

## § 43.6

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(2) *Time delay during Year 2.* For one year beginning on the first anniversary of the compliance date of this part, the time delay for public dissemination of swap transaction and pricing data for all swaps described in § 43.5(g) shall be two hours immediately after execution of such swap; however, any large notional off-facility swap in the other commodity asset class in which only one party is not a swap dealer or major swap participant and such party is not a financial entity as defined in Section 2(h)(7)(C) of the Act and Commission regulations, shall receive a time delay of two hours immediately after execution of such swap, or if such swap transaction or pricing data is received by the registered swap data repository later than two hours immediately after execution, the registered swap data repository shall publicly disseminate such data as soon as technologically practicable after the data is received.

(3) *Time delay after Year 2.* Beginning on the second anniversary of the compliance date of this part, the time delay for public dissemination of swap transaction and pricing data for all swaps described in § 43.5(g) shall be two hours after the execution of such swap.

(h) *Time delay for large notional off-facility swaps in all asset classes not subject to the mandatory clearing requirement in which neither counterparty is a swap dealer or a major swap participant.* Any large notional off-facility swap in which neither party is a swap dealer or a major swap participant, which is not subject to the mandatory clearing requirement or is exempt from such mandatory clearing requirement, shall receive a time delay in the public dissemination of swap transaction and pricing data as follows:

(1) *Time delay during Year 1.* For one year beginning on the compliance date of this part, the time delay for public dissemination of swap transaction and pricing data for all swaps described in § 43.5(h) shall be 48 business hours immediately after execution of such swap.

(2) *Time delay during Year 2.* For one year beginning on the first anniversary of the compliance date of this part, the time delay for public dissemination of swap transaction and pricing data for all swaps described in § 43.5(h) shall be

36 business hours immediately after the execution of such swap.

(3) *Time delay after Year 2.* Beginning on the second anniversary of the compliance date of this part, the time delay for public dissemination transaction and pricing data for all swaps described in § 43.5(h) shall be 24 business hours immediately after the execution of such swap.

### § 43.6 Block trades and large notional off-facility swaps.

(a) *Commission determination.* The Commission shall establish the appropriate minimum block size for publicly reportable swap transactions based on the swap categories set forth in paragraph (b) of this section in accordance with the provisions set forth in paragraphs (c), (d), (e), (f) or (h) of this section, as applicable.

(b) *Swap categories.* Swap categories shall be established for all swaps, by asset class, in the following manner:

(1) *Interest rates asset class.* Interest rate asset class swap categories shall be based on unique combinations of the following:

(i) Currency by:

- (A) Super-major currency;
- (B) Major currency; or
- (C) Non-major currency; and

(ii) Tenor of swap as follows:

- (A) Zero to 46 days;
- (B) Greater than 46 days to three months (47 to 107 days);
- (C) Greater than three months to six months (108 to 198 days);
- (D) Greater than six months to one year (199 to 381 days);
- (E) Greater than one to two years (382 to 746 days);
- (F) Greater than two to five years (747 to 1,842 days);
- (G) Greater than five to ten years (1,843 to 3,668 days);
- (H) Greater than ten to 30 years (3,669 to 10,973 days); or
- (I) Greater than 30 years (10,974 days and above).

(2) *Credit asset class.* Credit asset class swap categories shall be based on unique combinations of the following:

(i) Traded Spread rounded to the nearest basis point (0.01) as follows:

- (A) 0 to 175 points;
- (B) 176 to 350 points; or
- (C) 351 points and above;

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- (ii) Tenor of swap as follows:
  - (A) Zero to two years (0–746 days);
  - (B) Greater than two to four years (747–1,476 days);
  - (C) Greater than four to six years (1,477–2,207 days);
  - (D) Greater than six to eight-and-a-half years (2,208–3,120 days);
  - (E) Greater than eight-and-a-half to 12.5 years (3,121–4,581 days); and
  - (F) Greater than 12.5 years (4,582 days and above).
- (3) *Equity asset class.* There shall be one swap category consisting of all swaps in the equity asset class.
- (4) *Foreign exchange asset class.* Swap categories in the foreign exchange asset class shall be grouped as follows:
  - (i) By the unique currency combinations of one super-major currency paired with one of the following:
    - (A) Another super major currency;
    - (B) A major currency; or
    - (C) A currency of Brazil, China, Czech Republic, Hungary, Israel, Mexico, Poland, Russia, and Turkey; or
  - (ii) By unique currency combinations not included in paragraph (b)(4)(i) of this section.
- (5) *Other commodity asset class.* Swap contracts in the other commodity asset class shall be grouped into swap categories as follows:
  - (i) For swaps that are economically related to contracts in Appendix B of this part, by the relevant contract as referenced in Appendix B of this part; or
  - (ii) For swaps that are not economically related to contracts in Appendix B of this part, by the following futures-related swaps—
    - (A) CME Cheese;
    - (B) CBOT Distillers' Dried Grain;
    - (C) CBOT Dow Jones-UBS Commodity Index;
    - (D) CBOT Ethanol;
    - (E) CME Frost Index;
    - (F) CME Goldman Sachs Commodity Index (GSCI), (GSCI Excess Return Index);
    - (G) NYMEX Gulf Coast Sour Crude Oil;
    - (H) CME Hurricane Index;
    - (I) CME Rainfall Index;
    - (J) CME Snowfall Index;
    - (K) CME Temperature Index;
    - (L) CME U.S. Dollar Cash Settled Crude Palm Oil; or

- (iii) For swaps that are not covered in paragraphs (b)(5)(i) and (b)(5)(ii) of this section, the relevant product type as referenced in Appendix D of this part.

(c) *Methodologies to determine appropriate minimum block sizes and cap sizes.* In determining appropriate minimum block sizes and cap sizes for publicly reportable swap transactions, the Commission shall utilize the following statistical calculations—

(1) *50-percent notional amount calculation.* The Commission shall use the following procedure in determining the 50-percent notional amount calculation:

- (i) Select all of the publicly reportable swap transactions within a specific swap category using a one-year window of data beginning with a minimum of one year's worth of data;

- (ii) Convert to the same currency or units and use a trimmed data set;

- (iii) Determine the sum of the notional amounts of swaps in the trimmed data set;

- (iv) Multiply the sum of the notional amount by 50 percent;

- (v) Rank order the observations by notional amount from least to greatest;

- (vi) Calculate the cumulative sum of the observations until the cumulative sum is equal to or greater than the 50-percent notional amount calculated in paragraph (c)(1)(iv) of this section;

- (vii) Select the notional amount associated with that observation;

- (viii) Round the notional amount of that observation to two significant digits, or if the notional amount associated with that observation is already significant to two digits, increase that notional amount to the next highest rounding point of two significant digits; and

- (ix) Set the appropriate minimum block size at the amount calculated in paragraph (c)(1)(viii) of this section.

(2) *67-percent notional amount calculation.* The Commission shall use the following procedure in determining the 67-percent notional amount calculation:

- (i) Select all of the publicly reportable swap transactions within a specific swap category using a one-year

window of data beginning with a minimum of one year's worth of data;

(ii) Convert to the same currency or units and use a trimmed data set;

(iii) Determine the sum of the notional amounts of swaps in the trimmed data set;

(iv) Multiply the sum of the notional amount by 67 percent;

(v) Rank order the observations by notional amount from least to greatest;

(vi) Calculate the cumulative sum of the observations until the cumulative sum is equal to or greater than the 67-percent notional amount calculated in paragraph (c)(2)(iv) of this section;

(vii) Select the notional amount associated with that observation;

(viii) Round the notional amount of that observation to two significant digits, or if the notional amount associated with that observation is already significant to two digits, increase that notional amount to the next highest rounding point of two significant digits; and

(ix) Set the appropriate minimum block size at the amount calculated in paragraph (c)(2)(viii) of this section.

(3) *75-percent notional amount calculation.* The Commission shall use the following procedure in determining the 75-percent notional amount calculation:

(i) Select all of the publicly reportable swap transactions within a specific swap category using a one-year window of data beginning with a minimum of one year's worth of data;

(ii) Convert to the same currency or units and use a trimmed data set;

(iii) Determine the sum of the notional amounts of swaps in the trimmed data set;

(iv) Multiply the sum of the notional amount by 75 percent;

(v) Rank order the observations by notional amount from least to greatest;

(vi) Calculate the cumulative sum of the observations until the cumulative sum is equal to or greater than the 75-percent notional amount calculated in paragraph (c)(3)(iv) of this section;

(vii) Select the notional amount associated with that observation;

(viii) Round the notional amount of that observation to two significant dig-

its, or if the notional amount associated with that observation is already significant to two digits, increase that notional amount to the next highest rounding point of two significant digits; and

(ix) Set the appropriate minimum block size at the amount calculated in paragraph (c)(3)(viii) of this section.

(d) *No appropriate minimum block sizes for swaps in the equity asset class.* Publicly reportable swap transactions in the equity asset class shall not be treated as block trades or large notional off-facility swaps.

(e) *Initial appropriate minimum block sizes.* Prior to the Commission making a determination as described in paragraph (f)(1) of this section, the following initial appropriate minimum block sizes shall apply:

(1) *Prescribed appropriate minimum block sizes.* Except as otherwise provided in paragraph (e)(1) of this section, for any publicly reportable swap transaction that falls within the swap categories described in paragraphs (b)(1), (b)(2), (b)(4)(i), (b)(5)(i) or (b)(5)(ii) of this section, the initial appropriate minimum block size for such publicly reportable swap transaction shall be the appropriate minimum block size that is in Appendix F of this part.

(2) *Certain swaps in the foreign exchange and other commodity asset classes.* All swaps or instruments in the swap categories described in paragraphs (b)(4)(ii) and (b)(5)(iii) of this section shall be eligible to be treated as a block trade or large notional off-facility swap, as applicable.

(3) *Exception.* Publicly reportable swap transactions described in paragraph (b)(5)(i) of this section that are economically related to a futures contract in Appendix B of this part shall not qualify to be treated as block trades or large notional off-facility swaps (as applicable), if such futures contract is not subject to a designated contract market's block trading rules.

(f) *Post-initial process to determine appropriate minimum block sizes.*

(1) *Post-initial period.* After a registered swap data repository has collected at least one year of reliable data

for a particular asset class, the Commission shall establish, by swap categories, the post-initial appropriate minimum block sizes as described in paragraphs (f)(2) through (f)(5) of this section. No less than once each calendar year thereafter, the Commission shall update the post-initial appropriate minimum block sizes.

(2) *Post-initial appropriate minimum block sizes for certain swaps.* The Commission shall determine post-initial appropriate minimum block sizes for the swap categories described in paragraphs (b)(1), (b)(2), (b)(4)(i) and (b)(5) of this section by utilizing a one-year window of swap transaction and pricing data corresponding to each relevant swap category reviewed no less than once each calendar year, and by applying the 67-percent notional amount calculation to such data.

(3) *Certain swaps in the foreign exchange asset class.* All swaps or instruments in the swap category described in paragraph (b)(4)(ii) of this section shall be eligible to be treated as a block trade or large notional off-facility swap, as applicable.

(4) *Commission publication of post-initial appropriate minimum block sizes.* The Commission shall publish the appropriate minimum block sizes determined pursuant to paragraph (f)(1) of this section on its Web site at <http://www.cftc.gov>.

(5) *Effective date of post-initial appropriate minimum block sizes.* Unless otherwise indicated on the Commission's Web site, the post-initial appropriate minimum block sizes described in paragraph (f)(1) of this section shall be effective on the first day of the second month following the date of publication.

(g) *Required notification.*

(1) *Block trade election.*

(i) The parties to a publicly reportable swap transaction that has a notional amount at or above the appropriate minimum block size shall notify the registered swap execution facility or designated contract market, as applicable, pursuant to the rules of such registered swap execution facility or designated contract market, of its election to have the publicly reportable swap transaction treated as a block trade.

(ii) The registered swap execution facility or designated contract market, as applicable, pursuant to the rules of which a block trade is executed shall notify the registered swap data repository of such a block trade election when transmitting swap transaction and pricing data to such swap data repository in accordance with § 43.3(b)(1).

(2) *Large notional off-facility swap election.* A reporting party who executes an off-facility swap that has a notional amount at or above the appropriate minimum block size shall notify the applicable registered swap data repository that such swap transaction qualifies as a large notional off-facility swap concurrent with the transmission of swap transaction and pricing data in accordance with this part.

(h) *Special provisions relating to appropriate minimum block sizes and cap sizes.* The following special rules shall apply to the determination of appropriate minimum block sizes and cap sizes—

(1) *Swaps with optionality.* The notional amount of a swap with optionality shall equal the notional amount of the component of the swap that does not include the option component.

(2) *Swaps with composite reference prices.* The parties to a swap transaction with composite reference prices may elect to apply the lowest appropriate minimum block size or cap size applicable to one component reference price's swap category of such publicly reportable swap transaction.

(3) *Notional amounts for physical commodity swaps.* Unless otherwise specified in this part, the notional amount for a physical commodity swap shall be based on the notional unit measure utilized in the related futures contract market or the predominant notional unit measure used to determine notional quantities in the cash market for the relevant, underlying physical commodity.

(4) *Currency conversion.* Unless otherwise specified in this part, when the appropriate minimum block size or cap size for a publicly reportable swap transaction is denominated in a currency other than U.S. dollars, parties to a swap and registered entities may use a currency exchange rate that is widely published within the preceding

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two business days from the date of execution of the swap transaction in order to determine such qualification.

(5) *Successor currencies.* For currencies that succeed a super-major currency, the appropriate currency classification for such currency shall be based on the corresponding nominal gross domestic product classification (in U.S. dollars) as determined in the most recent World Bank, World Development Indicator at the time of succession. If the gross domestic product of the country or nation utilizing the successor currency is:

(i) Greater than \$2 trillion, then the successor currency shall be included among the super-major currencies;

(ii) Greater than \$500 billion but less than \$2 trillion, then the successor currency shall be included among the major currencies; or

(iii) Less than \$500 billion, then the successor currency shall be included among the non-major currencies.

(6) *Aggregation.* Except as otherwise stated in this paragraph, the aggregation of orders for different accounts in order to satisfy the minimum block trade size or the cap size requirement is prohibited. Aggregation is permissible on a designated contract market or swap execution facility if done by a person who:

(i) (A) Is a commodity trading advisor registered pursuant to Section 4n of the Act, or exempt from registration under the Act, or a principal thereof, who has discretionary trading authority or directs client accounts,

(B) Is an investment adviser who has discretionary trading authority or directs client accounts and satisfies the criteria of § 4.7(a)(2)(v) of this chapter, or

(C) Is a foreign person who performs a similar role or function as the persons described in paragraphs (h)(6)(i)(A) or (h)(6)(i)(B) of this section and is subject as such to foreign regulation; and,

(ii) Has more than \$25,000,000 in total assets under management.

(i) *Eligible Block Trade Parties.*

(1) Parties to a block trade must be “eligible contract participants,” as defined in Section 1a(18) of the Act and the Commission’s regulations. How-

ever, a designated contract market may allow:

(i) A commodity trading advisor registered pursuant to Section 4n of the Act, or exempt from registration under the Act, or a principal thereof, who has discretionary trading authority or directs client accounts,

(ii) An investment adviser who has discretionary trading authority or directs client accounts and satisfies the criteria of § 4.7(a)(2)(v) of this chapter, or

(iii) a foreign person who performs a similar role or function as the persons described in paragraphs (i)(1)(i) or (ii) of this section and is subject as such to foreign regulation, to transact foreign trades for customers who are not eligible contract participants if such commodity trading advisor, investment adviser or foreign person has more than \$25,000,000 in total assets under management.

(2) A person transacting a block trade on behalf of a customer must receive prior written instruction or consent from the customer to do so. Such instruction or consent may be provided in the power of attorney or similar document by which the customer provides the person with discretionary trading authority or the authority to direct the trading in its account.

[78 FR 32938, May 31, 2013]

### § 43.7 Delegation of authority.

(a) *Authority.* The Commission hereby delegates, until it orders otherwise, to the Director of the Division of Market Oversight or such other employee or employees as the Director may designate from time to time, the authority:

(1) To determine whether swaps fall within specific swap categories as described in § 43.6(b);

(2) To determine and publish post-initial, appropriate minimum block sizes as described in § 43.6(f); and

(3) To determine post-initial cap sizes as described in § 43.4(h).

(b) *Submission for Commission consideration.* The Director of the Division of Market Oversight may submit to the Commission for its consideration any matter that has been delegated pursuant to this section.