for building entry, and one of the alternate forms of ID listed below will be required. Acceptable alternate forms of Photo-ID include: A U.S. Passport or Passport Card; an Enhanced Driver's License or Enhanced ID-Card issued by States and territories as identified on the DHS website (Enhanced licenses issued by these States and territories are clearly marked Enhanced or Enhanced Driver's License); a military ID or other Federal government-issued Photo-ID card.

In addition, you can attend the public meeting via webinar. Webinar registration information, participant instructions, and information about the capabilities available to webinar participants will be published on DOE's website: *https://energy.gov/eere/buildings/appliance-standards-and-rulemaking-federal-advisory-committee.* Participants are responsible for ensuring their systems are compatible with the webinar software.

Procedure for Submitting Prepared General Statements for Distribution

Any person who has plans to present a prepared general statement may request that copies of his or her statement be made available at the public meeting. Such persons may submit requests, along with an advance electronic copy of their statement in PDF (preferred), Microsoft Word or Excel, WordPerfect, or text (ASCII) file format, to the appropriate address shown in the **FOR FURTHER INFORMATION CONTACT** section of this notice. The request and advance copy of statements must be received at least one week before the public meeting and may be emailed, hand-delivered, or sent by postal mail. DOE prefers to receive requests and advance copies via email. Please include a telephone number to enable DOE staff to make a follow-up contact, if needed.

Conduct of the Public Meetings

ASRAC's Designated Federal Officer will preside at the public meetings and may also use a professional facilitator to aid discussion. The meetings will not be judicial or evidentiary-type public hearings, but DOE will conduct them in accordance with section 336 of EPCA (42 U.S.C. 6306). A court reporter will be present to record the proceedings and prepare a transcript. A transcript of each public meeting will be included on DOE's website: *https://energy.gov/eere/buildings/appliance-standards-and-rulemaking-federal-advisory-committee.* In addition, any person may buy a copy of each transcript from the transcribing reporter. Public comment and statements will be allowed prior to the close of each meeting.

Docket

The docket is available for review at: *https://www.regulations.gov/docket?D=EERE-2018-BT-STD-0003,* including **Federal Register** notices, public meeting attendee lists and transcripts, comments, and other supporting documents/materials. All documents in the docket are listed in the *http://www.regulations.gov* index. However, not all documents listed in the index may be publically available, such as information that is exempt from public disclosure.

Signed in Washington, DC, on October 18, 2019.

Alexander N. Fitzsimmons

Acting Deputy Assistant Secretary for Energy Efficiency, Energy Efficiency and Renewable Energy.

[FR Doc. 2019–23140 Filed 10–23–19; 8:45 am]

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COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 23

RIN 3038–AE89

Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commodity Futures Trading Commission (''Commission'' or ''CFTC'') is seeking comment on a proposed amendment to the margin requirements for uncleared swaps for swap dealers (''SD'') and major swap participants (''MSP'') for which there is no prudential regulator (the ''CFTC Margin Rule''). As adopted in 2016, the CFTC Margin Rule, which mandates the collection and posting of variation margin and initial margin (''IM''), takes effect under a phased compliance schedule extending from September 1, 2016 to September 1, 2020. The proposed amendment would extend the compliance schedule to September 1, 2021, for entities with smaller average daily aggregate notional amounts of swaps and certain other financial products. By extending the compliance schedule, the proposed amendment would mitigate the potential market disruption that could result from such a large number of entities coming into the scope of the IM requirements on September 1, 2020.

DATES: Comments must be received on or before December 23, 2019.

ADDRESSES: You may submit comments, identified by RIN 3038–AE89, by any of the following methods:

- *CFTC Comments Portal: https://comments.cftc.gov.* Select the ''Submit Comments'' link for this rulemaking and follow the instructions on the Public Comment Form.
- *Mail:* Send to Christopher Kirkpatrick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Center, 1155 21st Street NW, Washington, DC 20581.
- *Hand Delivery/Courier:* Follow the same instructions as for Mail, above.

Please submit your comments using only one of these methods. Submissions through the CFTC Comments Portal are encouraged.

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

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

FOR FURTHER INFORMATION CONTACT: Joshua B. Sterling, Director, 202–418–6056, *jsterling@cftc.gov*; Thomas J. Smith, Deputy Director, 202–418–5495, *tsmith@cftc.gov*; Warren Gorlick, Associate Director, 202–418–5195, *wgorlick@cftc.gov*; Carmen Moncada-Terry, Special Counsel, 202–418–5795, *cmoncada-terry@cftc.gov*; or Rafael Martinez, Senior Financial Risk Analyst, 202–418–5462, *rmartinez@cftc.gov,* Division of Swap Dealer and Intermediary Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581.

[1] 17 CFR 145.9. Commission regulations referred to herein are found at 17 CFR Chapter I.

SUPPLEMENTARY INFORMATION:

I. Background

Section 4s(e) of the Commodity Exchange Act (''CEA'') [2] requires the Commission to adopt rules establishing minimum initial and variation margin requirements for all swaps [3] that are (i) entered into by an SD or MSP for which there is no Prudential Regulator [4] (collectively, ''covered swap entities'' or ''CSEs'') and (ii) not cleared by a registered derivatives clearing organization (''uncleared swaps'').[5] To offset the greater risk to the SD or MSP [6] and the financial system arising from the use of uncleared swaps, these requirements must (i) help ensure the safety and soundness of the SD or MSP and (ii) be appropriate for the risk associated with the uncleared swaps held by the SD or MSP.[7]

The Basel Committee on Banking Supervision (''BCBS'') and the Board of the International Organization of Securities Commissions (''IOSCO'') established an international framework for margin requirements for uncleared derivatives in September 2013 (the ''BCBS/IOSCO framework'').[8] After the establishment of the BCBS/IOSCO framework, on January 6, 2016, the CFTC, consistent with Section 4s(e), promulgated rules requiring CSEs to collect and post initial and variation margin for uncleared swaps,[9] adopting the implementation schedule set forth in the BCBS/IOSCO framework, including the revised implementation schedule adopted on March 18, 2015.[10]

II. Proposed Changes to the CFTC Margin Rule (''Proposal'')

Covered swap entities are required to post and collect IM with counterparties that are SDs, MSPs, or financial end users with material swap exposure (''MSE'') [11] (''covered counterparties'') in accordance with a compliance schedule set forth in Commission § 23.161.[12] The compliance schedule comprises five compliance dates, from September 1, 2016 to September 1, 2020, staggered such that CSEs and covered counterparties, starting with the largest average daily aggregate notional amounts (''AANA'') of uncleared swaps and certain other financial products, and then successively lesser AANA, come into compliance with the IM requirements in a series of five phases.

The fourth compliance date, September 1, 2019, brought within the scope of compliance CSEs and covered counterparties each exceeding $750 billion in AANA. On the fifth and last compliance date (''phase 5''), September 1, 2020, remaining CSEs and covered counterparties, including financial end user counterparties with an MSE exceeding $8 billion in AANA, will come into compliance. As a result of the large reduction in the compliance threshold from $750 billion to $8 billion at the end of the compliance schedule, a significant number of financial end user counterparties, including relatively small counterparties, will be required to comply with the IM requirements and implement related operational processes. According to the CFTC's Office of the Chief Economist (''OCE''), compared with the first through the fourth phase of compliance, which brought approximately 40 entities into scope, phase 5 would bring approximately 700 entities, along with 7,000 relationships, which represent the number of IM agreements that would have to be in place in phase 5 to carry out swap transactions.[13]

Market participants have expressed concerns regarding the onset of phase 5 given the operational complexity associated with IM calculation and third-party segregation of IM collateral.[14] As a large number of counterparties prepare to meet applicable IM deadlines, newly in-scope entities may encounter operational difficulties because a significant number of these entities will be engaging the same limited number of entities that provide IM required services, involving, among other things, the preparation of IM-related documentation, the approval and implementation of risk-based models for IM calculation, and custodial arrangements. The potential for compliance delays may lead to disruption in the markets, including the possibility that some counterparties could, for a time, be prohibited from entering into uncleared swaps and therefore be unable to use swaps to hedge their financial risk. In recognition of these difficulties, BCBS/IOSCO revised its framework to extend the schedule for compliance with the IM requirements and provide an additional phase-in period for smaller counterparties.[15]

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[2] 7 U.S.C. 1 *et seq.*

[3] For the definition of swap, *see* section 1a(47) of the CEA and Commission § 1.3. 7 U.S.C. 1a(47) and 17 CFR 1.3. It includes, among other things, an interest rate swap, commodity swap, credit default swap, and currency swap.

[4] *See* 7 U.S.C. 6s(e)(1)(B). SDs and MSPs for which there is a Prudential Regulator must meet the margin requirements for uncleared swaps established by the applicable Prudential Regulator. 7 U.S.C. 6s(e)(1)(A). *See also* 7 U.S.C. 1a(39) (defining the term ''Prudential Regulator'' to mean the Board of Governors of the Federal Reserve System; the Office of the Comptroller of the Currency; the Federal Deposit Insurance Corporation; the Farm Credit Administration; and the Federal Housing Finance Agency). The definition further specifies the entities for which these agencies act as Prudential Regulators. The Prudential Regulators published final margin requirements in November 2015. *See* Margin and Capital Requirements for Covered Swap Entities, 80 FR 74840 (Nov. 30, 2015) (''Prudential Regulators' Margin Rule'').

[5] *See* 7 U.S.C. 6s(e)(2)(B)(ii). In Commission § 23.151, the Commission further defined this statutory language to mean all swaps that are not cleared by a registered derivatives clearing organization or a derivatives clearing organization that the Commission has exempted from registration as provided under the CEA. 17 CFR 23.151.

[6] For the definitions of SD and MSP, *see* section 1a of the CEA and Commission § 1.3. 7 U.S.C. 1a and 17 CFR 1.3.

[7] 7 U.S.C. 6s(e)(3)(A).

[8] *See* BCBS and IOSCO ''Margin requirements for non-centrally cleared derivatives,'' (September 2013), available at *https://www.bis.org/publ/bcbs261.pdf.*

[9] *See* Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants, 81 FR 636 (Jan. 6, 2016). The CFTC Margin Rule, which became effective April 1, 2016, is codified in part 23 of the Commission's regulations. 17 CFR 23.150–23.159, 23.161. In May 2016, the Commission amended the CFTC Margin Rule to add Commission § 23.160, providing rules on its cross border application. Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants—Cross-Border Application of the Margin Requirements, 81 FR 34818 (May 31, 2016). 17 CFR 23.160.

[10] *See* BCBS and IOSCO ''Margin requirements for non-centrally cleared derivatives,'' (March 2015), available at *https://www.bis.org/bcbs/publ/d317.pdf.*

[11] Commission § 23.151 provides that MSE for an entity means that the entity and its margin affiliates have an average daily aggregate notional amount of uncleared swaps, uncleared security-based swaps, foreign exchange forwards, and foreign exchange swaps with all counterparties for June, July or August of the previous calendar year that exceeds $8 billion, where such amount is calculated only for business days. A company is a ''margin affiliate'' of another company if: (i) Either company consolidates the other on a financial statement prepared in accordance with U.S. Generally Accepted Accounting Principles, the International Financial Reporting Standards, or other similar standards; (ii) both companies are consolidated with a third company on a financial statement prepared in accordance with such principles or standards; or (iii) for a company that is not subject to such principles or standards, if consolidation as described in paragraph (1) or (2) of this definition would have occurred if such principles or standards had applied. 17 CFR 23.151.

[12] *See* 17 CFR 23.161.

[13] *See* Initial Margin Phase 5 by Richard Haynes, Madison Lau, and Bruce Tuckman, Oct. 24, 2018 available at *https://www.cftc.gov/sites/default/files/About/Economic%20Analysis/Initial%20Margin%20Phase%205%20v5_ada.pdf* (''OCE Initial Margin Phase 5 Study'').

[14] *See, e.g.,* Letter from the Securities Industry and Financial Markets Association (''SIFMA''), the American Bankers Association (''ABA''), the Global Foreign Exchange Division of the Global Financial Markets Association (''GFXD''), and the Institute of International Bankers (''IIB'') (April 5, 2019); Letter from the Managed Funds Association (June 20, 2019).

[15] *See* BCBS and IOSCO ''Margin requirements for non-centrally cleared derivatives,'' (July 2019), available at *https://www.bis.org/bcbs/publ/d475.pdf* (''July 2019 BCBS/IOSCO Margin Framework'').

The CFTC believes it is appropriate to amend the CFTC Margin Rule consistent with the BCBS/IOSCO framework's revision.[16] The Commission's Proposal, which is in line with the revised framework, would extend the compliance schedule for the IM requirements, alleviating the potential market disruption. The Proposal represents the Commission's effort to undertake coordinated action with international counterparts to achieve regulatory harmonization with respect to uncleared swaps margin.

In proposing the change in the phase 5 compliance date, the Commission also considered the relatively small amount of swap activity of the financial end users that would be subject to the one year extension. The OCE estimated in 2018 that the average AANA per entity in phase 5 is $54 billion compared to an average $12.71 trillion AANA for each entity in phases 1, 2, and 3 and $1 trillion in phase 4. OCE also estimated that total AANA for entities that would be subject to the one year extension is approximately three percent of the total AANA across all the phases.[17] Given the relatively small amount of swap activity of the financial end users in the extended compliance date group, the Commission believes the proposed compliance date extension will have a muted impact on the systemic risk mitigating effects of the IM requirements during the extension period.

Accordingly, the Commission proposes to amend Commission § 23.161(a), which sets forth the schedule for compliance with the CFTC Margin Rule, to add a sixth phase of compliance for certain smaller entities that are currently subject to phase 5. The proposed amendment would require compliance by September 1, 2020, for CSEs and covered counterparties with an AANA ranging from $50 billion up to $750 billion. The compliance date for all other remaining CSEs and covered counterparties, including financial end user counterparties exceeding an MSE of $8 billion in AANA, would be extended to September 1, 2021.

In addition, the Commission is proposing non-substantive, conforming technical changes [18] to Commission § 23.161(a) to replace, where applicable, ''between an entity or a margin affiliate only one time'' with ''between the entity and a margin affiliate only one time.'' The proposed change will conform the CFTC Margin Rule to the rule text of the Prudential Regulators' Margin Rule, promoting further harmonization between both regulators.

The Commission is also proposing to replace in Commission § 23.161(a), where applicable, ''shall not count a swap or a security-based swap that is exempt pursuant to § 23.150(b)'' with ''shall not count a swap that is exempt pursuant to § 23.150(b).'' This proposed change will remove the term ''security-based swap'' from certain parts of Commission § 23.161(a). This change is necessary because, due to a transcription error, the current rule text incorrectly indicates that Commission § 23.150(b) exempts security-based swaps from the CFTC Margin Rule. Section 23.150(b) applies only to swaps. Notwithstanding this technical change that eliminates the reference to Commission § 23.150(b) with respect to security-based swaps, Commission § 23.161(a) will continue to exclude any security-based swap, for purposes of the calculation of the various thresholds set forth in Commission § 23.161(a), that is exempt pursuant to section 15F(e) of the Securities Exchange Act, of 1934, as is the case, prior to this Proposal, under the current rule text.

Request for comment. The Commission requests comment regarding the proposed amendments to Commission § 23.161. The Commission specifically requests comment on the following question:

- Is the proposed rule text relating to the one-year extension of the final implementation timeline clear in its intent and direction to market participants? Is any further Commission guidance necessary to avoid any potential confusion or market disruption? Please explain.

III. Related Matters

A. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (''PRA'') [19] imposes certain requirements on Federal agencies, including the Commission, in connection with their conducting or sponsoring any collection of information, as defined by the PRA. The Commission may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid Office of Management and Budget control number. This Proposal contains no requirements subject to the PRA.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (''RFA'') requires that agencies consider whether the regulations they propose will have a significant economic impact on a substantial number of small entities.[20] This Proposal only affects SDs and MSPs that are subject to the CFTC Margin Rule and their covered counterparties, all of which are required to be eligible contract participants (''ECPs'').[21] The Commission has previously determined that SDs, MSPs, and ECPs are not small entities for purposes of the RFA.[22] Therefore, the Commission believes that this Proposal will not have a significant economic impact on a substantial number of small entities, as defined in the RFA.

Accordingly, the Chairman, on behalf of the Commission, hereby certifies pursuant to 5 U.S.C. 605(b) that this Proposal will not have a significant economic impact on a substantial number of small entities. The Commission invites comment on the impact of this Proposal on small entities.

C. Cost-Benefit Considerations

Section 15(a) of the CEA requires the Commission to consider the costs and benefits of its actions before promulgating a regulation under the CEA. Section 15(a) further specifies that the costs and benefits shall be evaluated in light of the following five broad areas of market and public concern: (1) Protection of market participants and the public; (2) efficiency, competitiveness, and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations. The Commission considers the costs and benefits resulting from its discretionary determinations with respect to the section 15(a) considerations. Further, the Commission reflected upon the extraterritorial reach of this Proposal and notes where this reach may be especially relevant.

This Proposal extends the compliance schedule for the CFTC Margin Rule and introduces an additional compliance date for smaller counterparties.[23] The proposed compliance schedule would require CSEs and covered counterparties, with an AANA ranging

[16] *See* July 2019 BCBS/IOSCO Margin Framework.

[17] *See* OCE Initial Margin Phase 5 Study at 4–5.

[18] For consistency, the proposed changes include revisions to text in Commission § 23.161(a) relating to compliance dates that have already passed.

[19] 44 U.S.C. 3501 *et seq.*

[20] 5 U.S.C. 601 *et seq.*

[21] Each counterparty to an uncleared swap must be an ECP, as the term is defined in section 1a(18) of the CEA, 7 U.S.C. 1a(18) and Commission § 1.3, 17 CFR 1.3. *See* 7 U.S.C. 2(e).

[22] *See* Registration of Swap Dealers and Major Swap Participants, 77 FR 2613, 2620 (Jan. 19, 2012) (SDs and MSPs) and Opting Out of Segregation, 66 FR 20740, 20743 (April 25, 2001) (ECPs).

[23] The Commission is also proposing conforming technical changes to Commission § 23.161(a). Given the non-substantive nature of these changes, there are no costs or benefits to be considered.

from $50 billion up to $750 billion, to exchange IM in phase 5. All remaining CSEs and covered counterparties, including financial end user counterparties exceeding an MSE of $8 billion in AANA, would come into scope in the proposed additional sixth phase, beginning September 1, 2021.

As discussed above, the Commission believes that as a result of the large number of counterparties that would be required to comply with the IM requirements for the first time at the end of the current compliance schedule, market disruption may arise. The markets may be strained given counterparties' demand for resources and services to meet the September 2020 deadline and operationalize the exchange of IM, involving, among other things, counterparty onboarding, approval and implementation of risk-based models for the calculation of IM, and documentation associated with the exchange of IM.

The baseline against which the benefits and costs associated with this Proposal are compared is the uncleared swaps markets as they exist today, including the impact of the current compliance schedule and the implementation of phase 5 on September 1, 2020. With this as the baseline for this Proposal, the following are the benefits and costs of this Proposal.

1. Benefits

As described above, this Proposal will extend the compliance schedule for the IM requirements for certain smaller entities to September 1, 2021. The Proposal is intended to alleviate the potential congestion and market disruption resulting from the large number of counterparties that would come into scope under the current compliance schedule and the strain on the uncleared swaps markets resulting from the increased demand for limited resources and services to set up operations to comply with the IM requirements, including counterparty onboarding, adoption and implementation of risk-based models to calculate IM, and documentation associated with the exchange of IM.

The Proposal would prioritize applicable IM compliance deadlines in order to focus on certain financial end users, SDs, and MSPs that engage in greater swap trading activity and that may significantly contribute to systemic risk in the financial markets, while providing a 12-month delay for smaller counterparties, whose swap trading may not pose the same level of risk, to prepare for their eventual compliance with the IM requirements. The Proposal therefore would promote the smooth and orderly transition into IM compliance.

The Proposal would amend the CFTC Margin Rule consistent with the revised BCBS/IOSCO margin framework. The Proposal therefore promotes harmonization with international margin regulatory requirements, reducing the potential for regulatory arbitrage.

2. Costs

The Proposal would extend the time frame for compliance with the IM requirements for the smallest, in terms of notional amount, CSEs and covered counterparties, including SDs and MSPs and financial end users that exceed an MSE of $8 billion, by an additional 12 months. Swaps entered into during this period with the smallest CSEs have the potential to be treated as legacy swaps and thus would not be subject to the IM requirements. The contagion risk associated with these potentially uncollateralized legacy swaps is a lesser concern because these legacy swap portfolios would be entered into with counterparties that engage in lower levels of notional trading.

The Proposal would also delay the implementation of IM by smaller CSEs. There may not be as much IM posted to protect the financial system as would otherwise be the case. As such, the probability and severity of financial contagion may increase.

3. Section 15(a) Considerations

In light of the foregoing, the CFTC has evaluated the costs and benefits of this Proposal pursuant to the five considerations identified in section 15(a) of the CEA as follows:

(a) Protection of Market Participants and the Public

This Proposal would protect market participants and the public against the potential disruption that may be caused by the large number of counterparties that would come into scope of the IM requirements at the end of the current compliance schedule.

Under the proposed compliance schedule, fewer counterparties would come into scope in phase 5 and many smaller counterparties would be able to defer compliance until the sixth and last compliance date on September 1, 2021. As such, the demand for resources and services to achieve operational readiness would be reduced, mitigating the potential strain on the uncleared swaps markets.

Also, the Proposal would appropriately prioritize IM compliance requirements for those counterparties and CSEs that have greater swap trading activity and potentially pose greater systemic risk, while giving more time to smaller counterparties to come into compliance with the IM requirements.

Inasmuch as this Proposal delays the implementation of IM for the smallest CSEs, there may not be as much IM posted to protect the financial system as would otherwise be the case. Consequently, the probability and severity of financial contagion may be increased, especially among the smallest CSEs.

(b) Efficiency, Competitiveness, and Financial Integrity of Markets

The Proposal would make the uncleared swaps markets more streamlined by facilitating counterparties' transition into compliance with the IM requirements. Counterparties would have additional time to document their swap relationships and set up adequate processes to operationalize the exchange of IM. As such, the Proposal would promote fairer competition among counterparties in the uncleared swaps markets, as it would remove the potential incentive of CSEs to prioritize arrangements with larger counterparties to the detriment of smaller counterparties and would help maintain the current state of market efficiency.

By preventing the market disruption that would result from the large number of counterparties that would come into scope at the end of the current compliance schedule, the Proposal promotes the financial integrity of the markets, reducing the probability of congestion resulting from the heightened demand for limited financial infrastructure resources. On the other hand, there would be less IM posted overall, making uncleared swaps markets more susceptible to financial contagion where the default of one counterparty could lead to subsequent defaults of other counterparties potentially harming market integrity.

(c) Price Discovery

This Proposal would not harm price discovery and might help preserve it. Without the Proposal, counterparties, in particular smaller counterparties, may be discouraged from entering or may even be foreclosed from entering the uncleared swaps markets because they may not be able to secure resources and services in a timely manner to operationalize the exchange of IM. These counterparties may thus be shut out from the uncleared swaps markets, potentially reducing liquidity and harming price discovery.

(d) Sound Risk Management

The Proposal would stave off the potential market disruption that could result from the large number of counterparties that would come into the scope of the IM requirements at the end of the current compliance schedule. The extended compliance schedule would alleviate the potential congestion in establishing the financial infrastructure to post IM between in scope entities and would give counterparties time to prepare for the exchange of IM and to establish operational processes tailored to their uncleared swaps and associated risks. The additional compliance time may also improve risk management practices because there might be some parties who may prefer to enter into cleared swaps rather than install otherwise required financial infrastructure in a short time frame, choosing to enter into swaps that are more standardized but that do not match their risk management needs as well.

(e) Other Public Interest Considerations

The Proposal would amend the CFTC Margin Rule consistent with the revised BCBS/IOSCO margin framework in order to promote harmonization with international margin regulatory requirements and reduce the potential for regulatory arbitrage.

4. Request for Comments on Cost-Benefit Considerations

The Commission invites public comment on its cost-benefit considerations, including the section 15(a) factors described above. Commenters are also invited to submit any data or other information that they may have quantifying or qualifying the costs and benefits of the proposed amendments with their comment letters. In particular, the Commission seeks specific comment on the following:

(a) Has the Commission accurately identified all the benefits of this Proposal? Are there other benefits to the Commission, market participants, and/or the public that may result from the adoption of this Proposal that the Commission should consider? Please provide specific examples and explanations of any such benefits.

(b) Has the Commission accurately identified all the costs of this Proposal? Are there additional costs to the Commission, market participants, and/or the public that may result from the adoption of this Proposal that the Commission should consider? Please provide specific examples and explanations of any such costs. For example, is there a potential for increased counterparty credit risk in trades or contagion involving firms that will get the benefit of the margin deadline extension that we have proposed, *i.e.,* with respect to trades entered into by those entities during the period between September 2020 and September 2021? Is it possible to identify reliably the amount of any such increase in potential risk? Should the margin amounts that these firms are required to post by contract, rather than by our regulations, be considered as a risk mitigant during that period?

(c) Does this Proposal impact the section 15(a) factors in any way that is not described above? Please provide specific examples and explanations of any such impact.

D. Antitrust Laws

Section 15(b) of the CEA requires the Commission to take into consideration the public interest to be protected by the antitrust laws and endeavor to take the least anticompetitive means of achieving the purposes of the CEA, in issuing any order or adopting any Commission rule or regulation (including any exemption under section 4(c) or 4c(b) of the CEA), or in requiring or approving any bylaw, rule, or regulation of a contract market or registered futures association established pursuant to section 17 of the CEA.[24]

The Commission believes that the public interest to be protected by the antitrust laws is generally to protect competition. Further, the Commission preliminarily believes that allowing parties more time to come into compliance with the CFTC Margin Rule by splitting the last compliance phase into two phases will preserve competition by encouraging more participation in the uncleared swaps markets. The Commission requests comment on whether this Proposal implicates any other specific public interest to be protected by the antitrust laws.

The Commission has considered this Proposal to determine whether it is anticompetitive and has preliminarily identified no anticompetitive effects. The Commission requests comment on whether this Proposal is anticompetitive and, if it is, what the anticompetitive effects are.

Because the Commission has preliminarily determined that this Proposal is not anticompetitive and has no anticompetitive effects, the Commission has not identified any less anticompetitive means of achieving the purposes of the CEA. The Commission requests comment on whether there are less anticompetitive means of achieving the relevant purposes of the CEA that would otherwise be served by adopting this Proposal.

[24] 7 U.S.C. 19(b).

List of Subjects in 17 CFR Part 23

Capital and margin requirements, Major swap participants, Swap dealers, Swaps.

For the reasons stated in the preamble, the Commodity Futures Trading Commission proposes to amend 17 CFR part 23 as follows:

PART 23—SWAP DEALERS AND MAJOR SWAP PARTICIPANTS

■ 1. The authority citation for part 23 continues to read as follows:

Authority: 7 U.S.C. 1a, 2, 6, 6a, 6b, 6b–1,6c, 6p, 6r, 6s, 6t, 9, 9a, 12, 12a, 13b, 13c, 16a, 18, 19, 21.

Section 23.160 also issued under 7 U.S.C. 2(i); Sec. 721(b), Pub. L. 111–203, 124 Stat. 1641 (2010).

■ 2. Amend § 23.161 by revising paragraphs (a)(1)(iii), (a)(3)(iii), (a)(4)(iii), (a)(5)(iii), and (a)(6) and adding paragraph (a)(7) to read as follows:

§ 23.161 Compliance dates.

(a) * * *

(1) * * *

(iii) In calculating the amounts in paragraphs (a)(1)(i) and (ii) of this section, an entity shall count the average daily notional amount of an uncleared swap, an uncleared security-based swap, a foreign-exchange forward, or a foreign exchange swap between the entity and a margin affiliate only one time and shall not count a swap that is exempt pursuant to § 23.150(b) or a security-based swap that is exempt pursuant to section 15F(e) of the Securities Exchange Act of 1934 (15 U.S.C. 78o–10(e)).

* * * * *

(3) * * *

(iii) In calculating the amounts in paragraphs (a)(3)(i) and (ii) of this section, an entity shall count the average daily notional amount of an uncleared swap, an uncleared security-based swap, a foreign-exchange forward, or a foreign exchange swap between the entity and a margin affiliate only one time and shall not count a swap that is exempt pursuant to § 23.150(b) or a security-based swap that is exempt pursuant to section 15F(e) of the Securities Exchange Act of 1934 (15 U.S.C. 78o–10(e)).

(4) * * *

(iii) In calculating the amounts in paragraphs (a)(4)(i) and (ii) of this section, an entity shall count the

average daily notional amount of an uncleared swap, an uncleared security-based swap, a foreign-exchange forward, or a foreign exchange swap between the entity and a margin affiliate only one time and shall not count a swap that is exempt pursuant to § 23.150(b) or a security-based swap that is exempt pursuant to section 15F(e) of the Securities Exchange Act of 1934 (15 U.S.C. 78o–10(e)).

(5) * * *

(iii) In calculating the amounts in paragraphs (a)(5)(i) and (ii) of this section, an entity shall count the average daily notional amount of an uncleared swap, an uncleared security-based swap, a foreign-exchange forward, or a foreign exchange swap between the entity and a margin affiliate only one time and shall not count a swap that is exempt pursuant to § 23.150(b) or a security-based swap that is exempt pursuant to section 15F(e) of the Securities Exchange Act of 1934 (15 U.S.C. 78o–10(e)).

(6) September 1, 2020 for the requirements in § 23.152 for initial margin for any uncleared swaps where both—

(i) The covered swap entity combined with all its margin affiliates; and

(ii) Its counterparty combined with all its margin affiliates have an average daily aggregate notional amount of uncleared swaps, uncleared security-based swaps, foreign exchange forwards, and foreign exchange swaps in March, April, and May 2020 that exceeds $50 billion, where such amounts are calculated only for business days; and where

(iii) In calculating the amounts in paragraphs (a)(6)(i) and (ii) of this section, an entity shall count the average daily notional amount of an uncleared swap, an uncleared security-based swap, a foreign exchange forward, or a foreign exchange swap between the entity and a margin affiliate only one time and shall not count a swap that is exempt pursuant to § 23.150(b) or a security-based swap that is exempt pursuant to section 15F(e) of the Securities Exchange Act of 1934 (15 U.S.C. 78o.10(e)).

(7) September 1, 2021 for the requirements in § 23.152 for initial margin for any other covered swap entity with respect to uncleared swaps entered into with any other counterparty.

* * * * *

Issued in Washington, DC, on October 16, 2019, by the Commission.

Robert Sidman,

Deputy Secretary of the Commission.

Note: The following appendices will not appear in the Code of Federal Regulations.

Appendices to Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants—Commission Voting Summary and Commissioners' Statements

Appendix 1—Commission Voting Summary

On this matter, Chairman Tarbert and Commissioners Quintenz, Behnam, Stump, and Berkovitz voted in the affirmative. No Commissioner voted in the negative.

Appendix 2—Supporting Statement of Commissioner Brian Quintenz

I am pleased to support the Commission's proposal to extend the compliance schedule for uncleared margin to September 1, 2021 for entities with smaller average daily aggregate notional amounts of activity. As our own Office of the Chief Economist noted, phase five would have brought approximately 700 entities into our margin regime, implicating around 7,000 relationships that would have to be negotiated to manage initial margin arrangements.[1] Recognizing the operational challenges associated with phase 5 implementation, BCBS and IOSCO revised the uncleared margin framework to include an additional implementation phase. I am pleased that the agency, consistent with this revised international framework, is providing these smaller counterparties with additional time to come into compliance. I also support the recent proposal by the US banking regulators to similarly extend the compliance period for smaller firms.

However, much more needs to be done. First, it is critical that the CFTC, US banking regulators, the SEC, and our international counterparts adopt a coordinated approach with respect to uncleared margin. The derivatives market is a global market and any differences in our respective approaches will result in increased burdens and operational complexities for firms. This point was emphasized most recently at the Global Markets Advisory Committee (GMAC) meeting. Participants highlighted the numerous ways in which derivatives regulators across the globe have implemented conflicting timing, scope, calculation, and other requirements for uncleared margin implementation. I believe we must work with our regulatory counterparts to eliminate these cross-border discrepancies. This rulemaking represents a first step of many more in that international harmonization effort and I will continue to support the work of Commissioner Stump through the GMAC to further align and rationalize uncleared margin frameworks globally.

[1] *See* Initial Margin Phase 5 by Richard Haynes, Madison Lau, and Bruce Tuckman, Oct. 24, 2018 available at *https://www.cftc.gov/sites/default/files/About/Economic%20Analysis/Initial%20Margin%20Phase%205%20v5_ada.pdf.*

Appendix 3—Concurring Statement of Commissioner Dan M. Berkovitz

I concur with issuing for public comment the proposed rulemaking (''Proposal'') to extend the swaps margining compliance deadline for certain financial entities that have smaller swap portfolios.

In general, I am not in favor of extending compliance deadlines when there has been a substantial lead-in period for compliance. The compliance date being extended in the Proposal was set more than four years earlier. However, in this instance, there are several factors that lead me to conclude that the Proposal will benefit hundreds of entities with smaller swap portfolios while having only a small impact on the systemic risk mitigation benefits of the initial margin requirements.

Variation and initial margin requirements for uncleared swaps reduce contagion and liquidity concerns by ensuring that collateral is available to cover swap losses if a party defaults.[1] Two types of margin are required. Variation margin covers current net exposure from day-to-day price movements for a portfolio of swaps. The Proposal does not change variation margin requirements. Initial margin covers estimated potential future exposures between the time a default occurs and when the swaps can be closed out or hedged.

A CFTC Office of the Chief Economist (''OCE'') analysis indicated that approximately 40 large financial enterprises are already required to exchange initial margin for uncleared swaps under regulations adopted by the CFTC and other regulators.[2] Under the current rule, the so called ''phase 5'' entities, entities with average daily aggregate notional amounts (''AANA'') of between $8 billion and $750 billion on a consolidated basis, are required to have various margining and custodial agreements in place by September 1, 2020. The Proposal does not change that deadline for financial end users that have an AANA greater than $50 billion. Accordingly, entities with moderately large swap portfolios would remain subject to the original compliance date. Only financial end users with relatively modest AANA levels would get an extension of the compliance deadline.

The existing implementation schedule is consistent with the original Basel Committee on Banking Supervision (''BCBS'') and the Board of the International Organization of Securities Commissions (''IOSCO'') international framework for margin requirements. In July 2019, BCBS and IOSCO revised the framework to effectively recommend an extension of the phase 5

[1] Basel Committee on Banking Supervision and the Board of the International Organization of Securities Commissions ''Margin requirements for non-centrally cleared derivatives,'' (September 2013), available at *https://www.bis.org/publ/bcbs261.pdf.*

[2] *See* Initial Margin Phase 5 by Richard Haynes, Madison Lau, and Bruce Tuckman, Oct. 24, 2018 available at *https://www.cftc.gov/sites/default/files/About/Economic%20Analysis/Initial%20Margin%20Phase%205%20v5_ada.pdf.*

deadline in recognition of likely compliance delays given the large number of entities that would need to execute margining agreements to comply with the new initial margin requirements.[3]

The Proposal follows the revisions recommended by BCBS and IOSCO. Other United States and foreign regulators have indicated they also intend to adopt extensions. Consistency with other regulators, particularly with requirements like swap margining, helps reduce the likelihood of regulatory arbitrage.

I am concurring with the Proposal because the impact on systemic risk mitigation resulting from the partial one year delay is muted while the potential impacts on the hundreds of financial end users with smaller swap portfolios might be significant if they are not able to have margining documentation in place by the original deadline. This is a data driven conclusion. While about 40 entities have had to comply through phase 4, the OCE analysis estimates that around 700 entities with 7,000 swap arrangements would be included in phase 5. Providing more time to hundreds of smaller users of swaps should help maintain the hedging capabilities of these market participants while they negotiate and establish the necessary margining arrangements.

The OCE analysis also provides critical data on the muted impact of the proposed change on systemic risk mitigation. The estimated average AANA for phase 5 entities is $54 billion compared to an average $12.71 trillion AANA for entities in phases 1, 2 and 3, and $1 trillion for entities in phase 4. The total estimated AANA for entities that would be subject to the one year extension is approximately three percent of the total AANA of entities subject to the margin rules. In my view, this data is critical to supporting a one year extension as it indicates that the likely affect in providing the extension on systemic risk mitigation will be quite limited.

For these reasons, I concur in the issuance of the Proposal.

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SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34–87327; File No. S7–18–19]

Commission Statement on Market Structure Innovation for Thinly Traded Securities

AGENCY: Securities and Exchange Commission.

ACTION: Commission statement.

SUMMARY: This Securities and Exchange Commission (''Commission'') statement (''Statement'') is intended to facilitate the development of proposals that will improve secondary market trading for equity securities that trade in lower volume (''thinly traded securities''). The Commission's interest in considering proposals for improvement in this segment of the secondary market extends to proposals that could include the suspension or termination of unlisted trading privileges (''UTP'') and/or exemptive relief from Regulation NMS and other rules under the Securities Exchange Act of 1934 (''Exchange Act'').

DATES: The Commission's statement was effective October 17, 2019.

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/policy.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number S7–18–19 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number S7–18–19. This file number should be included on the subject line if email is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/policy.shtml*). Comments are also available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549–1090 on official business days between the hours of 10:00 a.m. and 3:00 p.m. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. Studies, memoranda, or other substantive items may be added by the Commission or staff to the comment file. A notification of the inclusion in the comment file of any materials will be made available on the Commission's website. To ensure direct electronic receipt of such notifications, sign up through the ''Stay Connected'' option at *www.sec.gov* to receive notifications by email.

FOR FURTHER INFORMATION CONTACT: Cristie March, Senior Special Counsel; Deborah Flynn, Special Counsel; Christopher Chow, Special Counsel; or Liliana Burnett, Attorney-Adviser, at 202–551–5550, in the Division of Trading and Markets, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Commission is issuing this Statement to facilitate the ability of market participants to develop innovative proposals for changes in equity market structure that are designed to improve trading in thinly traded securities. Although the Commission believes that the current equity market structure generally works well for securities that trade in higher volume, the Commission has concerns that the current ''one-size-fits-all'' equity market structure, as largely governed under Regulation NMS,[1] may not be optimal for thinly traded securities.

The secondary market for thinly traded securities faces liquidity challenges that can have a negative effect on both investors and issuers. In particular, thinly traded securities, which are often also smaller-capitalization securities, tend to have wider spreads and less displayed size relative to securities that trade in greater volume, often resulting in higher transaction costs for investors.[2] Potential investors in such securities also may be concerned that they could encounter difficulties finding the necessary liquidity to establish or unwind positions in the stocks.[3] A lack of readily available liquidity also may discourage potential market makers from electing to make markets in those

[3] See BCBS and IOSCO ''Margin requirements for non-centrally cleared derivatives,'' (July 2019), available at *https://www.bis.org/bcbs/publ/d475.pdf* (''July 2019 BCBS/IOSCO Margin Framework'').

[1] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005) (adopting 17 CFR 242.600 through 242.613 (Regulation NMS)) (''NMS Release''). ''NMS'' stands for the National Market System.

[2] *See* Division of Trading and Markets Data Paper: Empirical Analysis of Liquidity Demographics and Market Quality, April 10, 2018, *available at https://www.sec.gov/files/thinly_traded_eqs_data_summary.pdf,* at 1 (summarizing the quoting and trading characteristics of NMS stocks on the lower end of the liquidity spectrum).

[3] *See, e.g.,* Transcript for Roundtable on Market Structure for Thinly-Traded Securities, April 23, 2018, *available at https://www.sec.gov/spotlight/equity-market-structure-roundtables/thinly-traded-securities-rountable-042318-transcript.txt* (''Transcript''), at 35; *see also* Thierry Foucault, Ohad Kadan & Eugene Kandel, *Liquidity Cycles and Make/Take Fees in Electronic Markets,* 68 J. Fin. 299 (2013) (discussing the externality of liquidity demand increases resulting in the increasing supply of liquidity, and an exogenous increase in the supply of liquidity resulting in an increase in the demand for liquidity).