

(H) Greater than ten to 30 years (3,669 to 10,973 days); or

(I) Greater than 30 years (10,974 days and above).

(2) *Credit asset class.* Credit asset class swap categories shall be based on unique combinations of the following:

(i) Traded Spread rounded to the nearest basis point (0.01) as follows:

(A) 0 to 175 points;

(B) 176 to 350 points; or

(C) 351 points and above;

(ii) Tenor of swap as follows:

(A) Zero to two years (0–746 days);

(B) Greater than two to four years (747–1,476 days);

(C) Greater than four to six years (1,477–2,207 days);

(D) Greater than six to eight-and-a-half years (2,208–3,120 days);

(E) Greater than eight-and-a-half to 12.5 years (3,121–4,581 days); and

(F) Greater than 12.5 years (4,582 days and above).

(3) *Equity asset class.* There shall be one swap category consisting of all swaps in the equity asset class.

(4) *Foreign exchange asset class.* Swap categories in the foreign exchange asset class shall be grouped as follows:

(i) By the unique currency combinations of one super-major currency paired with one of the following:

(A) Another super major currency;

(B) A major currency; or

(C) A currency of Brazil, China, Czech Republic, Hungary, Israel, Mexico, Poland, Russia, and Turkey; or

(ii) By unique currency combinations not included in paragraph (b)(4)(i) of this section.

(5) *Other commodity asset class.* Swap contracts in the other commodity asset class shall be grouped into swap categories as follows:

(i) For swaps that are economically related to contracts in Appendix B of this part, by the relevant contract as referenced in Appendix B of this part; or

(ii) For swaps that are not economically related to contracts in Appendix B of this part, by the following futures-related swaps—

(A) CME Cheese;

(B) CBOT Distillers' Dried Grain;

(C) CBOT Dow Jones-UBS Commodity Index;

(D) CBOT Ethanol;

(E) CME Frost Index;

(F) CME Goldman Sachs Commodity Index (GSCI), (GSCI Excess Return Index);

(G) NYMEX Gulf Coast Sour Crude Oil;

(H) CME Hurricane Index;

(I) CME Rainfall Index;

(J) CME Snowfall Index;

(K) CME Temperature Index;

(L) CME U.S. Dollar Cash Settled Crude Palm Oil; or

(iii) For swaps that are not covered in paragraphs (b)(5)(i) and (b)(5)(ii) of this section, the relevant product type as referenced in Appendix D of this part.

(c) *Methodologies to determine appropriate minimum block sizes and cap sizes.* In determining appropriate minimum block sizes and cap sizes for publicly reportable swap transactions, the Commission shall utilize the following statistical calculations—

(1) *50-percent notional amount calculation.* The Commission shall use the following procedure in determining the 50-percent notional amount calculation:

(i) Select all of the publicly reportable swap transactions within a specific swap category using a one-year window of data beginning with a minimum of one year's worth of data;

(ii) Convert to the same currency or units and use a trimmed data set;

(iii) Determine the sum of the notional amounts of swaps in the trimmed data set;

(iv) Multiply the sum of the notional amount by 50 percent;

(v) Rank order the observations by notional amount from least to greatest;

(vi) Calculate the cumulative sum of the observations until the cumulative sum is equal to or greater than the 50-percent notional amount calculated in paragraph (c)(1)(iv) of this section;

(vii) Select the notional amount associated with that observation;

(viii) Round the notional amount of that observation to two significant digits, or if the notional amount associated with that observation is already significant to two digits, increase that notional amount to the next highest rounding point of two significant digits; and

(ix) Set the appropriate minimum block size at the amount calculated in paragraph (c)(1)(viii) of this section.

(2) *67-percent notional amount calculation.* The Commission shall use the following procedure in determining the 67-percent notional amount calculation:

(i) Select all of the publicly reportable swap transactions within a specific swap category using a one-year window of data beginning with a minimum of one year's worth of data;

(ii) Convert to the same currency or units and use a trimmed data set;

(iii) Determine the sum of the notional amounts of swaps in the trimmed data set;

(iv) Multiply the sum of the notional amount by 67 percent;

(v) Rank order the observations by notional amount from least to greatest;

(vi) Calculate the cumulative sum of the observations until the cumulative sum is equal to or greater than the 67-percent notional amount calculated in paragraph (c)(2)(iv) of this section;

(vii) Select the notional amount associated with that observation;

(viii) Round the notional amount of that observation to two significant digits, or if the notional amount associated with that observation is already significant to two digits, increase that notional amount to the next highest rounding point of two significant digits; and

(ix) Set the appropriate minimum block size at the amount calculated in paragraph (c)(2)(viii) of this section.

(3) *75-percent notional amount calculation.* The Commission shall use the following procedure in determining the 75-percent notional amount calculation:

(i) Select all of the publicly reportable swap transactions within a specific swap category using a one-year window of data beginning with a minimum of one year's worth of data;

(ii) Convert to the same currency or units and use a trimmed data set;

(iii) Determine the sum of the notional amounts of swaps in the trimmed data set;

(iv) Multiply the sum of the notional amount by 75 percent;

(v) Rank order the observations by notional amount from least to greatest;

(vi) Calculate the cumulative sum of the observations until the cumulative sum is equal to or greater than the 75-percent notional amount calculated in paragraph (c)(3)(iv) of this section;

(vii) Select the notional amount associated with that observation;

(viii) Round the notional amount of that observation to two significant digits, or if the notional amount associated with that observation is already significant to two digits, increase that notional amount to the next highest rounding point of two significant digits; and

(ix) Set the appropriate minimum block size at the amount calculated in paragraph (c)(3)(viii) of this section.

(d) *No appropriate minimum block sizes for swaps in the equity asset class.* Publicly reportable swap transactions in the equity asset class shall not be treated as block trades or large notional off-facility swaps.

(e) *Initial appropriate minimum block sizes.* Prior to the Commission making a determination as described in paragraph (f)(1) of this section, the following initial appropriate minimum block sizes shall apply:

(1) *Prescribed appropriate minimum block sizes.* Except as otherwise provided in paragraph (e)(1) of this section, for any publicly reportable swap transaction that falls within the swap categories described in paragraphs (b)(1), (b)(2), (b)(4)(i), (b)(5)(i) or (b)(5)(ii) of this section, the initial appropriate minimum block size for such publicly reportable swap transaction shall be the appropriate minimum block size that is in Appendix F of this part.

(2) *Certain swaps in the foreign exchange and other commodity asset classes.* All swaps or instruments in the swap categories described in paragraphs (b)(4)(ii) and (b)(5)(iii) of this section shall be eligible to be treated as a block trade or large notional off-facility swap, as applicable.

(3) *Exception.* Publicly reportable swap transactions described in paragraph (b)(5)(i) of this section that are economically related to a futures contract in Appendix B of this part shall not qualify to be treated as block trades or large notional off-facility swaps (as applicable), if such futures contract is not subject to a designated contract market's block trading rules.

(f) *Post-initial process to determine appropriate minimum block sizes.*

(1) *Post-initial period.* After a registered swap data repository has collected at least one year of reliable data for a particular asset class, the Commission shall establish, by swap categories, the post-initial appropriate minimum block sizes as described in paragraphs (f)(2) through (f)(5) of this section. No less than once each calendar year thereafter, the Commission shall update the post-initial appropriate minimum block sizes.

(2) *Post-initial appropriate minimum block sizes for certain swaps.* The Commission shall determine post-initial appropriate minimum block sizes for the swap categories described in paragraphs (b)(1), (b)(2), (b)(4)(i) and (b)(5) of this section by utilizing a one-year window of swap transaction and pricing data corresponding to each relevant swap category reviewed no less than once each calendar year, and by applying the 67-percent notional amount calculation to such data.

(3) *Certain swaps in the foreign exchange asset class.* All swaps or instruments in the swap category described in paragraph (b)(4)(ii) of this section shall be eligible to be treated as a block trade or large notional off-facility swap, as applicable.

(4) *Commission publication of post-initial appropriate minimum block sizes.* The Commission shall publish the appropriate minimum block sizes determined pursuant to paragraph (f)(1) of this section on its Web site at *http://www.cftc.gov*.

(5) *Effective date of post-initial appropriate minimum block sizes.* Unless otherwise indicated on the Commission's Web site, the post-initial appropriate minimum block sizes described in paragraph (f)(1) of this

section shall be effective on the first day of the second month following the date of publication.

(g) *Required notification.*

(1) *Block trade election.*

(i) The parties to a publicly reportable swap transaction that has a notional amount at or above the appropriate minimum block size shall notify the registered swap execution facility or designated contract market, as applicable, pursuant to the rules of such registered swap execution facility or designated contract market, of its election to have the publicly reportable swap transaction treated as a block trade.

(ii) The registered swap execution facility or designated contract market, as applicable, pursuant to the rules of which a block trade is executed shall notify the registered swap data repository of such a block trade election when transmitting swap transaction and pricing data to such swap data repository in accordance with § 43.3(b)(1).

(2) *Large notional off-facility swap election.* A reporting party who executes an off-facility swap that has a notional amount at or above the appropriate minimum block size shall notify the applicable registered swap data repository that such swap transaction qualifies as a large notional off-facility swap concurrent with the transmission of swap transaction and pricing data in accordance with this part.

(h) *Special provisions relating to appropriate minimum block sizes and cap sizes.* The following special rules shall apply to the determination of appropriate minimum block sizes and cap sizes—

(1) *Swaps with optionality.* The notional amount of a swap with optionality shall equal the notional amount of the component of the swap that does not include the option component.

(2) *Swaps with composite reference prices.* The parties to a swap transaction with composite reference prices may elect to apply the lowest appropriate minimum block size or cap size applicable to one component reference price's swap category of such publicly reportable swap transaction.

(3) *Notional amounts for physical commodity swaps.* Unless otherwise specified in this part, the notional amount for a physical commodity swap shall be based on the notional unit measure utilized in the related futures contract market or the predominant notional unit measure used to determine notional quantities in the cash market for the relevant, underlying physical commodity.

(4) *Currency conversion.* Unless otherwise specified in this part, when the appropriate minimum block size or cap size for a publicly reportable swap transaction is denominated in a currency other than U.S. dollars, parties to a swap and registered entities may use a currency exchange rate that is widely published within the preceding two business days from the date of execution of the swap transaction in order to determine such qualification.

(5) *Successor currencies.* For currencies that succeed a super-major currency, the appropriate currency classification for such currency shall be based on the corresponding nominal gross domestic product classification (in U.S. dollars) as determined in the most recent World Bank, World Development Indicator at the time of succession. If the gross domestic product of the country or nation utilizing the successor currency is:

(i) Greater than $2 trillion, then the successor currency shall be included among the super-major currencies;

(ii) Greater than $500 billion but less than $2 trillion, then the successor currency shall be included among the major currencies; or

(iii) Less than $500 billion, then the successor currency shall be included among the non-major currencies.

(6) *Aggregation.* Except as otherwise stated in this paragraph, the aggregation of orders for different accounts in order to satisfy the minimum block trade size or the cap size requirement is prohibited. Aggregation is permissible on a designated contract market or swap execution facility if done by a person who:

(i) (A) Is a commodity trading advisor registered pursuant to Section 4n of the Act, or exempt from registration under the Act, or a principal thereof, who has discretionary trading authority or directs client accounts,

(B) Is an investment adviser who has discretionary trading authority or directs client accounts and satisfies the criteria of § 4.7(a)(2)(v) of this chapter, or

(C) Is a foreign person who performs a similar role or function as the persons described in paragraphs (h)(6)(i)(A) or (h)(6)(i)(B) of this section and is subject as such to foreign regulation; and,

(ii) Has more than $25,000,000 in total assets under management.

(i) *Eligible Block Trade Parties.*

(1) Parties to a block trade must be ''eligible contract participants,'' as defined in Section 1a(18) of the Act and the Commission's regulations. However, a designated contract market may allow:

(i) A commodity trading advisor registered pursuant to Section 4n of the Act, or exempt from registration under the Act, or a principal thereof, who has discretionary trading authority or directs client accounts,

(ii) An investment adviser who has discretionary trading authority or directs client accounts and satisfies the criteria of § 4.7(a)(2)(v) of this chapter, or

(iii) a foreign person who performs a similar role or function as the persons described in paragraphs (i)(1)(i) or (ii) of this section and is subject as such to foreign regulation, to transact block trades for customers who are not eligible contract participants if such commodity trading advisor, investment adviser or foreign person has more than $25,000,000 in total assets under management.

(2) A person transacting a block trade on behalf of a customer must receive prior written instruction or consent from the customer to do so. Such instruction or consent may be provided in the power of attorney or similar document by which the customer provides the person with discretionary trading authority or the authority to direct the trading in its account.

■ 5. Add § 43.7 to read as follows:

§ 43.7 Delegation of authority.

(a) *Authority.* The Commission hereby delegates, until it orders otherwise, to the Director of the Division of Market Oversight or such other employee or employees as the Director may designate from time to time, the authority:

(1) To determine whether swaps fall within specific swap categories as described in § 43.6(b);

(2) To determine and publish post-initial, appropriate minimum block sizes as described in § 43.6(f); and

(3) To determine post-initial cap sizes as described in § 43.4(h).

(b) *Submission for Commission consideration.* The Director of the Division of Market Oversight may submit to the Commission for its consideration any matter that has been delegated pursuant to this section.

(c) *Commission reserves authority.* Nothing in this section prohibits the Commission, at its election, from exercising the authority delegated in this section.

■ 6. Amend Appendix B to Part 43 to add the following contracts under the heading ''Energy'' after the existing listing for ''New York Mercantile Exchange New York Harbor Heating Oil'':

Appendix B to Part 43—Enumerated Physical Commodity Contracts and Other Contracts

* * * * *

Energy

* * * * *

ICE Futures SP–15 Day-Ahead Peak Fixed Price
ICE Futures SP–15 Day-Ahead Off-Peak Fixed Price
ICE Futures PJM Western Hub Real Time Peak Fixed Price
ICE Futures PJM Western Hub Real Time Off-Peak Fixed Price
ICE Futures Mid-Columbia Day-Ahead Peak Fixed Price
ICE Futures Mid-Columbia Day-Ahead Off-Peak Fixed Price
Chicago Basis
HSC Basis
Socal Border Basis
Waha Basis
ICE Futures AB NIT Basis
NWP Rockies Basis
PG&E Citygate Basis

* * * * *

■ 7. Add Appendix D to Part 43 to read as follows:

Appendix D to Part 43—Other Commodity Swap Categories

Other Commodity Group

Individual Other Commodity

Grains
- Oats
- Wheat
- Corn
- Rice
- Grains—Other

Livestock/Meat Products
- Live Cattle
- Pork Bellies
- Feeder Cattle
- Lean Hogs
- Livestock/Meat Products—Other

Dairy Products
- Milk
- Butter
- Cheese
- Dairy Products—Other

Oilseed and Products
- Soybean Oil
- Soybean Meal
- Soybeans
- Oilseed and Products—Other

Fiber
- Cotton
- Fiber—Other

Foodstuffs/Softs
- Coffee
- Frozen Concentrated Orange Juice
- Sugar
- Cocoa
- Foodstuffs/Softs—Other

Petroleum and Products
- Jet Fuel
- Ethanol
- Biodiesel
- Fuel Oil
- Heating Oil
- Gasoline
- Naphtha
- Crude Oil
- Diesel
- Petroleum and Products—Other

Natural Gas and Related Products
- Natural Gas Liquids
- Natural Gas
- Natural Gas and Related Products—Other

Electricity and Sources
- Coal
- Electricity
- Uranium
- Electricity and Sources—Other

Precious Metals
- Palladium
- Platinum
- Silver
- Gold
- Precious Metals—Other

Base Metals
- Steel
- Copper
- Base Metals—Other

Wood Products
- Lumber
- Pulp
- Wood Products—Other

Real Estate
- Real Estate

Chemicals
- Chemicals

Plastics
- Plastics

Emissions
- Emissions

Weather
- Weather

Multiple Commodity Index
- Multiple Commodity Index

Other Agricultural
- Other Agricultural

Other Non-Agricultural
- Other Non-Agricultural

■ 8. Add Appendix E to Part 43 to read as follows:

Appendix E to Part 43—Other Commodity Geographic Identification for Public Dissemination Pursuant to § 43.4(d)(4)(iii)

Registered swap data repositories are required by § 43.4(d)(4)(iii) to publicly disseminate any specific delivery point or pricing point associated with publicly reportable swap transactions in the ''other commodity'' asset class pursuant to Tables E1 and E2 in this appendix. If the underlying asset of a publicly reportable swap transaction described in § 43.4(d)(4)(iii) has a delivery or pricing point that is located in the United States, such information shall be publicly disseminated pursuant to the regions described in Table E1 in this appendix. If the underlying asset of a publicly reportable swap transaction described in § 43.4(d)(4)(iii) has a delivery or pricing point that is not located in the United States, such information shall be publicly disseminated pursuant to the countries or sub-regions, or if no country or sub-region, by the other commodity region, described in Table E2 in this appendix.

Table E1. U.S. Delivery or Pricing Points

Other Commodity Group
- Region

Natural Gas and Related Products
- Midwest
- Northeast
- Gulf
- Southeast
- Western
- Other—U.S.

Petroleum and Products
- New England (PADD 1A)
- Central Atlantic (PADD 1B)
- Lower Atlantic (PADD 1C)
- Midwest (PADD 2)
- Gulf Coast (PADD 3)
- Rocky Mountains (PADD 4)
- West Coast (PADD 5)
- Other—U.S.

Electricity and Sources
- Florida Reliability Coordinating Council (FRCC)
- Midwest Reliability Organization (MRO)
- Northeast Power Coordinating Council (NPCC)
- Reliability First Corporation (RFC)
- SERC Reliability Corporation (SERC)
- Southwest Power Pool, RE (SPP)
- Texas Regional Entity (TRE)
- Western Electricity Coordinating Council (WECC)
- Other—U.S.

All Remaining Other Commodities (Publicly disseminate the region. If pricing or delivery point is not region-specific, indicate ''U.S.'')
- Region 1—(Includes Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont)
- Region 2—(Includes New Jersey, New York)
- Region 3—(Includes Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, West Virginia)
- Region 4—(Includes Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee)
- Region 5—(Includes Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin)
- Region 6—(Includes Arkansas, Louisiana, New Mexico, Oklahoma, Texas)
- Region 7—(Includes Iowa, Kansas, Missouri, Nebraska)
- Region 8—(Includes Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming)
- Region 9—(Includes Arizona, California, Hawaii, Nevada)
- Region 10—(Includes Alaska, Idaho, Oregon, Washington)

Table E2. Non-U.S. Delivery or Pricing Points

Other Commodity Regions
- Country or Sub-Region

North America (Other than U.S.)
- Canada
- Mexico

Central America

South America
- Brazil
- Other South America

Europe
- Western Europe
- Northern Europe
- Southern Europe
- Eastern Europe (excluding Russia)

Russia

Africa
- Northern Africa
- Western Africa
- Eastern Africa
- Central Africa
- Southern Africa

Asia-Pacific
- Northern Asia (excluding Russia)

Central Asia
Eastern Asia
Western Asia
Southeast Asia
Australia/New Zealand/Pacific Islands

■ 9. Add Appendix F to Part 43 to read as follows:

Appendix F to Part 43—Initial Appropriate Minimum Block Sizes by Asset Class for Block Trades and Large Notional Off-Facility Swaps

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

INTEREST RATE SWAPS

Currency group	Tenor greater than	Tenor less than or equal to	50% Notional (in millions)
Super-Major		46 days	6,400
Super-Major	46 days	Three months (107 days)	2,100
Super-Major	Three months (107 days)	Six months (198 days)	1,200
Super-Major	Six months (198 days)	One year (381 days)	1,100
Super-Major	One year (381 days)	Two years (746 days)	460
Super-Major	Two years (746 days)	Five years (1,842 days)	240
Super-Major	Five years (1,842 days)	Ten years (3,668 days)	170
Super-Major	Ten years (3,668 days)	30 years (10,973 days)	120
Super-Major	30 years (10,973 days)		67
Major		46 days	2,200
Major	46 days	Three months (107 days)	580
Major	Three months (107 days)	Six months (198 days)	440
Major	Six months (198 days)	One year (381 days)	220
Major	One year (381 days)	Two years (746 days)	130
Major	Two years (746 days)	Five years (1,842 days)	88
Major	Five years (1,842 days)	Ten years (3,668 days)	49
Major	Ten years (3,668 days)	30 years (10,973 days)	37
Major	30 years (10,973 days)		15
Non-Major		46 days	230
Non-Major	46 days	Three months (107 days)	230
Non-Major	Three months (107 days)	Six months (198 days)	150
Non-Major	Six months (198 days)	One year (381 days)	110
Non-Major	One year (381 days)	Two years (746 days)	54
Non-Major	Two years (746 days)	Five years (1,842 days)	27
Non-Major	Five years (1,842 days)	Ten years (3,668 days)	15
Non-Major	Ten years (3,668 days)	30 years (10,973 days)	16
Non-Major	30 years (10,973 days)		15

CREDIT SWAPS

Spread group (Basis Points)	Traded tenor greater than	Traded tenor less than or equal to	50% Notional (in Millions)
Less than or equal to 175		Two years (746 days)	320
Less than or equal to 175	Two years (746 days)	Four years (1,477 days)	200
Less than or equal to 175	Four years (1,477 days)	Six years (2,207 days)	110
Less than or equal to 175	Six years (2,207 days)	Eight years and six months (3,120 days).	110
Less than or equal to 175	Eight years and six months (3,120 days).	Twelve years and six months (4,581 days).	130
Less than or equal to 175	Twelve years and six months (4,581 days).		46
Greater than 175 and less than or equal to 350.		Two years (746 days)	140
Greater than 175 and less than or equal to 350.	Two years (746 days)	Four years (1,477 days)	82
Greater than 175 and less than or equal to 350.	Four years (1,477 days)	Six years (2,207 days)	32
Greater than 175 and less than or equal to 350.	Six years (2,207 days)	Eight years and six months (3,120 days).	20
Greater than 175 and less than or equal to 350.	Eight years and six months (3,120 days).	Twelve years and six months (4,581 days).	26
Greater than 175 and less than or equal to 350.	Twelve years and six months (4,581 days).		63
Greater than 350		Two years (746 days)	66

CREDIT SWAPS—Continued

Spread group (Basis Points)	Traded tenor greater than	Traded tenor less than or equal to	50% Notional (in Millions)
Greater than 350	Two years (746 days)	Four years (1,477 days)	41
Greater than 350	Four years (1,477 days)	Six years (2,207 days)	26
Greater than 350	Six years (2,207 days)	Eight years and six months (3,120 days).	13
Greater than 350	Eight years and six months (3,120 days).	Twelve years and six months (4,581 days).	13
Greater than 350	Twelve years and six months (4,581 days).		41

FOREIGN EXCHANGE SWAPS

		Super-major currencies			
		EUR (Euro)	GBP (British pound)	JPY (Japanese yen)	USD (U.S. dollar)
Super-major currencies	EUR		6,250,000	6,250,000	18,750,000
	GBP	6,250,000*		6,250,000	6,250,000
	JPY	6,250,000*	6,250,000*		1,875,000,000
	USD	18,750,000*	6,250,000*	1,875,000,000*	
Major currencies	AUD	6,250,000*	0	10,000,000	10,000,000
	CAD	6,250,000*	0	10,000,000	10,000,000
	CHF	6,250,000*	6,250,000*	12,500,000	12,500,000
	DKK	0	0	0	0
	KRW	0	0	0	6,250,000,000
	SEK	6,250,000*	0	0	10,000,000
	NOK	6,250,000*	0	0	10,000,000
	NZD	0	0	0	5,000,000
	ZAR	0	0	0	25,000,000
Non-major currencies	BRL	0	0	0	5,000,000
	CZK	200,000,000	0	0	200,000,000
	HUF	1,500,000,000	0	0	1,500,000,000
	ILS	0	0	0	50,000,000
	MXN	0	0	0	50,000,000
	PLN	25,000,000	0	0	25,000,000
	RMB	50,000,000	0	50,000,000	50,000,000
	RUB	0	0	0	125,000,000
	TRY	6,250,000*	0	0	10,000,000*

All values that do not have an asterisk are denominated in the currency of the left hand side.
All values that have an asterisk (*) are denominated in the currency indicated on the top of the table.

OTHER COMMODITY SWAPS

Related futures contract	Initial appropriate minimum block size	Units
AB NIT Basis (ICE)	62,500	MMBtu
Brent Crude (ICE and NYMEX)	25,000	bbl.
Cheese (CME)	400,000	lbs.
Class III Milk (CME)	NO BLOCKS	
Cocoa (ICE and NYSE LIFFE and NYMEX)	1,000	metric tons
Coffee (ICE and NYMEX)	3,750,000	lbs.
Copper (COMEX)	625,000	lbs.
Corn (CBOT)	NO BLOCKS	bushels
Cotton No. 2 (ICE and NYMEX)	5,000,000	lbs.
Distillers' Dried Grain (CBOT)	1,000	short tons
Dow Jones-UBS Commodity Index (CBOT)	30,000 times index	dollars
Ethanol (CBOT)	290,000	gallons
Feeder Cattle (CME)	NO BLOCKS	
Frost Index (CME)	200,000 times index	euros
Frozen Concentrated Orange Juice (ICE)	NO BLOCKS	
Gold (COMEX and NYSE Liffe)	2,500	troy oz.
Goldman Sachs Commodity Index (GSCI), GSCI Excess Return Index (CME)	5,000 times index	dollars
Gulf Coast Sour Crude Oil (NYMEX)	5,000	bbl.
Hard Red Spring Wheat (MGEX)	NO BLOCKS	
Hard Winter Wheat (KCBT)	NO BLOCKS	
Henry Hub Natural Gas (NYMEX)	500,000	MMBtu
HSC Basis (ICE and NYMEX)	62,500	MMBtu
Hurricane Index (CME)	20,000 times index	dollars
Chicago Basis (ICE and NYMEX)	62,500	MMBtu

OTHER COMMODITY SWAPS—Continued

Related futures contract	Initial appropriate minimum block size	Units
...	...	
Lean Hogs (CME)	NO BLOCKS	
Light Sweet Crude Oil (NYMEX)	50,000	bbl.
Live Cattle (CME)	NO BLOCKS	
Mid-Columbia Day-Ahead Off-Peak Fixed Price (ICE)	250	MW/Hr.
Mid-Columbia Day-Ahead Peak Fixed Price (ICE)	4,000	MW/Hr.
New York Harbor RBOB (Blendstock) Gasoline (NYMEX)	1,050,000	gallons
New York Harbor No. 2 Heating Oil (NYMEX)	1,050,000	bbl.
NWP Rockies Basis (ICE and NYMEX)	62,500	MMBtu
Oats (CBOT)	NO BLOCKS	
Palladium (NYMEX)	1,000	troy oz.
PG&E Citygate Basis (ICE and NYMEX)	62,500	MMBtu
PJM Western Hub Real Time Off-Peak Fixed Price (ICE)	3,900	MW/Hr.
PJM Western Hub Real Time Peak Fixed Price (ICE)	8,000	MW/Hr.
Platinum (NYMEX)	500	troy oz.
Rainfall Index (CME)	10,000 times index	dollars
Rough Rice (CBOT)	NO BLOCKS	
Silver (COMEX and NYSE Liffe)	125,000	troy oz.
Snowfall Index (CME)	10,000 times index	dollars
Socal Border Basis (ICE and NYMEX)	62,500	MMBtu
Soybean (CBOT)	NO BLOCKS	
Soybean Meal (CBOT)	NO BLOCKS	
Soybean Oil (CBOT)	NO BLOCKS	
SP–15 Day-Ahead Peak Fixed Price (ICE)	4,000	MW/Hr.
SP–15 Day-Ahead Off-Peak Fixed Price (ICE)	250	MW/Hr.
Sugar #11 (ICE and NYMEX) (futures)	5,000	metric tons
Sugar #16 (ICE) (futures)	NO BLOCKS	
Temperature Index (CME)	400 times index	currency units
U.S. Dollar Cash Settled Crude Palm Oil (CME)	250	metrics tons
Waha Basis (ICE and NYMEX)	62,500	MMBtu
Wheat (CBOT)	NO BLOCKS	

Issued in Washington, DC, on May 16, 2013, by the Commission.

Christopher J. Kirkpatrick,

Deputy Secretary of the Commission.

Appendices to Procedures To Establish Appropriate Minimum Block Sizes for Large Notional Off-Facility Swaps and Block Trades—Commission Voting Summary and Statements of Commissioners

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

Appendix 1—Commission Voting Summary

On this matter, Chairman Gensler and Commissioners Chilton and Wetjen voted in the affirmative; Commissioners Sommers and O'Malia voted in the negative.

Appendix 2—Statement of Chairman Gary Gensler

I support the final block rule for swaps, which is critical to promoting transparency in this once opaque market. With this rule, the public will benefit from seeing the price and volume of the majority of swaps transactions in real time—as soon as technologically practicable—after a trade is executed. Further, with this rule the public will benefit from the competition that will arise as buyers and sellers must transact on transparent trading platforms.

The methodology for determining block sizes is appropriately tailored to vary by asset class and by underlying referenced product or rate.

The Commission also has established a phased-in approach for setting and implementing appropriate minimum block sizes. During an initial one-year period, block sizes in the interest rate and credit asset classes will be set such that 50 percent of the notional amount of a particular swap category will benefit from pre-trade and post-trade transparency. Also during this initial period, the block sizes for foreign exchange and other commodity asset classes will be based upon the block sizes that designated contract markets have set for economically related futures contracts.

After the initial period, the Commission will determine block sizes using a methodology that relies on the data collected by swap data repositories. Block sizes will be set such that 67 percent of the notional amount of a particular swap category will benefit from pre-trade transparency and enhanced post-trade transparency.

The rule also includes measures to protect the identities, market positions and business transactions of swap counterparties when their swap transactions and pricing are reported to the public.

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