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Commodity Futures Trading Commission

17 CFR Part 43

Real-Time Public Reporting of Swap Transaction Data; Proposed Rule

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 43

RIN 3038–AD08

Real-Time Public Reporting of Swap Transaction Data

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commodity Futures Trading Commission ("Commission") is proposing rules to implement new statutory provisions enacted by Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act"). Specifically, in accordance with Section 727 of the Dodd-Frank Act, the Commission is proposing rules to implement a new framework for the real-time public reporting of swap transaction and pricing data for all swap transactions. Additionally, the Commission is proposing rules to address the appropriate minimum size and time delay relating to block trades on swaps and large notional swap transactions.

DATES: Comments must be received by February 7, 2011.

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

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

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

The Commission reserves the right, but shall not have the obligation, to review, pre-screen, filter, redact, refuse, or remove any or all of your submission from www.cftc.gov that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed from the Commission's Internet Web site, but that contain comments on the merits of the rulemaking, will be retained in the public comment file and will be considered as required under the Administrative Procedure Act, 5 U.S.C. 551 *et seq.,* and other applicable laws, and may be accessible under the Freedom of Information Act, 5 U.S.C. 552.

FOR FURTHER INFORMATION CONTACT: Thomas Leahy, Associate Director, Division of Market Oversight, 202–418–5278, *tleahy@cftc.gov;* or Jeffrey L. Steiner, Special Counsel, Division of Market Oversight, 202–418–5482, *jsteiner@cftc.gov*; Commodity Futures Trading Commission, Three Lafayette Center, 1155 21st Street, NW., Washington, DC 20581.

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I. Background

On July 21, 2010, President Obama signed the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act").[2] Title VII of the Dodd-Frank Act[3] amended the Commodity Exchange Act ("CEA")[4] to establish a comprehensive, new regulatory framework for swaps and security-based swaps.[5] The legislation was enacted to reduce risk, increase transparency and promote market integrity within the financial system by, among other things: (1) Providing for the

[1] 17 CFR 145.9.

[2] *See* Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 1376 (2010). The text of the Dodd-Frank Act may be accessed at *http://www.cftc.gov./LawRegulation/OTCDERIVATIVES/index.htm.*

[3] Pursuant to Section 701 of the Dodd-Frank Act, Title VII may be cited as the "Wall Street Transparency and Accountability Act of 2010."

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

[5] Rules governing the reporting and dissemination of security-based swaps are the subject of a separate and forthcoming rulemaking by the Securities and Exchange Commission ("SEC").

registration and comprehensive regulation of swap dealers 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 Commodity Futures Trading Commission's ("Commission" or "CFTC") rulemaking and enforcement authorities with respect to, among others, all registered entities and intermediaries subject to the Commission's oversight.

Accordingly, in order to ensure the proper implementation of the new regulatory framework, Section 727 of the Dodd-Frank Act created Section 2(a)(13) of the CEA, which requires the Commission to promulgate rules that provide for the public availability of swap transaction and pricing data in real-time in such form and at such times as the Commission determines appropriate to enhance price discovery.[6] Under new Section 2(a)(13)(A) of the CEA, the definition of "real-time public reporting" means reporting "data relating to a swap transaction, including price and volume, as soon as technologically practicable after the time at which the swap transaction has been executed."

Sections 2(a)(13)(C)(i) through (iv) of the CEA set out the four types of swaps for which transaction and pricing data must be reported to the public in real-time: (i) Swaps that are subject to the mandatory clearing requirement[7] (including those swaps that may qualify for a non-financial end-user exception from the mandatory clearing requirement);[8] (ii) swaps that are not subject to the mandatory clearing requirement but are cleared at a registered derivatives clearing organization ("DCO"); (iii) swaps that are not cleared at a registered DCO and which are reported to a registered swap data repository ("SDR") or to the Commission pursuant to Section 2(h)(6) of the CEA; and (iv) swaps that are "determined to be required to be cleared" under Section 2(h)(2) of the CEA but are not cleared. The four categories described in Section 2(a)(13)(C) of the CEA cover all swaps and, therefore, the real-time reporting requirements apply to all swaps, including those swaps executed on a registered swap execution facility ("SEF") or a registered designated contract market ("DCM," together with a SEF, a "swap market") and those swaps executed bilaterally between counterparties and not pursuant to the rules of a SEF or DCM ("off-facility swaps").[9]

With regard to swaps described in Sections 2(a)(13)(C)(i) and (ii) of the CEA, Section 2(a)(13)(E) of the CEA provides that the Commission shall prescribe rules that: (i) Ensure such information does not identify the participants; (ii) specify the criteria for determining what constitutes a large notional swap transaction (block trade) for particular markets and contracts; (iii) specify the appropriate time delay for reporting large notional swap transactions (block trades) to the public; and (iv) take into account whether public disclosure will materially reduce market liquidity. CEA Section 2(a)(13)(E) does not state explicitly that the proposed rules must contain similar provisions for those swaps described in Sections 2(a)(13)(C)(iii) and (iv). However, in applying its authority under 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," the Commission is authorized to prescribe similar rules to those provisions in Section 2(a)(13)(E) for off-facility swap transactions described in Sections 2(a)(13)(C)(iii) and (iv).[10]

II. Explanation of the Proposed Rules

A. Overview

1. Introduction

The Commission proposes to create a new part 43 of its regulations, implementing the provisions of Section 2(a)(13) of the CEA. The proposed rules in part 43 set out: (1) The entities or persons that shall be responsible for reporting swap transaction and pricing data; (2) the entities or persons that shall be responsible for publicly disseminating such data; (3) the data fields and guidance on the appropriate order and format for data to be reported to the public in real-time; (4) the appropriate minimum size and time delay for block trades and large notional swaps; and (5) the proposed effective date and implementation schedule for the proposed rules.

The proposed rules reflect consultation with staff of the Securities and Exchange Commission (the "SEC")[11] and staff of the Board of Governors of the Federal Reserve.[12] Staff from each of these agencies has provided verbal and/or written comments and the proposed rules incorporate elements of the comments provided. The proposed rules have been further informed by (i) the joint roundtable conducted by CFTC staff and staff of the SEC on September 14, 2010 (the "Roundtable");[13] (ii) public comments posted on the Commission's Internet Web site;[14] and (iii) CFTC staff meetings with market participants.[15]

The SEC is adopting rules related to the real-time reporting of security based swaps as required under Section 763 of the Dodd-Frank Act. Understanding that the Commission and the SEC regulate different products and markets and, as such may be proposing alternative regulatory requirements, the Commission requests comments on the impact of any differences between the Commission's and the SEC's approach to the regulation and reporting of swaps and security-based swaps and the public dissemination of swap transaction and

[6] Section 2(a)(13)(B) of the CEA states that "[t]he purpose of this section is to authorize the Commission to make swap transaction and pricing data available to the public in such form and at such times as the Commission determines appropriate to enhance price discovery."

It is notable that the CEA is silent as to the appropriate method through which real-time public reporting must occur.

[7] The mandatory clearing requirement is found in Section 2(h)(1) of the CEA, as added by Section 723(a)(3) of the Dodd-Frank Act.

[8] Section 2(h)(7) of the CEA provides the non-financial end-user exception from the mandatory clearing requirement.

[9] The legislative history of the Dodd-Frank Act also suggests that the real-time reporting requirements of Section 2(a)(13) apply to all swaps. Senate Agriculture Committee Chairwoman Blanche Lincoln stated during Senate deliberations that "[t]he major components of the derivatives title include: 100 percent reporting of swaps and security-based swaps, mandatory trading and clearing of standardized swaps and security-based swaps and real-time price reporting for all swap transactions—those subject to mandatory trading and clearing as well as those subject to the end-user clearing exemption and customized swaps." 156 Cong. Rec. S5,920 (daily ed. July 15, 2010) (statement of Sen. Blanche Lincoln).

[10] In addition, the Commission is required by Section 2(a)(13)(C)(iii) of the CEA to prescribe real-time public reporting requirements for off-facility swaps "in a manner that does not disclose the business transactions and market positions of any person."

[11] Section 763 of the Dodd-Frank Act authorizes the SEC to promulgate rules "to provide for the public availability of security-based swap transaction, volume, and pricing data * * *."

[12] *See* Section 712(a)(1) of the Dodd-Frank Act requires staff to consult with the SEC and other prudential regulators.

[13] The transcript from the Roundtable (the "Roundtable Tr.) is available at: *http://www.cftc.gov/ucm/groups/public/@swaps/documents/file/derivative18sub091410.pdf.*

[14] Such comments are available at: *http://www.cftc.gov/LawRegulation/DoddFrankAct/OTC_18_RealTimeReporting.html.*

[15] A list and description of such meetings is available at: *http://www.cftc.gov/LawRegulation/DoddFrankAct/ExternalMeetings/index.htm.*

pricing data in real-time. In addition, the Commission requests specific comment on the following issues:

- Would the regulatory approach of the Commission in this proposed rulemaking, pursuant to Section 727 of the Dodd-Frank Act, and the SEC's proposed rulemaking, pursuant to Section 763 and 766 of the Dodd-Frank Act, result in duplicative or inconsistent requirements on the part of market participants to both regulatory regimes or result in gaps between those regimes? If so, in what way should these duplications, inconsistencies or gaps be minimized?
- Do commenters believe that the proposed approaches by the Commission and the SEC for the real-time reporting and public dissemination of swap transaction and pricing data are comparable? If not, why? Are there approaches that could make the real-time reporting and public dissemination of swap transaction and pricing data more comparable? If so, what?
- Do commenters believe that it would be appropriate for the Commission to adopt an approach proposed by the SEC that differs from the Commission's proposal? If so, which one(s)? The Commission requests that commenters provide data, to the extent possible, to support any suggested approaches.

2. Parties Responsible for Reporting Swap Transaction and Pricing Data to a Registered Entity

Section 2(a)(13)(F) of the CEA provides that the parties to a swap (including agents of the parties to a swap) shall be responsible for reporting swap transaction information to the appropriate registered entity [16] in a timely manner as may be prescribed by the Commission.[17] For off-facility swaps, the Commission's proposal places the requirement to report the swap transaction and pricing data in real-time to a registered entity (*i.e.,* a registered SDR that accepts and publicly disseminates real-time swap transaction and pricing data in real-time) in a manner similar to that in which all swap transaction information for uncleared swaps would be reported to a registered SDR pursuant to Section 4r(a)(3) of the CEA.[18] With respect to swaps that are executed on a swap market, the Commission's proposal provides that if the parties to a swap execute a transaction on a swap market, then the transacting parties' reporting requirements under Section 2(a)(13)(F) of the CEA are satisfied. The Commission views the real-time swap transaction and pricing data that is sent to a real-time disseminator and the swap information that is sent to a registered SDR as two separate and distinct data streams.[19]

3. Parties Responsible for Publicly Disseminating Swap Transaction and Pricing Data in Real-Time

Section 2(a)(13)(D) of the CEA authorizes the Commission to require registered entities "to publicly disseminate the swap transaction and pricing data." With respect to all off-facility swaps, the Commission's proposal requires that reporting parties send swap transaction and pricing data to registered SDRs to publicly disseminate such data in real-time. With respect to swaps that are executed on a swap market, the Commission's proposal requires that swap markets publicly disseminate swap transaction and pricing data either through a registered SDR or a third-party service provider. Under the proposal, if a swap market sends the swap transaction and pricing data to a registered SDR, the swap market is responsible for ensuring that such data is sent in a timely manner for public dissemination. Alternatively, if a swap market sends the swap transaction and pricing data to a third-party service provider for the public dissemination of such data, the swap market does not absolve itself from or satisfy the requirement to publicly disseminate swap transaction and pricing data until such time as the third-party service provider actually disseminates such data. Indeed, under the alternative, a swap market must ensure that the third-party service provider publicly disseminates the data in the manner set forth in the proposal.[20]

The Commission requests comment on all aspects of the proposed rules, as well as comment on the specific provisions, issues and questions highlighted in the discussion in Section B below.

4. Proposed Effective Date and Implementation Schedule

The Dodd-Frank Act requires the Commission to promulgate rules to implement these provisions by July 15, 2011.[21] Proposed part 43 is designed to provide clarity as to the real-time reporting and public dissemination requirements with respect to all swap transaction and pricing data. The Commission acknowledges that the systems for reporting and public dissemination described in proposed part 43 may take a significant amount of time and resources to implement effectively. While the Commission is fully committed to implementing Congress' directive to require real-time public reporting of all swaps and will adopt final rules by July 15, 2011, participants will need a reasonable amount of time in which to acquire or configure the necessary systems, engage

[16] Section 1a(40) of the CEA, as amended by Section 721(a) of the Dodd-Frank Act, defines "registered entity" to include SEFs, DCMs and SDRs, but does not include swap dealers and MSPs. Section 1a(40) also defines registered entity to include DCOs. The Commission has determined not to apply this requirement to DCOs because it believes that the value of timely public dissemination outweighs the benefit of waiting until a swap is presented to a clearing organization.

[17] Sections 4s(f)(1)(A) and 4s(f)(2) of the CEA, provide the Commission with broad authority to adopt rules governing the reporting of all swap transaction information for swap dealers and MSPs. Specifically, Section 4s(f)(1)(A) of the CEA provides that "[e]ach registered swap dealer and major swap participant shall make such reports as are required by the Commission by rule or regulation regarding the transactions and positions and financial condition of the registered swap dealer or major swap participant * * *" Section 4s(f)(2) of the CEA provides that "[t]he Commission shall adopt rules governing reporting and recordkeeping for swap dealers and major swap participants." Additionally, Sections 4s(h)(1)(D) and 4s(h)(3)(D) of the CEA provide the Commission with rulemaking authority to establish business conduct standards and requirements relating to the real-time reporting requirements on swap dealers and major swap participants.

[18] Section 4r(a)(3) of the CEA provides that for swaps in which only one counterparty is a swap dealer or MSP, the swap dealer or MSP is required to report the swap to a registered SDR. For swaps in which only one counterparty is a swap dealer and the other is an MSP, the swap dealer is required to report to a registered SDR. For all other swaps, Section 4r(a)(3) provides that the counterparties to the swap shall select a counterparty to report to a registered SDR.

[19] The real-time reporting requirements pursuant to Section 2(a)(13) of the CEA are separate and apart from the requirements to report swap transaction information to a registered SDR. The reporting requirements for all swap transaction information to an SDR are found in Sections 2(a)(13)(G) and 4r(a)(1) of the CEA. Specifically, Section 2(a)(13)(G) of the CEA provides that [e]ach swap, (whether cleared or uncleared) shall be reported to a registered swap data repository." In addition, Section 4r(a)(1) provides that "[e]ach swap that is not accepted for clearing by any [DCO] shall be reported to [an SDR] described in section 21 [of the CEA];" or if no SDR exists, to the Commission.

[20] In considering different schemes of real-time public reporting requirements, the Commission also considered a "first touch" method of reporting whereby the swap dealer, MSP or swap market where a swap transaction occurred would have been required to real-time report the transaction by posting the transaction on its Internet Web site or through other electronic means. The Commission chose not to pursue a "first touch" method because it would likely lead to greater fragmentation of market data, increased search costs for market participants and potential concerns with the quality of the data that would be publicly disseminated.

[21] *See* Section 754 of the Dodd-Frank Act which states: "Unless otherwise provided in this title, the provisions of this subtitle shall take effect on the later of 360 days after the date of enactment of this subtitle or, to the extent a provision of this subtitle requires a rulemaking, not less than 60 days after publication of the final rule or regulation implementing such provision of this subtitle."

and train the necessary staff and develop and implement the necessary policies and procedures to implement the proposed rules. The Commission's proposed rules provide that appropriate minimum block sizes will be published by registered SDRs beginning in January 2012.[22] Accordingly, it is anticipated that registered entities and registrants will have begun their compliance by that time.

The Commission requests comment on what would be an appropriate implementation schedule (*i.e.,* effective date) for the final rules. In addition, the Commission requests specific comment on the following issues:

- How do commenters believe that an appropriate implementation schedule should be structured? Should there be a phased-in approach? Please provide specific examples.
- Do commenters believe that different types of reporting parties (*e.g.,* swap dealers, MSPs and end-users) should have different implementation timeframes? If so, why and what timeframes? If not, why and what timeframe?
- Do commenters believe that different types of execution (*e.g.,* SEF, DCM and off-facility) should have different implementation timeframes? If so, why and what timeframes? If not, why and what timeframe?
- How long would swap dealers, MSPs and end-users need to establish the appropriate connections to report off-facility swaps to registered SDRs? Please explain.
- How long after registration would registered SDRs need to accept and publicly disseminate swap transaction and pricing data in real-time? Please explain.
- Should there be different implementation timeframes for particular asset classes, markets or contracts? If so, what criteria should be used to select those asset classes, markets or contracts?
- Should the implementation timeframes for real-time reporting and public dissemination requirements for swaps and security-based swaps be coordinated?
- Should there be different implementation timeframes for the block trade and large notional swap rules explained in the discussion relating to proposed § 43.5 below?

[22] *See* discussion relating to proposed § 43.5(g)(4) below.

B. Section-by-Section Analysis

1. Proposed Section 43.1—Purpose, Scope and Rules of Construction

The proposed rules apply to all swaps as defined in Section 1a(47) of the CEA and as may be further defined by Commission regulations. The categories of swaps described in Section 2(a)(13)(C) of the CEA account for all swaps, whether cleared or uncleared, and regardless of whether a swap is executed on a SEF, DCM or off-facility. The proposed rules apply real-time reporting requirements to SEFs, DCMs, SDRs and the parties of a swap, including registered or exempt swap dealers, registered or exempt MSPs and U.S.-based end-users.

The Commission requests comment generally on the scope of transactions covered by this part. In addition, the Commission requests specific comment on which parties to a swap should be covered by the reporting requirements in this part in order to enhance price discovery?

2. Proposed Section 43.2—Definitions

Proposed § 43.2 contains definitions for, inter alia, the following terms: "Affirmation"; "As Soon As Technologically Practicable"; "Asset Class"; "Confirmation"; "Execution"; "Public Dissemination" or "Publicly Disseminate"; "Real-Time Disseminator"; "Reportable Swap Transaction"; "Swap Instrument"; and "Third-Party Service Provider".

Affirmation

Proposed § 43.2(b) defines "affirmation" as the process (electronically, orally, in writing or otherwise) in which the parties to a swap verify that they agree on the primary economic terms of a swap, but not necessarily all terms of the swap. The affirmation of the swap is only the agreement to the primary economic terms of the swap, as distinguished from the confirmation of a swap in which all of the terms of the swap are agreed to in writing to memorialize the agreement of all parties to the swap. Such confirmation legally supersedes any previous agreement of the parties.

Affirmation and execution can, but do not necessarily, occur at the same time. In either case, affirmation and execution always occur prior to the confirmation of a swap. One further distinction is that "affirmation", as defined in the proposed rules, differs from "confirmation by affirmation". Some confirmation service vendors (*e.g.,* Deriv/SERV, MarkitSERV) have used the term "affirmation" to describe the process by which one party to a swap (usually an end-user) electronically acknowledges its assent to complete swap terms submitted to the vendor by its counterparty (usually a dealer). This process allows for electronic confirmation even when one party to the swap does not have the systems necessary to submit swap terms to the vendor electronically. Upon such assent to complete swap terms, a swap is legally confirmed (*i.e.,* "confirmation by affirmation"). Parties that use a confirmation by affirmation process previously will have affirmed the primary economic terms of the trade and therefore executed the trade pursuant to the definitions in the proposed rules.

As Soon as Technologically Practicable

Section 2(a)(13)(A) of the CEA defines "real-time public reporting" to mean "to report 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." "As soon as technologically practicable" and "executed" are not defined in the Dodd-Frank Act.[23]

The proposed rules provide definitions for "as soon as technologically practicable" and "executed". Proposed § 43.2(d) defines the term "as soon as technologically practicable" to mean as soon as possible, taking into consideration the prevalence of technology, implementation and use of technology by comparable market participants. In defining "as soon as technologically practicable", the Commission has considered that this term may have different interpretations for different parties to a swap (*i.e.,* swap dealers, MSPs and end-users), for different types of swaps (*e.g.,* energy swaps, credit default swaps, interest rate swaps, etc.) and for different methods of execution (*i.e.,* SEFs, DCMs and off-facility). Staff considered real-time reporting regimes that are currently in place, comments by market participants at external meetings, the discussions at the Roundtable and the potential costs to market participants, among other things. Cost, access to the latest technology and other factors may prevent some of the fastest, most efficient technology from being available to all market participants. Because of these factors, the Commission recognizes that what is "technologically practicable" for one party to a swap may not be the same as what is "technologically practicable" for another party to a swap.

[23] The terms "execution" and "executed" are discussed below.

The Commission requests comment on whether the term should account for other considerations not presently identified in the definition.

Asset Class

Proposed § 43.2(e) defines the term "asset class" to mean the broad category of goods, services or commodities underlying a swap. The asset classes include, but are not limited to, the following five major categories: interest rate, currency, credit, equity and other commodity.[24] In proposing these five major categories, the Commission considered market statistics that distinguish between those general types of underlying instruments, as well as market infrastructures that have been established for these five types of instruments. The interest rate asset class would encompass the underlying of any swap which is primarily based on one or more reference rates, such as swaps of payments determined by fixed and floating rates. The currency asset class would encompass the underlying of any swap that is primarily based on rates of exchange between different currencies, changes in such rates or other aspects of such rates including any swap that is a foreign exchange option. This category includes foreign exchange swaps defined in Section 1a(25) of the CEA. The credit asset class would encompass the underlying of any swap that is primarily based on one instruments of indebtedness, including without limitation any swap primarily based on one or more broad-based indices related to instruments of indebtedness and any swap that is an index credit default swap or a total return swap on one or more indices of debt instruments. The equity asset class would encompass the underlying of any swap that is primarily based on equity securities, including, without limitation, any swap primarily based on one or more broad-based indices of equity securities and any total return swap on one or more equity indices. The other commodity asset class would encompass the underlying of any swap not included in the credit, currency, equity or interest rate asset class categories, including, without limitation, any swap for which the primary underlying notional item is a physical commodity or the price or any other aspect of a physical commodity.[25]

The Commission requests comment on the following issues related to the definition of asset class:

- Do commenters agree with the proposed asset class categories? If not, why? Should there be any additional categories of asset classes? Should any categories of asset classes in the proposed definition be changed or removed?
- Do commenters agree on the proposed method of allocating swaps among asset class categories? If not, why?
- Should the Commission classify cross-currency rate swaps as belonging to the interest rate asset class or to the currency asset class? Please explain.
- Should the asset class for other commodity be divided further (*e.g.,* agricultural commodity, energy commodity, *etc.*)? If so, how should it be divided?

Confirmation

Proposed § 43.2(g) defines the term "confirmation" to mean the consummation (electronically or otherwise) of legally binding documentation (electronic or otherwise) that memorializes the agreement of the parties to all terms of a swap. A confirmation must be in writing (whether electronic or otherwise) and must legally supersede any previous agreement (electronic or otherwise). A confirmation between parties to a swap may occur in various ways including via facsimile, via "confirmation by affirmation" and via electronic matching. A confirmation will contain all of the terms to a swap that have been agreed to between two parties, whereas an affirmation contains a subset of the terms of the confirmation.

Execution

As noted above, swap counterparties and reporting entities must report "as soon as technologically practicable after the time at which the swap transaction has been executed."[26] Proposed § 43.2(k) defines "execution" as the agreement between parties to the terms of a swap that legally binds the parties to such terms under applicable law. An agreement may be in electronic form (*e.g.,* on a swap market or via instant message), oral (*e.g.,* over the phone), in writing (*e.g.,* a bespoke, structured transaction where documents are exchanged) or in some other format not contemplated at this time. Execution immediately follows or is simultaneous with the pre-execution affirmation of the swap. The Commission notes that the proposed definition of execution does not attempt to define what constitutes a legally enforceable contract, only that execution occurs if and when the parties have formed a legally enforceable contract (which is a matter to be decided by applicable law).[27] If pre-execution affirmation of the primary economic terms creates a legally enforceable contract under applicable law, then it would also constitute execution. If pre-execution affirmation does not create a legally enforceable contract, then execution would not have occurred at that stage.

Public Dissemination and Publicly Disseminate

Proposed § 43.2(r) defines "public dissemination" and "publicly disseminate" to mean publishing and making available swap transaction and pricing data in a non-discriminatory manner, through the Internet or other electronic data feed that is widely published and in a machine-readable format. The definition encompasses the non-delayed provision of such data to the public, including market participants, end-users, data vendors and news media.

Real-Time Disseminator

Proposed § 43.2(s) defines "real-time disseminator" to mean any registered SDR or third-party service provider that is responsible for accepting and publicly disseminating swap transaction and pricing data in real-time from multiple sources, in accordance with proposed part 43.

Reportable Swap Transaction

Proposed § 43.2(v) defines "reportable swap transaction" to mean any executed swap, novation, swap unwind, partial novation, partial swap unwind or such post-execution event that affects the price of a swap. A reportable swap transaction includes not only the execution of a swap contract, but also certain price-affecting events that occur over the "life" of a swap. The Commission believes novations and swap unwinds are events that clearly affect the price of the swap and, therefore, should be publicly disseminated in real-time. In addition to novations and swap unwinds, other price-affecting events over the life of a swap may be considered reportable swap transactions. For example, certain amendments that change the price terms of a swap may be subject to the real-time public reporting requirements. Further, the Commission recognizes that certain

[24] Proposed § 43.2(e) also provides that the Commission may determine other asset classes.

[25] Proposed § 43.2(q) defines "other commodity" to mean any commodity that cannot be grouped in one of the other four asset classes (*i.e.,* interest rate, currency, credit, equity). Other commodities may include physical commodities (*e.g.,* natural gas, oil) but may also include non-physical commodities (*e.g.,* weather and property).

[26] Section 2(a)(13)(A) of the CEA.

[27] Because contract law varies by jurisdiction, the time at which a legally enforceable contract is formed may differ based on the applicable state or local law.

market participants may enter into a swap and then immediately enter into an amendment to the swap that alters the price terms, thus reducing transparency and price discovery. The Commission believes that including such post-execution price-affecting events to be reportable for the purposes of real-time public reporting will enhance the transparency and price discovery attributes of swaps trading.

The Commission requests comments on other post-execution events that could affect price and that should be considered reportable swap transactions.

Swap Instrument

Proposed § 43.2(y) defines "swap instrument" to mean each swap in the same asset class with the same or similar characteristics. Under proposed § 43.5, discussed below, registered SDRs would determine the appropriate minimum block size based on the type of swap instrument. After a registered SDR sets the appropriate minimum block size for a swap instrument and groups a specific swap contract that is listed on a swap market into a category of swap instrument, a swap market that lists such swap contract would then reference such appropriate minimum block size when adopting the minimum block trade size for such swap. The Commission believes that it is appropriate to group particular swap contracts into various broad categories of swap instruments in determining the appropriate minimum block size.

The Commission is requesting general and specific comments on swap instruments, as described in the discussion of appendix A to proposed part 43 below.

Third-Party Service Provider

Proposed § 43.2(bb) defines "third-party service provider" to mean an entity, other than a registered SDR, that publicly disseminates swap transaction and pricing data in real-time on behalf of a swap market or, in the case of an off-facility swap where there is no registered SDR available to publicly disseminate the data in real-time, on behalf of a reporting party.

3. Proposed Section 43.3—Method and Timing for Real-Time Public Reporting

Section 2(a)(13) of the CEA does not provide an explicit method or timeframe in which swap transaction and pricing data must be reported to the public in real-time. Instead, Section 2(a)(13) of the CEA provides the Commission with authority to prescribe rules requiring: (1) The parties to a swap transaction (including agents of the parties) to report swap transaction and pricing data to the appropriate registered entity in a timely manner;[28] and (2) registered entities to publicly disseminate swap transaction and pricing data.[29] In addition, Section 2(a)(13)(B) of the CEA provides that the Commission is authorized 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. Accordingly, the Commission's proposal in § 43.3 sets out both the manner in which parties to a swap must report the swap transaction and pricing data to the appropriate registered entity, as well as the manner in which registered entities must publicly disseminate such data. In addition, proposed § 43.3 sets out requirements for: (1) The acceptable forms of media through which swap transaction and pricing data must be made available to the public; (2) the appropriate methods to cancel or correct erroneous or omitted data that has been publicly disseminated; (3) the hours of operation that swap markets and registered SDRs must maintain for the public dissemination of swap transaction and pricing data; and (4) the recordkeeping of data by swap markets and registered SDRs.

i. Responsibilities of the Reporting Party To Report Data

As discussed above, Section 2(a)(13)(F) of the CEA provides that the parties to a swap (including agents of the parties to a swap) shall be responsible for reporting swap transaction information to the appropriate registered entity. In general, proposed § 43.3(a) provides that the "reporting party" to each swap transaction shall be responsible for reporting any reportable swap transaction to a registered entity as soon as technologically practicable.[30] Proposed § 43.2(w) defines "reporting party" to mean a party to a swap with the duty to report a reportable swap transaction to a registered entity. Under this proposal, the determination of who has this duty depends on whether the reportable swap transaction is executed on a swap market. For reportable swap transactions that are executed on a swap market, proposed § 43.3(a)(2)(i) provides that the requirement for parties to report the swap transaction and pricing data is itself satisfied by the act of execution on the swap market. The Commission believes that this approach should result in the timeliest and most efficient method of reporting swap transaction and pricing data, since swap markets by definition would have immediate access to the most accurate execution information related to each swap transaction (*e.g.,* information on the counterparties to the swap, date and time of execution, bid-offer information, final pricing information, whether the swap should be deemed a block trade, *etc.*). Proposed § 43.3(a)(2)(ii) recognizes that block trades may not be executed on a swap market, but would be effective pursuant to the rules of the swap market. For that reason, this section would require the reporting party to the block trade to report such trades to the swap market in accordance with the rules of the swap market and proposed § 43.5.

For off-facility swaps, proposed § 43.3(a)(3) provides that, except otherwise provided in proposed § 43.5, the reporting party must report (*i.e.,* transmit or otherwise electronically transfer) swap transaction and pricing data to a registered SDR as soon as technologically practicable. Once a reporting party has reported its swap transaction and pricing data to a registered SDR, the reporting party has satisfied its requirement to report pursuant to Section 2(a)(13)(F) of the CEA and this proposed part 43.

The Commission believes that advanced technologies presently exist through which a reporting party to an off-facility swap can send swap transaction and pricing data to a registered SDR as soon as technologically practicable. Through discussions with market participants, the Commission understands that many swaps are executed over the telephone and then inputted manually into electronic recording systems. The Commission believes that reporting parties should remain current with changes in technology and regularly update their technology infrastructure to decrease the time of transmission of swap transaction and pricing data to real-time disseminators.[31]

[28] *See* Section 2(a)(13)(F) of the CEA.

[29] *See* Section 2(a)(13)(D) of the CEA. As discussed below, the Commission's proposal requires registered entities to publicly disseminate swap transaction and pricing data "as soon as technologically practicable". *See* Section 2(a)(13)(A).

[30] The Commission proposes to define "timely manner" to mean "as soon as technologically practicable".

[31] Two examples of how reporting technology can improve over time are seen in the evolution of (1) the Financial Industry Regulatory Authority's ("FINRA") Trade Reporting and Compliance Engine ("TRACE"), and (2) the reporting of over-the-counter ("OTC") equity securities. Under the reporting rules for TRACE, the current maximum reporting time requirement for publicly reporting transaction and pricing data for corporate bonds is 15 minutes. FINRA staff has noted in meetings with

Continued

The determination of which party to a swap will be deemed the reporting party for the purposes of proposed § 43.3(a) chiefly depends on the types of entities that are parties to the swap.

Specifically, proposed § 43.3(a)(3) provides that for off-facility swaps:

- If only one party is a swap dealer or MSP, the swap dealer or MSP shall be the reporting party.
- If one party is a swap dealer and the other party is an MSP, the swap dealer shall be the reporting party.
- If both parties are swap dealers, the swap dealers shall designate which party shall be the reporting party.
- If both parties are MSPs, the MSPs shall designate which party shall be the reporting party.
- If neither party is a swap dealer or an MSP, the parties shall designate which party (or its agent) shall be the reporting party.

Through discussions with market participants at the Roundtable and external meetings, the Commission believes that swap dealers and MSPs are more likely to have the infrastructure and resources available to report their swap transaction information to a registered SDR in a quicker period of time than parties to an end-user-to-end-user, off-facility swap. Indeed, the Commission recognizes that non-financial end-users do not frequently enter into swap transactions and may not have the technology readily available to report swap transaction and pricing data for the purposes of the real-time reporting requirements under Section 2(a)(13)(F) of the CEA, and therefore, may lead to longer reporting time periods from execution for such reporting parties.

The Commission understands that the requirement to report swap transaction and pricing data as soon as technologically practicable may increase costs for reporting parties as a result of such parties having to upgrade their technology infrastructures. Based on discussions with market participants, however, the Commission believes that technology solutions may develop, such as web portals and other Internet-based interfaces, which will aide reporting parties in complying with the requirements proposed in § 43.3(a) and reduce the cost burden associated with their compliance. In addition, the Commission believes that the total number of end-user to end-user swaps will be small and thus the costs imposed on end-users will likely be lower relative to the total number of swaps.[32]

The Commission's proposal with respect to off-facility swaps is consistent with the reporting requirements for the reporting of uncleared swaps to a registered SDR under Section 4r(a) of the CEA.[33] After consulting with market participants at the Roundtable and in meetings with market participants, the Commission believes that this consistency may reduce technology infrastructure costs for swap dealers and MSPs, particularly since swap dealers and MSPs will likely establish direct connectivity to registered SDRs to satisfy the reporting requirements for the reporting of uncleared swaps under Section 4r(a) of the CEA.

In the event that no registered SDR exists or is available to accept and publicly disseminate swap transaction and pricing data, proposed § 43.3(a)(4) establishes a special rule for the real-time reporting of these swaps. Specifically, proposed § 43.3(a)(4) provides that the reporting party may report such data to a third-party service provider, which provides public dissemination services. Similar to the requirements placed on swap markets when such markets choose to publicly disseminate through a third-party service provider, the reporting party will be required to ensure that the swap transaction and pricing data is publicly disseminated in real-time.

The Commission requests comment related to the responsibilities of the parties to a swap to report swap transaction and pricing data. In addition, the Commission requests specific comment on the following issues:

- Should the Commission establish maximum timeframes in which reporting parties must report to a registered SDR that accepts and publicly disseminates swap transaction and pricing data in real-time (*e.g.,* as soon as technologically practicable but no later than five minutes)? If so, what should the maximum timeframes be and how should they be determined?
- Do commenters believe that the rules should require that any additional parties to a swap be the reporting party for a swap? If so, which parties and in which circumstances?
- Should the Commission's final rules address the reporting and public dissemination of swap transaction and pricing data for swaps, which are transacted between two non-U.S. persons? If so, how should the Commission's final rules address these situations?
- In off-facility swap transactions where a non-U.S. swap dealer or non-U.S. MSP transacts with a U.S.-based end-user, which party to the swap should have the obligation to report to a real-time disseminator? Are there other situations involving non-U.S. parties where this issue may arise? How should the Commission address these situations in its final rules?
- Should there be an alternative method of reporting and subsequently disseminating swap transaction and pricing data in real-time when no registered SDR is available to accept and publicly disseminate such data? If there is no registered SDR available and there is no third-party service provider available to accept and publicly disseminate data for a swap transaction, what should the real-time reporting requirement be for such transaction?
- Is there a better or more efficient alternative to have swap transaction and pricing data reported by a reporting party to a registered SDR for public dissemination in real-time? If so, what would that be?

ii. Responsibilities of Swap Markets To Publicly Disseminate Swap Transaction and Pricing Data in Real-Time

Section 2(a)(13)(D) of the CEA gives the Commission the authority to require registered entities to publicly disseminate swap transaction and pricing data.[34] Proposed § 43.3(b) provides the method and timeliness of public dissemination of swap transaction and pricing data. Proposed § 43.3(b) distinguishes the public dissemination requirement for swaps that are executed on a swap market versus those swaps that are executed off-facility.[35] Irrespective of the mode of

Commission staff that over 90% of its trades are reported within five minutes. *See* FINRA Rule 6730 ("Transaction Reporting"). Available at: *http://finra.complinet.com/en/display/display_main.html?rbid=2403&element_id=4402.*

With respect to the OTC securities market, FINRA has recently reduced the reporting requirements for these securities to within 30 seconds of execution. *See* Securities Exchange Act Release No. 61819 (March 31, 2010), 75 FR 17806 (April 7, 2010 (Notice of Filing of Amendment No. 2 and Order Granting Accelerated Approval of File No. SR–FINRA–2009–061)); *See also,* FINRA Rules 6282(a); 6380A(a) and (g); 6380B(a) and (f); 6622(a) and (f); 7130(b); 7230A(b); 7230B(b); and 7330(b).

[32] In addition, the Commission believes that increased transparency may lead to more robust price competition, thus decreasing bid-offer spreads in certain swap contracts and benefiting end-users.

[33] The requirements of Section 4r(a)(3) of the CEA are discussed in footnote 18 above.

[34] As noted above, Section 1a(40) of the CEA, as amended by Section 721(a) of the Dodd-Frank Act, defines "registered entity" to include SEFs, DCOs, DCMs and SDRs. The Commission has determined, however, not to apply the Section 2(a)(13)(D) requirement to DCOs because it believes that the value of timely public dissemination outweighs the benefit of waiting until a swap is presented to a clearing organization.

[35] Block trades that are transmitted pursuant to a swap market's rules are addressed in proposed § 43.5.

execution, the Commission sought to provide market participants with reasonable guidelines to report and publicly disseminate swap transaction and pricing data in real-time.

With respect to reportable swap transactions that are executed on a swap market, proposed § 43.3(b)(1)(i) provides that a swap market shall satisfy its requirement to publicly disseminate swap transaction and pricing data by: (1) Sending, or otherwise electronically transmitting, swap transaction and pricing data to a registered SDR that accepts swaps for the particular asset class of reportable swap transactions; or (2) disseminating such data to the public through a third-party service provider operating on behalf of the swap market.[36] The Commission notes that a swap market that relies on a third-party service provider to disseminate swap transaction and pricing data, for example through a contractual agreement, remains responsible for compliance with the rules of proposed part 43.

If a swap market sends swap transaction and pricing data to a registered SDR, proposed § 43.3(b)(1)(i) provides that such data must be sent as soon as technologically practicable after the swap has been executed. As a result of industry comments made during staff meetings and at the Roundtable, the Commission believes that technologies presently exist through which a swap market can send swap transaction and pricing data to a registered SDR almost instantaneously after execution of a reportable swap transaction.[37] Under the proposal, once the swap market has sent the swap transaction and pricing data to a registered SDR, the swap market will have satisfied its dissemination requirement.

In contrast, proposed § 43.3(b)(1)(ii) provides that if a swap market sends swap transaction and pricing data to a third-party service provider, the swap market does not satisfy its requirement to publicly disseminate swap transaction and pricing data until such data is actually disseminated to the public. The Commission's proposal distinguishes between a registered SDR and a third-party service provider because the Commission would have oversight authority over a registered SDR, but not over a third-party service provider. This distinction would be especially important if, for example, a third-party service provider failed to publish swap transaction and pricing data in real-time. Under those circumstances, the Commission may have no authority over the third-party service provider to remedy the failure. Since the swap market is still obligated to publicly disseminate, the Commission may require the swap market to resolve the failure and publicly disseminate the swap transaction and pricing data through another third-party service provider or a registered SDR. Accordingly, the Commission would expect that a swap market that uses a third-party service provider to meet its public dissemination obligation should be vigilant in monitoring the timeliness and accuracy of the provider's publication of the swap market's swap transaction and pricing data.

Proposed § 43.3(b)(2)(i) prohibits swap markets or any reporting party to a swap from disclosing the swap transaction and pricing data before the real-time disseminator has publicly disseminated such data. The Commission believes that this prohibition will ensure that swap transaction and pricing data is disseminated uniformly and is not published in a manner that creates unfair advantages for any segment of market participants.

The proposed rules do allow for swap markets and swap dealers to provide their market participants and customers, respectively, with swap transaction and pricing data for swaps that they execute. In particular, proposed § 43.3(b)(2)(ii) provides that notwithstanding the non-disclosure provision in proposed § 43.3(b)(2)(i), a swap market may make swap transaction and pricing data available to participants on its market prior to the public dissemination of such data; however, the swap market must send such swap transaction and pricing data to a real-time disseminator at the same time as or earlier than it makes such data available to its market participants. Similarly, proposed § 43.3(b)(2)(iii) provides that notwithstanding the non-disclosure provision in proposed § 43.3(b)(2)(i), a swap dealer may make swap transaction and pricing data for off-facility swaps available to its customer base prior to the public dissemination of such data; however, such swap dealer must send such swap transaction and pricing data to a registered SDR at the same time as or earlier than it makes such data available to its customer base. In both cases, the data may only be made available to the particular market (*e.g.,* data for a swap executed on a particular SEF or DCM may only be shared with market participants on that SEF or DCM). The Commission believes that granting swap markets and swap dealers the flexibility to provide swap transaction and pricing data to its market participants or customer base, respectively, concurrent with reporting to the real-time disseminator may incentivize a rapid transmittal of data to the real-time disseminator.

The Commission requests comment generally on the responsibilities of swap markets to publicly disseminate real-time swap transaction and pricing data. In addition, the Commission requests comment on the following issues:

- Should the Commission establish a maximum timeframe in which swap markets must report swap transaction and pricing data to a real-time disseminator? If so, what is an appropriate maximum timeframe and why?
- Do commenters agree with the Commission's proposal that swap markets satisfy their public dissemination requirement by either sending to a registered SDR that accepts and disseminates swap transaction and pricing data or by publicly disseminating through a third-party service provider? If not, why? Should there be any other means by which a swap market can satisfy its public dissemination requirement? If yes, by what other means?

iii. Requirements for Registered SDRs

Sections 2(a)(13)(D) and 21(c)(4)(B) of the CEA provide the Commission with the authority to require registered SDRs to publicly disseminate swap transaction and pricing data in real-time. In particular, Section 2(a)(13)(D) provides that the Commission may require registered entities to publicly disseminate swap transaction and pricing data. Registered SDRs are registered entities as defined in Section 1(a)(40)(E) of the CEA. Section 21(c)(4)(B) of the CEA provides that an SDR must provide swap transaction information in such form and at such frequency as the Commission may require to comply with the real-time reporting requirements under Section 2(a)(13).

Pursuant to these authorities, the Commission is proposing § 43.3(c)(1) to require that registered SDRs that accept and publicly disseminate such data in real-time to comply with proposed part

[36] As discussed immediately below, proposed§ 43.3(b)(2) prohibits a swap market or reporting parties from disclosing swap transaction and pricing data prior to sending such data to a real-time disseminator.

[37] *See, e.g.,* Comments by Steve Joachim, Executive Vice President, Transparency Services, FINRA ("[T]he technology for collecting, aggregating, and disseminating [swap] data, assuming [the] use [of] current infrastructures * * * can allow [real-time public reporting] to work pretty efficiently.") Roundtable Tr. at 277–78.

49 of the Commission's regulations.[38] Under proposed part 49, a registered SDR may choose, but would not be required, to publicly disseminate swap transaction and pricing data in real-time for an asset class of swaps. Further, a registered SDR that accepts swap transaction and pricing data for public dissemination must publicly disseminate such data as soon as technologically practicable upon receipt of such data. Proposed § 43.3(c)(2) provides that if a registered SDR chooses to publicly disseminate swap transaction and pricing data in real-time for its specified asset class,[39] the registered SDR must accept and publicly disseminate swap transaction and pricing data for all swaps within such asset class. This requirement is intended to minimize the number of swaps that are not accepted by a registered SDR for public dissemination by enabling market participants to easily identify the SDR that accepts particular asset classes. In addition, proposed § 43.3(c)(3) provides that any registered SDR that accepts and publicly disseminates swap transaction and pricing data in real-time shall perform, on an annual basis, an independent review of its security and other system controls, in accordance with established audit procedures and standards, for the purposes of ensuring that the requirements of proposed part 43 are met.

The Commission requests comment generally on the requirements for registered SDRs under proposed part 43. In addition, the Commission requests comment on whether it should require registered SDRs to publicly disseminate all real-time swap transaction and pricing data.

iv. Requirements for Third-Party Service Providers

If a swap market chooses to publicly disseminate swap transaction and pricing data through a third-party service provider, proposed § 43.3(d) provides that the swap market must ensure that the provider maintains standards that are, at a minimum, equal to those standards for registered SDRs described in proposed part 43 and the relevant provisions relating to real-time public reporting that will be proposed in part 49 of the Commission's regulations. In addition, this section provides that the swap market must ensure that the Commission has access to any swap transaction and pricing data, either through the swap market or directly through the third-party service provider.

v. Availability of Real-Time Swap Transaction and Pricing Data

Under proposed § 43.3(e), registered SDRs that report swap transaction and pricing data to the public in real-time, must make the data available and accessible in an electronic format that is capable of being downloaded, saved and/or analyzed. The Commission is proposing this provision to address the concern that a registered SDR may flash real-time swap transaction and pricing data to selected market participants with the technology to view such data without making such information available to the public and all market participants. Requiring registered SDRs to allow market participants and the public to download, save and/or analyze the real-time swap transaction and pricing data upon public dissemination, ensures equal access to real-time swap transaction and pricing data.

vi. Errors or Omissions

Proposed § 43.3(f)(1) sets out the process through which any errors or omissions in swap transaction and pricing data that were publicly disseminated in real-time shall be corrected or cancelled. Section 43.3(f)(1) sets out different processes depending on whether the data error or omission was discovered by the reporting party to the swap or the non-reporting party. Proposed paragraph (f)(1)(i) provides that if the non-reporting party becomes aware of an error or omission in the data reported for its swap, it shall promptly notify the reporting party of the correction. Proposed paragraph (f)(1)(ii) provides that if the reporting party becomes aware of an error or omission in the reported data, it is required to promptly submit the corrected data to the swap market or real-time disseminator. Proposed paragraph (f)(1)(iii) provides that if the swap market becomes aware of an error or omission in the swap transaction and pricing data reported for a swap, whether or not it received notification from the reporting party, the swap market shall promptly submit corrected data to the real-time disseminator. Proposed paragraph (f)(1)(iv) provides that a registered SDR that accepts and publicly disseminates swap transaction and pricing data in real-time must publicly disseminate any cancellations or corrections to such data as soon as technologically practicable after receipt or discovery of such cancellation or correction.

The proposal also seeks to prevent fraudulent dissemination for the purpose of distorting market pricing. Specifically, proposed paragraph (f)(2) of this section provides that reporting parties, swap markets and registered SDRs that accept and publicly disseminate swap transaction and pricing data in real-time are prohibited from submitting or agreeing to submit a cancellation or correction for the purpose of re-reporting swap transaction and pricing data in order to gain or extend a delay in publication or to otherwise evade the reporting requirements of proposed part 43.

Proposed paragraph (f)(3) of this section sets forth the appropriate method of canceling incorrectly published swap transaction and pricing data. Specifically, this paragraph provides that a real-time disseminator must cancel incorrect data that has been disseminated to the public by publishing a cancellation of the incorrect data in the format and manner described in appendix A to proposed part 43.

Proposed paragraph (f)(4) of this section sets forth the appropriate method of correcting erroneous or omitted swap transaction and pricing data. Specifically, this paragraph provides that a real-time disseminator must correct any erroneous or omitted data that has been disseminated to the public by first publicly disseminating a cancellation of the incorrect data and then publicly disseminating the correct data pursuant to the format described in appendix A to proposed part 43.

Depending on the situation, a cancellation may or not be followed by a correction. For example, a cancellation may occur in a situation where a clearinghouse does not accept a particular swap for clearing and, therefore, the swap may be busted and not require a correction. In another situation, one or more terms to a swap may be incorrectly reported by the party responsible for reporting the swap, and upon confirmation of the swap the error in the terms would be realized. Under the proposed rules, such a situation would require a cancellation of the original incorrectly reported data, followed by a correction with the correct swap transaction and pricing data. Whenever reporting a cancellation or correction, the real-time disseminator must report the data in the same form

[38] In a forthcoming release, the Commission will propose part 49 of the Commission's regulations, which will set out the requirements that a registered SDR must satisfy in connection with its receipt and public dissemination of swap transaction and pricing data in real-time. Proposed part 49 of the Commission's regulations also will identify the necessary systems that registered SDRs must develop and maintain in order to receive and publicly disseminate such data.

[39] In the forthcoming proposed part 49 of the Commission's regulations, registered swap data repositories will select the asset class(es) for which they accept swaps.

and manner in which it was originally reported and include a date stamp reflecting the time of the original transaction, so that market participants and the public are aware of exactly which swap has been canceled or corrected.

vii. Hours of Operation

Since Section 2(a)(13) of the CEA requires that swap transaction and pricing data be reported and subsequently disseminated to the public in real-time, the Commission proposes that registered SDRs maintain certain hours of operation in order to comply with this legislative requirement. Proposed § 43.3(g)(1) requires registered SDRs that accept and publicly disseminate swap transaction and pricing data in real-time to be able to receive and publicly disseminate such data at all times, twenty-four hours a day.

Because the Commission recognizes that a registered SDR periodically may need to conduct maintenance on its electronic systems, proposed § 43.3(g)(2) would permit a registered SDR to declare special closing hours to perform such maintenance on an ad hoc basis. In addition, this section would require a registered SDR to provide advance notice of its special closing hours to market participants and the public. Further, proposed § 43.3(g)(3) provides that registered SDRs should avoid scheduling special closing hours during those periods when the U.S. markets and major foreign swap markets are most active. Proposed § 43.3(h) provides that during special closing hours, a registered SDR that accepts and publicly disseminates swap transaction and pricing data in real-time shall have the capability to receive and hold in queue information regarding reportable swap transactions pursuant to proposed part 43.

The Commission requests comment on the following questions regarding hours of operation:

- Should swap markets have requirements regarding hours of operation for the purposes of the real-time reporting requirements?
- Do the proposed requirements regarding hours of operation provide registered SDRs with sufficient flexibility to conduct the necessary maintenance on their electronic systems?
- Do commenters agree that registered SDRs that accept and publicly disseminate swap transaction and pricing data should have the capability to receive and hold such data in queue during special closing hours? If not, why and are there any alternatives?

viii. Recordkeeping Requirements

Proposed § 43.3(i) requires reporting parties, swap markets and registered SDRs to retain all data related to a reportable swap transaction (including large notional swaps and block trades) for a period of not less than five years following the time at which such reportable swap transaction is publicly disseminated. The Commission believes that it is necessary to retain such records in order to recreate transaction profiles for the purposes of trade practice surveillance and compliance. This requirement is separate and distinct from any other recordkeeping requirements under the Commission's regulations, including § 1.31.[40]

The Commission requests comment on the following questions regarding recordkeeping requirements:

- Do commenters believe that the proposed retention period for data related to reportable swap transactions is an appropriate period of time?
- Should the recordkeeping requirement be the same as § 1.31 of the Commission's regulations?
- What are the anticipated costs associated with storing such real-time swap transaction and pricing data for a longer period of time?

ix. Fees Charged by Registered SDRs

The Commission believes that the intent and purpose of Sections 2(a)(13) and 21 of the CEA is for registered SDRs to provide open and equal access to their data collection services for the purposes of real-time public reporting.[41] Consistent with open and equal access to registered SDR services, the Commission further believes that fees or charges adopted by a registered SDR for its data collection services for the purposes of real-time public reporting must be equitable and non-discriminatory. Proposed § 43.3(j) ensures that any fees or charges assessed on a reporting party or a swap market are consistent with the intent and purpose of Sections 2(a)(13) and 21. Proposed § 43.3(j) also prohibits a registered SDR from offering a discount based on the volume of swap transaction and pricing data reported to the registered SDR for public dissemination, unless such discount is offered to all reporting parties and swap markets.

x. Consolidated Public Dissemination of Swap Data

The Commission recognizes the benefits of consolidating the public dissemination of swap transaction and pricing data in real-time.[42] During the Roundtable and in Commission external meetings, several market participants commented on their desire for the Commission to establish a consolidator in order to avoid fragmentation of the publication of swap transaction and pricing data. The Commission believes that a real-time reporting consolidator of swap transaction and pricing data could provide a comprehensive record of all swaps executed in chronological order. Additionally, a real-time reporting consolidator would create greater anonymity for the parties to transactions, particularly for swap dealers and MSPs.

Unlike the federal securities laws,[43] however, neither the CEA nor the Dodd-Frank Act grants the Commission explicit statutory authority to establish a real-time reporting consolidator.[44] The Commission requests comment on methods to encourage the consolidation of publicly disseminated swap transaction and pricing data.

[40] Section 1.31 of the Commission's regulations generally provides, inter alia, all books and records required to be kept by the CEA or the Commission's regulations shall be kept for a period of five years from the date such records come into existence. In addition, § 1.31 provides that the records shall be readily accessible during the first two years of the five year period.

[41] Section 21 of the CEA sets forth the rules with respect to the business conduct standards and regulation of SDRs.

[42] The Commission considered the experience of the European Union under the Markets in Financial Instruments Directive ("MiFID") and its Financial Services Action Plan, which went into effect on November 1, 2007 for OTC equity securities. Under this plan, the European Union broadened post-trade transparency requirements in European OTC equity securities markets. While MiFID required transparency, many market participants expressed concerns about the fragmentation of post-trade transparency under the MiFID regime, especially in OTC trading. The quality, disparate timing of publication and other barriers to consolidation of post-trade data were all highlighted as problems by the Committee of European Securities Regulators ("CESR") in its Technical Advice report. *See* "CESR Technical Advice to the European Commission in the Context of the MiFID Review and Responses to the European Commission Request for Additional Information" (CESR/10–802, CESR/10–799, CESR/10–808, CESR/10–859), July 29, 2010. Available at: *http://www.cesr-eu.org/popup2.php?id=7003*.

[43] *See, e.g.,* 15 U.S.C. 78k–1.

[44] As mentioned above, FINRA oversees TRACE, which is a mechanism through which post-trade data regarding OTC secondary market securities in fixed income is reported. FINRA requires its broker-dealer member firms to report transactions to TRACE under an SEC-approved set of rules. Beginning in 2002, TRACE published transaction data on a consolidated tape. TRACE first published data on very liquid transactions and later phased-in additional products. More information on TRACE can be accessed at: *http://www.finra.org/Industry/Compliance/MarketTransparency/TRACE/index.htm*.

4. Proposed Section 43.4 and Appendix A to Proposed Part 43—Swap Transaction and Pricing Data To Be Publicly Disseminated in Real-Time

As noted above, Section 2(a)(13)(B) authorizes the Commission to prescribe regulations to make swap transaction and pricing data available in real-time in such form as the Commission determines appropriate to enhance price discovery. Proposed § 43.4 establishes the format in which such data will be publicly disseminated.

Proposed § 43.4(a) provides that swap transaction information shall be reported to a real-time disseminator so that the real-time disseminator can publicly disseminate swap transaction and pricing data in real-time in accordance with proposed part 43, including the manner and format described in appendix A to proposed part 43.[45] Appendix A to proposed part 43 provides a list of data fields for which a registered SDR must publicly disseminate swap transaction and pricing data. The descriptions and examples in appendix A to proposed part 43 are intended to provide guidance on an acceptable public reporting format and order for the data fields that are listed.

Proposed § 43.4(b) provides that any registered SDR that accepts and publicly disseminates swap transaction and pricing data in real-time shall publicly disseminate the information in the data fields described in appendix A to proposed part 43.

Proposed § 43.4(c) provides that a registered SDR that accepts and publicly disseminates swap transaction and pricing data in real-time may, as necessary, require reporting parties and swap markets to report such information in addition to the data described in appendix A to proposed part 43, in order to match the swap transaction and pricing data that was publicly disseminated in real-time to the data reported to a registered SDR or confirm that parties to a swap have reported in a timely manner pursuant to § 43.3. Such additional information shall not be publicly disseminated, on either a transactional or aggregate basis, by the registered SDR that accepts and publicly disseminates swap transaction and pricing data in real-time.

Proposed § 43.4(d) provides that the Commission may determine from time to time to amend the data fields described in appendix A. This section gives the Commission flexibility to add, modify or delete data fields as the Commission may deem appropriate and necessary to enhance price discovery and prevent the disclosure of the identities of the parties to any swap.

The Commission requests comment generally on the real-time reporting and public dissemination of the data described in appendix A to proposed part 43. In addition, the Commission requests comment on the following issues:

- Should the Commission specify the format and/or manner in which swap transaction and pricing data must be reported to a real-time disseminator?
- Should the Commission require that registered SDRs follow a specified order and format for the public dissemination of swap transaction and pricing data instead of providing examples and guidance?

i. Ensuring the Anonymity of the Parties to a Swap

Sections 2(a)(13)(C)(iii) and 2(a)(13)(E)(i) of the CEA emphasize the importance of maintaining the anonymity of the parties to a swap.[46] Proposed § 43.4(e)(1) prohibits the disclosure of swap transaction and pricing data that is publicly disseminated in real-time, which identifies or otherwise facilitates the identification of a party to a swap. This section further provides that a registered SDR may not report such data in a manner that discloses or otherwise facilitates the identification of a party to a swap.

The Commission understands that this latter prohibition may lead to a loss of clarity with respect to the precise characteristics of swaps in certain circumstances.[47] Proposed § 43.4(e)(2) provides that a reporting party or a swap market must provide a real-time disseminator with a specific description of the underlying asset and tenor of a swap. The description must be general enough to provide anonymity, but specific enough to provide for a meaningful understanding of the swap. The Commission recognizes that it is conceivable that in situations where few parties trade a particular type of underlying asset, the description of that asset may inadvertently reveal the identity of one or more party(ies) to the swap.

For off-facility swaps, particularly other commodity swaps with very specific underlying assets, market participants may be able to infer the identity of a party or parties to a swap based on the description of the underlying asset.[48] For example, if the underlying asset to an off-facility swap is an energy commodity contract that has a specific delivery point at Lake Charles, Louisiana and such contract is only traded by two companies, then disclosing the underlying asset to the public would effectively disclose that one of those companies was entering into the trade. Proposed § 43.4(e)(2) allows reporting parties of off-facility swaps to publicly disseminate a description an underlying asset or tenor that by virtue of its real-time reporting would enable market participants to infer the identity of a party to the swap, in a way that does not disclose a party to a swap, but provides a meaningful understanding of the swap for the purpose of price discovery.[49] In the example, instead of saying a specific delivery point of Lake Charles, Louisiana, the reporting party may use a broader geographic region (*e.g.,* Louisiana, Gulf coast, *etc.*) under the Commission's proposal. The Commission believes that the issue of the description being too specific as to divulge the identity of a party to a swap

[45] Proposed § 43.4 would not require that a reporting party or swap market provide swap transaction and pricing data in a particular format or that such data be anonymized prior to being sent to a real-time disseminator. Reporting parties and swap markets must, however, provide real-time disseminators with the information required to publicly disseminate the required data fields.

[46] The legislative history of the Dodd-Frank Act states that "regulators are to ensure that the public reporting of swap transactions and pricing data does not disclose the names or identities of the parties to the transactions." 156 Cong. Rec. S5,921 (daily ed. July 15, 2010) (statement of Sen. Blanche Lincoln).

[47] *See, e.g.,* comments from Steve Joachim, Executive Vice President, Transparency Services, FINRA ("I think we have to recognize that when we're talking about transparen[cy] in marketplaces that if we want to pursue the goal of transparency, that trading in transparent markets is different than trading in opaque markets and that you lose some anonymity no matter what happens. There will not be total confidentiality."), Roundtable Tr. at 258.

[48] *See, e.g.,* comments from Peter Axilrod, Managing Director, New Business Development, The Depository Trust & Clearing Corporation ("I guess I'd like to make a plea for people to be careful with commodities. It's a little bit of a different market than what most people have been talking about. There are delivery points all over the country, there are load-serving entities, many of them all over the country, there are producers all over the country, and if you force people to specify a particular delivery point all the time, people are pretty much going to know who's making those trades. So, whatever you do in terms of what commodities data is reported publicly, you have to leave room for some flexibility in terms of anonymization [sic]. So, if the delivery points are too specific, you may never get much anonymizing [sic] of trades, but if you allow the geographic area to be expanded or to have some anonymity criteria and perhaps pick the set of the delivery points that meets the anonymity criteria, something like that needs to be done."), Roundtable Tr. at 252–253.

[49] It is important to note that the reporting requirement in this section is separate from the requirement to report swap transaction information to a registered SDR pursuant to Section 2(a)(13)(G) of the CEA. The CEA does not require swap transaction information be reported in a manner that protects anonymity since such information will not be publicly disseminated.

is more likely to arise when the underlying asset is a commodity. The Commission, however, believes that other asset classes and markets may have similar issues. 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.

The Commission recognizes that swap markets may differ and that new types of swaps may emerge; therefore, the Commission is not proposing specific guidelines at this time for how an underlying asset should be described for the purposes of proposed § 43.4(e)(2). The specificity of the description will vary based on particular markets and contracts, but the proposed rules provide reporting parties with discretion on how to report swap transaction and pricing data. Proposed § 43.3(e)(2) and proposed part 23 of the Commission's regulations require that swap dealers and MSPs who do not disclose a specific description of an underlying asset and/or tenor because such disclosure would facilitate the identity of a party to a swap, must document why the specific information regarding the underlying asset and/or tenor was not publicly disseminated.[50] Further, swap dealers and MSPs must retain and provide such written justifications to the Commission pursuant to proposed part 23 of the Commission's regulations.[51]

The Commission notes that the language found in Section 2(a)(13)(C)(iii) of the CEA, requiring that real-time public reporting be done "in a manner that does not disclose the business transactions and market positions of any person" is similar to the language found in Section 8(a) of the CEA. Section 8(a)(1) of the CEA 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 of or names of customers * * *."[52] For the purposes of protecting the confidentiality of participants' business transactions or market positions as required under Section 8(a)(1) of the CEA, the Commission has historically created guidelines for various market information reports (*e.g.,* Bank Participation Reports ("BPRs") and Commitments of Traders ("COT") reports) that prevent market participants and the public from reverse-engineering aggregate data to determine the participants that submitted the data.[53] The Commission believes that the approach in the proposed rules regarding protecting the identities of parties to a swap under Sections 2(a)(13)(C)(iii) and 2(a)(13)(E)(i) of the CEA is consistent with the approach to confidentiality under Section 8(a)(1).

The Commission requests comment generally on the protection of identities of the parties to the swap relating to real-time public reporting. In addition, the Commission requests comment on the following issues:

- Do commenters agree with the proposed method for real-time reporting of less specific information with regard to the underlying asset and tenor data fields in order to protect the anonymity of parties to a swap? If not, why?
- Should any additional data fields be allowed to have less specificity to ensure the anonymity of the parties to a swap? Should this proposed provision apply to all asset classes? If so, why?
- In what situations, if any, would it be appropriate for a reporting party to report, for the purposes of public dissemination, less specificity in the underlying asset(s) of a swap and how should such underlying asset(s) be reported? Please provide specific examples.
- Do commenters believe that it is appropriate to allow for less specificity than the month and year (as described in appendix A to proposed part 43) for the tenor of the swap? If not, why? If so, in what situations would it be appropriate for a reporting party to report, for the purposes of public dissemination, less specificity in the tenor of a swap and how should the tenor be reported? Please provide specific examples.
- What specific parameters for reporting less specificity in the underlying asset(s) and tenor of a swap should be applied to swaps in order to protect the identities of the counterparties?
- Should there be an indication to the public that a description of the underlying asset or tenor lacks specificity in order to protect the identities of the parties to the swap?

ii. Unique Product Identifiers

The Commission anticipates that unique product identifiers may develop for various swap products in various markets. Proposed § 43.4(f) provides that if a unique product identifier is developed and it sufficiently describes the information in one or more of the data fields for public dissemination in real-time, as described in appendix A, then such unique product identifier may be used in lieu of such data fields. If a swap does not have a unique product identifier, the swap transaction and pricing data must contain all of the appropriate product identification fields in appendix A to proposed part 43.[54]

iii. Price-Forming Continuation Data

Proposed § 43.4(g) requires any swap-specific event (including, but not limited to, novations, swap unwinds, partial novations and partial swap unwinds) that occurs during the life of a swap and affects the price of such swap to be publicly disseminated (a "price forming continuation event"). The Commission does not believe that a price-forming continuation event includes the scheduled expiration of a swap, any anticipated interest rate adjustments, or any other event that does not result in a change to the price that would otherwise not have been known at the point of execution.

v. Reporting and Public Dissemination of Notional or Principal Amount

Proposed § 43.4(h) and (i) provide rules for the public reporting of the notional or principal amount for all swaps. Proposed § 43.4(h)(1) would require the reporting party to report the actual notional size of any swap, including large notional swaps, to the registered SDR that accepts and publicly disseminates such data. Proposed § 43.4(h)(2) would require a reporting party to transmit the actual notional size

[50] In a forthcoming release, the Commission will propose part 23 of the Commission's regulations, which will set out the internal business conduct standards for swap dealers and MSPs, including recordkeeping requirements in connection with real-time public reporting.

[51] *See id.*

[52] 7 U.S.C. 12(a)(1).

[53] The BPRs, which provide large-trader positions of banks participating in various financial and non-financial commodity futures, collect data for every market where five or more banks hold reportable positions. The BPRs break the banks' positions into two categories—U.S. Banks and Non-U.S. Banks—and show their aggregate gross long and short market positions for each type. However, in those markets where the number of banks in either category (U.S. Banks or Non-U.S. Banks) is less than five, the number of banks in each of the two categories is omitted and only the total number of banks is shown for that market. Available at:*http://www.cftc.gov/MarketReports/BankParticipationReports/ExplanatoryNotes/index.htm.* Similarly, the COT reports provide a breakdown of each Tuesday's open interest for markets in which 20 or more traders hold positions equal to or above the reporting levels established by the Commission. Available at:*http://www.cftc.gov/MarketReports/CommitmentsofTraders/AbouttheCOTReports/index.htm.*

[54] The Commission is considering the issue of unique product identifiers in two forthcoming rulemakings under proposed parts 45 and 49.

of any block trade to a swap market. Further, a swap market must transmit the actual notional size for all swaps executed on or pursuant to its rules to a real-time disseminator. The Commission believes that the application of the rounding convention for notional or principal size, described in proposed § 43.4(i) should be done at the point of public dissemination (as opposed to the point at which it is reported to real-time disseminator) since this timing would provide for a more efficient audit trail of the swap.

Proposed § 43.4(i) provides that for all swaps the notional or principal amount that must be reported pursuant to proposed § 43.4 and appendix A to proposed part 43 should be rounded pursuant a specific rounding convention. Specifically, proposed § 43.4(i) provides that if the notional or principal amount of a swap is:

- Less than one million, round to the nearest 100 thousand;
- Less than 50 million, but greater than one million, round to the nearest million;
- Less than 100 million, but greater than 50 million, round to the nearest 5 million;
- Less than 250 million, but greater than 100 million, round to the nearest 10 million; and
- Greater than 250 million, use "250+".

For example, if the notional size of a swap is $575 million, the notional size that would be reported by a reporting party to a swap market (assuming such swap is a block trade) would be $575 million. The swap market would then report the notional amount of $575 million to a real-time disseminator and the real-time disseminator would publicly disseminate the notional amount for such block trade as "$250+". By reporting the notional or principal transaction amount pursuant to the rounding convention set forth in proposed § 43.4(i), parties to swaps, particularly those swaps that are of a large notional size, would be given a greater amount of anonymity.

The Commission requests comment generally on all aspects of the proposed rules relating to the reporting and public dissemination of notional or principal amount. In addition, the Commission requests specific comment on the following issues:

- Do commenters agree with the proposed rounding convention for public dissemination of large notional or principal amount provided in proposed § 43.4(i)? If not, why and provide alternatives?
- Would this rounding convention be appropriate for all swaps? For example, would this apply to swaps with an underlying asset that is a physical commodity with a specific delivery point? If not, why and what additional rounding convention may be needed?
- Does the rounding convention for reporting notional and principal transaction amounts in proposed § 43.4(i) help to protect the anonymity of the parties to a swap?
- Should the actual notional or principal amount be publicly disseminated at a later time?
- Should registered SDRs publish the aggregate volume for each category of swap instrument on a daily basis? If so, why? If not, why not?
- Would the daily publication of aggregate volume of swap instruments be useful to market participants and the public?

v. Appendix A to Proposed Part 43

The Commission anticipates that real-time swap transaction and pricing data may be publicly disseminated by multiple real-time disseminators in the same asset class. In order to reduce the effects of fragmentation and increase consistency both within an asset class and between asset classes, the Commission is proposing that the information in the data fields in appendix A to proposed part 43 be publicly disseminated. In addition, the Commission is providing proposed guidance on the order and format of reporting swap transaction and pricing data.[55] Additionally, the Commission believes that the public dissemination of standardized data should reduce the search costs to the public and market participants, increase consolidation of real-time swap transaction and pricing data and promote post-trade transparency and price discovery.[56] While appendix A to proposed part 43 attempts to provide consistency in describing which real-time data fields must be publicly disseminated, the Commission anticipates that certain fields will be easier to standardize than other fields. For example, it should be easy to standardize the format for an execution time-stamp across all swap transactions; whereas it may be more difficult to achieve standardization when describing an underlying asset. The Commission anticipates that, as markets develop over time, real-time disseminators and market participants may develop a form of standardization for certain data fields in certain asset classes.

While real-time disseminators must disseminate swap transaction and pricing data to the public, the reporting parties and swap markets must provide the real-time disseminators with, at a minimum, the relevant information needed to report the data fields described in appendix A to proposed part 43. As discussed above, a real-time disseminator that is a registered SDR may require a reporting party or a swap market to report additional information to the information necessary for public dissemination. Since all swap data must be sent to a registered SDR pursuant to Section 2(a)(13)(G) of the CEA and forthcoming Commission proposals, and an SDR may be a real-time disseminator, as previously discussed, the proposed rules provide that a registered SDR that is a real-time disseminator may require additional information to match the real-time swap transaction and pricing data to data reported to the registered SDR or confirm that parties to a swap have reported in a timely manner pursuant to Section 2(a)(13)(F) of the CEA. Such additional information requested by a registered SDR may include a transaction identification code, the names of the parties to the swap, or such other information as may be necessary.

As mentioned above, proposed § 43.4(b) would require that the information in any data field listed in appendix A to proposed part 43 to be publicly disseminated by a registered SDR or swap market through a third-party service provider to the extent that such data field captures a term of the reportable swap transaction. In many cases, several data fields listed in appendix A to proposed part 43 will not be applicable to a particular reportable swap transaction. To the extent that a data field is not a term of the swap, such field need not be reported and should be left blank. Appendix A to proposed part 43 also provides specific examples of how the reporting of a particular field should look (both in form and in order) when disseminated to the public.

[55] In developing the Commission's proposal, Commission staff considered technical advice reports from CESR in the context of MiFID. In those reports, CESR concluded that market participants in the equities markets are not delivering consolidated data to the market in a standard format as a result of the "inadequate quality and consistency of the raw data itself, the inconsistencies in the way in which firms report it for publication, and the lack of any formal requirements to publish data through bodies with responsibilities for monitoring the publication process." Committee for European Securities Regulators, "CESR Technical Advice to the European Commission in the Context of the MiFID Review—Equity Markets," CESR/10–802, July 29, 2010. Available at: *http://www.cesr-eu.org/popup2.php?id=7004. See also,* "CESR Technical Advice to the European Commission in the Context of the MiFID Review and Responses to the European Commission Request for Additional Information" (CESR/10–802, CESR/10–799, CESR/10–808, CESR/10–859), July 29, 2010. Available at: *http://www.cesr-eu.org/popup2.php?id=7003.*

[56] *See id.*

Table A1 of appendix A to proposed part 43 provides that the following data fields be reported to the public in real-time.

1. *Cancellation.* This data field reports the swap transaction and pricing data that was incorrectly or erroneously reported and is therefore being canceled. Any cancellations must also contain a date stamp of the original swap, even if such date stamp was not originally reported, followed by the full swap transaction and pricing data that is being canceled (including the original time-stamp of execution). It must be made clear to the public exactly which transaction is being reported so that the public can easily disregard such swap transaction and pricing data. A cancellation does not have to be corrected; however, any corrections must first be canceled. Any such cancellation must be done in accordance with proposed § 43.3(f).

2. *Correction.* This data field reports the swap transaction and pricing data that is being reported is a correction to real-time swap transaction and pricing data that has been incorrectly publicly disseminated. Any corrections must also contain a date stamp to indicate the date of the initial swap that is being corrected, even if such date stamp was not originally reported, and the time-stamp must indicate the time of execution of the swap, not the time of the correction. Providing the date and original time-stamp of the swap will allow the public to easily replace the incorrect data. Any reportable swap transaction for which there are corrections to real-time swap transaction and pricing data must first be canceled prior to the correction, so that the public is aware of which data is being corrected. Any such correction must be done in accordance with proposed § 43.3(f).

3. *Date stamp.* This data field reports the date of execution of the swap (if not the same day or a correction). This data field need only be publicly disseminated if the swap that is being reported was executed on a day other than the current day or if the swap transaction or pricing data is a cancellation or correction to previously real-time reported swap transaction and pricing data.

4. *Execution time-stamp.* This data field reports the time of execution of the swap. The reporting party provides the execution time-stamp of the swap. The execution time-stamp is the only time-stamp that will be publicly disseminated.

5. *Cleared or uncleared.* This data field reports whether a swap is cleared through a DCO, which may affect the price of the swap. For cleared swaps, the specific DCO that clears the swap will not be listed. In consideration of protecting the identities of the parties to the swap, the Commission does not believe that the specific DCO through which a swap is cleared must be reported to the public.

6. *Indication of other price-affecting term (non-standardized swaps).* This data field reports whether there are other non-standard terms to the swap that materially affect the price of the swap. This indicator signals to market participants that there may be unreported terms of the contract that affect the price. Any reporting of bespoke swap transactions must include this indicator, since in these transactions there are other terms or factors that materially affect the price of the swap and are otherwise not included in the required fields for real-time public reporting found elsewhere in appendix A to proposed part 43.

7. *Block trades and large notional swaps.* This data field reports whether the swap is a block trade or large notional swap. This data field does not, however, make a distinction between block trades and large notional swaps, since the execution venue data field will reveal that information.

8. *Execution venue.* This data field reports where the swap was executed. The reporting party must indicate whether the swap was executed on a swap market or whether such swap is an off-facility swap. This data field assists the public in understanding the other data fields that are being reported. In consideration of protecting the identities of the parties, the Commission does not believe that the specific swap market on which the swap was executed need be publicly disseminated. Similarly, the Commission does not believe that a distinction need be made between those swaps executed on a SEF and those executed on a DCM.

9. *Swap instrument.* This data field must be reported only if a trade is a block trade or a large notional swap. Large notional swaps must refer to an existing swap instrument that is posted by a registered SDR and has an appropriate minimum block size associated with such instrument. The parties to a swap must use the appropriate minimum block size of the swap instrument when determining if a swap constitutes a large notional swap. Swap markets, in setting the minimum block trade size for a particular listed swap, must reference the appropriate minimum block size for the category of swap instrument within which the particular listed swap is included. A swap market will set a minimum block trade size for a listed swap based on the appropriate minimum block size for the relevant category of swap instrument as calculated by the SDR. Proposed § 43.5 provides rules on block trades and large notional swaps, including the determination of minimum block trade sizes. The reporting of the swap instrument data field provides market participants and the public with an understanding of the type of swap instrument for which a block trade is occurring.

The Commission believes that within each asset class there should be certain criteria that are used to determine a category of swap instrument. For example, swaps in the interest rate asset class may be considered the same swap instrument if they are denominated in the same major currency (or denominated in any non-major currency considered in the aggregate) and if they have the same general tenor.[57] With regard to tenor, the Commission believes that tenors may be grouped into ranges based on maturity date (*e.g.,* short, intermediate and long). For example, a single category of swap instrument may be "U.S. dollar interest rate swaps in a short maturity bucket, including swaps, swaptions, inflation-linked swaps, etc. and all underlying reference rates." Similarly, swaps in the "other commodity" asset class may be considered the same swap instrument if they have the same underlying asset, which generally would include all swaps whose economic terms relate to the same underlying product (*e.g.,* oil, natural gas, heating oil, gold, *etc.*). In contrast, the Commission believes that for swaps under the Commission's jurisdiction in the credit or equity asset classes all swaps within each asset class can be considered to be the same swap instrument. The swaps in the credit and equity asset class will be broad-based or on indexes and such swaps can likely be grouped together for purposes of determining the appropriate minimum block size. In the currency asset class, swap instruments may be defined by major currency pair, not by whether a major currency is one of the currencies involved in the swap.

The Commission requests comment generally about swap instruments. In addition the Commission requests comment on the following specific issues:

- What criteria for each asset class should a registered SDR consider in determining if a swap falls within a

[57] Major currencies are those of the United States, Japan, the United Kingdom, Canada, Australia, Switzerland, Sweden and the European Monetary Union. *See* § 15.03 of the Commissions regulations.

particular grouping of swap instrument? Specifically, what criteria should be used to classify a swap instrument and how do those criteria differ by asset class? What particular considerations should apply to swaps in interest rate, equity, credit, currency and other commodity classes? Who should determine the categories of swap instrument?

• How broad or narrow should the categories of swap instruments be for each asset class? Do commenters believe that the appropriate minimum block size should be determined based on particular types of swap contracts and not on categories of swap instruments? If so, why?

• Should certain asset classes have additional or fewer criteria in determining a swap instrument? If so, what asset classes and what criteria?

• Should a registered SDR apply any other criteria to the other commodity asset class to decide whether a swap falls within a particular type of swap instrument? How should the underlying asset be grouped for the other commodity asset class?

• Is it an appropriate approach to group tenors for swaps in the interest rate asset class into ranges (*e.g.,* short-term, intermediate-term and long-term)? What should be the appropriate ranges of tenor or maturity date for each of these ranges? Should there be tenor ranges for other asset classes?

• Are there any other currencies other than those described in § 15.03 of the Commissions regulations that the Commission should consider as a major currency? If so, which currencies and why?

10. *Start date.* This data field reports the day on which the contractual provisions of a swap commence or become effective. The Commission recognizes that the start date may be different than the execution date. The Commission also recognizes that the markets may develop such that swaps traded on swap markets become standardized to the point where the start date is embedded or understood by a unique product identifier. For example, the start date for a particular swap may always be the day following execution (*i.e.,* T+1), and such information could be captured by simply identifying the product through a unique product identifier. If the markets evolve in such a manner, then this data field may not be necessary to report for these swaps. Nonetheless, the start date must always be provided in a manner that is apparent to the public.

11. *Asset class.* This data field provides a general description of the asset class for a swap, as defined in proposed § 43.2(e). This data field will allow the public to easily compare swaps within an asset class and to easily identify the type of swap that is being reported. Swaps within an asset class would have broadly similar characteristics.

12. *Sub-asset class for other commodity.* This data field provides greater detail as to the type of other commodity that is being reported. The Commission realizes that there may be vast differences in the types of products that fall under a particular asset class. For this reason, a sub-asset class should be reported for other commodities so that the public can easily understand similar types of swaps. Such sub-asset classes may include, but are not limited to, specific energy, weather, precious metals, other metals, agricultural commodities, etc.

13. *Contract type.* This data field reports the specific type of swap that has been executed. This data field provides greater transparency and price discovery to market participants and the public, as knowledge of the contract type will allow the public to understand the swap transaction and pricing data that is being reported. The Commission has identified four broad categories of contracts that may be entered into: swaps, swaptions, forwards and stand-alone options. These categories may be further defined by the contract sub-type data field discussed immediately below.

14. *Contract sub-type.* This data field provides more detail on the type of contract specified in the contract type data field. The Commission envisions that there will be many contract sub-types. Such contract sub-types may include, for example, basis swaps, index swaps, broad-based security swaps and basket swaps. Specific option types and other information about options are covered by the options fields found in Table A2 to appendix A to proposed part 43.

15. *Price-forming continuation data.* This data field describes whether the information that is being reported is a price-affecting event to an existing swap. Such events may include novations, partial novations, swap unwinds and partial swap unwinds as well as other price-forming events that may occur following the execution of the swap. Such other events may also include amendments to the swap that have a specific affect on the price of the swap.

16. *Underlying asset 1 and underlying asset 2.* These data fields describe the specifics of the swap and help the public evaluate the price of the swap transaction. It is likely that each leg of a swap (*i.e.,* the fixed and the variable) will have an underlying asset that should be reported as a separate field. If there are more than two underlying assets, all underlying assets should be real-time reported and publicly disseminated. The Commission is not providing a specific format for all underlying asset fields, but the description of each underlying asset should be in a format that is commonly used by market participants. The Commission encourages reporting parties and real-time reporting disseminators to consult with one another to determine consistent ways of reporting similar underlying assets. If a standardized industry abbreviation exists for a particular underlying asset, such abbreviation should be used to describe the underlying asset. Whenever possible, alphabetical abbreviations should be used, including roman numerals; provided, however the underlying asset must be reasonably apparent to the public (*e.g.,* six-month LIBOR could be represented as VIL, 10-year Treasury could be represented as TX, etc.). Further, if a unique product identifier adequately captures the underlying asset, the underlying asset field may not need to be reported.

17. *Price notation and additional price notation.* These data fields report the price of the swap. These fields should include the total or net of any premium that is associated with a party's requirements under the swap. For example, if Party A's contractual requirements are linked to a 10-year Treasury note and Party B's requirements are linked to three-month LIBOR, the price notation should be the rate of 10-year Treasury note compared to three-month LIBOR (*e.g.,* 2.5).

The Commission recognizes that a number of different pricing conventions currently exist across swap transactions and even among market participants for similar swap transactions. Nevertheless, the Commission believes that standardizing of pricing conventions will result in greater price transparency. In order to promote such standardization, it becomes important to define what "pricing" means for swaps. Notional or principal amount is the amount on which payment rates are calculated and is not the actual amount or units exchanged in most cases. Payments under the swap are based on what the market refers to as "legs" and what the Commission refers to as "underlying assets" in this proposed rulemaking. The additional price notation would be necessary in such instances where there are multiple premiums yields, spreads or rates are characteristics of the swap. It is for this reason that the proposed rules require

the additional price notation to include, inter alia, front-end payments, back-end payments, mid-cycle flat payments, collateral and margin. All of the elements to additional price notation must be represented in this field as a single number, relative to the difference in payments between the underlying assets of the swap.

In the example above, if Party A's requirement is tied to the 10-year Treasury note yield and Party B's requirement is linked to three-month LIBOR and Party B is also required to post a back-end payment of $100,000, then the price notation would be the rate of 10-year Treasury note compared to three-month LIBOR (*e.g.,* 2.5). The additional price notation might be calculated to be +0.05, because in this example, the net present value of the back-end payment of $100,000, as applied to the exchange of payments within the swap, would be equal to +0.05. These two data fields provide the public and market participants with an easily accessible and uniform means of understanding the price at which the parties to a swap have reached an agreement regarding the swap's payment streams.

18. *Unique product identifier.* This data field, if available, describes a standardized swap. If a unique product identifier is available for a particular product, it may be reported in lieu of reporting other identifying fields including, but not limited to, the underlying asset, asset class, contract type, contract sub-type and start date, so long as such fields are adequately described and apparent to the public. The Commission believes that the markets will evolve to a point where the use of such unique product identifiers will increase transparency and promote price discovery across real-time disseminators. The Commission envisions unique product identifiers will be uniform across different swap markets.

19. *Notional currency 1 and notional currency 2.* This data field is needed if the notional or principal amounts are referenced in terms of a currency. The currency field may be reported in a commonly-accepted code. For example, U.S. dollars may be reported with the ISO 4217 currency code "USD".[58] The notional currency 1 field should refer to the notional or principal amount 1 field, while the notional currency 2 field, if applicable, should refer to the notional or principal amount 2 field. If there are more than two notional or principal amounts that require a notional currency field, then these fields should be reported in a similar manner.

20. *Notional or principal amount 1 and notional or principal amount 2.* This data field is needed to identify the size or amount of the swap transaction. The notional amount may be reported in a currency and if so, the currency must be disclosed and made easily identifiable to the public. Such disclosure can be done by reporting the notional currency field with respect to the notional amount that requires such information. If a principal amount is in units, then a currency description does not need to be reported. Appendix A to proposed part 43 contemplates the potential for two or more notional or principal amounts. When a swap has more than two notional or principal amounts, then all such amounts must be reported and made easily identifiable by reporting parties and real-time reporting disseminators. The notional or principal amount for swaps should be reported pursuant to proposed § 43.4(h) and (i). Each notional or principal amount (if there is more than one) should be labeled with a number (*e.g.,* 1, 2, 3, etc.), such that the number corresponds to the underlying asset for which the notional or principal amount is applicable.

21. *Payment frequency 1 and payment frequency 2.* This data field is needed to assist in understanding the price of a swap. It represents the frequency at which payments will be made for a party's contractual requirements under a swap. It is possible that the payment frequency may be the same for both parties to a swap; however, the payment frequency also may be different. If there is a difference, the payment frequencies must be reported for each requirement under the swap. The format for payment frequency should be consistent and may be reported as a numerical character followed by a letter.[59] For example, if payments are to be made every two weeks, then "2W" may be reported in this field; if payments are to be made every year, then "1Y" may be reported, etc. Each payment frequency (if there is more than one) should be labeled with a number (*e.g.,* 1, 2, 3, *etc.*), such that the number corresponds to the underlying asset for which the payment frequency is applicable.

22. *Reset frequency 1 and reset frequency 2.* This data field is needed to assist in understanding the price of a swap. It represents the frequency that a price for an underlying asset may be adjusted. It is possible that there is no reset frequency, that the reset frequency is the same for both underlying assets or that the reset is different for both underlying assets. If different, the reset frequencies must be reported for each underlying asset. The format for reset frequency must be consistent and may be a numerical character followed by a letter.[60] For example, if adjustments are to be made every two weeks, then "2W" may be reported in this field, if adjustments are to be made every year, then "1Y" may be reported, etc. Each reset frequency (if there is more than one) should be labeled with a number (*e.g.,* 1, 2, 3, *etc.*), such that the number corresponds to the underlying asset for which the reset frequency is applicable.

23. *Tenor.* This data field is needed to describe the duration of a swap and when a swap will terminate, mature or end. To protect the anonymity of the parties to a swap, the tenor field should only be reported as the month and year that the swap terminates, matures or ends. Such description may use the three character alpha-numerical format that is used in describing futures contracts.[61] For example, if a swap ends on March 15, 2020, the tenor may be reported as "H20".

Table A2 of appendix A to proposed part 43 provides the following data fields to be publicly disseminated in real-time for options, swaptions and swaps with embedded options, if applicable to a swap. If a swap has more than one embedded option or swaption provision, then all such embedded options or swaptions should be real-time reported to the public in the same manner.

1. *Embedded option on swap.* This data field is needed to describe whether the data listed in the option fields is an option that is embedded in the price of the swap. Proposed § 43.2(i) defines "embedded option" as any right, but not an obligation, provided to one party of a swap by the other party to the same swap that provides the party in possession of the option with the ability to change any one or more of the economic terms of the swap as they were previously established at confirmation (or were in effect on the start date). By requiring a separate field for embedded options on swaps, market participants and the public will be able to compare prices across the same or

[58] The International Organization for Standardization ("ISO") provides a list of currency and funds names that are represented by both a three-letter alphabetical and a three-number numerical code (the "ISO 4217" code list), which is available at: *http://www.iso.org/iso/support/currency_codes_list-1.htm.*

[59] Such period descriptions may be described as follows: daily (D), weekly (W), monthly (M) and yearly (Y).

[60] *See id.*

[61] Futures month symbols are as follows: January (F), February (G), March (H), April (J), May (K), June (M), July (N), August (Q), September (U), October (V), November (X) and December (Z).

similar swaps. The Commission believes that requiring this field will increase transparency and price discovery across the swap markets, as it will allow for the easy comparison of price by market participants and the public. Further, the Commission does not wish to see market participants wasting resources to try to avoid transparency by adding embedded options to otherwise standardized swap contracts. If the Commission did not require separate reporting of the embedded option field, it would be possible for market participants to attach worthless options to a swap in order to avoid real-time public reporting the swap in the same format as a standardized swap that does not have an embedded option.

2. *Option strike price.* This data field reports the level or price at which a party to a swap may exercise an option. The Commission recognizes that for some option types, such as collars, strangles and condors, it will be necessary to report two or more prices in this field. This data field is the first field that would be reported for options and real-time disseminators may choose to place an "O" prior to the strike price. After the "O", the level or price should follow immediately thereafter. For example, an option or swaption with a strike price of $25 should be real-time publicly reported as "O25".

3. *Option type.* This data field reports the type of option. The option type is important because it clarifies how the buying or selling of the asset is to be transacted between two parties. To promote standardization, this data field should be reported from the perspective of the party to the swap associated with underlying asset 1. The Commission recognizes that there are several different types of options, and has tried to identify some of the more common option types and their suggested two-character alphabetical descriptors in Table A2 of appendix A to proposed part 43. The Commission intends for the list of options in Table A2 to promote consistency and transparency across reporting parties and real-time disseminators. Some examples of option types include caps, collars, floors, puts, calls, pay fixed versus floating, receive fixed versus floating, straddles, strangles and knock-outs.

4. *Option family.* This data field reports the family associated with the option. The option family is important because it identifies the period of time over which an option may be executed. The Commission recognizes that there are several different types of option families, and has tried to identify some of the more common option families and provided suggested two-character alphabetical descriptors in Table A2 of appendix A to proposed part 43. The Commission intends for the list in Table A2 to promote consistency and transparency across reporting parties and real-time disseminators. Some examples of option families include American, Bermudan, European and Asian.

5. *Option currency.* This data field is needed to explain the currency for the option that is being reported. If applicable, the option currency field shall refer to both the option premium field and the option strike price.

6. *Option premium.* This data field reports the purchase price for the option at the time of execution of the swap. This number represents the total additional cost of the option as a numerical value and is broken out separately from the price notation and additional price notation fields to allow for an easier comparison of a swap with an option to similar swaps that do not include an option.

7. *Option lockout period.* This data field reports the time at which an option first can be exercised and thus, assist them in evaluating the price of an option. The option lockout date should be reported in the year and month format used in futures markets.[62] This field most often will be needed for European style options and other options where the start date for the requirements to a swap with an embedded option may be different than the date that an embedded option is available for execution. The option lockout period should be reported in the year and month format used in futures.

8. *Option expiration.* This data field reports when an option can no longer be exercised. This data field will assist the public and market participants in evaluating the price of an option. In most cases, this data field can be omitted, as a standard option would expire at the same time as the swap contract to which it is linked. The option expiration should be reported in the year and month format used in futures markets.

v. Examples To Illustrate the Public Reporting of Real-Time Swap Transaction and Pricing Data

The Commission envisions that the reporting of the data fields in appendix A to proposed part 43 may eventually be reported in the form of a consolidated ticker, particularly for the more standardized swaps that are traded on swap markets. Additionally, the Commission believes that when unique product identifiers emerge they will be publicly disseminated, increase uniformity and transparency across real-time disseminators and ultimately lead to greater transparency and price discovery. Below, the Commission has set out two examples of how real-time public reporting of swap transaction and pricing data may evolve as consolidation and standardization develops in particular asset classes and markets.

Example 1

On Friday, February 4, 2011, Bank X enters into a new plain vanilla 10-year fixed versus floating interest rate swap with Bank Y, for a notional amount of $10 million U.S. dollars. The swap is scheduled to start on Tuesday, February 8, 2011 (note: start dates are usually 2 business days later for interest rate swaps). Bank X is the payer of the fixed leg of the swap and is obligated to pay a fixed rate of 2.53% on the notional amount for the ten-year tenor of the swap. Bank Y is the payer of the floating leg of the swap and is obligated to pay the prevailing three-month LIBOR on the $10 million notional amount. The first LIBOR payment will be based upon the three-month LIBOR rate for February 4, 2011 with the rate reset on a quarterly basis going forward. This interest rate swap is plain vanilla with both banks using the same day count convention, payment currency and notional value for both of the underlying assets to the swap.

Bank X and Bank Y have no additional premiums or payments under the terms of the swap. In this example, the reset and payment frequency for the fixed-rate are semi-annual. The reset and payment frequency for the floating rate (*i.e.,* three-month LIBOR) are quarterly. The parties' requirements under the swap for both the fixed leg and floating leg are scheduled to mature on Monday, February 8, 2021. Bank X and Bank Y are both members in good standing with a SEF named "Xeqution Co." and use a DCO named "ClearitAll".

Field	Description
Execution time-stamp	16:20:47
Cleared or uncleared	C (**note:** the name of DCO is not reported)
Execution Venue	SWM (**note:** the name of SEF is not reported)
Start date	08–02–11
Asset class	IR
Contract type	S-

[62] *See id.*

Field	Description
Underlying asset 1	TX (**note:** TX represents the reference rate of Treasury 10 year, which is the fixed rate)
Underlying asset 2	IIIL (**note:** IIIL represents 3 month LIBOR, which is the floating rate)
Notional currency 1 ...	USD
Notional or principal amount 1.	10M (**note:** this may be reported as "10,000,000")
Pricing Notation	2.53
Payment frequency 1	6M
Payment frequency 2	3M
Reset frequency 1	6M
Reset frequency 2	3M
Tenor	G21 (**note:** actual day is not reported)

The Commission believes that as swaps become more standardized, market participants and real-time disseminators may develop a nomenclature that combines data fields in an easy-to-follow manner, ensuring that all the relevant information in appendix A to this proposed part 43 is publicly disseminated. For example, the swap in the above example may be displayed as follows:

16:20:47 IRS 10 TXIIIL 2.53 @0 G21.

In the illustration above, the symbol "C" is not included, because as the markets develop, the majority of standardized swaps will be cleared through DCOs and an indication of "U" would only be necessary for the reporting of uncleared swaps. The term "SWM" is also omitted since it could be assumed by market participants and the public that the swap has taken place on a swap market. Such an indication would only be needed if the swap was done off-facility pursuant to the non-financial end-user exception from the mandatory clearing requirement under Section 2(h)(7) of the CEA. The start date is not reported because in this illustration it is assumed for a swap of "TXIIIL" the start date is always two business days after the date of execution (*i.e.,* T+2). The term "IRS" would replace the separate data fields for asset class "IR" and contract type "S–" as the standard format once market participants have become accustomed to reading data on a consolidated tape for swaps. The terms "USD" and "M" in 10,000,000 are also dropped because in this illustration the market would have developed in such a manner as to understand that the standard trade is done in U.S. dollars and in round lots of one million or in this case "10". Payment frequency and reset frequency would also be excluded for both of the underlying assets because the symbol "TXIIIL" now represents a plain vanilla interest rate swap where payment frequency and reset frequency are standardized terms of the swap transaction. The number "2.53" for price notation remains but in some cases, such as a basis swap, this field may be omitted as the market develops. The symbol "@0" is used because in some cases front-end, back-end, margin, collateral or other payments that are not included in the terms of the swap must be reported as an additional price notation characteristic. In this example, there is no additional price notation that must be reported. The symbol "G21" is still reported to indicate that the swap matures (*i.e.,* terminates) in February 2016.

Example 2:

On Friday, February 4, 2011, Bank X, once again enters into a plain vanilla 10-year fixed versus floating interest rate swap with Bank Y for a notional amount of $10 million U.S. dollars. The swap is scheduled to start on Tuesday, February 8, 2011 (**Note:** start dates are usually 2 business days later). Bank X is payer of the fixed leg of the swap and is obligated to pay a fixed rate of 2.53% on the notional amount for the ten-year tenor of the swap. Bank Y is the payer of the floating leg of the swap and is obligated to pay the prevailing three-month LIBOR on the $10 million notional amount. To illustrate an exception from the plain vanilla swap, the first LIBOR payment in this example is based on the three-month LIBOR rate for February 4, 2011 with a weekly rate reset, instead of the normal quarterly rate reset. Both parties have agreed to use the same day count convention, payment currency and notional amount for both of the underlying assets to the swap.

Bank X and Bank Y have additional payments to be made between the two parties under the terms of the swap. Bank X is required to deliver a front-end payment of $500,000 U.S. dollars to Bank Y, which is represented by an increase to the fixed-rate payer's requirement of "+0.07" and reported in the additional price notation data field. For the sake of clarity, this additional price notation data field should be in the same format as the price notation field and be displayed as an addition or subtraction to the fixed-rate payer's rate under the swap.

In order for the parties to protect themselves from a possible increase in interest rates, Bank Y purchases a one-year pay fixed versus floating swaption with a strike rate of 2.53% to pay fixed for 9-years to Bank X (*i.e.,* through the maturity of the swap). This swaption effectively will terminate the original swap with Bank X, and in this example, we can assume that the cost of the swaption is $100,000. This swaption might also be listed as an adjustment to the fixed rate that Bank Y would receive from Bank X in the initial swap if the payments were not made outright, but were blended into the initial fixed rate. In this example, this might be represented by subtracting four basis points or "–0.04".

The reset and payment frequency for the fixed rate is semi-annual (every six months), while the reset and payment frequency for the three-month LIBOR is weekly, upon the request of the variable rate payer. The parties' requirements under the swap are scheduled to mature on Monday, February 8, 2021. Bank X and Bank Y are both members in good standing with a SEF named "Xeqution Co." and use a DCO named "ClearitAll".

Field	Description
Execution time-stamp	16:20:47
Cleared or uncleared	C (**note:** the name of DCO is not reported)
Execution Venue	SWM (**note:** the name of SEF is not reported)
Start date	08–02–11
Asset class	IR
Contract type	S–
Underlying asset 1	TX (**note:** TX represents Treasury 10 year)
Underlying asset 2	IIIL (**note:** IIIL represents 3 month LIBOR)
Price Notation	2.53
Additional price notation.	+0.07
Notional currency 1 ...	USD
Notional or principal amount 1.	10M (**note:** this may be reported as "10,000,000")
Payment frequency 1	6M
Payment frequency 2	1W
Reset frequency 1	6M
Reset frequency 2	1W
Tenor	G21 (**note:** actual day is not reported)
Embedded option on swap.	EMBED1
Option Strike Price	O2.53
Option Type	PF (**note:** this is always reported from the point of view of the variable leg)
Option Family	EU (**note:** this is a European style option)
Option currency	USD
Option premium	–.04 (**note:** this may be reported as "$100,000" depending on market conventions)

Field	Description
Option lockout period	G12 (**note:** actual day is not reported)
Option expiration	G21 (**note:** actual day is not reported)

The Commission believes that as swaps become more standardized, market participants or real-time disseminators may develop a nomenclature that combines data fields in an easy-to-follow manner, while ensuring that all the relevant information in appendix A to this proposed part 43 is publicly disseminated. Even swaps with one or more non-standard terms may still be reported in a consolidated format. For example, the swap in the example above may be displayed as follows:

16:20:47 IRS 10 TXIIIL S/1W 2.53 @0.07 G21 EMBED1 EU 2.53PF@–.04 LOG12

In the illustration above, the symbol "C" is not included because as the markets develop the majority of standardized swaps will be cleared through DCOs, and an indication (*e.g.,* the symbol "U") would only be necessary for the reporting of uncleared swaps. The term "SWM" is also omitted since, it could be assumed by market participants and the public that the swap has taken place on a swap market. Such indication would only be necessary if the swap was done off-facility, pursuant to the non-financial end-user exception from the mandatory clearing requirement under Section 2(h)(7) of the CEA. The start date not reported for this swap because in this illustration, it is assumed that for a swap of "TXIIIL" the start date is always two business days after the date of execution (*i.e.,* T+2). The term "IRS" would replace the separate data fields for asset class "IR" and contract type "S-" as the standard format once market participants have come accustomed reading data on a consolidated tape for swaps. The terms "USD" and "M" in 10,000,000 are also dropped because in this illustration the market has developed in such manner as to understand that the standard trade is done in U.S. dollars and in round lots of one million or in this case "10".

The Commission anticipates that in order for the price notation and additional price notation data fields to be of the greatest value to market participants and the public, some form of standardization likely will develop for the purposes of real-time public reporting and market participants consistently use these data fields.[63] An example of the evolution of standardization is shown in the illustration above where price notation is displayed as the number "2.53", which is equal to the rates associated with payments on each leg at execution. Each leg of the swap's present value of future payments would be equal to zero (*i.e.,* a par swap's value). The symbol "@0.07" is listed in the illustration above because the present value of the front-end payment is the equivalent of a higher interest payment of 0.07 over the life of the swap for the party that is paying the fixed rate at execution. Payment frequency and reset frequency have been represented with an "S/1W" for the underlying assets because the symbol "TXIIIL" represents a plain vanilla interest rate swap where payment frequency and reset frequency are standardized terms of the swap transaction. In the illustration above, however, only the Treasury leg is standard, while the floating LIBOR leg is set to weekly versus its standard quarterly format. The symbol "G21" is reported to indicate that the requirements under the swap terminate in February 2021. In this illustration, "TXIIIL" is still used as a symbol that lets participants know several of the previously required data fields are standardized and combined and therefore do not need to be displayed separately for real-time public reporting, while those fields that are non-standard are simply broken out and reported separately in a more traditional long format.

The interest rate swap in this illustration contains an embedded option that is broken out so that data fields can be easily comparable across a wider variety of similar, but not identical swaps, thus promoting post-trade price transparency. The term "EMBED1" indicates that this interest rate swap has an embedded option and the pricing information for such embedded option follows on the real-time public reporting consolidated tape. The symbol "2.53PF" replaces the separate data fields for option strike price "O2.53" and option type "PF". Option family "EU" is included in the consolidated tape to indicate the family of the embedded option. The option currency "USD" is left off of this transaction because it is assumed for a "TXIIIL" swap, the option currency for any embedded options would be "USD", unless broken out and reported individually. The symbol "LOG12" is used instead of "G12" to indicate the lock out period to provide clarity. The option expiration of "G21" is omitted because the embedded option is assumed to be in a standard form and as such would be set to expire at the same time as the swap itself. If such embedded option was not in standard form, then the option expiration field would have been reported as an additional data field.

The Commission requests comment on all aspects of the data fields in appendix A to proposed part 43 that would be required to be reported in real-time under this proposal. In addition, the Commission requests specific comment on the following issues:

- Do commenters agree with the proposed data fields that would be required to be reported in real-time? If not, what additional data fields should be reported and why? How would public dissemination of these data fields enhance transparency and price discovery?
- Which data fields, if any, should not be required to be publicly disseminated in real-time and why?
- Would public dissemination of certain data fields reduce market liquidity?[64] If so, why?
- Should the portion of the amount reported in the additional price notation data field that relates to the creditworthiness of a counterparty be extracted and reported as a separate data field? If so, why? Should the creditworthiness of a counterparty be reported in some other way?
- Do commenters agree that tenure should only be reported with month and year? Is this a useful method for protecting the anonymity of the counterparties? Does this provide an adequate level of transparency?
- Do commenters agree with the proposed method for real-time reporting and public dissemination of non-standardized swaps? Should the "indication of other price affecting term" data field contain more specificity as to what type of term is affecting the price? If so, what additional information should be included and how should it be reported?
- Would public dissemination of information concerning non-standardized swaps materially reduce market liquidity? If so, why?[65]
- Under the proposal, the swap instrument data field would only be required for block trades and large notional swaps, should this data field be reported for all swaps? If so, why?

[63] It is important to note that such standards are not intended to change the form in which market participants use to quote or construct swaps.

[64] Section 2(a)(13)(E)(iv) requires that the Commission "take into account whether the public disclosure will materially reduce market liquidity."

[65] *See* Section 2(a)(13)(E)(iv).

• Would information concerning the type of counterparties that enter into a swap enhance transparency and price discovery (*e.g.,* whether the counterparty is a swap dealer, MSP, or not)? If so, why?

• Would separately reporting embedded option information enhance price discovery and transparency? If not, why?

• Do proposed § 43.4 and appendix A to proposed part 43 provide adequate guidance with respect to the information that must be reported? If not, what additional guidance do commenters believe is necessary?

• Do commenters agree with the reporting of price-affecting continuation events? Should data relating to these events be publicly disseminated in real-time in the same way as new swap transactions? What additional types of transactions, if any, would be price-affecting continuation events that should be reported and publicly disseminated in real-time?

• What would be the costs of reporting and publicly disseminating the proposed data fields? What would be the benefits? Please provide examples, if possible.

5. Proposed Section 43.5—Block Trades and Large Notional Swaps

Sections 2(a)(13)(E)(ii) and (iii) of the CEA authorize the Commission to prescribe rules "to specify the criteria for determining what constitutes a large notional swap transaction (block trade) for particular markets and contracts" and "to specify the appropriate time delay for reporting large notional swap transactions (block trades) to the public." As discussed in the Background Section above, while Section 2(a)(13)(E) of the CEA specifically 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 believes that it is appropriate to consider the four criteria in Section 2(a)(13)(E) of the CEA for all four categories of swaps described in Section 2(a)(13)(C) of the CEA.[66] Therefore, proposed § 43.5 establishes: (1) the procedures for determining the appropriate minimum sizes for block trades and large notional swaps; and (2) the appropriate time delays for the reporting of block trades and large notional swaps.

In developing the proposed rules with respect to block trades and large notional swaps, the Commission considered its guidance with respect to block trades in the futures markets. Additionally, the Commission considered the treatment of block trades in other markets (both foreign and domestic), such as those for equities, options and corporate bonds. Further, the Commission considered the treatment and effects of swaps with large notional or principal amounts in the current OTC swap markets. The Commission is not aware of any academic literature that offers empirical evidence to support the claim of impaired liquidity given greater transparency or how block trades on swaps or large notional swaps are affected by a post-trade transparency regime.[67]

The Commission recognizes that the term "block trade" has different meanings in different markets. For example, in the futures markets, a block trade is a permissible, privately negotiated transaction that equals or exceeds a DCM's specified minimum quantity of futures or options contracts and is executed away from the DCM's centralized market but pursuant to its rules.[68] Block trades are large-sized transactions that would cause a significant price impact if required to be executed on the DCM's centralized market. In contrast, the Commission understands, through discussions with market participants, that in the swaps markets, asset managers that execute OTC swaps and then later distribute or allocate the swap to various clients or funds may refer to such bunched transactions as block trades. To clarify the Commission's view of block trades on swaps, the proposed rules include definitions for both "block trade" and "large notional swap".[69]

i. Parties to a Block Trade or Large Notional Swap

Proposed § 43.5(b)(1) provides that any party to a block trade or large notional swap is required to be an eligible contract participant ("ECP") as that term is defined in Section 1(a)(18) of the CEA. The ECP requirement relies on Section 2(e) of the CEA, which provides 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 board of trade designated as a contract market under section 5." The parties to any block trade, pursuant to a swap market's rules, and any large notional swap executed off-facility, must be ECPs. However, the proposed rule makes clear that a registered DCM may allow commodity trading advisors acting in an asset managerial capacity and investment advisors that have over $25 million in assets under management, including foreign persons performing equivalent roles, to carry out block trades on a registered DCM for non-ECP customers. Any such person may not conduct a trade on behalf of a customer unless the person receives instruction or prior consent to do so.

Proposed § 43.5(b)(2) requires that parties to a swap that is equal to or greater than the minimum block trade size must elect to be treated as a block trade and that the swap market must provide the real-time disseminator with such election. The block trade election allows parties to a swap to calculate the impact of executing the transaction bilaterally and delaying public dissemination versus executing the transaction on a swap market's trading system or platform where there would be no delay in the dissemination of the swap's transaction and pricing data. Proposed § 45.5(b)(2) also requires that the parties to a swap that qualifies as a large notional swap must elect to be treated as a large notional swap and the reporting party must provide the real-time disseminator with such election.[70]

ii. Block Trades on Swaps

Proposed § 43.2(f) and (l) define "block trade" and "large notional swap"

[66] Pursuant to the Commission's authority under Sections 2(a)(13)(B) and 2(a)(13)(E)(iii) of the CEA.

[67] The Commission will continue to analyze and study the effects of increased transparency on post-trade liquidity, particularly in the context of block trades on swaps and large notional swaps. The Commission expects that, as post-trade transparency is implemented in the context of the Dodd-Frank Act, new data will come to light that will inform the discussion and could cause subsequent revision of the proposed rules.

[68] *See, e.g.,* CME Rulebook, Rule 526 ("Block Trades"). Available at: *http://www.cmegroup.com/rulebook/CME/index.html;* ICE Futures U.S. Rulebook, Rule 4.31 ("Block Trading"). Available at: *https://www.theice.com/Rulebook.shtml?futuresUSRulebook=.*

[69] The legislative history to the Dodd-Frank Act provides the following statement by Senate Agriculture Committee Chairwoman Blanche Lincoln regarding block trades and large notional swaps: "I would like to specifically note the treatment of 'block trades' or 'large notional' swap transactions. Block trades, which are transactions involving a very large number of shares or dollar amount of a particular security or commodity and which transactions could move the market price for the security or contract, are very common in the securities and futures markets. Block trades, which are normally arranged privately, off exchange, are subject to certain minimum size requirements and time delayed reporting * * *." 156 Cong. Rec. S5921 (daily ed. July 15, 2010) (statement of Sen. Blanche Lincoln).

[70] By way of comparison, a party to a futures contract may elect not to treat the transaction as a block trade. By not electing to treat the transaction as a block trade, the party is choosing to place its order on the DCM's centralized market. The party who makes such an election may believe that it will receive a better price in settling its trade immediately, on the DCM's centralized market, rather than bilaterally negotiating the transaction and delaying the reporting of the trade.

as separate concepts to distinguish the difference between large notional or principal sized trades executed pursuant to a swap market's rules (block trades) and off-facility swaps that are not subject to a swap market's rules but have very large notional or principal sizes (large notional swaps). Proposed § 43.2(f) defines a block trade as a swap transaction that: (1) Involves a swap that is made available for trading or execution on a swap market; (2) occurs off the swap market's trading system or platform pursuant to the swap market's rules and procedures; (3) is consistent with the minimum block trade size requirements set forth in proposed § 43.5; and (4) is reported in accordance with the swap market's rules and procedures and subject to the appropriate time delay set forth in proposed § 43.5.[71]

Proposed § 43.5(c)(2) provides that a reporting party for any block trade must report the block trade transaction and pricing data pursuant to the rules of the swap market that makes that swap available for trading. Such reporting must occur as soon as technologically practicable after execution of the block trade and pursuant to the rules of the swap market.

Proposed § 43.5(c)(3) would require the swap market that accepts the block trade to immediately send the block trade transaction and pricing data to a real-time disseminator, which shall not publicly disseminate the swap transaction and pricing data before the expiration of the appropriate time delay described in proposed § 43.5(k) discussed below.

The Commission requests comment generally on all aspects of the proposed rules regarding block trades. In addition, the Commission requests specific comment on the following issues:

- Do commenters agree with the proposed definition of "block trade"? If not, why?
- Do commenters believe that the Commission should set a maximum time frame in which a reporting party must report a block trade to a swap market, or should such time period be defined pursuant to the rules of the respective swap markets?

iii. Large Notional Swaps

Proposed § 43.2(l) defines a large notional swap as a swap that (1) is not available for trading or execution on a swap market; (2) is consistent with the appropriate size requirements for large notional swaps set forth in proposed § 43.5; and (3) is reported in accordance with the appropriate time delay requirements set forth in proposed § 43.5. Similar to the proposed reporting requirements for block trades, the reporting party to a large notional swap must report to a real-time disseminator as soon as technologically practicable. Such large notional swaps may include: (1) Swaps that would have been subject to mandatory clearing, and for which an end-user relies on the exception from the mandatory clearing requirement in Section 2(h)(7) of the CEA;[72] or (2) other off-facility swaps that are not subject to mandatory clearing but have large notional amounts (which would include non-standardized swaps). The proposed rules provide that if a swap is sufficiently large in notional or principal amount, such swap could be considered a large notional swap and therefore may be eligible for the same time delay in real-time public reporting as block trades.

Proposed § 43.5(d) requires the registered SDR that has received the swap transaction and pricing data for a large notional swap not to publicly disseminate such data before the expiration of the appropriate time delay described in proposed § 43.5(k).

Proposed § 43.5(e) provides that an off-facility swap where neither counterparty is a swap dealer or an MSP (*e.g.,* a swap between two end-users) may be eligible to be a large notional swap. Although the parties to these swaps will not be registrants with the Commission, this provision specifies that such swaps (*i.e.,* end-user to end-user transactions) will be treated the same as swaps in which a swap dealer or MSP is a party.

The Commission requests comment generally on all aspects of the proposed rules regarding large notional swaps. In addition, the Commission requests specific comment on the following issues:

- Do commenters agree with the proposed definition of "large notional swap"? If not, why?
- Do commenters agree that off-facility swaps in which neither party is a swap dealer or an MSP be eligible to be treated as large notional swaps? If not, why?

iv. Time-Stamp and Reporting Requirements for Block Trades and Large Notional Swaps

In addition to the execution time-stamp requirement under proposed § 43.4 and appendix A to proposed part 43, proposed § 43.5(f) would require a swap market and registered SDR that accepts and publicly disseminates swap transaction and pricing data in real-time to have additional time-stamp requirements with respect to block trades and large notional swaps. Proposed § 43.5(f)(1) would require swap markets to time-stamp swap transaction and pricing data with the date and time to the nearest second (1) when such swap market receives the data from a reporting party and (2) when a swap market transmits such data to a real-time disseminator. Proposed § 45.5(f)(2) would require registered SDRs that accept and publicly disseminate swap transaction and pricing data in real-time to time-stamp such data with the date and time to the nearest second when (1) such registered SDR receives such swap transaction and pricing data from a swap market or reporting party and (2) when such data is publicly disseminated.[73] Proposed § 43.5(f)(3) would require that records of these additional time-stamps be maintained for a period of at least five years from the execution of the block trade or large notional swap. The Commission believes that requiring a swap market and a registered SDR to time-stamp these actions for block trades and/or large notional swaps is essential in providing an audit trail for block trade and large notional swap transactions from execution through public dissemination. Additionally, such time-stamps would provide the Commission ability to monitor whether reporting parties, swap markets and registered SDRs are reporting the block trades and large notional swaps in the manner described in proposed part 43.

v. Responsibilities of Registered SDRs in Determining the Appropriate Minimum Block Size

Proposed § 43.5(g) would require registered SDRs to calculate the appropriate minimum block size[74] for

[71] Both block trades and large notional swaps would only apply to new events (*i.e.,* not price affecting continuation events).

[72] As described below, swaps that rely on the exception in Section 2(h)(7) of the CEA, although large notional swaps, are subject to the same time delay as block trades.

[73] Proposed § 43.5(f) would require five distinct time-stamps for block trades and three distinct time-stamps for large notional swaps. Block trades would receive a time-stamp by: (1) The parties at execution; (2) the swap market upon receipt of the data; (3) the swap market when it sends the data to a real-time disseminator; (4) the real-time disseminator upon receipt of the data; and (5) the real-time disseminator upon public dissemination of the data. A large notional swap would receive a time-stamp: (1) The parties at execution; (2) the real-time disseminator (a registered SDR, if available) upon receipt of the data; and (3) the real-time disseminator (a registered SDR, if available) upon public dissemination of the data.

[74] Proposed § 43.2(c) defines "appropriate minimum block size" to mean the minimum notional or principal size of a swap instrument that qualifies swaps within such category of swap instrument as a block trade.

swaps for which such registered SDR receives data in accordance with Section 2(a)(13)(G) of the CEA. Such appropriate minimum block size for a swap instrument [75] shall be the greater of the resulting number derived from the "distribution test" and the "multiple test" (each described below).[76] If there is only one registered SDR for a particular asset class, the registered SDR would have to calculate the appropriate minimum block size. Since registered SDRs will be receiving data from all swaps within an asset class, they should have a more complete set of swap data and therefore the calculations will be based off of a more complete set of swap data. In the event that there are multiple registered SDRs for an asset class, and therefore, multiple registered SDRs would accept swaps for a particular category of swap instrument, the Commission will prescribe how the appropriate minimum block size should be calculated, in a way that accounts for all the relevant data.[77]

The Commission requests comment on the appropriate methods to calculate the appropriate minimum block size when more than one registered SDR accepts swap data for a particular asset class or swap instrument. In addition, the Commission requests specific comment on the following issues:

- Who should determine the appropriate minimum block size when there is more than one registered SDR that accepts swap data for a particular asset class or instrument?
- Should the Commission require registered SDRs to self-certify determinations of the appropriate minimum block size for swap instruments?

vi. Formula To Calculate the Appropriate Minimum Block Size

Section 2(a)(13)(E)(ii) of the CEA directs the Commission to determine the appropriate minimum size for large notional swaps and block trades.[78] Proposed § 43.5(g)(1) describes the procedure and calculations that a registered SDR must follow in determining the appropriate minimum block size. In determining the appropriate calculations, the Commission considered: (1) Currently existing size standards for block trades in other markets; (2) the potential impact of block trades on liquidity; and (3) the frequency of block trades in other markets, including equities, bonds and futures markets. The Commission also considered the standards used by TRACE in setting its minimum threshold for block trades.[79] In that regard, for trades with a par value exceeding $5 million for investment-grade bonds or $1 million for non-investment grade bonds (*e.g.,* high-yield and unrated debt), TRACE publicly disseminates the quantity as "5MM+" and "1MM+", respectively.[80] In developing the appropriate minimum block size formula, the Commission considered the many differences within the swaps markets, including differences in liquidity between particular markets and contracts and differences in product types between asset classes and within the same asset class.

Proposed § 43.5(g)(1) would also require a registered SDR to set the appropriate minimum block size at the greater resulting number of each of the "distribution test" and "multiple test."

vii. Distribution Test

Proposed § 43.5(g)(1)(i) describes the distribution test as applying the "minimum threshold" to the "distribution of the notional or principal transaction amounts." The proposed distribution test would require a registered SDR to create a distribution curve to see where the most and least liquidity exists based on the notional or principal transaction amounts for all swaps within a category of swap instrument.[81] The application of the distribution test requires a registered SDR to determine first the distribution of the rounded notional or principal transaction amounts of swaps (rounded pursuant to the proposed rules in § 43.4(i)) within a category of swap instrument and then calculate a notional or principal size for such swap instrument that is greater than the minimum threshold.

Proposed § 43.5(g)(1)(i)(A) would require a registered SDR to pool and perform an empirical distributional analysis on the transactional data for the swaps included in each category of swap instrument by pooling the data from such swaps for which it has data that are executed on a swap market and that are executed off-facility. Proposed § 43.5(g)(1)(i)(A) also provides that a registered SDR may consider other economic information in determining the appropriate minimum block size, in consultation with the Commission.[82] The registered SDR should: (1) identify all of the rounded notional or principal amounts traded; (2) group the transactions of a particular swap instrument based on the rounded notional or principal amounts; [83] and (3)

[75] As discussed below, proposed § 43.2(y) defines "swap instrument" to mean a grouping of swaps in the same asset class with the same or similar characteristics. Swaps in a category of swap instruments may be traded on SEFs, DCMs or off-facility. The Commission is requesting general and specific comment about the determination of swap instrument, as explained in the discussion of appendix A to part 43 above.

[76] The Commission has the authority to require registered SDRs to provide the appropriate block trade minimum size to the public under Sections 21(c)(4)(B) and 21(c)(5) of the CEA. Section 21(c)(4)(B) of the CEA states that an SDR shall provide data "in such form and at such frequency as the Commission may require to comply with the public reporting requirements contained in section 2(a)(13)." Section 21(c)(5) of the CEA states that an SDR shall "at the direction of the Commission, establish automated systems for monitoring, screening, and analyzing swap data, including compliance and frequency of end-user clearing exemption claims by individual and affiliate entities."

[77] The Commission is considering alternative methods on how to determine the appropriate minimum block size when there is more than one registered SDR that accepts data for a particular asset class, including requiring a registered SDR to follow the requirements in § 40.6(a) of the CEA to self-certify the appropriate minimum block size and having the Commission make a determination of the appropriate minimum block size for a swap instrument.

[78] The legislative history to the Dodd-Frank Act provides the following statement by Senate Agriculture Committee Chairwoman Blanche Lincoln regarding the calculation of the minimum size for block trades and large notional swaps: "The committee expects that regulators to distinguish between different types of swaps based on the commodity involved, size of the market, term of the contract and liquidity in that contract and related contracts, *i.e.;* for instance the size/dollar amount of what constitutes a block trade in 10-year interest rate swap, 2-year dollar/euro swap, 5-year CDS, 3-year gold swap, or a 1-year unleaded gasoline swap. While we expect the regulators to distinguish between particular contracts and markets, the guiding principal in setting appropriate block trade levels should be that the vast majority of swap transactions should be exposed to the public through exchange trading." 156 Cong. Rec. S5,921–22 (daily ed. July 15, 2010) (statement of Sen. Blanche Lincoln).

[79] TRACE does not use the term "block trades." Rather, the TRACE system uses the term "disseminated volume caps." In discussions between TRACE representatives and staff, TRACE informed staff that disseminated volume caps are, for all intents and purposes, substantially similar to the minimum size requirements for block trades.

[80] *See* TRACE, Trade Reporting and Compliance Engine, User Guide, Version 2.4—March 31, 2010, p. 50, *http://www.finra.org/web/groups/industry/@ip/@comp/@mt/documents/appsupportdocs/p116039.pdf.*

[81] For the purposes of determining the appropriate minimum block size, swaps may be grouped by asset class into a category of swap instruments. As discussed above, proposed § 43.2(y) defines swap instrument as a grouping of swaps in the same asset class with the same or similar characteristics. A registered SDR would determine a swap instrument based on different criteria per asset class. The Commission is requesting comment on the appropriate criteria to determine the categories of swap instruments for a particular asset class.

[82] The Commission anticipates that as swap markets develop, certain adjustments for seasonality, etc., may become relevant depending on the particular type of swap contract.

[83] Rounding would occur pursuant to the rounding rules for the real-time public reporting of notional or principal amounts which are illustrated in proposed § 43.4(i).

calculate the empirical distribution of all trades for the swap instrument.

Once the distribution of notional or principal transaction amounts is completed for a swap instrument, a registered SDR must then apply the minimum threshold to such distribution. Proposed § 43.5(g)(1)(i)(B) describes the "minimum threshold" as a notional or principal amount that is greater than 95% of transaction sizes in a category of swap instrument during the period of time represented by the distribution of the notional or principal transaction amounts. Setting the threshold level at 95% ensures that the resulting number from the distribution test will be large relative to the notional value of other swaps of the same type.

In determining the appropriate percentage at which to set the "minimum threshold," the Commission considered the impact of block trades in selected futures markets.[84] In the studies conducted by the Commission, the Commission found that block trades made up a small percentage of the overall markets, accounting for less than 0.075% of total trades in the three observed markets (*i.e.,* ED, CL and RB futures contracts). Recognizing that the market for swaps is not as liquid as that of futures, and recognizing market participants' needs to lay-off risk associated with block trades, the Commission is proposing a minimum threshold of greater than 95%.

viii. Multiple Test

Proposed § 43.5(g)(1)(ii) provides that to apply the multiple test to a swap instrument, a registered SDR shall multiply the "block multiple" by the "social size".[85] The multiple test is necessary since the market for a swap instrument may be illiquid and there may be very few transactions over a particular period to provide a meaningful distribution of transaction amounts.

Proposed § 43.5(g)(1)(ii)(A) provides that the social size shall be determined by: (1) Calculating the mode, median and mean transaction sizes for all swaps within a category swap instrument; and (2) choosing the greatest of the mode, median and mean transaction sizes.[86] Commission staff's research and external meetings with market participants indicated that a swap's "social size" is an important criterion in quantifying an appropriate minimum block size.[87] The social size, or customary transaction size, for a swap varies by asset class, tenor and delivery points.

Once the social size is determined, the registered SDR must then apply the block multiplier. Proposed § 43.5(g)(1)(ii)(B) provides that the block multiple shall be set at five, so therefore the registered SDR should multiply the social size by five. The resulting product will be the number that the registered SDR compares to the resulting number from the distribution test, the greater of which will be the appropriate minimum block size for such swap instrument. In determining the block multiplier, the Commission selected a number that it believed would help to ensure that the block trade size was sufficiently large relative to the trading in a particular market and would take into account those markets that have very little trading.

The Commission believes this proposed two-part test is necessary to ensure that qualifying block trades are, in fact, large trades relative to the notional or principal amounts for a swap instrument.[88] For example, suppose there is a swap instrument that has 500 trades over a one month period and all of the specific swap instruments had notional values between $50 and $60 million. Using the distribution test, the appropriate minimum block size would be somewhere close to $60 million. Using the multiple test, the appropriate minimum block size would be $275 million.[89] The $60 million

[84] The Commission examined trading data for the Eurodollar ("ED"), crude oil ("CL") and reformulated gasoline blendstock for oxygenate blending ("RB") futures contracts, among other contracts. In the ED, CL and RB studies, the relevant time period was February 2009 to September 2010 ("relevant time period"). The Commission evaluated the frequency of use and impact of block trades in these three futures markets, which represent both liquid (*e.g.,* ED) and less liquid (*e.g.,* RB) markets. In the ED futures market, the Commission looked at a total of 56,643,563 trades of which 502 trades were block trades under CME's rules, representing 0.00089% of all trades in the ED futures market during the relevant time period. The average size of an ED futures block trade during the relevant time period consisted of 2,835 contracts, and the largest ED futures block trade consisted of 21,800 contracts. In the RB futures market, the Commission looked at 10,230,939 trades of which 7,551 trades met the minimum qualifications of a block trade, representing 0.0739% of all trades in the RB futures market during the relevant time period. The average size of a RB futures block trade was 106.47 contracts and the largest RB futures block trade was 1,050 contracts. Lastly, in the CL futures market, the Commission looked at 53,796,956 trades of which 9,346 trades were block trades, representing 0.0173% of all trades during the relevant time period. The average size of a block trade in CL futures was 294.2 contracts and the largest individual trade was 5,200 contracts.

At the time of the study, the block trade minimum was 4,000 ED futures contracts (or 1,000 ED futures contracts, provided that a minimum of 1,000 contracts are transacted in years 6–10), the block trade minimum size for RB futures was 100 contracts and the block trade minimum size for RB futures was 100 contracts. *See* CME & CBOT Market Regulation Advisory Notice RA1006–3, October 19, 2010. Available at: *http://www.cmegroup.com/rulebook/files/CME_CBOT_RA1006–3.pdf. See also,* CME Rule 526 ("Block Trades"). Available at: *http://www.cmegroup.com/rulebook/CME/I/5/26.html.*

[85] Proposed § 43.2(x) defines the "social size" as the greatest of the mode, median and mean transaction sizes of a particular type of swap.

[86] The Commission also considered using one of the mode, median, or mean of a swap instrument category as the sole measurement of social size without first comparing the three to determine which is largest. However, the Commission determined such a methodology would render an incomplete understanding of a particular swap category. By itself, the mean would not represent the social size of a particular type of swap because, as the sum of the values divided by the total number of transactions, it would fail to accurately account for the influence of outliers at the extreme large end of the data set. The median, although it would take into account swap transaction outliers, would fail to accurately reflect which trade size is transacted most often. Finally, the mode, which would represent the trade size that occurs most frequently in a particular type of swap, would fail to take into account a market where trade sizes were thinly spread and where there were large gaps in data points or in swap markets without a normal distribution.

[87] *See, e.g.,* Comments from Robert Cook, Director of the Division of Trading and Markets, SEC, Yunho Song, Managing Director/Senior Trader, Bank of America Merrill Lynch and Conrad Volstad, Chief Executive Officer, ELX Futures, L.P.:

Mr. Cook: Let me ask in terms of methodology, it's been argued by some to us that there are certain markets where there's a social size of trade or fairly standardized level of trading that could be used as a part of a building block or measuring—measurement of a block trade and others where there aren't. I would just ask if, in your experience, there are generalizations that can be drawn and, if so, what product categories do you think would lend themselves most to that type of approach to the issue?

Mr. Song: Well, I'll have a go at this. It's relatively the easiest for the most liquid products say like interest rate swaps because you can get data from banks and brokers as to—like data mining. How many trades have you done? What is the maturity profile? What is the median ticket size? What ticket size will put you in the top tenth percentile? Those, I think, you would have the relatively the least amount of hurdles to derive those number scientifically. Where it gets difficult is with the products that might trade, like, once a month, because then you've got the issue with these lumpy trades, right. It could be very illiquid. Well, you may not trade for a few months. You do this gigantic trade and then you do very little trades again and then another gigantic trade. But for—again for the bulk of the OTC derivative market, for interest rate swaps and plain vanilla options, I believe that that data is relatively readily available.

Mr. Voldstad: I would think the same is true for (inaudible) credit default swaps as it is for various indices. Roundtable Tr. at 376–377.

[88] The legislative history to the Dodd-Frank Act provides the following statement by Senate Agriculture Committee Chairwoman Blanche Lincoln regarding the calculation of the minimum size for block trades and large notional swaps: "Block trades, which are transactions involving a very large number of shares or dollar amount of a particular security or commodity and which transactions could move the market price for the security or contract, are very common in the securities and futures markets. " 156 Cong. Rec. S5,921 (daily ed. July 15, 2010) (statement of Sen. Blanche Lincoln).

[89] Assuming that the median ($55 million) is the largest of the mode, median and mean, the median would be multiplied by the block multiplier (five (5)) to equal $275 million.

notional size determined by the distribution test would not move the market (since the market can clearly handle that size) and would therefore not be a large notional amount relative to the other notional amounts that traded over the one month period. Therefore, in this example, the distribution test alone would not provide a good measure for the appropriate minimum block size. The proposed rules would require the registered SDR to compare the resulting number from the distribution test to resulting number from the multiple test. The greater of the two numbers would be the appropriate minimum block size for a swap instrument, which the registered SDR would post on its Internet Web site. In the example above, the result of the multiple test ($275 million) is greater than the distribution test and therefore would be the appropriate minimum block size that is posted by the registered SDR for the swap instrument.

With respect to newly-listed swaps, a registered SDR would be required to evaluate the distribution of notional or principal transaction amounts and calculate the mode, median and mean, over the one month period following the registered SDR's acceptance of the swap data pursuant to Section 2(a)(13)(G) of the CEA. Proposed § 43.5(g)(2) provides that after such one month period, the registered SDR would assign the newly-listed swap to the appropriate category of swap instrument or determine that a new category of swap instrument was necessary and would set an appropriate minimum block size. Proposed § 43.5(g)(2) also provides that registered SDRs should make an initial determination of the appropriate minimum block size [90] for a newly-listed swap one month after such newly-listed swap is first executed and reported to the registered SDR pursuant to Section 2(a)(13)(G) of the CEA. The Commission believes that one month of trading data provides a registered SDR with sufficient data to determine an appropriate minimum block size for a swap instrument.

Proposed § 43.5(g)(3) provides that registered SDRs must publish the list of the appropriate minimum block sizes in swap instruments on its Internet Web site, for which the registered SDR has received data pursuant to Section 2(a)(13)(G) of the CEA. Such appropriate minimum block size information must be available to the public in an open and non-discriminatory manner.

Proposed § 43.5(g)(4) would require that a registered SDR evaluate the distribution of notional or principal transaction amounts and calculate the mode, median and mean, on a yearly basis, initially beginning in accordance with the implementation timeframe for which the Commission is requesting public comment. The Commission recognizes that the appropriate minimum block size for a swap instrument may change due to market conditions. Such annual adjustments are in addition to the requirement to provide an appropriate minimum block size for newly-listed swaps one month after the registered SDR first receives data for such swap. Publishing the information on the same date each year (10th business day) will allow swap markets, market participants and the public certainty as to when they should check the appropriate minimum block sizes and, in the case of swap markets, adjust the minimum block trade sizes. In making its calculations, the registered SDR should look back to the data over the previous year for a category of swap instrument. If a particular swap instrument does not have a an entire year's worth of data, the proposed rules provide that the registered SDR should use the data that it has to make its determination of the appropriate minimum block size for a particular swap instrument. Proposed § 43.5(g)(4) also provides that registered SDRs shall begin to publish appropriate minimum block sizes for swap instruments in January 2012. The Commission believes that such timeframe allows the registered SDRs enough time to receive data to determine appropriate minimum block sizes for swap instruments.

The Commission considered the burden on registered SDRs and the benefit to market participants, swap markets and the public in proposing an annual update of the appropriate minimum block size. Allowing for a longer period between reviews would, presumably, bring more certainty to traders who engage in long-term investment strategies. However, such longer periods would fail to take into account the dynamic nature of swaps markets, as significant changes in swaps markets may occur in a relatively short amount of time. Therefore, previously established appropriate minimum block sizes may fail to accurately reflect the market. Conversely, shorter timeframes (*e.g.,* weekly, monthly, quarterly, etc.) were considered by the Commission, but such updates may be burdensome on registered SDRs and may create instability for market participants who engage in long-term investment strategies. The Commission believes that an annual review of the appropriate minimum block sizes is appropriate to balance these competing interests.[91]

ix. Responsibilities of Swap Markets in Determining Minimum Block Trade Sizes

Proposed § 43.5(h) provides that after an "appropriate minimum block size" is established by either a registered SDR or by a Commission prescribed method, a swap market shall set the "minimum block trade size" [92] for those swaps that it lists and wishes to allow block trading, by referring to the appropriate minimum block size that is posted on a registered SDR's Internet Web site for the swap instrument category for such swap. A swap market must set the minimum block trade size for a swap at an amount that is equal to or greater than the appropriate minimum block size listed by the appropriate registered SDR. A swap market would be responsible for ensuring that the minimum block trade sizes for swaps that it lists are consistent with the annual updates to the appropriate minimum block size for swap instruments. Additionally, a swap market would have to immediately apply any change to the minimum block size of a particular swap, following the posting of an appropriate minimum block size by a registered SDR. The swap market should follow the requirements set forth in § 40.6(a) of the Commission's regulations.[93]

Proposed § 43.5(h) provides that if a swap market wishes to set a minimum block trade size for a swap that does not have an appropriate minimum block size listed by a registered SDR, the swap market must follow the rules in proposed § 43.5(i) which discusses the procedure for setting the minimum block trade size for newly-listed swaps.

Proposed § 43.5(i) would require a swap market to set a minimum block trade size for newly-listed swap. Proposed § 43.2(n) defines a "newly-

[90] As discussed, such initial determination may be done by either grouping such newly-listed swap into an existing swap instrument category or by creating a new category of swap instrument and determining the appropriate minimum block size based on the criteria set forth in proposed § 43.5.

[91] Registered SDRs will have the relevant swap data readily available since it will be sent to them pursuant to Section 2(a)(13)(G) of the CEA, and the Commission does not anticipate that the annual review calculations required by this proposed rule will be burdensome on a registered SDR. Additionally, market participants and the public will receive the benefit of having up-to-date, appropriate minimum block sizes that accurately reflect the current market for a swap instrument.

[92] Proposed § 43.2(m) defines "minimum block trade size" as the minimum notional or principal amount, as determined by each swap market, for a block trade in a particular type of swap that is listed or executed on such swap market.

[93] The Commission recently proposed amendments to § 40.6(a) of the CEA. *See* 75 FR 67282 (November 2, 2010).

listed swap" as a swap that is listed on any swap market where an appropriate minimum block size has not been published by a registered SDR.[94] The minimum block trade size for a newly-listed swap that is set by a swap market would govern the trading of the newly-listed swaps on such swap market until such time as a registered SDR establishes an appropriate minimum block size for the newly-listed swap.

Proposed§ 43.5(i)(1) provides that if a newly-listed swap is within the parameters of an existing category of swap instrument for which a registered SDR has posted an appropriate minimum block size, the swap market shall set the minimum block trade size for such newly-listed swap at a level equal to or greater than such appropriate minimum block size. The requirement would enable a swap market to reference a currently existing appropriate minimum block size as a point of reference during the one-month interim period until the registered SDR actually puts the swap in a particular category of swap instrument and establishes an appropriate minimum block size. Proposed § 43.5(i)(2) provides that in setting the minimum block trade size for a newly-listed swap that is not within an existing category of swap instrument, the swap market should consider: (i) The anticipated distribution of notional or principal transaction amounts; (ii) the social size for swaps in other markets that are in substance the same as the newly-listed swap; and (iii) the minimum block trade sizes of similar swaps in the same asset class.. After taking into account these considerations, proposed § 43.5(i)(3) provides that the swap market must ensure that the notional or principal amount selected represents a reasonable estimate of the greater of (i) a notional or principal amount that is greater than all but 95% of the total anticipated distribution of notional or principal transaction amounts over the one-month period immediately following the first execution of the swap; or (ii) five times the anticipated social size over the one-month period immediately following the first execution of the swap.

In the event that a registered SDR does not set an appropriate minimum block size for a newly-listed swap after one month, as described in proposed § 43.5(g)(2), the Commission believes that in order to comply with the proposed requirements of § 43.5(i), a swap market should continue to revise the minimum block trade size for such newly-listed swap as trading increases in order to ensure that the estimated minimum block trade size is reasonable relative to increased trading activity for such newly-listed swap. Such process should continue until an appropriate minimum block size is published for the type of swap by a registered SDR.[95]

If the same type of swap begins trading on more than one swap market during the one-month period before a registered SDR sets the appropriate minimum block size, proposed § 43.5(i) would apply to each swap market where such swap is traded. Each such swap market should set the minimum block trade size the swap listed on its facility until an appropriate minimum block size is published by a registered SDR.[96]

x. Responsibilities of the Parties to a Swap in Determining the Appropriate Minimum Large Notional Swap Size

Section 43.5(j)(1) provides the procedure for parties to a swap to determine the appropriate minimum large notional swap size.[97] Because the appropriate minimum block size for swap instruments will be available on a registered SDR's Internet Web site with respect to swaps that have been trading for one month or longer, the proposed rules provide that parties who engage in an off-facility swap, and seek to qualify their swap as a large notional swap, must refer to the appropriate minimum block sizes for swap instruments. Parties to such off-facility swap must then identify the category of swap instrument in which the swap that they wish to be considered a large notional swap would likely fall. The parties to the off-facility swap should refer to the appropriate minimum block size that is associated with the selected swap instrument, and the notional or principal amount of such swap must be equal to or greater than the appropriate minimum block size. If there is not an existing category of swap instrument with an appropriate minimum block size available to reference, then such swap between the parties shall not qualify as a large notional swap and would not be afforded any time delay in public reporting. In determining the appropriate category of existing swap instrument, the parties to a swap should consider and must document: (1) The similarities of the terms of the swap between the parties compared to the terms of swaps that are grouped within the existing category of swap instrument (*e.g.,* similarities of the fields listed in appendix A to proposed part 43); and (2) other swaps listed on swap markets that were considered in evaluating the swaps that are grouped within the existing swap instrument.

The Commission considered several factors in determining this proposed method for calculating the appropriate minimum size for large notional swaps. First, the appropriate minimum block sizes that are posted by a registered SDR should be accurate, up to date and accessible to market participants. Additionally, to the extent that the reporting party to a large notional swap is a swap dealer or MSP, such reporting parties would be subject to the Commission's proposed rules for internal business conduct standards in proposed part 23 of the Commission's regulations. Further, the swap instrument categories should be broadly defined to allow parties to a large notional swap to easily place their swap into one of the categories of swap instrument. The parties to an off-facility swap should therefore be able to accurately choose a swap instrument based on the criteria set forth in this proposed rule.

Proposed § 43.5(j)(2) provides that, to the extent that the parties to a large notional swap transaction are swap dealers and/or MSPs, such parties must maintain records that illustrate the basis for the selection of the swap instrument for the large notional swap in accordance with proposed part 23 of the Commission's regulations. This section also requires that such records be made available to the Commission upon request. This proposed recordkeeping requirement should ensure that parties to an off-facility swap do not attempt to manipulate these proposed rules.

Proposed § 43.5(j)(3) provides that if the parties to a swap are unable to determine, identify or agree on the appropriate swap instrument to

[94] A swap market may, however choose not to allow block trading for such swaps and would therefore not be required to make such determination.

[95] If the initial minimum block trade size established by a swap market is greater than or equal to the appropriate minimum block size posted on a registered SDR's Internet Web site, a swap market may not have to adjust its minimum block trade size. In such a situation, a swap market may reduce its minimum block trade size to the appropriate minimum block size.

[96] For example, if on March 1, a newly-listed swap is executed on swap market 1 and a registered SDR is available to accept the swap transaction and pricing data for the swap. If on March 15, a swap is traded on swap market 2 with the same terms as the swap traded on swap market 1. The minimum block trade size established by swap market 1 will prevail until the appropriate minimum block size is calculated and posted on the registered SDR's Internet Web site on April 1, at which time swap market 1 must ensure its minimum block trade size is greater than or equal to the appropriate minimum block size. The minimum block trade size established by swap market 2 will only be its prevailing block trade size until April 1st, when it must conform to the appropriate minimum block size as calculated by the registered SDR.

[97] As noted, proposed § 45.3(b)(2) requires the reporting party of a large notional swap to elect to treat such swap as a large notional swap.

reference for the purposes of treating such swap as a large notional swap, such swap cannot qualify as a large notional swap and therefore will not be eligible for a time delay thereby requiring that such swap transaction and pricing data be publicly disseminated in real-time.

The Commission requests comment generally on all aspects of determining the appropriate minimum size for block trades and large notional swaps. In addition, the Commission requests comment on the following issues:

- Do commenters agree with the approach of having a registered SDR calculate and publicize appropriate minimum block size, but allowing swap markets to individually set their own minimum block sizes for particular contracts at a higher level based on the appropriate minimum block size? Why or why not? If not, please provide an alternative approach.
- Is the distribution test an acceptable method of determining an appropriate minimum block size? If so, is 95% the appropriate minimum threshold?
- Is the multiple test an acceptable method of determining an appropriate minimum block size? If so, is five the appropriate block multiple?
- Do the distribution test and the multiple test, taken together, account for a situation where there is a swap instrument with an extremely small sample (*e.g.,* less than 40 transactions for a category of swap instrument)? If not, what alternative method of calculation can be added for swap instruments with a small number of transactions?
- Do commenters agree with the proposal to use the greater of the distribution test or the multiple test)? If not, what alternative approach should be used and why?
- The Commission recognizes that the two-pronged formula for determining the appropriate minimum block size may lead to a relatively small appropriate minimum block size and the possibility that a significant percentage of the overall notional or principal amount of swaps transacted in a particular category of swap instrument could be executed pursuant to block trade rules or as large notional swaps, which are subject to a delay in real-time public dissemination. Therefore, should the Commission adopt an additional standard which would limit the aggregate notional or principal amount of block trades and large notional swap transactions to a percentage of the overall notional or principal volume over the prior year? If not, why not? If so, why and what should that percentage be? Should some other test be used to address this situation?
- Do commenters agree that the appropriate minimum block sizes for swap instruments, as determined by a registered SDR, should apply to all swap markets and off-facility swaps, regardless of differences in liquidity in swap markets or off-facility? [98]
- Should there be one block trade formula for all swaps? Should there be one block trade formula for all swaps in an asset class? Should different swap instruments have different block trade formulas? If commenters believe there should be various block trade formulas for different markets, for which markets and how should those standards be defined?
- Do commenters agree with the proposed method for determining the minimum block size for large notional swaps? If not, why (please provide alternative methods)? Do commenters believe that there should be other criteria that should be considered in determining if a swap is a large notional swap? If so, what other criteria?
- If there is more than one registered SDR per asset class, how could the Commission ensure that all registered SDRs implement the same appropriate minimum block size formula for the entire market for a category of swap instrument? How should the Commission approach this issue?
- Do commenters believe that the concept of block trades should exist for newly-listed swaps? If not, why? Do commenters agree with the proposed method for determining the minimum block trade size for newly-listed swaps? If not, why?
- Do commenters believe that the registered SDRs should initially calculate the appropriate minimum block size for a swap one month after a swap has been executed on a swap market? If so, why? If not, why?
- If there is no registered SDR to accept swaps for an asset class, do commenters agree with the Commission's proposal that swap markets will determine the minimum block sizes in the manner described in proposed § 43.5(h) and (i)?
- Do commenters believe that having registered SDRs perform an annual review of all appropriate minimum block sizes is the appropriate frequency? If so, why? If not, why?
- How much data would be necessary for the initial determination by registered SDRs of appropriate minimum block trade sizes? When should such initial determination of appropriate minimum block trade sizes begin? Should there be different initial determinations times based on asset class? If so, why?
- Should registered SDRs consider data for pre-existing swaps (*i.e.,* swaps entered into prior to the effective date of the Dodd-Frank Act) in making their determinations of the appropriate minimum block sizes for swap instruments? If so, why? If not, why?
- Should registered SDRs have a requirement to consult with swap markets in calculating the appropriate minimum block size of a swap instrument? If not, should swap markets have an ability to dispute and/or appeal the calculation of the appropriate minimum block size for a swap instrument that is determined by a registered SDR?
- Should registered SDRs submit to the Commission their formulas/calculations for the appropriate minimum block sizes of swap instruments in order to ensure market transparency?

xi. Time Delay in the Real-Time Public Reporting of Block Trades and Large Notional Swaps

Section 2(a)(13)(A) of the CEA requires that all parties to swap transactions, including parties to block trades and large notional swap transactions, to report data relating to swap transactions "as soon as technologically practicable after the time at which the swap transaction has been executed." [99] However, the Dodd-Frank Act also requires the Commission to promulgate rules "to specify the appropriate time delay for reporting large notional swap transactions (block trades) to the public." [100] Additionally, the Dodd-Frank Act requires that the Commission, in writing these proposed rules, "take into account whether public disclosure will materially reduce market liquidity." [101]

The Commission recognizes the potential market impact that the reporting of a block trade or large notional swap may have on the market. Such potential market impact is critical to the determination of an appropriate time delay before public dissemination of block trade or large notional swap transaction and pricing data. The ability for market participants to trade in large

[98] *See* Section 2(a)(13)(E)(iv).

[99] Section 2(a)(13)(A) of the CEA; *see also,* Statement of Senate Agriculture Committee Chairwoman Blanche Lincoln's statement: "With respect to delays in public reporting of block trades, we expect the regulators to keep the reporting delays as short as possible." 156 Cong. Rec. S5,922 (daily ed. July 15, 2010) (statement of Sen. Blanche Lincoln).

[100] Section 2(a)(13)(E)(iii) of the CEA.

[101] Section 2(a)(13)(E)(iv) of the CEA.

notional or principal amounts without market prices moving significantly against them is a vital component of any vibrant and liquid marketplace.

In external meetings with market participants, CFTC staff was often told that increased pre-trade and post-trade transparency would enable front-running and may have an adverse impact on market liquidity. Specifically, market participants expressed concern that if they were required to publicly disseminate swap transaction and pricing data immediately after the execution of a block trade or large notional swap, other market participants would be able to profit on this information by anticipating the trading activity of the block trade or large notional swap participants who are attempting to hedge their swap portfolios. As other market participants anticipate the block trade or large notional swap parties' hedges, prices may rise adverse to the market participant who is attempting to hedge and, as a result, certain market participants may be forced to take on increased costs and market exposure in offsetting their risk. Although CFTC staff was often told of the adverse impact of post-trade transparency on market liquidity, staff is not aware of any empirical evidence to support this position.[102]

Proposed § 43.5(k)(1) provides the appropriate time delays for public dissemination of block trades and large notional swaps. The time delay for public dissemination begins at execution of the swap (*i.e.,* upon or immediately following or simultaneous with affirmation of the parties to the swap). Therefore, in the case of a block trade, the time delay would begin prior to the time that that a swap market receives the swap transaction and pricing data from a reporting party. The registered SDR that publicly disseminates such data would be responsible for ensuring that such data is disseminated in accordance with proposed § 43.5(k).

Proposed § 43.5(k)(2) requires that the time delay for block trades be no later than 15 minutes after the time of execution. After the 15 minute time delay has expired, the registered SDR or the swap market (through a third-party service provider) must immediately disseminate the swap transaction and pricing data to the public.[103] As discussed above, such delay does not apply to the reporting party's requirement to report to a swap market or to a swap party's requirement to report to a real-time disseminator. It is the responsibility of the registered SDR or the swap market (through a third-party service provider) to hold the swap data for a period of 15 minutes after the execution of the trade prior to dissemination. The 15 minute time delay would apply to all swaps in Sections 2(a)(13)(C)(i) and (iv) of the CEA, meaning that even though some swaps may be large notional swaps (*e.g.,* those subject to the non-financial end-user exception from mandatory clearing) they would be subject to the same time delay as block trades executed pursuant to the rules of a swap market. The Commission believes that since swaps in Sections 2(a)(13)(i) and (iv) of the CEA will be standardized, they should be subject to the same time delay as other standardized swaps.

In determining this proposed time delay for standardized block trades and large notional swaps, the Commission considered time delays for reporting block trades or large notional transactions in other markets. FINRA's TRACE system for corporate and agency debt securities requires that "transactions in TRACE-eligible securities executed on a business day at or after 8:00 a.m. Eastern Time through 6:29:59 p.m. Eastern Time must be reported within 15 minutes of the time of execution."[104] Given the 15 minute reporting delay, TRACE does not provide any additional time delay for those trades that are subject to disseminated volume caps.[105] On the other hand, in the equity securities markets the New York Stock Exchange ("NYSE") requires all trades to be reported within 30 seconds; no additional time delay is provided for block trades.[106] The London Stock Exchange ("LSE") allows the publication of the trade to be delayed, if requested, for a specified period of time which is dependent on the volume of the trade compared to the average daily turnover, as published by LSE, for that particular security.[107] In the futures markets, CME Group's rules require the seller in a block trade transaction to report to the exchange within five minutes of execution if the trade is executed during regular trading hours (as compared to the immediate reporting exchange executed transactions). After the reporting of the block trade data, the exchange "promptly publishes such information separately from the reports of transactions in the regular markets."[108] NYSE Liffe U.S., on the other hand, allows a 15 minute delay after the trade is executed to publicly report the block trade information.[109]

Proposed § 43.5(k)(3) provides that large notional swap transaction and pricing data must be reported to the public by the registered SDR that accepts and publicly disseminates such data subject to a time delay as may be

[102] *See, e.g.,* the exchange at the Roundtable between Chester Spatt, Pamela R. and Kenneth B. Dunn Professor of Finance, Tepper School of Business, Director, Center for Financial Markets Carnegie Mellon University and Yunho Song, Managing Director/Senior Trader, Bank of America Merrill Lynch:

MR. SPATT: So just to follow up on that as well, in the three years that I was at the SEC, was basically coincided with the three years after much of the implementation of TRACE. And while folks from industry repeatedly came in and pressed the point that spreads were wider, they never presented to us in any format a convincing empirical study and nor am I aware of any empirical study in the academic community to show those effects. So I do think it's incumbent upon critics of post-trade disclosure to point to and identify convincing empirical evidence of these effects. And I think that's extremely important to the regulators as they go forward, but I must say, I'm not aware of that evidence right now.

MR. SONG: If I may comment on that—I think one of the distinctions we have is a market that may be [smaller] in retail based versus a market that is with [a] far small number of participant[s] and that's institutional based. So, you may not be able to, for example, find who was doing a specific trade looking at a TRACE report so it has a marginal impact on the marketplace * * *.

Roundtable Tr. at 332–333.

[103] In calculating the 15 minute time delay, the clock begins immediately upon execution of the swap transaction. Under proposed § 43.5(k), no pause in the running of the clock is permitted during the time it takes the reporting party or swap market to report the swap data to a real-time disseminator.

[104] FINRA Rule 6730 ("Transaction Reporting"). Available at: *http://finra.complinet.com/en/display/display_main.html?rbid=2403&element_id=4402.*

[105] *See* TRACE, Trade Reporting and Compliance Engine, User Guide, Version 2.4—March 31, 2010, p. 50. Available at: *http://www.finra.org/web/groups/industry/@ip/@comp/@mt/documents/appsupportdocs/p116039.pdf.*

[106] The NYSE has a definition of "block trade" but such designation does not affect how such transactions are reported. *See* NYSE Rule 127.

[107] LSE rules require member firms to submit trade reports to LSE as "close to instantaneously as technically possible and that the authorized limit of three minutes should only be used in exceptional circumstances,"; however, publication of such data may be deferred. *See,* LSE Rules 3020 and 3030, effective August 2, 2010. Available at: *http://www.londonstockexchange.com/traders-and-brokers/rules-regulations/rules-lse-2010.pdf.*

[108] *See,* CME Rule 526(F), ("The seller must ensure that each block trade is reported to the Exchange within five minutes of the time of execution; except that block trades in interest rate futures and options executed outside of Regular Trading Hours (7 a.m.–4 p.m. Central Time, Monday–Friday on regular business days) and Housing and Weather futures and options must be reported within fifteen minutes of the time of execution."). Available at: *http://www.cmegroup.com/rulebook/CME/I/5/26.html.*

[109] *See* NYSE Liffe U.S. Rule 423(d), ("Block Trades must be reported to the Exchange in a manner prescribed from time to time by the Exchange. Block Trades must be reported to the Exchange within 15 minutes after the completion of negotiations, but may not be submitted any later than 15 minutes prior to the Contract's Trading Session close time."). Available at: *http://www.nyse.com/pdfs/rulebook.pdf.*

prescribed by the Commission. The Commission believes that such time delay for large notional swaps may vary based on whether a swap's underlying asset is a financial or a physical commodity, asset class, and/or other factors. This provision covers all swaps under Sections 2(a)(13)(C)(ii) and (iii) of the CEA, which covers those swaps that are not subject to the mandatory clearing requirement. The swaps that fall under Sections 2(a)(13)(C)(ii) and (iii) of the CEA generally will be more customized and may, in some instances require, in the case of large notional swaps, different time delays than the time delays for block trades.

Proposed § 43.5(l) provides that all information in the data fields described in appendix A to this part and proposed § 43.4 shall be disseminated to the public for block trades and large notional swaps.

The Commission requests comment generally on all aspects of the proposed time delay in reporting block trade and large notional swap transaction and pricing data to the public. In addition, the Commission requests specific comment on the following issues:

- Do commenters believe that any time delay is appropriate for block trades and/or large notional swaps? If not, why? If so, why?
- Is a 15 minute time delay for publicly reporting the block trade transaction and pricing data described in the proposed rules an appropriate amount of time? If not, why? If so, why?
- Should the Commission consider different time delays for block trades that are significantly larger than the appropriate minimum block trade size? If so, why? How much larger than the appropriate minimum block trade size should the notional or principal amount be to warrant an additional time delay?
- Should the Commission consider different time delays for block trades and large notional swaps based on asset classes, swap instruments or particular contracts? If so, what factors or specific examples would warrant such longer time delays?
- How should the Commission determine an appropriate time delay for large notional swaps? The Commission believes that swaps will fall under the Commission's jurisdiction in the equity, credit, currency and interest rate asset classes (*i.e.,* financial swaps) can be distinguished from those swaps that fall in the other commodity asset class (*e.g.,* physical commodities). The Commission's presumption is that swaps in the equity, credit, currency and interest rate asset classes be subject to the same time delay as block trades (*i.e.,* 15 minutes). Do commenters agree that 15 minutes is an appropriate delay for these trades? If not, why and what would be an appropriate time delay? With regard to the time delay for large notional swaps in the other commodity asset class, the Commission recognizes a longer time delay may be necessary due to the hedging strategies that are associated with such swaps. What time delay would be appropriate for swaps in the other commodity asset class and why?
- What are the factors that should be considered in determining how long a time delay for a large notional swap should be? Which characteristics of a swap should be taken into consideration in determining the time delay for publicly disseminating swap transaction and pricing data relating to a large notional swap?
- If commenters believe that there would be an adverse price impact for traders if all information on block trades were made available in real-time, do commenters have any studies or empirical evidence to support that assertion? What would be the long-term effects on the market if all market participants knew the swap transaction and pricing details of all swaps in real-time? Would this impact liquidity? If so, how?
- Would the differences between the Commission's and the SEC's proposals for treatment of block trades, particularly regarding the time delay for public dissemination of block trade information provide for unfair treatment for any market participants? If so, how? Could the differences in the proposals regarding the time delay lead to any disruption in trading in any swaps markets? If so, how?

xii. Prohibition of Aggregation of Trades

Proposed § 43.5(m) prohibits the aggregation of orders for different trading accounts in order to satisfy the minimum block size requirement, except if done on a DCM by a commodity trading advisor acting in an asset manager capacity or an investment advisor who has $25 million in total assets under management.

III. Related Matters

A. Cost-Benefit Analysis

1. Introduction

Section 15(a) of the CEA requires the Commission to consider the costs and benefits of its actions before issuing a rulemaking under the CEA.[110] By its terms, Section 15(a) of the CEA does not require the Commission to quantify the costs and benefits of the rulemaking or to determine whether the benefits of the rulemaking outweigh its costs; rather, it requires that the Commission "consider" the costs and benefits of its actions. Section 15(a) of the CEA further specifies that the costs and benefits shall be evaluated in light of five broad areas of market and public concern: (1) Protection of market participants and the public; (2) efficiency, competitiveness and financial integrity of markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations. The Commission may in its discretion give greater weight to any one of the five enumerated areas and could in its discretion determine that, notwithstanding its costs, a particular rule is necessary or appropriate to protect the public interest or to effectuate any of the provisions or accomplish any of the purposes of the CEA.

2. Summary of Proposed Requirements

The proposal provides rules for the real-time public reporting of all swap transaction data, including volume and pricing data. The proposed rules mandate that reporting parties (which include swap dealers, MSPs and end-users) and swap markets (which include SEFs and DCMs), be responsible for the reporting of the swap transaction and pricing data in real-time by sending the data to an appropriate real-time disseminator. For swaps traded on a swap market, the swap market must send the data to a registered SDR or third-party service provider and such entity will publicly disseminate the swap transaction and pricing data in real-time. For off-facility swaps, the reporting party (either an MSP, swap dealer, or end-user) must send the data to a registered SDR, or if no registered SDR is available, to a third-party service provider, who will publicly disseminate the swap transaction and pricing data. The proposed rules also specify rules for how swap transaction and pricing data for trades deemed as either a block trade or large notional swap should be publicly disseminated.

3. Costs

With respect to costs, the Commission believes that the proposed reporting and recordkeeping requirements would impose significant compliance costs on registered SDRs, SEFs, DCMs, swap dealers, MSPs, end-users and third-party service providers. The proposed rules may reduce liquidity in the market by discouraging dealers from holding inventory as part of a market participant's risk management practice. Disclosing the terms of a trade

[110] *See* 7 U.S.C. 19(a).

immediately after execution exposes the price paid for a large position by a particular dealer to the rest of the market. Market participants may attempt to anticipate trading activity that the dealer will engage in to rebalance its portfolio, which may induce adverse price movements against such dealer. Additionally, real-time public reporting may obstruct some trading in illiquid instruments. Swap dealers may be less likely to commit capital in less liquid products because the terms of the trade are disclosed as soon as the trade is executed and the dealer fears his ability to lay off the risk in the market. If a trade is considered a block trade or large notional swap, the proposed rules may lead to increased costs associated with added liquidity risks, which may be passed on to end-users.

4. Benefits

With respect to benefits, the Commission believes that the proposed rules promote transparency in swaps trading which, in turn, creates greater efficiency in the swap markets.[111] Additionally, real-time reporting may expand trading opportunities as market participants have more data to analyze and research when producing investment strategies. The Commission believes that transparency in the form of real-time public dissemination of swap transaction and pricing data leads to the fairness and efficiency of markets and improves price discovery. The facilitation of price discovery decreases risk to market participants by promoting responsible and informed risk taking and, to the extent that swaps play a central role in the national economy, decreases the risk of another financial disaster by enabling market participants to measure systematic risk. The Commission believes that the federal government will be better positioned to protect the public as a result of increased surveillance and monitoring of the swap markets and its market participants. The Commission requests public comment on its cost-benefit considerations. Specifically, the Commission requests comment on whether there are alternative ways we can meet these statutory requirements under Section 727 of the Dodd-Frank Act in a less costly manner. Commenters are also invited to submit any data or other information that they may have quantifying or qualifying the costs and benefits of the proposal with their comment letters.

B. Paperwork Reduction Act

1. Introduction

The purposes of the Paperwork Reduction Act ("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 government.[112] The PRA applies with extraordinary breadth to all information, "regardless of form or format," a government agency is "obtaining, causing to be obtained [or] soliciting" and includes requiring "disclosure to third parties or the public, of facts or opinion," when the information collection calls for "answers to identical questions posed to, or identical reporting or recordkeeping requirements imposed on, ten or more people." [113] This provision has been determined to include not only mandatory but also voluntary information collections, and include both written and oral communications.[114]

To effect the purposes of the PRA, Congress requires all agencies to quantify and justify the burden of any information collection it imposes.[115] This includes submitting each collection, whether or not it is contained in a rulemaking, to the Office of Management and Budget ("OMB") for review.[116] The OMB submission process includes completing a form 83–I and a supporting statement with the agency's burden estimate and justification for the collection. When the information collection is established within a rulemaking, the agency's burden estimate and justification should be provided in the proposed rulemaking, subjecting it to the rulemaking's public comment process.

Provisions of proposed part 43 of the Commission's regulations would result in new collection of information requirements within the meaning of the PRA. The Commission therefore is submitting this proposal to the Office of Management and Budget ("OMB") for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. The title for this collection of information is "Regulation 43—Real-Time Public Reporting," OMB control number 3038–NEW. If adopted, responses to this new collection of information would be mandatory.

The Commission will protect proprietary information according to the Freedom of Information Act and 17 CFR part 145, "Commission Records and Information." In addition, section 8(a)(1) of the CEA strictly prohibits the Commission, unless specifically authorized by the CEA, from making public "data and information that would separately disclose the business transactions or market positions of any person and trade secrets or names of customers." The Commission also is required to protect certain information contained in a government system of records according to the Privacy Act of 1974, 5 U.S.C. 552a.

2. Information Provided by Reporting Entities/Persons

As mentioned above, proposed part 43 of the Commission's regulations would result in three new collections of information requirements within the meaning of the PRA. First, proposed part 43 would create a new reporting requirement either on a "swap market" when a swap is executed on a facility, or on the parties to each swap transaction when a swap is not executed on such a facility. Second, proposed part 43 would create a public dissemination requirement on a "real-time disseminator". Third, proposed part 43 creates a recordkeeping requirement for swap markets, real-time disseminators, any reporting party.

i. Reporting Requirement

Under proposed § 43.3(a), reporting parties [117] would be required to electronically report any reportable swap transactions [118] to a real-time disseminator, except as otherwise provided in such section. Proposed § 43.3 places the duty to report on several entities or persons depending on: (1) The manner in which the transaction is executed; and (2) the parties to the swap transaction.

For those swap transactions that are executed on a swap market (*i.e.,* a DCM or SEF), proposed § 43.3 requires the swap market to publicly disseminate such swap transaction and pricing data by either sending swap transaction information to a registered SDR that accepts and publicly disseminates swap transaction and pricing data or by

[111] Under Section 727 of the Dodd-Frank Act, Congress has mandated that swap transaction and pricing data be real-time reported and publicly disseminated. The Commission has requested comments on ways we can meet these statutory requirements in a less costly manner.

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

[113] 44 U.S.C. 3502.

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

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

[116] *See* 44 U.S.C. 3507.

[117] Proposed § 43.2(w) defines "reporting party" to include the party to a swap with the duty to report a reportable swap transaction.

[118] Proposed § 43.2(v) defines "reportable swap transaction" to mean any executed swap, notation, swap unwind, partial novation, partial swap unwind or any other post-execution event that affects the pricing of a swap.

sending swap transaction information through a third-party service provider for public dissemination. The Commission estimates that DCMs and SEFs (an estimated 57 entities or persons) will have approximately 2,080 burdens hours per swap market.[119]

For those swap transactions that are executed "off-facility", proposed § 43.3 requires reporting parties (*i.e.,* swap dealers, MSPs and swap end-users) to report their swap transaction and pricing data to a registered SDR or, if no registered SDR will accept such data, to a third-party service provider. With respect to swap dealers and MSPs (an estimated 300 entities or persons), proposed § 43.3 requires only one party to such transaction report to a real-time disseminator. The Commission estimates that swap dealers and MSPs will have 2,080 annual burden hours associated with the reporting requirement under proposed § 43.3. With respect to swap end-users, proposed § 43.3 requires swap end-users to report their swap transaction and pricing data only for end-user-to-end-user transactions. In addition, proposed § 43.3 provides that only one swap end-user in an end-user-to-end-user swap transaction will have the obligation to report to a real-time disseminator. For that reason, the Commission estimates that the total number of swap end-users that would be required to report their swap transaction and pricing data is 1,500 entities or persons.[120] The Commission estimates that swap end-users will have four (4) annual burden hours per reporting party or person, for a total of 6,000 aggregate annual burden hours.[121]

Based on the foregoing, the Commission has determined the estimated aggregate annual burden hours on swap markets and with respect to off-facility swap transactions to be 748,560.

ii. Public Dissemination Requirement

Proposed § 43.3 requires a registered SDR to publish through an electronic medium swap transaction and pricing data received from reporting parties as soon as technologically practicable, except when the registered SDR is required to delay the publication of information relating to large notional swaps or block trades. The Commission estimates that there will be approximately 15 registered SDRs[122] Proposed § 43.3(h) requires registered SDRs to receive and publicly disseminate real-time swap transaction and pricing data at all times, 24-hours a day. The Commission anticipates that there will be 6,900 annual burden hours per registered SDR. Based on the foregoing, the Commission has determined the estimated aggregate annual burden hours to be 103,500 for all registered SDRs.[123] Therefore, the total aggregate annual burden hours associated with this public dissemination requirement, including the burden hours associated with third party service providers, is estimated to be 207,000.

iii. Recordkeeping Requirement

Under proposed § 43.3(i), swap markets (an estimated 57 entities or persons), registered SDRs (an estimated 15 entities or persons) and reporting parties must retain all data relating to a reportable swap transaction for a period of not less than five years following the time at which such reportable swap transaction is publicly disseminated in real-time. With respect to swap markets and real-time disseminators, the Commission estimates that proposed recordkeeping requirement will be 250 annual burden hours per swap market and registered SDR.[124] As referenced above, the Commission anticipates that 1,500 swap end-users will be reporting parties for the purposes of this part of the Commission's regulations. Since the Commission anticipates that there will be lower levels of activity relating to the requirement for swap end-users, the Commission estimates that there will be two (2) annual burden hours per swap end-user. It is important to note that the Commission addresses the recordkeeping requirements of swap dealers and MSPs in a separate, but related rulemaking relating to the internal business conduct standards of these entities as part of the Commission's overall rulemaking initiative implementing the Dodd-Frank Act.[125]

Based on the foregoing, the Commission estimates that the aggregate annual burden hours associated with the recordkeeping requirement under the proposed § 43.3 will be 39,250.

iv. Determination of Appropriate Minimum Block Size

Under proposed § 43.5(g), registered SDRs (an estimated 15 entities or persons) will be required to determine the appropriate minimum block size for swaps for which these registered SDRs receive data in accordance with Section 2(a)(13)(G) of the CEA. A registered SDR shall set and publish annually the appropriate minimum block size for each swap instrument as the greater of the numbers derived from two formulas: A distribution test and a multiple test as described in the proposal. Additionally, under proposed § 43.5(i), the SDR shall set the appropriate minimum block size for newly-listed swaps one month after the registered SDR receives data in accordance with Section 2(a)(13)(G). The registered SDR may set the appropriate minimum block size for newly-listed swaps by placing them in

[119] Because the Commission has not regulated the swap market, it has not collected data relevant to this estimate. Therefore, the Commission requests comment on this estimate.

[120] The Commission requests comment on the number of swap end-users that would be required to report their swap transaction and pricing data pursuant to proposed § 43.3. The Commission estimates that there will be a total of 30,000 swap market participants and that 1,500 of those participants will engage in end-user-to-end-user swap transactions (5% of 30,000) requiring at least one of those participants to report such swap transaction and pricing data.

[121] Estimated burden hours were obtained in consultation with the Commission's experts on information technology. This estimate includes the expectation that end users who participate in end-user-to-end-user swaps will contract with other entities to report the swap transaction and pricing data to a registered SDR or third party service provider. The Commission requests comment on these estimates.

[122] Because the Commission has not regulated the swap market, the Commission was unable to collect data relevant to these estimates. For that reason, the Commission requests comment on these estimates.

[123] The Commission estimates that there will be 15 third-party service providers. These third-party service providers are anticipated to have the same public dissemination and recordkeeping burden hours as those estimated for registered SDRs. Proposed § 43.3(d) would require a swap market that chooses to publicly disseminate swap transaction and pricing data in real-time through a third-party service provider to (1) ensure that any such third-party service provider that publicly disseminates the swap market's swap transaction and pricing data in real-time does so in a manner that complies with those standards for registered swap data repositories described in this part; and (2) ensure that the Commission has access to any such swap transaction and pricing data, through either the swap market or via direct access to the third-party service provider. Additionally, certain off-facility swaps may be publicly disseminated through a third-party service provider in those instances where no registered SDR is available to accept and publish the swap transaction and pricing data. Therefore, although the ultimate responsibility is on the swap market who uses a third-party service provider to ensure it complies with standards set forth in part 43 for registered SDRs, the third-party service provider will be the entity actually performing the public dissemination and, in some cases, recordkeeping function for certain swaps. Therefore, as was estimated for registered SDRs, the Commission estimates a public dissemination burden of 6,900 hours per third-party service provider, for an aggregate of 103,500 annual burden hours for all third-party service providers. Also, the Commission estimates a recordkeeping burden of 250 hours per third-party service provider, for an aggregate of 3,750 annual burden hours for all third-party service providers.

[124] *See* footnote 123 above.

[125] An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number. The Commission invites public comment on the accuracy of its estimate that no additional recordkeeping or information collection requirements related to swap dealers and MSPs would result from the rules proposed herein.

a category of existing swap instrument with an appropriate minimum block size or by creating a new category of swap instrument and performing the calculations described in § 43.5(g). The Commission estimates that proposed requirement will impose 20 annual burden hours per registered SDR.

Based on the foregoing, the Commission estimates that the aggregate annual burden hours associated with this requirement under the proposed § 43.5(g) and (i) will be 300.

3. Information Collection Comments

The Commission invites the public and other Federal agencies to comment on any aspect of the reporting and recordkeeping burdens discussed above. Pursuant to 44 U.S.C. 3506(c)(2)(B), the Commission requests comments in order to: (i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (ii) evaluate the accuracy of the Commission's estimate of the burden of the proposed collection of information; (iii) determine whether there are ways to enhance the quality, utility and clarity of the information to be collected; and (iv) minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

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

C. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA") was adopted to address the concerns that government regulations may have a significant and/or disproportionate effect on small businesses. To mitigate this risk, the RFA requires agencies to conduct an initial and final regulatory flexibility analysis for each rule of general applicability for which the agency issues a general notice of proposed rulemaking.[126] These analyses must describe the impact of the proposed rule on small entities, including a statement of the objectives and the legal bases for the rulemaking; an estimate of the number of small entities to be affected; identification of federal rules that may duplicate, overlap, or conflict with the proposed rules; and a description of any significant alternatives to the proposed rule that would minimize any significant impacts on small entities.[127]

Proposed part 43 shall affect real-time disseminators (*i.e.,* registered SDRs and third-party service providers), SEFs, DCMs, swap dealers, MSPs and swap end-users that transact with other swap end-users. The Commission has previously established certain definitions of "small entities" to be used by the Commission in evaluating the impact of its regulations on small entities in accordance with the RFA.[128] In its previous determinations, the Commission has concluded that DCMs are not small entities for the purpose of the RFA.[129]

As registered SDRs and SEFs are new entities to be regulated by the Commission pursuant to the Dodd-Frank Act, the Commission previously has not determined whether these entities are "small entities" for the purpose of the RFA. The Commission is proposing to determine that registered SDRs and SEF covered by these proposed regulations, for reasons similar to those applicable to DCMs, are not small entities for purposes of the RFA. Specifically, the Commission proposes that registered SDRs and SEFs should not be considered small entities based on, among other things, the central role they will play in the national regulatory scheme overseeing the trading of swaps. Because they will be required to accept swaps across asset classes, registered SDRs will require significant resources to operate. With respect to SEFs, not only will SEFs play a vital role in the national economy, but they will be required to operate a self-regulatory organization, subject to Commission oversight, with statutory duties to enforce the rules adopted by their own governing bodies. Most of these entities will not be small entities for the purposes of the RFA.

With respect to swap dealers, the Commission previously has determined that futures commission merchants ("FCMs") should not be considered to be small entities for the purposes of the RFA.[130] Like FCMs, swap dealers will be subject to minimum capital and margin requirements, and are excepted to comprise the largest global financial firm. Additionally, the Commission is required to exempt from designation entities that engage in a de minimis level of swaps.[131]

Similarly, with respect to swap dealers and MSPs, the Commission has previously determined that large traders are not "small entities" for RFA purposes. Like large traders, swap dealers and MSPs will maintain substantial positions, creating substantial counterparty exposure that could have serious adverse effects on the financial stability of the United States banking system or financial markets.

Although the regulations will require reporting from a single end-user transacting in a swap with another end-user, in all other situations (such as when an end-user engages in a swap with a swap or MSP), the reporting requirement will be borne by the swap dealer or MSP. Additionally, most end-users regulated by the Employee Retirement Income Security Act of 1974 ("ERISA") [132] such as pension funds, which are among the most active end-users in the swap market, are prohibited from transacting directly with other ERISA-regulated end-users. The Commission does not believe that the reporting requirements under this rulemaking will create a significant economic impact on a substantial number of small entities.

Accordingly, the Chairman, on behalf of the Commission, hereby certifies pursuant to 5 U.S.C. 605(b) that the proposed rules, will not have a significant impact on a substantial number of small entities. Nonetheless, the Commission specifically requests comment on the impact these proposed rules may have on small entities.

List of Subjects in 17 CFR Part 43

Real-time public reporting; block trades; large notional swaps; reporting and recordkeeping requirements.

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

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

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

[129] *See* 47 FR 18618 (Apr. 30, 1982).

[130] *See* 47 FR 18618 (Apr. 30, 1982).

[131] *See id.* at 18619.

[132] *See* 29 U.S.C. 1106.

In consideration of the foregoing, and pursuant to the authority in the Commodity Exchange Act, as amended, and in particular Section 2(a)(13) of the Act, the Commission hereby proposes to amend Chapter I of Title 17 of the Code of Federal Regulation by adding part 43 as follows:

PART 43—REAL-TIME PUBLIC REPORTING

Sec.
43.1 Purpose, scope, and rules of construction.
43.2 Definitions.
43.3 Method and timing for real-time public reporting.
43.4 Swap transaction and pricing data to be publicly disseminated in real-time.
43.5 Block trades and large notional swaps for particular markets and contracts.

Appendix A to Part 43—Data Fields for Real-Time Public Reporting

Authority: 7 U.S.C. 2(a), 12a(5) and 24a, *amended by* Pub. L. 111–203, 124 Stat. 1376 (2010).

§ 43.1 Purpose, scope and rules of construction.

(a) *Purpose.* This part sets forth rules relating to the collection and public dissemination of certain swap transaction and pricing data to enhance transparency and price discovery.

(b) *Scope.* (1) The provisions of this part shall apply to all swaps as defined in Section 1a(47) of the Act and any implementing regulations therefrom, including:

(i) Swaps subject to the mandatory clearing requirement described in Section 2(h)(1) of the Act (including those swaps that are excepted from the requirement pursuant to Section 2(h)(7) of the Act);

(ii) Swaps that are not subject to the mandatory clearing requirement described in Section 2(h)(1) of the Act, but are cleared at a registered derivatives clearing organization;

(iii) Swaps that are not cleared at a registered derivatives clearing organization and are reported to a registered swap data repository that accepts and publicly disseminates swap transaction and pricing data in real-time; and

(iv) Swaps that are required to be cleared under Section 2(h)(2) of the Act, but are not cleared.

(2) This part applies to all swap execution facilities, designated contract markets, swap data repositories, as well as parties to a swap including registered or exempt swap dealers, registered or exempt major swap participants and U.S.-based end-users.

(c) *Rules of Construction.* The examples in this part and in appendix A to this part 43 are not exclusive. Compliance with a particular example or application of a sample clause, to the extent applicable, constitutes compliance with such portion of the rule to which the example relates.

§ 43.2. Definitions.

As used in this part:

(a) *Act* means the Commodity Exchange Act, as amended.

(b) *Affirmation* means the process by which parties to a swap verify (orally, in writing, electronically or otherwise) that they agree on the primary economic terms of a swap (but not necessarily all terms of the swap). Affirmation may constitute "execution" of the swap or may provide evidence of execution of the swap, but does not constitute confirmation (or confirmation by affirmation) of the swap.

(c) *Appropriate minimum block size* means the minimum notional or principal size of a swap instrument that qualifies swaps within such category of swap instrument as a block trade. The appropriate minimum block size is calculated by a registered swap data repository or is prescribed by the Commission.

(d) *As soon as technologically practicable* means as soon as possible, taking into consideration the prevalence, implementation and use of technology by comparable market participants.

(e) *Asset class* means the broad category of goods, services or commodities underlying a swap. The asset classes include interest rate, currency, credit, equity, other commodity and such other asset classes as may be determined by the Commission.

(f) *Block trade* means a swap transaction that:

(1) Involves a swap that is made available for trading or execution on a swap market;

(2) Occurs off the swap market's trading system or platform pursuant to the swap market's rules and procedures;

(3) Is consistent with the minimum block trade size requirements set forth in § 43.5; and

(4) Is reported in accordance with the swap market's rules and procedures and the appropriate time delay set forth in § 43.5(k).

(g) *Confirmation* means the consummation (electronically or otherwise) of legally binding documentation (electronic or otherwise) that memorializes the agreement of the parties to all terms of a swap. A confirmation must be in writing (whether electronic or otherwise) and must legally supersede any previous agreement (electronically or otherwise).

(h) *Confirmation by affirmation.* The process by which one party to a swap acknowledges its assent to the complete swap terms submitted by the other party to the swap. If the parties to a swap are using a confirmation service vendor, complete swap terms may be submitted electronically by a party to such vendor's platform and the other party may affirm such terms on such platform. With the affirmation by one party to the complete swap terms submitted by the other party, the swap is legally confirmed and a legally binding confirmation is consummated (*i.e.,* "confirmation by affirmation").

(i) *Embedded option* means any right, but not an obligation, provided to one party of a swap by the other party to the same swap that provides the party in possession of the option with the ability to change any one or more of the economic terms of the swap as they were previously established at confirmation (or were in effect on the start date).

(j) *Executed* means the completion of the execution process.

(k) *Execution* means an agreement by the parties (whether orally, in writing, electronically, or otherwise) to the terms of a swap that legally binds the parties to such swap terms under applicable law. Execution occurs immediately following or simultaneous with the affirmation of the swap.

(l) *Large notional swap* means a swap transaction that:

(1) Involves a swap that is not available for trading or execution on a swap market;

(2) Is consistent with the appropriate size requirements for large notional swaps set forth in § 43.5; and

(3) Is reported in accordance with the appropriate time delay requirements set forth in § 43.5(k).

(m) *Minimum block trade size* means the minimum notional or principal amount, as determined by each swap market, for a block trade in a particular type of swap that is listed or executed on such swap market. The minimum block trade size shall be equal to or greater than the appropriate minimum block size.

(n) *Newly-listed swap* means a swap that is listed on any swap market where an appropriate minimum block size has not been published by a registered swap data repository pursuant to § 43.5.

(o) *Novation* means the process by which a party to a swap transfers all of its rights, liabilities, duties and obligations under the swap to a new legal party other than the counterparty to the swap. The transferee accepts all

of the transferor's rights, liabilities, duties and obligations under the swap. A novation is valid so long as the transferor and remaining party to the swap are given notice, and the transferor, transferee and remaining party to the swap consent to the transfer.

(p) *Off-facility swap* means any reportable swap transaction that is not executed on or subject to the rules of a swap market.

(q) *Other commodity* means any commodity that cannot be grouped in the credit, currency, equity or interest rate asset class categories.

(r) *Public dissemination and publicly disseminate* means to publish and make available swap transaction and pricing data in a non-discriminatory manner, through the Internet or other electronic data feed that is widely published and in machine-readable electronic format.

(s) *Real-time disseminator* means a registered swap data repository or third-party service provider that accepts swap transaction and pricing data from multiple data sources and publicly disseminates such data in real-time pursuant to this part.

(t) *Real-time public reporting* means the reporting of 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.

(u) *Remaining party* means a party to a swap that consents to a transferor's transfer by novation of all of the transferor's rights, liabilities, duties and obligations under such swap to a transferee.

(v) *Reportable swap transaction* means any executed swap, novation, swap unwind, partial novation or partial swap unwind, or such post-execution events that affect the pricing of a swap.

(w) *Reporting party* means the party to a swap with the duty to report a reportable swap transaction in accordance with this part and Section 2(a)(13)(F) of the Act.

(x) *Social size* means the greatest of the mode, median and mean transaction sizes of a particular swap contract or swap instrument, as commonly observed in the marketplace.

(y) *Swap instrument* means a grouping of swaps in the same asset class with the same or similar characteristics.

(z) *Swap market* means any registered swap execution facility or registered designated contract market that makes swaps available for trading.

(aa) *Swap unwind* means the termination and liquidation of a swap, typically followed by a cash settlement between the parties to such swap.

(bb) *Third-party service provider* means an entity, other than a registered swap data repository, that publicly disseminates swap transaction and pricing data in real-time on behalf of a swap market or, in the case of an off-facility swap where there is no registered swap data repository available to publicly disseminate the swap transaction and pricing data in real-time, on behalf of a reporting party.

(cc) *Transferee* means a party to a swap that accepts, by way of novation, all of a transferor's rights, liabilities, duties and obligations under such swap with respect to a remaining party.

(dd) *Transferor* means a party to a swap that transfers, by way of novation, all of its rights, liabilities, duties and obligations under such swap, with respect to a remaining party, to a transferee.

(ee) *Unique product identifier* means a unique identification of a particular level of the taxonomy of the asset class or sub-asset class in question, as further described in § 43.4(f) and § 45.4(c) of this chapter. Such unique product identifier may combine the information from one or more of the data fields described in appendix A to this part 43.

(ff) *U.S. person* means any U.S.-based swap dealer, major swap participant, eligible contract participant, end-user or other U.S.-based entity or person that transacts in a swap.

§ 43.3 Method and timing for real-time public reporting.

(a) *Responsibilities of parties to a swap to report swap transaction and pricing data in real-time.* (1) *In general.* A reporting party shall report any reportable swap transaction to a real-time disseminator as soon as technologically practicable.

(2) Swaps listed or executed on a swap market. (i) For swaps executed on a swap market's trading system or platform, a reporting party shall satisfy its reporting requirement under this section by executing such reportable swap transaction on the swap market.

(ii) For block trades executed pursuant to the rules of a swap market, the reporting party shall satisfy its reporting requirement by reporting such trades to the swap market in accordance with the rules of the swap market and § 43.5.

(3) Off-facility swaps. Except as otherwise provided in § 43.5, all off-facility swaps shall be reported as soon as technologically practicable following execution, by the reporting party, to a registered swap data repository that accepts and publicly disseminates swap transaction and pricing data in accordance with the rules set forth in this part. The following persons shall be reporting parties for off-facility swaps:

(i) If only one party is a swap dealer or major swap participant, the swap dealer or major swap participant shall be the reporting party.

(ii) If one party is a swap dealer and the other party is a major swap participant, the swap dealer shall be the reporting party.

(iii) If both parties are swap dealers, the swap dealers shall designate which party shall be the reporting party.

(iv) If both parties are major swap participants, the major swap participants shall designate which party shall be the reporting party.

(v) If neither party is a swap dealer nor a major swap participant, the parties shall designate which party (or its agent) shall be the reporting party.

(4) Special rules when no registered swap data repository will accept and publicly disseminate data. If no registered swap data repository is available to accept and publicly disseminate swap transaction and pricing data, the reporting party of an off-facility swap may satisfy the real-time public reporting requirement under this part by publicly disseminating such data through a third-party service provider in the same manner that a swap market may report through a third-party service provider.

(b) *Public dissemination of swap transaction and pricing data. (1) Reportable swap transactions executed on a swap market.* (i) A swap market shall publicly disseminate all swap transaction and pricing data for swaps executed thereon, as soon as technologically practicable after the swap has been executed. A swap market shall satisfy this public dissemination requirement by either sending or otherwise electronically transmitting swap transaction information to a registered swap data repository that accepts and publicly disseminates swap transaction and pricing data or by publicly disseminating swap transaction information through a third-party service provider for public dissemination.

(ii) A swap market that sends swap transaction information to a third-party service provider to publicly disseminate such data in real-time does not satisfy its requirements under this section until such data is publicly disseminated pursuant to this part.

(2) *Prohibition of disclosure of data prior to sending data to a real-time disseminator.*

(i) No swap market or reporting party shall disclose swap transaction and pricing data prior to the public

dissemination of such data by a real-time disseminator.

(ii) Notwithstanding the disclosure prohibition of § 43.5(b)(2)(i), a swap market may disclose swap transaction and pricing data available to participants on its market prior to the public dissemination of such data, provided that such disclosure is made no earlier than the disclosure of such data to a real-time disseminator for public dissemination.

(iii) Notwithstanding the disclosure prohibition of § 43.5(b)(2)(i), a swap dealer may disclose swap transaction and pricing data for off-facility swaps available to its customer base prior to the public dissemination of such data, provided that such disclosure is made no earlier than the disclosure of such data to a registered swap data repository that accepts swap transaction and pricing data for public dissemination.

(c) *Requirements for registered swap data repositories in providing the real-time public dissemination of swap transaction and pricing data.* (1) *Compliance with part 49 of this chapter.* Any registered swap data repository that accepts and publicly disseminates swap transaction and pricing data in real-time shall comply with part 49 of this chapter and shall publicly disseminate swap transaction and pricing data as soon as technologically practicable upon receipt of such data, unless the data is subject to a time delay in accordance with § 43.5.

(2) *Acceptance of all swaps in an asset class.* Any registered swap data repository that accepts and publicly disseminates swap transaction and pricing data in real-time for swaps in its selected asset class shall accept and publicly disseminate swap transaction and pricing data in real-time for all swaps within such asset class.

(3) *Annual independent review.* Any registered swap data repository that accepts and publicly disseminates swap transaction and pricing data in real-time shall perform, on an annual basis, an independent review in accordance with established audit procedures and standards of the registered swap data repository's security and other system controls for the purposes of ensuring compliance with the requirements in this part.

(d) *Requirements if a swap market publicly disseminates through a third-party service provider.* If a swap market chooses to publicly disseminate swap transaction and pricing data in real-time through a third-party service provider, such swap market shall —

(1) Ensure that any such third-party service provider that publicly disseminates the swap market's swap transaction and pricing data in real-time does so in a manner that complies with those standards for registered swap data repositories described in this part.

(2) Ensure that the Commission has access to any such swap transaction and pricing data, through either the swap market or via direct access to the third-party service provider.

(e) *Availability of swap transaction and pricing data to the public.* Registered swap data repositories shall publicly disseminate swap transaction and pricing data in such a format that may be downloaded, saved and/or analyzed.

(f) *Errors or omissions.* (1) *In general.* Any errors or omissions in swap transaction and pricing data that were publicly disseminated in real-time shall be corrected or cancelled in the following manner:

(i) If a party to the swap that is not the reporting party becomes aware of an error or omission in the swap transaction and pricing data reported with respect to such swap, such party shall promptly notify the reporting party of the correction.

(ii) If the reporting party to a swap becomes aware of an error or omission in the swap transaction and pricing data which it reported to a swap market or real-time disseminator with respect to such swap, either through its own initiative or through notice by the other party to the swap, the reporting party shall promptly submit corrected data to the same swap market or real-time disseminator.

(iii) If the swap market becomes aware of an error or omission in the swap transaction and pricing data reported with respect to such swap, or receives notification from the reporting party, the swap market shall promptly submit corrected data to the same real-time disseminator.

(iv) Any registered swap data repository that accepts and publicly disseminates swap transaction and pricing data in real-time shall publicly disseminate any cancellations or corrections to such data, as soon as technologically practicable after receipt or discovery of any such cancellation or correction.

(2) *Improper cancellation or correction.* Reporting parties, swap markets and registered swap data repositories that accept and publicly disseminate swap transaction and pricing data in real-time shall not submit or agree to submit a cancellation or correction for the purpose of re-reporting swap transaction and pricing data in order to gain or extend a delay in publication or to otherwise evade the reporting requirements in this part.

(3) *Cancellation.* A registered swap data repository that accepts and publicly disseminates swap transaction and pricing data in real-time shall cancel any incorrect data that had been publicly disseminated, by publicly disseminating a cancellation of such data, in the manner and format described in Appendix A to this part.

(4) *Correction.* A registered swap data repository that accepts and publicly disseminates swap transaction and pricing data in real-time shall correct any incorrect data that had been publicly disseminated to the public, by publicly disseminating a cancellation of the incorrect swap transaction and pricing data and then publicly disseminating the correct data, as soon as technologically practicable, in the manner and format described in Appendix A to this part.

(g) *Hours of operation.* A registered swap data repository that accepts and publicly disseminates swap transaction and pricing data in real-time:

(1) Shall maintain hours of operation to receive and publicly disseminate swap transaction and pricing data at all times, twenty-four hours a day;

(2) May declare, on an ad hoc basis, special closing hours to perform system maintenance and shall provide reasonable advance notice of its special closing hours to market participants and to the public; and

(3) Shall, to the extent reasonably possible under the circumstances, avoid scheduling special closing hours when, in its estimation, the U.S. market and major foreign markets are most active.

(h) *Acceptance of data during special closing hours.* During special closing hours, a registered swap data repository that accepts and publicly disseminates swap transaction and pricing data in real-time shall have the capability to receive and hold in queue information regarding reportable swap transactions pursuant to this part.

(i) *Recordkeeping.* All data related to a reportable swap transaction shall be maintained for a period of not less than five years following the time at which such reportable swap transaction is publicly disseminated pursuant to this part.

(1) *Retention of data by a swap market.* Any swap market and any registered swap data repository that accepts and publicly disseminates swap transaction and pricing data in real-time shall retain all swap transaction information that is received from reporting parties for public dissemination, including data related to block trades and large notional swaps and information that is received by a swap market or by a registered swap

data repository that accepts and publicly disseminates swap transaction and pricing data in real-time but is not publicly reported pursuant to § 43.4(c).

(2) *Retention of data by a swap dealer or major swap participant.* In accordance with this part and part 23 of this chapter, a swap dealer or major swap participant shall retain all data relating to a reportable swap transaction that such swap dealer or major swap participant sends to a swap market or a registered swap data repository that accepts and publicly disseminates such data in real-time or that such swap dealer or major swap participant retains in accordance with § 43.5.

(j) *Fees.* Any fees or charges assessed on a reporting party or swap market by a registered swap data repository that accepts and publicly disseminates swap transaction and pricing data in real-time for the collection of such data must be equitable and non-discriminatory. If such registered swap data repository allows a discount based on the volume of data reported to it for public dissemination, such discount shall be provided to all reporting parties and swap markets impartially.

§ 43.4 Swap transaction and pricing data to be publicly disseminated in real-time.

(a) *In general.* Swap transaction information shall be reported to a real-time disseminator so that the real-time disseminator can publicly disseminate swap transaction and pricing data in real-time in accordance with this part, including the manner and format requirements described in appendix A to this part 43 and this section.

(b) *Public dissemination of data fields.* Any registered swap data repository that accepts and publicly disseminates swap transaction and pricing data in real-time shall publicly disseminate the information in the data fields described in appendix A to this part.

(c) *Additional swap information.* A registered swap data repository that accepts and publicly disseminates swap transaction and pricing data in real-time may require reporting parties and swap markets to report to such registered swap data repository, such information that is necessary to match the swap transaction and pricing data that was publicly disseminated in real-time to the data reported to a registered swap data repository pursuant to Section 2(a)(13)(G) of the Act or to confirm that parties to a swap have reported in a timely manner pursuant to § 43.3. Such additional information shall not be publicly disseminated by the registered swap data repository that accepts and publicly disseminates swap transaction and pricing data in real-time on a transactional or aggregate basis.

(d) *Amendments to data fields.* The Commission may determine from time to time to amend the data fields described in appendix A to this part.

(e) *Anonymity of the parties to a swap transaction. (1) In general.* Swap transaction and pricing data that is publicly disseminated in real-time may not disclose the identities of the parties to the swap. A registered swap data repository that accepts and publicly disseminates such data in real-time may not do so in a manner that discloses or otherwise facilitates the identification of a party to a swap.

(2) *Use of general description.* Reporting parties and swap markets shall provide a registered swap data repository that accepts and publicly disseminates swap transaction and pricing data in real-time with a specific description of the underlying asset(s) and tenor of the swap; this description must be general enough to provide anonymity but specific enough to provide for a meaningful understanding of the economic characteristics of the swap. This requirement is separate from the requirement that a reporting party must report swap data to a registered swap data repository pursuant to Section 2(a)(13)(G) of the Act. If a swap dealer or major swap participant does not report the exact description of the underlying asset(s) or tenor for the purposes of real-time reporting pursuant to this part, because such exact description would facilitate the identity of a party to a swap, such swap dealer or major swap participant must comply with the related documentation and recordkeeping requirements described in Part 23 of this chapter.

(f) *Unique product identifier.* If a unique product identifier is developed that sufficiently describes one or more swap transaction and pricing data fields for real-time reporting described in appendix A to this part, then such unique product identifier may be used in lieu of the data fields that it describes.

(g) *Price forming continuation data.* Any swap-specific event including, but not limited to novations, swap unwinds, partial novations, and partial swap unwinds, that occurs during the life of a swap and affects the price of such swap shall be publicly disseminated pursuant to this part.

(h) *Reporting of notional or principal amount. (1) Off-facility swaps.* The actual notional or principal amount for any off-facility swap shall be reported by the reporting party to the registered swap data repository that accepts and publicly disseminates such data in real-time.

(2) *Swaps executed on or pursuant to the rules of a swap market.* The actual notional or principal amount for any block trade executed pursuant to the rules of a swap market shall be reported by the reporting party to the swap market. A swap market shall transmit the actual notional amount for all swaps executed on or pursuant to its rules to the real-time disseminator.

(i) *Public dissemination of notional or principal amount.* The notional or principal amount data fields described in Appendix A to this Part 43 shall be publicly disseminated as follows:

(1) If the notional or principal amount is less than 1 million, round to nearest 100 thousand;

(2) If the notional or principal amount is less than 50 million but greater than 1 million, round to the nearest million;

(3) If the notional or principal amount is less than 100 million but greater than 50 million, round to the nearest 5 million;

(4) If the notional or principal amount is less than 250 million but greater than 100 million, round to the nearest 10 million;

(5) If the notional or principal amount is greater than 250 million, round to "250+".

§ 43.5 Block trades and large notional swaps for particular markets and contracts.

(a) *In general.* The provisions in this § 43.5 shall apply to both block trades on swaps and large notional swaps.

(b) *Eligible block trade or large notional swap parties. (1) In general.* Parties to a block trade or large notional swap must be "eligible contract participants" as defined in Section 1a(18) of the Act. However, a designated contract market may allow a commodity trading advisor acting in an asset managerial capacity and registered pursuant to Section 4n of the Act, or a principal thereof, including any investment advisor who satisfies the criteria of § 4.7(a)(2)(v) of this chapter, or a foreign person performing a similar role or function and subject as such to foreign regulation, to transact block trades for customers who are not eligible contract participants, if such commodity trading advisor, investment advisor or foreign person has more than $25,000,000 in total assets under management. A person transacting a block trade on behalf of a customer must receive written instruction or prior consent from the customer to do so.

(2) Election to be treated as a block trade or large notional swap. Parties to a swap of a large notional value shall elect to have the swap treated as a block

trade or large notional swap. Any reporting party or swap market shall indicate such election to a real-time disseminator.

(c) *Block trades on swaps.* (1) A swap market that permits block trades must have rules that specify the minimum size of such block trades pursuant to this section.

(2) The reporting party of a block trade shall report the block trade transaction and pricing data to the swap market, as soon as technologically practicable after execution of the block trade and pursuant to the rules of such swap market.

(3) The swap market shall transmit block trade transaction and pricing data to a real-time disseminator as soon as technologically practicable after receipt of such data. Such information shall not be publicly disseminated until the expiration of the appropriate time delay described in § 43.5(k).

(d) *Large notional swaps.* A registered swap data repository that accepts and publicly disseminates swap transaction and pricing data in real-time shall not publicly report the large notional swap transaction and pricing data until the expiration of the appropriate time delay described in § 43.5(k). Immediately upon expiration of the appropriate time delay, the registered swap data repository that accepts and publicly disseminates swap transaction and pricing data in real-time must publicly disseminate the large notional swap transaction and pricing data.

(e) *Off-facility swaps in which neither counterparty is a swap dealer or a major swap participant.* Off-facility swaps in which neither counterparty is a swap dealer or a major swap participant may qualify as large notional swaps. Parties to such transactions shall follow the requirements for large notional swaps in § 43.5.

(f) *Time-stamp and reporting requirements for block trades and large notional swaps.* In addition to the requirements under § 43.4 and appendix A to this part, a swap market and a registered swap data repository that accepts and publicly disseminates swap transaction and pricing data in real-time shall have the following additional time-stamp requirements with respect to block trades and large notional swaps:

(1) A swap market shall time-stamp swap transaction and pricing data with the date and time, to the nearest second of when such swap market:

(i) Receives data from a reporting party; and

(ii) Transmits such data to a real-time disseminator.

(2) A registered swap data repository that accepts and publicly disseminates swap transaction and pricing data in real-time shall time-stamp such data with the date and time, to the nearest second when such swap data:

(i) Is received from a swap market or reporting party; and

(ii) Is publicly disseminated.

(3) All records relating to the time-stamps required by this section shall be maintained for a period of at least five years from the execution of the block trade or large notional swap.

(g) *Responsibilities of registered swap data repositories in determining appropriate minimum block size.*

(1) *In general.* A registered swap data repository shall determine the appropriate minimum block size for swaps for which such registered swap data repository receives data in accordance with Section 2(a)(13)(G) of the Act. A registered swap data repository shall set the appropriate minimum block size for each swap instrument as the greater of the numbers derived from the distribution test and the multiple test described in this paragraph. To qualify as a block trade, the notional or principal amount of the swap must be equal to or greater than the appropriate minimum block size.

(i) *Distribution test.* To apply the distribution test to a swap instrument, a registered swap data repository shall apply the minimum threshold to the distribution of the notional or principal transaction amounts, each as set forth in this paragraph.

(A) In determining the distribution of the notional or principal transaction amounts of a swap instrument, a registered swap data repository shall evaluate the transaction sizes, rounded in the manner discussed in § 43.4(i), for all swaps within a category of swap instrument, by looking at swaps within the category of swap instrument that are executed: on all swap execution facilities; on all designated contract markets; and as off-facility swaps. Registered swap data repositories may also consider other economic information to establish the total market size of a category of swap instrument, in consultation with the Commission.

(B) The minimum threshold shall be a notional or principal amount that is greater than 95% of the notional or principal transaction sizes in a swap instrument during the applicable period of time, as represented by the distribution of the notional or principal transaction amounts for such swap.

(ii) *Multiple test.* To apply the multiple test to a swap instrument, a registered swap data repository shall multiply the block multiple by the social size, as described in this paragraph.

(A) In determining the social size for a swap instrument, the registered swap data repository shall calculate the mode, mean and median transaction sizes for all swaps in the category of swap instrument and choose the greatest of the mode, mean and median transaction sizes.

(B) For all swaps, the block multiple shall be five.

(2) *Initial determination of appropriate minimum block size for newly-listed swaps.* A registered swap data repository shall make its initial determination of the appropriate minimum block size for a newly-listed swap one month after such newly-listed swap is first executed and reported to the registered swap data repository. Such registered swap data repository may make such a determination by:

(i) Grouping a newly-listed swap into an existing category of swap instrument for which the registered swap data repository has already determined an appropriate minimum block size; or

(ii) Creating a new category of swap instrument for the newly-listed swap and calculating the appropriate minimum block size based on the previous month's data.

(3) *Publication of appropriate minimum block sizes.* A registered swap data repository shall publish the appropriate minimum block sizes on its Internet Web site for all swap instruments. Additionally, a registered swap data repository shall publish the types of swaps that fall within a particular category of swap instrument, for which the registered swap data repository has received data on its Internet Web site. The appropriate minimum block size information and swap instrument information on the registered swap data repository's Internet Web site must be available to the public in an open and non-discriminatory manner.

(4) *Annual update.* A registered swap data repository shall each year beginning in January 2012, publish and update the appropriate minimum block sizes for the swap instruments for which the registered swap data repository accepts data. Any such updates must be posted on the registered swap data repository's Internet Web site by the tenth business day of each year. The registered swap data repository shall calculate the appropriate minimum block size based on the data that it has received over the previous year. If a registered swap data repository has received data for a category of swap instrument for less than one year, the appropriate minimum block size shall be calculated based on such data.

(5) *Appropriate minimum block size determination when more than one registered swap data repository.* If more than one registered swap data repository maintains data for a swap instrument, then the Commission shall prescribe the manner in which the appropriate minimum block trade size shall be determined.

(h) *Responsibilities of swap markets in determining minimum block trade sizes.* For any swap listed on a swap market, the swap market shall set the minimum block trade size. Swap markets must set the minimum block trade sizes for all listed contracts at levels greater than or equal to the appropriate minimum block sizes posted on the swap data repositories' Internet Web sites. Swap markets shall immediately apply any change to the minimum block trade size of a listed swap following the posting of a new or adjusted appropriate minimum block size on a registered swap data repository's Internet Web site, pursuant to the requirements set forth in part 40 of this chapter. If a swap listed on a swap market does not have an appropriate minimum block size, such swap market shall apply the rules set forth in § 43.5(i).

(i) *Minimum block trade size determination for newly-listed swaps.* For any newly-listed swap, the swap market that lists the swap for trading shall set the minimum block trade size.

(1) If a newly-listed swap is within the parameters of a category of swap instrument for which a registered swap data repository has posted an appropriate minimum block size, the swap market shall set the minimum block size for such newly listed swap at a level equal to or greater than such appropriate minimum block size.

(2) In determining the minimum block trade size for a newly-listed swap that is not within an existing category of swap instrument, swap markets shall take into account:

(i) The anticipated distribution of notional or principal transaction amounts;

(ii) The social size for swaps in other markets that are in substance the same as such newly-listed swap; and

(iii) The minimum block trade sizes of similar swaps in the same asset class.

(3) In determining the minimum block trade size for a newly-listed swap that is not within an existing category of swap instrument, the swap market that lists the swap must ensure that the notional or principal amount selected represents a reasonable estimate of the greater of:

(i) A notional or principal amount that is greater than all but 95% of the anticipated distribution of notional or principal transaction amounts over the one month period immediately following the first execution of the swap; or

(ii) Five times the anticipated social size over the one month period immediately following the first execution of the swap.

(j) *Responsibilities of the parties to a swap in determining the appropriate minimum large notional swap size.* (1) The parties to a large notional swap shall be responsible for determining the category of existing swap instrument in which such swap should be included. Once the category of existing swap instrument is identified by the parties to the swap, the parties shall refer to the appropriate minimum block size that is associated with such existing swap instrument and made available to the public on the appropriate registered swap data repository's Internet Web site, or as otherwise prescribed by the Commission. The notional or principal amount of the swap must be equal to or greater than the appropriate minimum block size of the swap instrument in order to qualify as a large notional swap. If there is not a swap instrument with an appropriate minimum block size available to reference, then such swap between the parties shall not qualify as a large notional swap or for any time delay in reporting. In determining the appropriate swap instrument, the following factors shall be documented—

(i) The similarities of the terms of the swap between the parties compared to the terms of swaps that are grouped within the existing swap instrument; and

(ii) Other swaps listed on swap markets that are grouped within an existing category of swap instrument.

(2) To the extent that the parties to a large notional swap are swap dealers and/or major swap participants, such parties shall maintain records illustrating the basis for the selection of the swap instrument for the large notional swap pursuant to part 23 of this chapter. Such records shall be made available to the Commission upon request.

(3) In the event that the parties to a swap seek to qualify such swap as a large notional swap, but are unable to determine, identify or agree on the appropriate swap instrument to refer to, such swap shall not qualify as a large notional swap and shall not qualify for any time delay in reporting.

(k) *Time delay in the real-time public reporting of block trades and large notional swaps.* (1) *In general.* The time delay for the real-time public reporting of a block trade or large notional swap begins upon execution. It is the responsibility of the registered swap data repository that accepts and publicly disseminates swap transaction and pricing data in real-time to ensure the block trade or large notional swap transaction and pricing data is publicly disseminated following the appropriate time delay described in this section.

(2) *Time delay for standardized block trades and large notional swaps.* The block trade or large notional swap transaction and pricing data shall be reported to the public by the swap market (through a third-party service provider) or registered swap data repository that accepts and publicly disseminates such data within 15 minutes of the time of execution reflected in the data. This provision covers all swaps under Sections 2(a)(13)(C)(i) and (iv) of the Act.

(3) *Time delay for customized large notional swaps.* The large notional swap transaction and pricing data shall be reported to the public by the registered swap data repository that accepts and publicly disseminates such data subject to a time delay as may be prescribed by the Commission. This provision covers all swaps under Sections 2(a)(13)(C)(ii) and (iii) of the Act.

(l) Data to be reported to the public. With respect to block trades and large notional swaps, all information in the data fields described in appendix A to this part and § 43.4 shall be disseminated to the public.

(m) *Aggregation.* Except as otherwise stated in this paragraph, the aggregation of orders for different accounts in order to satisfy the minimum block trade size requirement is prohibited. Aggregation is permissible if done by a commodity trading advisor acting in an asset managerial capacity and registered pursuant to Section 4n of the Act, or a principal thereof, including any investment advisor who satisfies the criteria of § 4.7(a)(2)(v) of this chapter, or a foreign person performing a similar role or function and subject as such to foreign regulation, if such commodity trading advisor, investment advisor or foreign person has more than $25,000,000 in total assets under management.

Appendix A to Part 43—Data Fields for Real-Time Public Reporting

The data fields described in Table A1 and Table A2, to the extent applicable for a particular reportable swap transaction, shall be real-time reported to the public. Table A1 and Table A2 provide guidance and examples for compliance with the reporting of each data field.

TABLE A1—DATA FIELDS AND SUGGESTED FORM AND ORDER FOR REAL-TIME PUBLIC REPORTING OF SWAP TRANSACTION AND PRICING DATA

Field	Description	Example	Data application
Cancellation	An indication that a reportable swap transaction has been incorrectly or erroneously reported and is canceled. There shall be a clear indication to the public that the reportable swap transaction is being canceled (*e.g.,* "CANCEL") followed by the swap transaction and pricing data that is being canceled same form and manner that it was erroneously reported. Any cancellations should be made in accordance with § 43.3(f). If a reportable swap transaction is canceled, it may be corrected by reporting the "Correction" data field and the correct information.	CANCEL	Information is needed to inform market participants and the public that swap transaction and pricing data was erroneously disseminated to the public.
Correction	An indication that the swap transaction and pricing data that is being reported is a correction to previously publicly disseminated swap transaction and pricing data that contained an error or omission. In order for a correction to occur, the registered swap data repository that accepts and publicly disseminates swap transaction and pricing data shall first cancel the incorrectly reported swap transaction and pricing data and the follow such cancellation with the correction. There shall be a clear indication to the public that the swap transaction and pricing data that is being reported is a correction (*e.g.,* "CORRECT"). Any corrections should be made in accordance with § 43.3(f).	CORRECT	Information needed to inform market participants and the public that a particular reportable swap transaction that is being reported is a correction to swap transaction and pricing data that has been publicly disseminated by a real-time disseminator.
Date stamp	The date of execution of the reportable swap transaction. The date shall be displayed with two digits for day, month, and year. The date stamp shall be reported only when the reportable swap transaction is executed on a day other than the current day or if the reportable swap transaction is a correction or cancellation.	13–10–07	Information needed to indicate the date of execution of the reportable swap transaction (if not the same day).
Execution time-stamp	The time of execution of the reportable swap transaction in Coordinated Universal Time (UTC). The time-stamp shall be displayed with two digits for each of the hour, minute and second.	15:25:47	Information needed to indicate the time of execution of the reportable swap transaction.
Cleared or uncleared	An indication of whether or not a reportable swap transaction is cleared by a derivatives clearing organization. If the reportable swap transaction is cleared by a derivatives clearing organization, a "C" may be used and if uncleared a "U" may be used. Alternatively, the entirety of the data fields reported to the public for the reportable swap transaction may be color coded white if the swap is cleared by a derivatives clearing organization and red if the reportable swap transaction is uncleared.	C	Information needed to indicate whether or not a reportable swap transaction is cleared through a derivatives clearing organization.
Indication of other price affecting term (non-standardized swaps).	An indication that the reportable swap transaction has one or more additional term(s) or provision(s), other than those listed in the required real-time data fields, that materially affect(s) the price of the reportable swap transaction. Reportable swap transactions that are reported with this designation would be non-standardized (bespoke) swaps.	B*	Information needed to indicate whether a reportable swap transaction is non-standardized (bespoke) and to inform the public that there are one or more additional term(s) or provision(s) that materially affect the price of the reportable swap transaction.

TABLE A1—DATA FIELDS AND SUGGESTED FORM AND ORDER FOR REAL-TIME PUBLIC REPORTING OF SWAP TRANSACTION AND PRICING DATA—Continued

Field	Description	Example	Data application
	Some common material price affecting terms may include counterparty credit, collateral, day count fraction, changing notional amount, etc. A "B*" may be used to indicate that a reportable swap transaction has a material price affecting term that is not otherwise shown..		
Block trades and large notional swaps.	An indication of whether a reportable swap transaction is a block trade or large notional swap. If a reportable swap transaction is a block trade or a large notional swap and subject to a time delay in real-time public reporting pursuant to § 43.5, such block trade or large notional swap may be indicated as follows: block trade or large notional swap ("BLK"). If a trade is not a block trade or large notional swap, then this field may be left blank.	BLK	Information needed to indicate whether a reportable swap transaction is a block trade or a large notional swap. This information is important since it will alert market participants and the public to the differences in notional or principal amount and the time delay in real-time reporting the swap transaction and pricing data.
Execution venue	An indication of the venue of execution of a reportable swap transaction. Such indication may be indicated with a three character reference code as follows: reportable swap transaction executed on or pursuant to the rules of a swap market (SWM) or an off-facility swap (OFF).	OFF	Information needed to indicate whether a reportable swap transaction is executed on a swap market, as an off-facility swap, or as a block trade or large notional swap.
Swap instrument	A description of the instrument used to determine the appropriate minimum block size for block trades and large notional swaps. The swap instrument may be reported with the letters "SWI" followed by the description of the swap instrument. The swap instrument should be described in such a manner that it is clear to market participants and the public what is being reported. If there is no swap instrument, then "NA" may be reported.	SWI–ST–USD–IRS (*e.g.,* short term USD interest rate swaps).	Information needed to understand what swap instrument was used by the parties to a block trade or large notional swap to determine the appropriate minimum block trade size that was relied on to delay reporting pursuant to § 43.5.
Start date	The date that the reportable swap transaction becomes effective or starts. The effective date shall be displayed with two digits for day, month, and year. If a standardized start date is established for a particular swap, for example, the start date is always T+1 for a particular swap contract or the start date is standardized to start on a given date in the future (*e.g.,* the first of the following month), this field may not be necessary.	20–02–09	Information needed to indicate when the terms of the reportable swap transaction become effective or start.
Asset class	An indication of one of the five broad categories as described in § 43.2(e). Reportable swap transactions may be reported in the following asset classes with an appropriate two character symbol: interest rate (IR), currency (CU), credit (CD), equity (EQ), other commodity (CO)..	IR	Information needed to broadly describe the underlying asset to facilitate comparison with other similar reportable swap transactions.
Sub-asset class for other commodity.	An indication of a more specific description of the asset class for other commodity. Such sub-asset classes for other commodity reportable swap transactions may include, but are not limited to, energy, precious metals, metals—other, agriculture, weather, emissions and volatility. The sub-asset class may be reported with an appropriate two character symbol (*e.g.,* energy (EN)).	AG (agriculture swap)	Information needed to define with greater specificity, the type of other commodity that is being real-time reported and to facilitate comparison with other similar reportable swap transactions.
Contract type	An indication of one of four specific contract types of reportable swap transactions. The following product types shall be reported with an appropriate two character symbol: swap (S-), swaption (SO), forward (FO) and stand-alone options (O-).	S-	Information needed to describe the reportable swap transaction and to be able to compare such reportable swap transaction to other similar reportable swap transactions.

TABLE A1—DATA FIELDS AND SUGGESTED FORM AND ORDER FOR REAL-TIME PUBLIC REPORTING OF SWAP TRANSACTION AND PRICING DATA—Continued

Field	Description	Example	Data application
Contract sub-type	An indication of more specificity into the type of contract described in the contract type field. Such contract sub-types may include, but are not limited to, basis swaps, index swaps, broad based security swaps, and basket swaps. The contract sub-type may be reported with an appropriate two character symbol (*e.g.,* basket swap (SK)).	SS (basis swap)	Information needed to define with greater specificity, the type of contract that is being real-time reported and to facilitate comparison with other similar reportable swap transactions.
Price-forming continuation data.	An indication of whether such reportable swap transaction is a post-execution event that affects the price of the reportable swap transaction. The following price-forming continuation data may be reported with a designation as follows: novation (N-), partial novation (PN), swap unwind (U-), partial swap unwind (PU), other price-forming continuation data (PF).	PN	Information needed to describe whether the reportable swap transaction is a post-execution event for a pre-existing swap (*i.e.,* not a newly executed swap) that materially affects the price of the reportable swap transaction.
Underlying asset 1	The asset, reference asset or reference obligation for payments of a party's obligations under the reportable swap transaction reference. The underlying asset may be a reference price, index, obligation, physical commodity with delivery point, futures contract or any other instrument agreed to by the parties to a reportable swap transaction. Reporting entities may refer to § 43.4(e) when reporting underlying asset.	TX (*e.g.,* TX represents "Treasury 10 year").	Information needed to describe the reportable swap transaction and to help market participants and the public evaluate the price of the reportable swap transaction.
Underlying asset 2	The asset, reference asset or reference obligation for payments of a party's obligations under the reportable swap transaction reference. The underlying asset may be a reference price, index, obligation, physical commodity with delivery point, futures contract or any other instrument agreed to by the parties to a reportable swap transaction.. Reporting entities may refer to § 43.4(e) when reporting underlying asset.. If there are more than two underlying assets, such underlying assets shall be reported in the same manner as above.	IIIL (*e.g.,* IIIL represents 3-month LIBOR).	Information needed to describe the reportable swap transaction and to help market participants and the public evaluate the price of the reportable swap transaction.
Price notation	The premium, yield, spread or rate, depending on the type of swap, that is calculated at affirmation and nets to a present value of zero at execution. The pricing characteristic shall not include any premiums associated with margin, collateral, independent amounts, reconcilable post-execution events, options on a swap, or other non-economic characteristics. The format in which the pricing characteristic is real-time reported to the public shall be the format commonly sought by market participants for each particular market or contract.	2.53	Information needed to describe the reportable swap transaction and to help market participants and the public evaluate the price of the reportable swap transaction.
Additional price notation.	The additional pricing characteristic shall include any premiums associated with margin, collateral, independent amounts, reconcilable post-execution events, front end payments, back end payments, or other non-economic characteristics not illustrated in the reporting field for pricing characteristic. The additional pricing characteristic shall not include options as they are reported elsewhere. The format in which the additional pricing characteristic is real-time reported to the public shall be as an addition or subtraction of the pricing characteristic and in a way commonly sought by market participants for each particular market or contract.	+0.25	Additional information needed to describe the reportable swap and to help market participants and the public evaluate the price of the reportable swap transaction.

TABLE A1—DATA FIELDS AND SUGGESTED FORM AND ORDER FOR REAL-TIME PUBLIC REPORTING OF SWAP TRANSACTION AND PRICING DATA—Continued

Field	Description	Example	Data application
Unique product identifier.	Certain fields may be replaced with a unique product identifier, if such unique identifier exists, to the extent that such unique product identifier adequately describes such fields..	To be determined	Information needed to describe the reportable swap transaction and for market participants and the public to be able to compare such reportable swap transaction to other similar reportable swap transactions. Such information would substitute the information described in one or more reportable fields in accordance with § 43.4.
Notional currency 1	An indication of the type of currency that the notional amount is in. The notional currency may be reported in a commonly accepted code (*e.g.,* the three character alphabetic ISO 4217 currency code).	EUR	Information needed to describe the type of currency of the notional amount.
Notional or principal amount 1.	The total currency amount or quantity of units of the underlying asset. The notional or principal amounts for reportable swap transactions, including block trades and large notional swaps shall be reported pursuant § 43.4.	200	Information needed to identify the size of the reportable swap transaction and to help evaluate the price of the reportable swap transaction.
Notional currency 2	An indication of the type of currency that the notional amount is in. The notional currency may be reported in a commonly accepted code (*e.g.,* the three character alphabetic ISO 4217 currency code).	USD	Information needed to describe the type of currency of the notional amount.
Notional or principal amount 2.	The total currency amount or quantity of units of the underlying asset. The notional or principal amounts for reportable swap transactions, including block trades and large notional swaps, shall be reported pursuant to § 43.4. Each notional or principal amount (if there is more than one) should be labeled with a number (*e.g.,* 1, 2, 3, *etc.*) such that the number corresponds to the underlying asset for which the notional or principal amount is applicable. If there are more than two notional or principal amounts, each such additional notional or principal amount shall be reported in the same manner.	45	Information needed to identify the size of the reportable swap transaction and to help market participants and the public evaluate the price of the reportable swap transaction.
Payment frequency 1 ..	An integer multiplier of a time period describing how often the parties to the reportable swap transaction exchange payments associated with each party's obligation under the reportable swap transaction. Such payment frequency may be described as one letter preceded by an integer. Such letter convention may be reported as follows: D (daily), W (weekly), M (monthly), Y (yearly).	2M	Information needed to identify the pricing characteristic of the reportable swap transaction and to help market participants and the public evaluate the price of the reportable swap transaction.
Payment frequency 2 ..	An integer multiplier of a time period describing how often the parties to the reportable swap transaction exchange payments associated with each party's obligation under the reportable swap transaction. Such payment frequency may be described as one letter preceded by an integer. Such letter convention may be reported as follows: D (daily), W (weekly), M (monthly), or Y (yearly). Each payment frequency (if there is more than one) should be labeled with a number (*e.g.,* 1, 2, 3, *etc.*) such that the number corresponds to the underlying asset for which the payment frequency is applicable. If there are more than two payment frequency, each such additional payment frequency shall be reported in the same manner.	6W	Information needed to identify the pricing characteristic of the reportable swap transaction and to help market participants and the public evaluate the price of the reportable swap transaction.

TABLE A1—DATA FIELDS AND SUGGESTED FORM AND ORDER FOR REAL-TIME PUBLIC REPORTING OF SWAP TRANSACTION AND PRICING DATA—Continued

Field	Description	Example	Data application
Reset frequency 1	An integer multiplier of a period describing how often the parties to the reportable swap transaction shall evaluate and, when applicable, change the price used for the underlying assets of the reportable swap transaction. Such reset frequency may be described as one letter preceded by an integer. Such letter convention may be reported as follows: D (daily), W (weekly), M (monthly), or Y (yearly).	1Y	Information needed to identify the pricing characteristic of the reportable swap transaction and to help market participants and the public evaluate the price of the reportable swap transaction.
Reset frequency 2	An integer multiplier of a period describing how often the parties to the reportable swap transaction shall evaluate and, when applicable, change the price used for the underlying assets of the reportable swap transaction. Such reset frequency may be described as one letter preceded by an integer. Such letter convention may be reported as follows: D (daily), W (weekly), M (monthly), or Y (yearly). Each reset frequency (if there is more than one) should be labeled with a number (*e.g.,* 1, 2, 3, *etc.*) such that the number corresponds to the underlying asset for which the reset frequency is applicable. If there are more than two reset frequencies, each such additional reset frequency shall be reported in the same manner.	6M	Information needed to identify the pricing characteristic of the reportable swap transaction and to help market participants and the public evaluate the price of the reportable swap transaction.
Tenor	The maturity, termination, or end date of the reportable swap transaction. The tenor may be displayed with the 3 character month and year format used for futures contracts.. Reporting entities may refer to § 43.4(e) in reporting tenor.	Z15	Information needed to determine the end month and year of the reportable swap transaction and to help market participants and the public evaluate the price of the reportable swap transaction.

If a swap has more than one embedded option, or multiple swaptions provisions, all such option provisions shall be reported in the same manner pursuant to the fields in Table A2 of Appendix A to this Part 43. When disseminated to the public, multiple embedded options associated with the same swap shall be clearly described and clearly linked to the swap with which the embedded option is associated.

TABLE A2—ADDITIONAL REAL-TIME PUBLIC REPORTING DATA FIELDS FOR OPTIONS, SAPTIONS AND SWAPS WITH EMBEDDED OPTIONS

Field	Description	Example	Data application
Embedded option on swap.	An indication of whether or not the option fields are for an embedded option. This indication may be displayed as "EMBED1," "EMBED2," etc. and should precede the option fields that describe the embedded option.	EMBED1	Information needed to describe whether an option is embedded in a swap to prevent confusion and allow the market participants and the public to understand the information that is being reported.
Option Strike Price	The level or price at which an option may be exercised. The option strike price may be displayed with the letter "O" followed immediately by the level or price.	O25	Information needed to indicate the level or price at which the option may be exercised to market participants and the public.

TABLE A2—ADDITIONAL REAL-TIME PUBLIC REPORTING DATA FIELDS FOR OPTIONS, SAPTIONS AND SWAPS WITH EMBEDDED OPTIONS—Continued

Field	Description	Example	Data application
Option Type	An indication of the type of option. The option type may be displayed with a two character code as follows: put (P-), call (C-), purchase to pay fixed vs. floating (PF), purchase to receive fixed vs. floating (RF) cap (PC), floors (F-), collar (RC), straddle (D-), strangle (G-), amortizing (A-), cancelable (NC), compounding (DC), knock-in (KI), knock-out (KO), reverse knock-in (RI), reverse knock-out (RO), one touch (OT), no touch (NT), double one-touch (DO), double no touch (DN), butterfly (BU), collar (L-), condor (R-), callable inverse snowball (JC), other exotic option types (XX).	P-	Information needed to adequately describe the option to market participants and the public.
Option Family	An indication of the style of the option transaction. The option style/family may be displayed as a two letter code as follows: European (EU), American (AM), Bermudan (BM), Asian (AS), other option style/family (YY).	EU	Information needed to adequately describe the option to market participants and the public.
Option currency	An indication of the type of currency of the option premium. The option currency may be reported in a commonly accepted code (*e.g.,* the three character alphabetic ISO 4217 currency code).	USD	Information needed to identify the type of currency of the option premium to market participants and the public.
Option premium	An indication of the additional cost of the option to the reportable swap transaction as a numerical value, not as the difference of the premiums of the party's obligations to the reportable swap transaction. This field shall be combined with the option currency field.	50000	Information needed to explain the market value of the option to market participants and the public at the time of execution. This field will allow the public to understand the price of the reportable swap transaction.
Option lockout period	An indication of the first allowable exercise date of the option. Such option lockout date shall be rounded to the month and reported using the three character month and year format used for futures contracts.	J19	Information is needed to identify when the option can first be exercised and to help market participants and the public evaluate the price of the option.
Option expiration	An indication of the date that the option is no longer available for exercise. Such option expiration shall be rounded off to the month and reported using the three character month and year format used for futures contracts.	Z20	Information is needed to identify when the option can no longer be exercised and to help market participants and the public evaluate the price of the option.

Issued in Washington, DC, on November 19, 2010, by the Commission.

David A. Stawick,

Secretary of the Commission.

Statement of Chairman Gary Gensler

Real-Time Public Reporting of Swap Transaction Data

I support the proposed rulemaking to implement a real-time public reporting regime for swaps. The proposed rules are designed to fulfill Congress's direction to bring public transparency to the entire swaps market, both standardized and customized swaps. This post-trade transparency will enhance price discovery and liquidity while ensuring anonymity and protection for large trades in appropriate cases. Per Congress's direction, the proposal requires real time reporting for swap transaction and pricing data to occur as soon as technologically practicable for trades other than trades of large notional size or block trades. Congress mandated that these trades be reported without delay regardless of whether they are standardized or customized.

With regard to block trades or trades of large notional size, the proposed rule includes two important features: a time delay and a method to report the large sizes. With regard to the delay, the proposed rule includes a 15-minute delay on standardized blocks. This compares to the futures marketplace, which currently has a five-minute delay for blocks, and the equities marketplace, which has an even shorter delay. With regard to customized trades of large notional size, the proposal asks a series of questions as to whether a similar delay of 15 minutes would be appropriate for interest rate, currency and other financial swaps and what delays may be appropriate for customized large trades referencing physical commodities. The second important feature with regard to block trades or trades of large notional size is a reporting method that transactions greater than $250 million notional amount—even the very largest of trades—will just be reported as being greater than $250 million. This will protect anonymity and promote the liquidity of these large trades.

The proposal on real time reporting includes the methods by which to calculate what a block trade is across the market for various swap instruments. This will be based on data collected by the swap data repositories in each of the asset classes. Lastly, the proposal includes an initial

implementation date of January 2012 to provide time for the initial setting of block sizes based on market data and time for market participants to prepare for such real time reporting requirements.

Real time post-trade reporting is critical to promoting market integrity and to benefit the investing and hedging public. When corporations, municipal governments, farmers and merchants seek to hedge their risk, they will benefit from seeing an accurate picture of where similar transactions are being priced concurrent with their decision-making. It is an essential ingredient of well-functioning markets. Such transparency increases liquidity and enhances the price discover function of the market.

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