



## COMMODITY FUTURES TRADING COMMISSION

### 17 CFR Part 23

### RIN 3038-AF33

## Capital and Financial Reporting Requirements for Swap Dealers and Major Swap Participants

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commodity Futures Trading Commission (“Commission” or “CFTC”) is adopting amendments to certain of the Commission’s regulations that impose minimum capital requirements and financial reporting obligations on swap dealers (“SDs”) and major swap participants (“MSPs”). The Commission is adopting amendments consistent with previously issued staff letters addressing the Tangible Net Worth Capital Approach for calculating capital under the applicable Commission regulation and alternative financial reporting by SDs subject to the capital requirements of a prudential regulator. The Commission is also adopting amendments to certain of its regulations applicable to SDs, in areas including the required timing of certain notifications, the process for approval of subordinated debt for capital, and the revision of financial reporting forms to conform to the rules. The amendments are intended to facilitate SDs’ compliance with the Commission’s financial reporting obligations and minimum capital requirements.

**DATES:** *Effective date:* This rule is effective **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

*Compliance date:* September 30, 2024. The compliance date applies to all financial reports with an “as of” reporting date of September 30, 2024 or later, to allow for sufficient time to effectuate amendments discussed herein.

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## I. Background

Section 4s(e) of the Commodity Exchange Act (“CEA” or the “Act”) requires the Commission to adopt minimum capital and margin requirements for SDs and MSPs.<sup>1</sup> On September 15, 2020, the Commission issued final rules adopting such requirements under part 23 of the Commission’s regulations (the “Final Rule” or the “Final Rules”).<sup>2</sup> The Final Rules became effective on November 16, 2020, with an extended compliance date of October 6, 2021 (“2021 Compliance Date”).<sup>3</sup> The Final Rules imposed capital requirements on SDs and MSPs that are not subject to a prudential regulator (“nonbank SDs” and “nonbank MSPs,” respectively).<sup>4</sup> The Final Rules included a detailed capital model application process whereby eligible nonbank SDs and nonbank MSPs could apply to the Commission, or a registered futures association (“RFA”) of which they are a

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<sup>1</sup> 7 U.S.C. 6s(e).

<sup>2</sup> Capital Requirements of Swap Dealers and Major Swap Participants, 85 FR 57462 (Sept. 15, 2020) (the “Final Rule” or the “Final Rules”). Commission regulations referred to herein are found at 17 CFR chapter I. Commission regulations are accessible on the Commission’s website at <https://www.cftc.gov>.

<sup>3</sup> *Id.*

<sup>4</sup> *Id.* The term “prudential regulator” is defined as the Board of Governors of the Federal Reserve System (“Federal Reserve Board”); the Office of the Comptroller of the Currency (“OCC”); the Federal Deposit Insurance Corporation (“FDIC”); the Farm Credit Administration; and the Federal Housing Finance Agency. Section 1a(39) of the CEA, 7 U.S.C. 1a(39).

member, for approval.<sup>5</sup> The Final Rules also adopted a capital comparability determination process for certain eligible foreign domiciled nonbank SDs and nonbank MSPs to seek substituted compliance for the Commission’s capital and financial reporting requirements.<sup>6</sup> Further, the Final Rules adopted detailed financial reporting, recordkeeping and notification requirements, including limited financial reporting requirements for SDs and MSPs subject to the capital requirements of a prudential regulator (“bank SDs” and “bank MSPs,” respectively).<sup>7</sup> The Final Rules also included amendments to existing capital rules for futures commission merchants (“FCMs”) to provide explicit additional capital requirements for proprietary positions in swaps and security-based swaps that are not cleared by a clearing organization.<sup>8</sup> Finally, the Final Rules required that financial reports and notices be filed with both the Commission and the NFA<sup>9</sup> and explicitly recognized NFA’s ability to adopt standardized forms and processes to carry out the Commission’s financial reporting and notification requirements for SDs.<sup>10</sup>

In the period leading up to the 2021 Compliance Date, Commission, NFA, and SEC staff worked together to develop a process for collecting financial reports and responding to market participant inquiries regarding compliance with financial reporting and notice requirements. The Commission also approved NFA’s capital model

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<sup>5</sup> *See generally* Final Rules, 85 FR 57467. The three methods discussed in detail in the Final Rules include the Bank-Based Capital Approach, the Tangible Net Worth Capital Approach, and the Net Liquid Assets Capital Approach (as defined therein). Each method permits the use of models upon approval of the Commission or an RFA and determines the frequency and type of financial reporting information to be provided to the Commission by each nonbank SD and nonbank MSP.

<sup>6</sup> 17 CFR 23.106.

<sup>7</sup> Final Rules, 85 FR 57463. Bank SDs, which are not subject to the capital requirements of the Commission, are required to provide the Commission and National Futures Association (“NFA”) with limited financial information regarding the capital and swap positions of the firms. 17 CFR 23.105(p).

<sup>8</sup> *Id.*

<sup>9</sup> *Id.* at 57515.

<sup>10</sup> *Id.* at 57518.

requirements and review process,<sup>11</sup> and NFA adopted new Financial Requirements Section 18,<sup>12</sup> which included capital rules largely modeled after the Commission’s Final Rules, and published new standardized financial reporting forms FR-CSE-NLA and FR-CSE-BHC for use by nonbank SDs that are not also registered with the SEC.<sup>13</sup> Commission staff also issued eight no-action and interpretive letters in response to inquiries from market participants regarding compliance with various capital and financial reporting obligations under the Final Rules.<sup>14</sup>

On December 15, 2023, the Commission proposed several amendments to the capital and financial reporting requirements of SDs and MSPs that are consistent with parts of the staff positions taken in two of the letters issued by Commission staff prior to the 2021 Compliance Date: CFTC Staff Letters No. 21-15 and 21-18 (“CFTC Staff Letters”),<sup>15</sup> and that would make other technical and clarifying changes necessary to effectuate the Final Rules’ purpose (the “Proposal”).<sup>16</sup> CFTC Staff Letter No. 21-15<sup>17</sup> provides the staff’s interpretation of the Tangible Net Worth Capital Approach for

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<sup>11</sup> CFTC Staff Letter No. 21-03, Jan. 12, 2021, available at <https://www.cftc.gov/csl/21-03/download>.

<sup>12</sup> NFA section 18.

<sup>13</sup> NFA submitted these rules for Commission review under section 17(j) of the CEA, 7 U.S.C. 21(j), on November 22, 2021, and the rules became effective on December 21, 2021. NFA Notice to Members I-21-45, available at <https://www.nfa.futures.org/news/newsNotice.asp?ArticleID=5437>.

<sup>14</sup> CFTC Staff Letter No. 21-15, June 29, 2021, available at <https://www.cftc.gov/csl/21-15/download>; CFTC Staff Letter No. 21-18, Aug. 31, 2021, available at <https://www.cftc.gov/csl/21-18/download>; CFTC Staff Letter No. 21-20, Sept. 30, 2021, available at <https://www.cftc.gov/csl/21-20/download>; CFTC Staff Letter No. 21-21, Sept. 30, 2021, available at <https://www.cftc.gov/csl/21-21/download>; CFTC Staff Letter No. 21-22, Sept. 30, 2021, available at <https://www.cftc.gov/csl/21-22/download>; CFTC Staff Letter No. 21-23, Sept. 30, 2021, available at <https://www.cftc.gov/csl/21-23/download>; CFTC Staff Letter No. 22-01, Jan. 5, 2022, available at <https://www.cftc.gov/csl/22-01/download>; CFTC Staff Letter No. 22-02, Jan. 5, 2022, available at <https://www.cftc.gov/csl/22-02/download>.

<sup>15</sup> CFTC Staff Letter No. 21-18 was time-limited and set to expire on October 6, 2023. To permit time for the Commission to issue a proposed rulemaking and address any comments received, the Market Participants Division extended the expiration of the letter to the earlier of October 6, 2025 or the adoption of any revised financial reporting requirements for bank SDs under regulation 23.105(p). CFTC Staff Letter No. 23-11, July 10, 2023, available at <https://www.cftc.gov/csl/23-11/download>.

<sup>16</sup> Capital and Financial Reporting Requirements for Swap Dealers and Major Swap Participants, 89 FR 2554 (Jan. 16, 2024) (designated above as “the Proposal”).

<sup>17</sup> CFTC Staff Letter No. 21-15.

calculating capital under Commission regulation 23.101.<sup>18</sup> CFTC Staff Letter No. 21-18 (further extended by CFTC Staff Letter No. 23-11) sets out staff’s time-limited, no-action position regarding alternative financial reporting by SDs subject to the capital requirements of a prudential regulator.<sup>19</sup> The technical and clarifying amendments proposed by the Commission included revisions to the required timing of certain notifications; modifications to the process for approval of subordinated debt for capital; and changes to financial reporting forms to conform to the rules.<sup>20</sup> The purpose of the amendments is to facilitate compliance by SDs and MSPs with the Commission’s financial reporting and applicable minimum capital obligations.

The comment period for the Proposal ended on February 13, 2024.<sup>21</sup> The Commission received four substantive comment letters.<sup>22</sup> In general, all of these letters expressed general support for the proposed amendments.<sup>23</sup> One commenter stated that it strongly supports the Commission’s proposed amendments, as they are intended to provide technical and other clarifying changes necessary to effectuate the Final Rule’s purpose.<sup>24</sup> Another commenter stated that it applauds the Commission’s efforts to provide regulatory certainty and consistency through the codification of the CFTC Staff Letters and amendments to the Tangible Net Worth Capital Approach for nonbank SDs.<sup>25</sup> Specifically, as to the amendments consistent with parts of CFTC Staff Letters No. 21-15

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<sup>18</sup> 17 CFR 23.101.

<sup>19</sup> CFTC Staff Letter No. 21-18; CFTC Staff Letter No. 23-11.

<sup>20</sup> See the Proposal, 89 FR 2561-2562.

<sup>21</sup> *Id.* at 2555.

<sup>22</sup> Letter from Stephanie Webster, Institute of International Bankers, Chris Young, International Swaps and Derivatives Association, and Kyle Brandon, Securities Industry and Financial Markets Association (Feb. 13, 2024) (“IIB/ISDA/SIFMA Letter”); Letter from Matthew J. Picardi, Shell Energy North America (U.S.) L.P., Shell Trading Risk Management, LLC, and their affiliates (Feb. 13, 2024) (“Shell Letter”); Letter from Chris Barnard (Feb. 10, 2024) (“Barnard Letter”); and Letter from Michael Ravnitzky (Jan. 16, 2024) (“Ravnitzky Letter”).

<sup>23</sup> See *id.*

<sup>24</sup> IIB/ISDA/SIFMA Letter at 1-2.

<sup>25</sup> Shell Letter at 2.

and 21-18, discussed in further detail below, one commenter stated that such amendments enhance the transparency and clarity of the SD capital regime and provide legal certainty and guidance for SDs, while improving transactional efficiency by avoiding the need for one-off staff letters.<sup>26</sup> This commenter further stated that these amendments also facilitate the implementation and enforcement of the capital and financial reporting requirements and promote compliance and cooperation.<sup>27</sup> After considering the comments, the Commission is adopting the Proposal subject to certain changes as noted below.<sup>28</sup>

## **II. Amendments to Commission Regulations**

### *A. CFTC Staff Letters and Other Amendments*

#### *1. Amendments to Tangible Net Worth Capital Approach—CFTC Staff Letter No. 21-15*

The Commission proposed amendments to certain of its part 23 regulations consistent with parts of interpretive CFTC Staff Letter No. 21-15 addressing the Tangible Net Worth Capital Approach for calculating capital under Commission regulation 23.101.<sup>29</sup> The Commission’s Market Participants Division (the “Division”) issued CFTC Staff Letter No. 21-15 on June 29, 2021, in response to concerns raised by nonbank SDs intending to elect the Tangible Net Worth Capital Approach for calculating capital under Commission regulation 23.101<sup>30</sup> regarding the application of the eligibility test to different corporate structures.<sup>31</sup> In CFTC Staff Letter No. 21-15, the Division issued its interpretation that the asset and revenue tests for “predominantly engaged in non-

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<sup>26</sup> Ravnitzky Letter at 1.

<sup>27</sup> *Id.*

<sup>28</sup> Note that as of the effective date of this rulemaking, CFTC Staff Letters No. 21-15 and 21-18 are hereby withdrawn and no longer in effect. These letters are superseded by the rules being adopted in this release.

<sup>29</sup> 17 CFR 23.101.

<sup>30</sup> 17 CFR 23.101.

<sup>31</sup> CFTC Staff Letter No. 21-15.

financial activities” could be assessed at the nonbank SD’s entity level or ultimate parent level and, further, such tests could be computed under International Financial Reporting Standards issued by the International Accounting Standards Board (“IFRS”) in lieu of generally accepted accounting principles as adopted in the United States (“U.S. GAAP”), if the entity was permitted to use IFRS for financial reporting.<sup>32</sup> The Division also stated its position that supplemental position reporting for nonbank SDs meeting these qualifications may be filed on a quarterly basis along with the firm’s financial reports, as opposed to monthly.<sup>33</sup>

To ensure that the Tangible Net Worth Capital Approach may be utilized by eligible nonbank SDs as intended in the Final Rules, the Commission proposed amendments to definitions in Commission regulation 23.100<sup>34</sup> and in the periodicity of Commission regulation 23.105(l)<sup>35</sup> in the Proposal,<sup>36</sup> which are consistent with the terms of CFTC Staff Letter No. 21-15. Specifically, the Commission proposed to amend the definitions in Commission regulation 23.100 of the terms “predominantly engaged in non-financial activities” and “tangible net worth” to explicitly permit the satisfaction of both the revenue and asset-based tests at the consolidated parent level of the nonbank SD and to clarify that “tangible net worth” may be determined under either U.S. GAAP or IFRS accounting standards.<sup>37</sup> The Proposal clarified that the tests may be satisfied either at the level of the nonbank SD or at the level of the nonbank SD’s consolidated parent rather than seeming to exclude the consolidated parent of the nonbank SD, as addressed

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<sup>32</sup> *Id.* at 3-6.

<sup>33</sup> *Id.* at 5-6. Compare 17 CFR 23.105(d) with 17 CFR 23.105(l), as the former includes monthly or quarterly periodicity as opposed to the latter only referring to monthly.

<sup>34</sup> 17 CFR 23.100.

<sup>35</sup> 17 CFR 23.105(l).

<sup>36</sup> The Proposal, 89 FR 2556-2557.

<sup>37</sup> *Id.* See 17 CFR 23.100 for the definition of the term “predominantly engaged in non-financial activities.”

in CFTC Staff Letter No. 21-15 in response to questions raised by industry.<sup>38</sup> The amendment to the definition of “tangible net worth” in Commission regulation 23.100 clarifies that “tangible net worth” may be determined under either applicable accounting standard, U.S. GAAP or IFRS.<sup>39</sup> This amendment aligns and corrects the permitted use of IFRS in determining eligibility for the approach with the standard permitted and utilized by the nonbank SD in preparation of its financial statements.<sup>40</sup> As discussed in the Final Rule, the Commission is generally comfortable with both U.S. GAAP and IFRS accounting standards in this context, as both of these accounting standards are designed to provide a complete, consistent, and comparable view of the financial condition of a company, especially as both standards continue to move toward greater convergence.<sup>41</sup>

The Commission received comments generally supporting the proposed amendments to the definitions of the terms “predominantly engaged in non-financial activities” and “tangible net worth” in Commission regulation 23.100.<sup>42</sup> One commenter stated that the proposed amendments would recognize the financial strength and support of the parent company for the nonbank SD and align the capital requirement with the accounting standards and practices of the parent company.<sup>43</sup> This commenter further stated that the proposed amendments would reduce regulatory burden and costs for some nonbank SDs, especially those that are predominantly engaged in non-financial activities and have a high level of tangible net worth.<sup>44</sup> Another commenter stated that the

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<sup>38</sup> *Id.*

<sup>39</sup> *Id.* See 17 CFR 23.100 for the definition of the term “tangible net worth.”

<sup>40</sup> *Id.* Nonbank SDs electing the Tangible Net Worth Capital Approach are currently permitted to use IFRS for their financial reporting obligations under Commission regulation 23.105 (17 CFR 23.105(d) and (e)). IFRS is also permitted as an acceptable reporting standard for all nonbank SDs provided that they otherwise do not prepare financial statements in accordance with U.S. GAAP.

<sup>41</sup> Final Rules, 85 FR 57514.

<sup>42</sup> See IIB/ISDA/SIFMA Letter; Shell Letter; Barnard Letter; Ravnitzky Letter.

<sup>43</sup> Ravnitzky Letter at 1.

<sup>44</sup> *Id.*

proposed amendments are crucial to clarify and simplify the interpretation and implementation of the “tangible net worth” test for eligible nonbank SDs.<sup>45</sup> The Commission agrees with the commenters and believes, as discussed above, that the proposed amendments will confirm its intention to permit consideration of the parent company in the assessment of predominantly engaged in non-financial activities under the Final Rules. This approach, as identified in the Final Rules, permits the eligibility test to be applied at the consolidated entity level, which does not penalize a non-financial entity from establishing separate SD subsidiaries to provide financial services for the corporate group, including engaging in swaps on behalf of the corporate group.<sup>46</sup> Further, the proposed amendment to allow nonbank SDs to utilize the same accounting standard permitted for their financial reporting comports with the purpose of the eligibility test. As such, the Commission is adopting the amendments to the definitions as proposed.

The Commission also proposed to amend Commission regulation 23.105(l)<sup>47</sup> to require that each nonbank SD and nonbank MSP file Appendix B to subpart E of part 23 (“Appendix B”),<sup>48</sup> which contains aggregate securities, commodities, and swap position information and certain credit exposure information, with the Commission and NFA on a quarterly or monthly basis in keeping with their routine financial reporting, rather than a monthly basis.<sup>49</sup> This amendment would align that filing with the periodicity permitted

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<sup>45</sup> Barnard Letter at 2.

<sup>46</sup> Final Rules, 85 FR 57502.

<sup>47</sup> 17 CFR 23.105(l).

<sup>48</sup> Appendix B to subpart E of part 23.

<sup>49</sup> The Proposal, 89 FR 2557. The Commission intended the swap position and credit information in Commission regulation 23.105(l) (17 CFR 23.105(l)) and Appendix B to be filed together with other financial information required by Commission regulation 23.105(d) (17 CFR 23.105(d)) as this information is supplementary to the financial statements as a whole and completes the routine financial reporting package. This approach is also consistent with how dually-registered SDs with the SEC complete the SEC’s Form X-17A-5 (“FOCUS Report”) Part II. SEC Form X-17A-5 FOCUS Report Part II, available at <https://www.sec.gov/manage-filings/forms-index/form-x-17a-5-2>.

as part of the nonbank SD's or nonbank MSP's routine financial report filings required by Commission regulation 23.105(d)<sup>50</sup> and would clarify that the information provided should be consistent with those financial report filings.<sup>51</sup>

The Commission requested comment on the proposed amendment to Commission regulation 23.105(l)<sup>52</sup> to require that each nonbank SD and nonbank MSP file Appendix B with the Commission and NFA on the same quarterly or monthly basis, as applicable, that the firm files its financial information pursuant to Commission regulation 23.105(d).<sup>53</sup> In response, the Commission received comments generally supporting the amendment.<sup>54</sup> The Commission believes, as discussed above, that this amendment will align the filing of Appendix B with the same periodicity of nonbank SD financial reporting. As such, the Commission is adopting the amendment as proposed.

*2. Amendments to Bank SD Financial Reporting Requirements—CFTC Staff Letter No. 21-18*

The Commission proposed amendments to certain of its part 23 regulations congruous with parts of CFTC Staff Letter No. 21-18 (and its successor, CFTC Staff Letter No. 23-11) regarding alternative financial reporting by SDs subject to the capital requirements of a prudential regulator.<sup>55</sup> The Division issued CFTC Staff Letter No. 21-

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<sup>50</sup> 17 CFR 23.105(d). Commission regulation 23.105(d) permits nonbank SDs electing the Tangible Net Worth Capital Approach to file required financial reports quarterly, whereas nonbank SDs electing either the Bank Based Capital Approach or the Net Liquid Asset Capital Approach are required to file such information on a monthly basis.

<sup>51</sup> The Proposal, 89 FR 2557. The Commission previously determined that nonbank SDs electing the Tangible Net Worth Capital Approach may engage in a wide variety of businesses and not be otherwise subject to any financial reporting. Thus, the Commission determined in the Final Rule that such SDs need only file financial reports quarterly and not monthly and may take a longer period of time to file audited financial reports. Final Rules, 85 FR 57514-57515.

<sup>52</sup> 17 CFR 23.105(l).

<sup>53</sup> The Proposal, 89 FR 2557-2558.

<sup>54</sup> See IIB/ISDA/SIFMA Letter; Shell Letter; Barnard Letter; Ravnitzky Letter.

<sup>55</sup> The Proposal, 89 FR 2557-2558.

18<sup>56</sup> on August 31, 2021, in response to concerns by several bank SDs<sup>57</sup> regarding compliance with financial reporting requirements under Commission regulation 23.105(p).<sup>58</sup> Bank SDs asserted that the financial reporting filing deadline adopted by the Commission preceded the financial reporting filing deadline imposed by prudential regulators, which conflicted with the Commission’s intent in the Final Rules that the reporting requirements of bank SDs and bank MSPs be consistent with the SEC requirements for bank security-based swap dealers (“SBSDs”) and bank major security-based swap participants (“MSBSPs”), to maintain equivalent financial reporting requirements for dually-registered firms.<sup>59</sup> Several bank SDs did not register as SBSDs, and therefore are subject only to limited financial reporting under the Commission’s rules.<sup>60</sup> In certain instances, the financial reporting required by the prudential regulators for these bank SDs permit a longer period of time and utilize a different format than that adopted by the Commission. Some of these bank SDs are not required to file financial reports with a prudential regulator if the bank SDs are domiciled outside the United States and may instead be subject only to financial reporting of a home country supervisor. Moreover, although Appendix C to subpart E of part 23 (“Appendix C”)<sup>61</sup>

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<sup>56</sup> CFTC Staff Letter Staff No. 21-18.

<sup>57</sup> Letter from Steven Kennedy, Institute of International Bankers and Kyle Brandon, Securities Industry and Financial Markets Association (Aug. 20, 2021) (the “ISDA-SIFMA Joint Request Letter”).

<sup>58</sup> 17 CFR 23.105(p).

<sup>59</sup> Commission regulation 23.105(p) requires bank SDs to report financial information within 30 calendar days of quarter-end. 17 CFR 23.105(p)(2). The Instructions for Preparation of Consolidated Reports of Condition and Income, Schedule RC-D, available at [https://www.ffiec.gov/pdf/FFIEC\\_forms/FFIEC031\\_FFIEC041\\_202303\\_i.pdf](https://www.ffiec.gov/pdf/FFIEC_forms/FFIEC031_FFIEC041_202303_i.pdf), however, permit a bank with more than one foreign office to submit its FFIEC 031 forms within 35 calendar days following quarter-end. Additionally, the SEC extended the filing deadline of FOCUS Report Part IIC for non-U.S. SBSDs subject to a prudential regulator from 30 to 35 days following quarter end, noting that “U.S. prudential regulators permit certain U.S. banks to file their financial reports 35 days after the quarter end.” Order Specifying the Manner and Format of Filing Unaudited Financial and Operational Information by Security-Based Swap Dealers and Major Security-Based Swap Participants That Are Not U.S. Persons and Are Relying on Substituted Compliance Determinations With Respect to Rule 18a-7, 86 FR 59208 (Oct. 26, 2021) at 59210.

<sup>60</sup> 17 CFR 23.105(p).

<sup>61</sup> Appendix C to subpart E of part 23.

was intended to capture line items on existing Federal Financial Institutions Examination Council (“FFIEC”)<sup>62</sup> Form 031 (“Call Report”) provided to prudential regulators, line items on specific schedules within the Call Report had either been removed, added, or otherwise changed since the Commission adopted Appendix C.<sup>63</sup>

CFTC Staff Letter No. 21-18, as extended under CFTC Staff Letter No. 23-11,<sup>64</sup> articulates a position by the Division that it would not recommend that the Commission engage in an enforcement action against bank SDs providing the Commission with copies of financial reports that are required by, and filed with, their respective prudential or home country regulators, in lieu of complying with the substantive requirements of Appendix C, subject to certain conditions.<sup>65</sup> CFTC Staff Letter No. 21-18 also contains a no-action position with respect to bank SDs filing comparable Call Report schedules with the Commission in lieu of the schedules contained in Appendix C, provided that the comparable schedules are filed with the Commission within the timeframe permitted by the prudential regulators for filing the schedules with the applicable home country regulator.<sup>66</sup> CFTC Staff Letter No. 21-18 further provides that the Division would not recommend enforcement action against certain foreign-domiciled bank SDs (“Non-U.S. bank SDs”) that do not provide financial reports to a prudential regulator if they file with the Commission balance sheet and statement of regulatory capital information in accordance with applicable home country requirements in lieu of the schedules contained in Appendix C, so long as the financial information is in English, with balances converted to U.S. dollars, and the financial information is filed within 15 days of the earlier of the

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<sup>62</sup> Federal Financial Institutions Examination Council, Consolidated Reports of Condition and Income for a Bank with Domestic and Foreign Offices – FFIEC 031, available at [https://www.ffiec.gov/pdf/FFIEC\\_forms/FFIEC031\\_202203\\_f.pdf](https://www.ffiec.gov/pdf/FFIEC_forms/FFIEC031_202203_f.pdf).

<sup>63</sup> ISDA-SIFMA Joint Request Letter at 3-4.

<sup>64</sup> *See supra* note 15.

<sup>65</sup> CFTC Staff Letter No. 21-18 at 4-5.

<sup>66</sup> *Id.* at 4-5, Condition 1.

date such financial information is filed or required to be filed with the Non-U.S. bank SDs' applicable home country regulator.<sup>67</sup> Finally, the Division stated that it would not recommend enforcement action against dually-registered Non-U.S. bank SDs filing comparable SEC-required financial reports and schedules with the Commission in lieu of the schedules contained in Appendix C.<sup>68</sup>

The Commission also proposed to amend Commission regulation 23.105(p)<sup>69</sup> to add an exception to the financial reporting requirements for Non-U.S. bank SDs that do not submit financial reports to a prudential regulator.<sup>70</sup> The amendment would permit Non-U.S. bank SDs to file with the Commission financial reports that are submitted to their respective home country regulator, provided the financial reports submitted to the Commission are translated into English with balances converted to U.S. dollars.<sup>71</sup> These Non-U.S. bank SDs, however, would continue to be required to file specific swap position information set forth in Schedule 1 to Appendix C.<sup>72</sup> Finally, these Non-U.S. bank SDs would be required to file with the Commission such reports no later than 90 calendar days following quarter-end.<sup>73</sup> This amendment would enable the Commission to collect such reports to support its ability to monitor the capital condition of all SDs, although the Commission does not establish the capital or margin requirements of bank SDs.<sup>74</sup>

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<sup>67</sup> *Id.* at 5, Conditions 2-4.

<sup>68</sup> *Id.*, Condition 5. In comparison to the SEC's approach to similarly situated bank SBSs, the Commission's capital comparability process adopted in Commission regulation 23.106 (17 CFR 23.106) does not extend to bank SDs.

<sup>69</sup> 17 CFR 23.105(p).

<sup>70</sup> The Proposal, 89 FR 2558.

<sup>71</sup> *Id.*

<sup>72</sup> *Id.*

<sup>73</sup> *Id.* Note that the Commission did not propose and is not adopting the restriction in CFTC Staff Letter No. 21-18 that Non-U.S. bank SDs be subject to home country capital standards in a G-20 jurisdiction. CFTC Staff Letter No. 21-18 at 3-5.

<sup>74</sup> *Id.* at 2559. Section 4s(f) of the CEA requires SDs and MSPs, including those for which there is a prudential regulator, to make any reports regarding transactions and positions, as well as any reports regarding financial condition, that the Commission adopts by rule or regulation. 7 U.S.C. 6s(f).

The Commission requested comment on the proposed amendment to Commission regulation 23.105(p)<sup>75</sup> to add the exception discussed above to the financial reporting requirements for Non-U.S. bank SDs that do not submit financial reports to a prudential regulator.<sup>76</sup> In response, the Commission received comments generally supporting the amendment.<sup>77</sup> One commenter stated that it agreed that the proposed 90-day time period should permit the Non-U.S. bank SDs sufficient time to prepare and submit the financial reports that are submitted to their respective home country regulator, translated into English with balances converted to U.S. dollars, along with Schedule 1 to Appendix C.<sup>78</sup> This commenter further stated that this approach allows the Commission to monitor the capital condition of such Non-U.S. bank SDs, although the Commission does not establish the capital or margin requirements of bank SDs.<sup>79</sup> Another commenter stated that this amendment, and the one discussed immediately below, would simplify the compliance and reporting process for some SDs, especially those that are subject to the oversight of other regulators, such as prudential regulators, the SEC, or foreign regulators.<sup>80</sup> This commenter further stated that this amendment would also avoid duplication, inconsistency, or conflict among different reporting requirements and standards.<sup>81</sup> The Commission has considered the comments, and believes, as discussed above, that this amendment will align the financial reporting requirements of Non-U.S. bank SDs with those of their prudential regulators, while still maintaining the Commission's ability to properly monitor the capital condition of all SDs, as these reports

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<sup>75</sup> 17 CFR 23.105(p).

<sup>76</sup> The Proposal, 89 FR 2558-2559.

<sup>77</sup> See IIB/ISDA/SIFMA Letter; Shell Letter; Barnard Letter; Ravnitzky Letter.

<sup>78</sup> IIB/ISDA/SIFMA Letter at 3.

<sup>79</sup> *Id.*

<sup>80</sup> Ravnitzky Letter at 1.

<sup>81</sup> *Id.*

still provide the Commission with essentially the same critical financial data.<sup>82</sup> As such, the Commission is adopting the amendment as proposed, with the exception of the modification of the word “approved” to “permitted” with respect to the use of acceptable accounting standards to recognize that certain regulatory authorities may not specifically issue an official approval of such standards.

The Commission also proposed to add a definition of the term “Call Report” to Commission regulation 23.100 and to amend Commission regulation 23.105(p)<sup>83</sup> to permit bank SDs to file the relevant schedules under the Call Report (Schedule RC and Schedule RC-R), rather than replicating various line items from within those reports on a separately constructed balance sheet and statement of regulatory capital currently maintained in Appendix C.<sup>84</sup> Schedule 1 of Appendix C, which contains relevant swap, mixed swap, and security-based swaps position information, would remain a required schedule to be provided by all bank SDs.<sup>85</sup> This approach would permit the Commission to collect the necessary financial information to monitor the financial condition of bank SDs, even though it is prepared in accordance with prudential regulators’ guidance, while eliminating the necessity that bank SDs familiarize themselves with a new reporting form and prevent the Commission from having to routinely monitor and update its form when

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<sup>82</sup> As noted in the Proposal, the Commission did not propose to include the restriction in CFTC Staff Letter No. 21-18 that Non-U.S. bank SDs be subject to home country capital standards in a G-20 jurisdiction. The Commission did not receive comment on this, and as indicated, to date all registered Non-U.S. bank SDs have met this criterion. The Proposal, 89 FR 2558.

<sup>83</sup> 17 CFR 23.105(p).

<sup>84</sup> The Proposal, 89 FR 2558-2559. As adopted, Appendix C contains three schedules: 1. Statement of Financial Condition (balance sheet); 2. Statement of Regulatory Capital; and 3. Schedule 1. Both the Statement of Financial Condition and Statement of Regulatory Capital schedules within Appendix C are modeled off the FOCUS Report Part IIC as adopted by the SEC for bank SBSDs and contain specific line item references corresponding to the Call Report. *See* Final Rules, 85 FR 57566-57569. Following adoption of these schedules, changes were made to the underlying Call Reports making the schedules obsolete. The SEC has since proposed revisions to the FOCUS Report Part IIC to reflect these changes. *See generally* Electronic Submission of Certain Materials Under the Securities Exchange Act of 1934; Amendments Regarding the FOCUS Report, 88 FR 23920 (Apr. 18, 2023), available at <https://www.federalregister.gov/documents/2023/04/18/2023-06330/electronic-submission-of-certain-materials-under-the-securities-exchange-act-of-1934-amendments> (the “FOCUS Report Amendments”).

<sup>85</sup> *Id.*

prudential regulators amend their schedules.<sup>86</sup> These changes are consistent with the terms of CFTC Staff Letter No. 21-18, which have resulted in the Commission and its staff receiving the requisite information to meaningfully oversee its population of bank SDs since 2021.<sup>87</sup> In addition, and as mentioned above, these amendments would enable the Commission to collect such reports enabling it to continue to monitor the capital condition of all SDs, although the Commission does not establish the capital requirements of banks.<sup>88</sup>

The Commission requested comment on the added definition to Commission regulation 23.100 and the proposed amendment to Commission regulation 23.105(p)<sup>89</sup> to permit bank SDs to file the relevant schedules under the Call Report (Schedule RC and Schedule RC-R), rather than replicating various line items from within those reports on a separately constructed balance sheet and statement of regulatory capital currently maintained in Appendix C.<sup>90</sup> In response, the Commission received comments generally supporting the amendment.<sup>91</sup> One commenter stated that it agreed that the above-described approach, which is consistent with the conditions in CFTC Staff Letter No. 21-18, has resulted in the Commission and its staff receiving the requisite information to meaningfully oversee its population of bank SDs since 2021.<sup>92</sup> This commenter further stated that it supported the proposed evergreen approach that provides for U.S. bank SDs to submit the relevant portions of the Call Report, as updated by U.S. prudential regulators from time to time, noting that it will avoid the need to periodically update the Commission's forms to ensure the cross references align with the current version of the

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<sup>86</sup> *Id.*

<sup>87</sup> *Id.*

<sup>88</sup> *Id.*

<sup>89</sup> 17 CFR 23.105(p).

<sup>90</sup> The Proposal, 89 FR 2559.

<sup>91</sup> See IIB/ISDA/SIFMA Letter; Shell Letter; Barnard Letter; Ravnitzky Letter.

<sup>92</sup> IIB/ISDA/SIFMA Letter at 4.

Call Report.<sup>93</sup> The Commission agrees with commenters and believes, as discussed above, that this amendment will align the financial reporting requirements of bank SDs with those of their prudential regulators, while still maintaining the Commission's ability to monitor the capital condition of all SDs. As such, the Commission is adopting the definition of Call Report and the amendment as proposed.

The Commission also proposed to amend Commission regulation 23.105(p)(7)<sup>94</sup> to require a bank SD or bank MSP that is also registered with the SEC as an SBSD or MSBSP and files a quarterly Form X-17A-5 FOCUS Report Part IIC with the SEC pursuant to 17 CFR 240.18a-7,<sup>95</sup> to file such Form X-17A-5 FOCUS Report Part IIC with the Commission in lieu of the Call Report.<sup>96</sup> Such a dual-registrant would be required to file the form with the Commission when it files the form with the SEC, but no later than 30 calendar days from the date the report is made.

The Commission requested comment on the proposed amendment to Commission regulation 23.105(p)(7) to require such dual-registered bank SD or bank MSP to file Form X-17A-5 FOCUS Report Part IIC with the Commission in lieu of the Call Report when it files the form with the SEC, but no later than 30 calendar days from the date the report is made.<sup>97</sup> One commenter stated that the 30-day deadline is inconsistent with the Commission's alignment of the deadline for U.S. bank SDs that are not also SBSDs to submit the Call Report when required by the prudential regulators.<sup>98</sup> This commenter further stated that the SEC aligned its deadline for all bank SBSDs to submit FOCUS

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<sup>93</sup> *Id.*

<sup>94</sup> 17 CFR 23.105(p)(7).

<sup>95</sup> 17 CFR 240.18a-7.

<sup>96</sup> The Proposal, 89 FR 2558.

<sup>97</sup> *Id.* at 2558-2559.

<sup>98</sup> IIB/ISDA/SIFMA Letter at 5.

Report Part IIC to the same 35-day deadline<sup>99</sup> and that the commenter believed that the Commission intended to align its deadline, along with the form of required reports, with those required by prudential regulators and the SEC.<sup>100</sup> The commenter further suggested that the Commission should amend the rule text to reflect that intention and to make clear that the Commission requires bank SDs that are also SBSBs to submit to the Commission the same reports on the same day as they do to the SEC.<sup>101</sup> After considering the comments, the Commission is adopting the amendment as proposed, with the exception of replacing the 30 calendar day requirement with 35 calendar days.

The Commission believes providing an additional five days will not have any negative impact on the Commission's use of bank SD financial reporting, as the information will still be timely, and agrees with the commenter that aligning the time period to 35 calendar days after the report date in practical effect will allow dual-registrants to submit the reports to the Commission on the same day as they do to the SEC, which comports with the Commission's intent.<sup>102</sup> The Commission, however, is not adopting the specific regulatory text suggested by the commenter, because adopting such text would eliminate any specific timeframe other than by reference to as permitted by the SEC. Although the Commission intends to allow dual-registrants to submit reports on the same day, the Commission believes this approach will permit the Commission to evaluate any potential longer reporting time periods that may be prospectively adopted by

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<sup>99</sup> *Id.* See SEC, Division of Trading and Markets letter on Financial Reporting requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants (Oct. 27, 2021) and Order Specifying the Manner and Format of Filing Unaudited Financial and Operational Information by Security-Based Swap Dealers and Major Security-Based Swap Participants That Are Not U.S. Persons and Are Relying on Substituted Compliance Determinations With Respect to Rule 18a-7, 86 FR 59208 (Oct. 26, 2021) at 59210.

<sup>100</sup> *Id.*

<sup>101</sup> *Id.*

<sup>102</sup> The Proposal, 89 FR 2560.

the SEC. As such, the Commission is adopting the amendment as proposed, with the revision discussed above.

*3. Amendments Regarding Financial Reporting and Other Requirements of SDs*

*a. Amendments to Schedules in Financial Reporting*

The Commission proposed to amend the scope of Commission regulation 23.105(k)<sup>103</sup> and the heading and scope of Commission regulation 23.105(l),<sup>104</sup> as well as the titles of certain schedules included in Appendix B,<sup>105</sup> to further clarify that these reporting obligations are applicable to all nonbank SDs and nonbank MSPs.<sup>106</sup> Commission regulation 23.105(k)<sup>107</sup> lists both model-specific information that nonbank SDs must report as well as a description of the same type of exposure information as reflected in the schedules to Appendix B.<sup>108</sup> Commission regulation 23.105(l),<sup>109</sup> however, requires all nonbank SDs, including those not approved to use models, to complete the Appendix B schedules on a monthly basis.<sup>110</sup> This has resulted in several nonbank SDs filing each of the schedules to Appendix B without having received capital model approval.<sup>111</sup> Hence, in current form, Commission regulations 23.105(k) and (l),<sup>112</sup> as well as the titles of Schedules 2-4 of Appendix B, could more explicitly indicate that

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<sup>103</sup> 17 CFR 23.105(k).

<sup>104</sup> 17 CFR 23.105(l).

<sup>105</sup> Appendix B is comprised of 4 individual schedules: SCHEDULE 1 – AGGREGATE SECURITIES, COMMODITIES AND SWAPS POSITIONS; SCHEDULE 2 – CREDIT CONCENTRATION REPORT FOR FIFTEEN LARGEST EXPOSURES IN DERIVATIVES; SCHEDULE 3 – PORTFOLIO SUMMARY OF DERIVATIVES EXPOSURES BY INTERNAL CREDIT RATING; and SCHEDULE 4 – GEOGRAPHIC DISTRIBUTION OF DERIVATIVES EXPOSURES FOR TEN LARGEST COUNTRIES.

<sup>106</sup> The Proposal, 89 FR 2559.

<sup>107</sup> 17 CFR 23.105(k).

<sup>108</sup> The Proposal, 89 FR 2559.

<sup>109</sup> 17 CFR 23.105(l).

<sup>110</sup> The Proposal, 89 FR 2559.

<sup>111</sup> *Id.*

<sup>112</sup> 17 CFR 23.105(k) and (l).

all of the information within the schedules included in Appendix B is required of all nonbank SDs, including those not authorized to use models.<sup>113</sup>

The Appendix B schedules are identical to corresponding schedules found in SEC's FOCUS Report required to be completed by both SBSBs and certain broker dealers ("BDs").<sup>114</sup> To the extent practicable, the Commission intends to align financial reporting requirements, including those listed in textual form in Commission regulation 23.105(k)<sup>115</sup> and in the finalized schedules part of Appendix B, with the reporting requirements finalized by the SEC pertaining to SBSBs, MSBSPs, and BDs.<sup>116</sup> This is also consistent with the Commission's general approach permitting dually-registered BDs and SBSBs to file SEC Form FOCUS Report Part II in lieu of their requirements under Commission regulations 23.105(d) and (e),<sup>117</sup> and for those dually-registered SBSBs subject to the capital rules of a prudential regulator under Commission regulation 23.105(p).<sup>118</sup>

NFA has also adopted nearly identical capital and financial reporting requirements for its member nonbank SDs and nonbank MSPs.<sup>119</sup> The finalized NFA rules mandate the use of comprehensive standardized forms for financial reporting by member nonbank SDs and nonbank MSPs that are not otherwise able to file an SEC Form FOCUS Report Part II.<sup>120</sup> These new NFA forms, FR-CSE-NLA and FR-CSE-

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<sup>113</sup> The Proposal, 89 FR 2559. To further complicate matters, the heading and first paragraph to Commission regulation 23.105(k) (17 CFR 23.105(k)) both indicate that this provision only applies to SDs approved to use internal models to calculate market risk and credit risk for calculating capital under Commission regulation 23.102(d) (17 CFR 23.102(d)).

<sup>114</sup> See FOCUS Report Amendments.

<sup>115</sup> 17 CFR 23.105(k).

<sup>116</sup> See Final Rules, 85 FR 57519.

<sup>117</sup> 17 CFR 23.105(d) and (e).

<sup>118</sup> 17 CFR 23.105(p). As indicated in the Final Rule, the Commission has a long history of permitting SEC registrants to meet their financial statement filing obligations with the Commission by submitting required SEC forms in lieu of the CFTC's forms, which reduces the burden on dually-registered firms by not requiring two separate financial reporting requirements. See Final Rules, 85 FR 57515.

<sup>119</sup> NFA section 18.

<sup>120</sup> NFA section 18(e).

BHC, include each of the required schedules found in Appendix B. All the information listed in textual form in paragraph (k)(1)(v) of Commission regulation 23.105<sup>121</sup> can be found in specific schedules found in Appendix B.<sup>122</sup> The Commission proposed Appendix B, which is now part of NFA's adopted forms, to be the primary mechanism for firms to provide the required information listed in Commission regulation 23.105(k).<sup>123</sup> The amendment to Commission regulation 23.105(k)<sup>124</sup> clarifies that Appendix B schedules are required to be completed by all nonbank SDs and nonbank MSPs as intended by the Final Rule, and is consistent with that required by the SEC and NFA.<sup>125</sup> Further, the Commission's proposed amendment to Commission regulation 23.105(l)<sup>126</sup> and the headings of certain schedules in Appendix B would make clear that these schedules must be reported at the same periodicity as the financial reporting of each respective nonbank SD, either monthly or quarterly as applicable, and that all of the schedules are required for all nonbank SDs, not just those authorized to use models.<sup>127</sup>

The Commission requested comment on the proposed amendments to revise the scope of Commission regulation 23.105(k)<sup>128</sup> and the heading and scope of Commission regulation 23.105(l),<sup>129</sup> as well as the titles of certain schedules included in Appendix

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<sup>121</sup> 17 CFR 23.105(k)(1)(v).

<sup>122</sup> For example, Commission regulation 23.105(k)(1)(v)(B) (17 CFR 23.105(k)(1)(v)(B)) requires that all model-approved SDs file the "Current exposure (including commitments) listed by counterparty for the 15 largest exposures," which is also found in Schedule 2 to Appendix B. Similarly, the information listed in textual form in Commission regulations 23.105(k)(1)(i)-(v) (17 CFR 23.105(k)(1)(i)-(v)) corresponds verbatim to the textual requirements found in SEC rule 18a-7(a)(3). *See* 17 CFR 240.18a-7(a)(3).

<sup>123</sup> 17 CFR 23.105(k). As discussed in the Final Rule, the Commission may (and subsequently has) approved additional procedures developed by an RFA, which could include standard forms or procedures necessary to carry out the Commission's filing requirements. *See* Final Rules, 85 FR 57518.

<sup>124</sup> 17 CFR 23.105(k).

<sup>125</sup> The Proposal, 89 FR 2560.

<sup>126</sup> 17 CFR 23.105(l).

<sup>127</sup> The Proposal, 89 FR 2559.

<sup>128</sup> 17 CFR 23.105(k).

<sup>129</sup> 17 CFR 23.105(l).

B.<sup>130</sup> In response, the Commission received comments generally supporting the amendments.<sup>131</sup> The Commission believes, as discussed above, that these amendments will make clear that these reporting obligations apply to all nonbank SDs and nonbank MSPs, as intended in the Final Rule. As such, the Commission is adopting the amendments as proposed.

*b. Changes to Public Disclosure Requirements*

The Commission proposed to amend Commission regulation 23.105(i)<sup>132</sup> to align the public disclosure of unaudited financial information with the periodicity permitted by routine financial filings in Commission regulation 23.105(d),<sup>133</sup> and to remove reference to a statement in both the unaudited and audited information disclosing the amounts of minimum regulatory capital and the amount of its minimum regulatory capital requirement computed in accordance with Commission regulation 23.101.<sup>134</sup> Currently, paragraphs (i)(1)(ii) and (i)(2)(ii) of Commission regulation 23.105 require a nonbank SD or nonbank MSP to publicly disclose on its website a statement of the amount of the nonbank SD's or nonbank MSP's regulatory capital and its minimum capital requirement.<sup>135</sup> This information is required to be disclosed as of the nonbank SD's or nonbank MSP's fiscal year-end, and as of six months after the firm's fiscal year-end.

The Commission proposed to revise Commission regulation 23.105(i)(1)(i)<sup>136</sup> to include the footnotes to the unaudited Statement of Financial Condition in the required disclosures.<sup>137</sup> The Commission also proposed to revise Commission regulations

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<sup>130</sup> The Proposal, 89 FR 2559-2560.

<sup>131</sup> See IIB/ISDA/SIFMA Letter; Shell Letter; Barnard Letter; Ravnitzky Letter.

<sup>132</sup> 17 CFR 23.105(i).

<sup>133</sup> 17 CFR 23.105(d).

<sup>134</sup> The Proposal, 89 FR 2560; 17 CFR 23.101.

<sup>135</sup> 17 CFR 23.105(i)(1)(ii) and (i)(2)(ii).

<sup>136</sup> 17 CFR 23.105(i)(1)(i).

<sup>137</sup> The Proposal, 89 FR 2560.

23.105(i)(1)(ii) and (i)(2)(ii)<sup>138</sup> to replace the word “statement” with “amounts” to indicate that required capital information does not need to exist in a standalone statement or form.<sup>139</sup> To the extent practicable, the Commission indicated its intention was to align its requirements with those required of BDs and SBSBs by the SEC<sup>140</sup> and determined that the information, regardless of its format, contained in the footnotes accompanying the financial statements should ordinarily satisfy the requirements for disclosing minimum regulatory capital.<sup>141</sup>

The Commission requested comment on the proposed amendments to Commission regulation 23.105(i)<sup>142</sup> to align the public disclosure of unaudited financial information with the periodicity permitted by routine financial filings in Commission regulation 23.105(d),<sup>143</sup> and to remove reference to a statement in both the unaudited and audited information disclosing the amounts of minimum regulatory capital and the amount of its minimum regulatory capital requirement computed in accordance with Commission regulation 23.101.<sup>144</sup> In response, the Commission received comments generally supporting the amendments.<sup>145</sup> The Commission believes, as discussed above, that these amendments will align the periodicity of different financial reporting requirements of nonbank SDs and create flexibility as to the format for disclosing minimum regulatory capital. As such, the Commission is adopting the amendments as proposed.

*c. Changes to Form I-FR-FCM*

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<sup>138</sup> 17 CFR 23.105(i)(1)(ii) and (i)(2)(ii).

<sup>139</sup> The Proposal, 89 FR 2560.

<sup>140</sup> See 17 CFR 240.18a-7(b).

<sup>141</sup> The Proposal, 89 FR 2560.

<sup>142</sup> 17 CFR 23.105(i).

<sup>143</sup> 17 CFR 23.105(d).

<sup>144</sup> The Proposal, 89 FR 2560; 17 CFR 23.101.

<sup>145</sup> See IIB/ISDA/SIFMA Letter; Shell Letter; Barnard Letter; Ravnitzky Letter.

The Commission proposed to amend Form 1-FR-FCM to add new lines 22.A.vi through vii. to the Statement of the Computation of the Minimum Capital Requirements schedule (“Statement of Minimum Capital Schedule”) to include the 2 percent of uncleared swap margin capital requirement under Commission regulation 1.17(a)(1)(i)(B)(2).<sup>146</sup> The Commission also proposed to amend Form 1-FR-FCM to add the specific market risk charges for swaps and security-based swaps as new lines 16.D. of the Statement of Minimum Capital Schedule.<sup>147</sup>

Commission regulation 1.10 requires all FCMs to submit a Form 1-FR-FCM when they file for registration as an FCM and periodically following registration.<sup>148</sup> Form 1-FR-FCM includes, among other things, the Statement of Minimum Capital Schedule as a supplementary schedule.<sup>149</sup> In the Final Rule, the Commission added a 2 percent of uncleared swap margin capital requirement to the risk-based net capital requirement for FCMs that are also registered as SDs (“FCM-SDs”), and adopted specific market risk charges for uncleared swaps in the FCM net capital requirements in Commission regulation 1.17.<sup>150</sup> Further, FCMs dually-registered as BDs are permitted to file the SEC’s FOCUS Report Part II in lieu of the Commission’s Form 1-FR-FCM in reporting net capital.<sup>151</sup> On March 22, 2023, the SEC proposed to amend its FOCUS Report Part II to include the Commission’s net capital changes adopted for FCM-SDs, including the addition of the 2 percent uncleared swap margin to the risk-based net capital requirement of FCM-SDs.<sup>152</sup> The Commission proposed the amendments to Form 1-FR-FCM to more explicitly require disclosure of the 2 percent amount and conform

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<sup>146</sup> The Proposal, 89 FR 2560; 17 CFR 1.17(a)(1)(i)(B)(2).

<sup>147</sup> *Id.*

<sup>148</sup> 17 CFR 1.10.

<sup>149</sup> CFTC Form 1-FR-FCM at 6-8.

<sup>150</sup> 17 CFR 1.17(a)(1)(i)(B)(2) and (c)(5)(iii). *See generally* Final Rules, 85 FR 57473-57476 and 57562.

<sup>151</sup> 17 CFR 1.10(h).

<sup>152</sup> *See generally* FOCUS Report Amendments.

with the SEC's proposal as well as to provide important information to assist the Commission in monitoring compliance of FCM-SD with the capital requirements adopted in the Final Rule.<sup>153</sup> This information is important to the Commission in monitoring the Final Rules, as reporting the 2 percent amount enables the Commission to confirm that the FCM-SD is complying with its capital requirement.<sup>154</sup>

The Commission requested comment on the proposed amendments to Form 1-FR-FCM to add new lines to the form to include the 2 percent of uncleared swap margin capital requirement under Commission regulation 1.17(a)(1)(i)(B)(2)<sup>155</sup> and to add specific disclosure of the haircuts for swaps and security-based swaps in the computation of net capital on the form.<sup>156</sup> In response, the Commission received comments generally supporting the amendments.<sup>157</sup> The Commission believes, as discussed above, that these amendments will ensure the collection of information that is important to the Commission in monitoring the Final Rules and will align the specific items within the Form 1-FR-FCM Statement of Minimum Capital Schedule with comparable schedules within the FOCUS Report Part II utilized by dual-registered BD or SBSs. As such, the Commission is adopting the amendments to the Form 1-FR-FCM as proposed.

*d. Additional Cross References to Clarify Applicable Market and Credit Risk Charges*

The Commission proposed to add new language to Commission regulations 23.103(a)(1) and (c)(1)<sup>158</sup> to clarify that the same standardized market and credit risk charges are applicable to nonbank SDs electing the Tangible Net Worth Capital

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<sup>153</sup> The Proposal, 89 FR 2561.

<sup>154</sup> *Id.*

<sup>155</sup> 17 CFR 1.17(a)(1)(i)(B)(2).

<sup>156</sup> The Proposal, 89 FR 2560-2561.

<sup>157</sup> See IIB/ISDA/SIFMA Letter; Shell Letter; Barnard Letter; Ravnitzky Letter.

<sup>158</sup> 17 CFR 23.103(a)(1) and (c)(1).

Approach as are applicable to all other nonbank SDs not approved to use models.<sup>159</sup> Commission regulation 23.103(b)<sup>160</sup> provides that nonbank SDs electing the Tangible Net Worth Capital Approach or Net Liquid Assets Capital Approach are required to compute standardized market risk charges contained in SEC Rule 18a-1<sup>161</sup> and Commission regulation 1.17,<sup>162</sup> as applicable. Commission regulation 23.103(c)<sup>163</sup> also provides that a nonbank SD electing the Net Liquid Assets Capital Approach must compute its standardized credit risk charge in accordance with SEC Rule 18a-1<sup>164</sup> or Commission regulation 1.17,<sup>165</sup> as applicable, but fails to provide a reference for nonbank SDs electing the Tangible Net Worth Capital Approach.<sup>166</sup> Because standardized credit risk charges were intended to be the same for nonbank SDs using the Tangible Net Worth Capital Approach or the Net Liquid Assets Capital Approach, the Commission proposed to amend Commission regulations 23.103(a)(1) and (c)(1)<sup>167</sup> to correct this omission by directing nonbank SDs electing the Tangible Net Worth Capital Approach to compute standardized credit risk charges in accordance with SEC Rule 18a-1<sup>168</sup> or Commission regulation 1.17,<sup>169</sup> as applicable.<sup>170</sup>

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<sup>159</sup> The Proposal, 89 FR 2560.

<sup>160</sup> 17 CFR 23.103(b).

<sup>161</sup> 17 CFR 240.18a-1.

<sup>162</sup> 17 CFR 1.17.

<sup>163</sup> 17 CFR 23.103(c).

<sup>164</sup> 17 CFR 240.18a-1.

<sup>165</sup> 17 CFR 1.17.

<sup>166</sup> SDs electing to use the Tangible Net Worth Capital Approach are required to meet a minimum capital requirement which includes, among other things, \$20 million plus the amount of the SD's market risk exposure requirement and its *credit risk exposure* requirement associated with the SD's swap and related hedge positions that are part of the SD's swap dealing activities. 17 CFR 23.101(a)(2)(ii)(A).

<sup>167</sup> 17 CFR 23.103(a)(1) and (c)(1).

<sup>168</sup> 17 CFR 240.18a-1.

<sup>169</sup> 17 CFR 1.17.

<sup>170</sup> The Proposal, 89 FR 2561.

Similarly, the Commission proposed to amend Commission regulation 23.102(d)<sup>171</sup> to correct the applicable cross reference in order to make it clearer that either 12 CFR part 217 or Appendix A to subpart E of part 23 (“Appendix A”)<sup>172</sup> should be utilized as applicable by the nonbank SD depending on the respective capital approach elected.<sup>173</sup>

The Commission requested comment on the proposed amendments to Commission regulations 23.103(a)(1) and (c)(1)<sup>174</sup> to clarify that the same standardized market and credit risk charges are applicable to nonbank SDs electing the Tangible Net Worth Capital Approach as are applicable to all other nonbank SDs not approved to use models, as well as the amendments to Commission regulation 23.102(d)<sup>175</sup> to correct the applicable cross reference in order to make it clearer that either 12 CFR part 217 or Appendix A should be utilized as applicable by the nonbank SD depending on the respective capital approach elected.<sup>176</sup> In response, the Commission received comments generally supporting the amendments.<sup>177</sup> The Commission believes, as discussed above, that these amendments will provide clarity on the applicable market and credit risk charges as well as which regulatory reference (12 CFR part 217 or Appendix A) should be utilized depending on the elected capital approach by the SD, as intended by the Final Rule. As such, the Commission is adopting the amendments as proposed.

## *B. Other Amendments*

### *1. Notice of Substantial Reduction in Capital*

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<sup>171</sup> 17 CFR 23.102(d).

<sup>172</sup> Appendix A to subpart E of part 23.

<sup>173</sup> The Proposal, 89 FR 2561; Final Rules, 85 FR 57506.

<sup>174</sup> 17 CFR 23.103(a)(1) and (c)(1).

<sup>175</sup> 17 CFR 23.102(d).

<sup>176</sup> The Proposal, 89 FR 2561.

<sup>177</sup> See IIB/ISDA/SIFMA Letter; Shell Letter; Barnard Letter; Ravnitzky Letter.

The Commission proposed to amend Commission regulation 23.105(c)(4)<sup>178</sup> to add a two-business day reporting timeframe to the requirement for a nonbank SD to file notice of a substantial reduction in capital.<sup>179</sup> Currently, Commission regulation 23.105(c)(4), which requires nonbank SDs and nonbank MSPs to provide notice of a substantial reduction in capital as compared to the last reported in a financial report, does not specify a timeframe for the notice filing.<sup>180</sup>

The Commission requested comment on the proposed amendment to Commission regulation 23.105(c)(4)<sup>181</sup> to add a two-business day reporting timeframe to the requirement for a nonbank SD to file notice of a substantial reduction in capital.<sup>182</sup> In response, the Commission received comments generally supporting the amendments.<sup>183</sup> One commenter stated that the addition of a concrete reporting timeframe will provide regulatory certainty regarding when such a filing is due and align it with current FCM capital reduction notification timing requirements.<sup>184</sup> The Commission agrees with commenters and believes that the amendment will align with the two-business day reporting timeframe applied to FCMs and provide regulatory certainty as to when the notification is required, while still making the notice timely. As such, the Commission is adopting the amendment as proposed.

## *2. Subordinated Debt Approval*

The Commission proposed to amend Commission regulations 23.101(a)(1)(i)(B) and add 23.101(a)(1)(ii)(D)<sup>185</sup> to establish that using subordinated debt as regulatory

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<sup>178</sup> 17 CFR 23.105(c)(4).

<sup>179</sup> The Proposal, 89 FR 2561.

<sup>180</sup> 17 CFR 23.105(c)(4).

<sup>181</sup> 17 CFR 23.105(c)(4).

<sup>182</sup> The Proposal, 89 FR 2561.

<sup>183</sup> See IIB/ISDA/SIFMA Letter; Shell Letter; Barnard Letter; Ravnitzky Letter.

<sup>184</sup> Ravnitzky Letter at 2.

<sup>185</sup> 17 CFR 23.101(a)(1)(i)(B) and (a)(1)(ii)(D).

capital is subject to the approval of either an RFA of which the nonbank SD is a member or the Commission.<sup>186</sup> The nonbank SD capital requirements for both the Bank-Based Capital Approach and the Net Liquid Assets Capital Approach permit the use of subordinated debt as capital in order to align with the permitted use of subordinated debt under the FCM net capital requirements.<sup>187</sup> The requirements for qualifying subordinated debt were adopted by the SEC in its capital rule for SBSDs and were included by reference by the Commission for other nonbank SDs in the Bank-Based Capital Approach.<sup>188</sup> Commission staff received questions regarding the process for approving subordinated debt for nonbank SDs not also registered with the SEC because the Final Rule did not articulate a process.<sup>189</sup> To address this omission, NFA adopted Financial Requirements Rule Section 18(d).<sup>190</sup> Under the existing framework, NFA already approves subordinated loan agreements for net capital agreements for nonbank SDs that are not dually-registered with the SEC. Similarly, although nonbank SDs that are dually-registered with the SEC are able to obtain SEC approval on subordinated debt,<sup>191</sup> nonbank SDs that elect either the Bank-Based Capital Approach or the Net Liquid Assets Capital Approach but are not registered with the SEC, do not have an approval process for the use of subordinated debt under the Commission's rules. As discussed in the Final Rule,<sup>192</sup> when adopting the permissive use of subordinated debt in establishing minimum

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<sup>186</sup> The Proposal, 89 FR 2561-2562.

<sup>187</sup> 17 CFR 1.17(h).

<sup>188</sup> 17 CFR 23.101(a)(1).

<sup>189</sup> The Proposal, 89 FR 2561-2562.

<sup>190</sup> See generally NFA Interpretative Notice 9078 (Feb. 18, 2021), available at <https://www.nfa.futures.org/rulebooksql/rules.aspx?Section=9&RuleID=9078#:~:text=In%20order%20to%20permit%20these%20non-SEC%20registered%20SD,NFA%27s%20pre-approval%20of%20the%20subordinated%20debt%20loan%20agreement.>

<sup>191</sup> Nonbanks SDs that are duly-registered as SBSDs typically elect under Commission regulation 23.101(a)(1)(ii) (17 CFR 23.101(a)(1)(ii)) to maintain net capital by complying with § 240.18a-1d, and are independently subject to such requirements, including the subordinated-debt approval process, by their registration as a SBSB with the SEC. 17 CFR 240.18a-1d.

<sup>192</sup> Final Rules, 85 FR 57495.

regulatory capital, the Commission has long approved a process for FCMs to obtain subordinated debt approval from their Designated Self-Regulatory Organizations (“DSROs”), including the NFA.<sup>193</sup>

The Commission proposed to permit NFA to administer the approval process for nonbank SDs because of the NFA’s extensive history and experience as a DSRO administering a subordinated debt approval program for FCMs.<sup>194</sup> The Commission requested comment on the proposed amendment to Commission regulations 23.101(a)(1)(i)(B) and addition of 23.101(a)(1)(ii)(D)<sup>195</sup> to establish that using subordinated debt as regulatory capital is subject to the approval of either an RFA of which the nonbank SD is a member or the Commission.<sup>196</sup> In response, the Commission received comments generally supporting the amendments.<sup>197</sup> The Commission believes that this amendment will address the omission discussed above and that NFA has the history, experience and resources to adequately perform the review, approval and ongoing assessment of nonbank SDs’ permitted use of subordinated debt. As such, the Commission is adopting the amendment as proposed.

### *3. Statement of No Material Difference*

The Commission proposed to amend Commission regulation 23.105(e)(4)(v)<sup>198</sup> for nonbank SDs and nonbank MSPs to explicitly require a statement, if applicable, that there are no material differences between the audited annual report and the unaudited

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<sup>193</sup> See Miscellaneous Rule Deletions, Amendments or Clarifications, 57 FR 20633, 20634 (May 14, 1992). The subordinated debt approval program for FCMs administered by NFA has been in place for over 30 years. In addition, the NFA, as the only registered futures association under the CEA, is specifically required to adopt capital requirements on its members, including SDs, and to implement a program to audit and enforce the compliance with such requirements in accordance with section 17(p)(2) of the CEA, 7 U.S.C. 21(p)(2).

<sup>194</sup> The Proposal, 89 FR 2562.

<sup>195</sup> 17 CFR 23.101(a)(1)(i)(B) and (a)(1)(ii)(D).

<sup>196</sup> The Proposal, 89 FR 2561-2562.

<sup>197</sup> See IIB/ISDA/SIFMA Letter; Shell Letter; Barnard Letter; Ravnitzky Letter.

<sup>198</sup> 17 CFR 23.105(e)(4)(v).

annual report of the same date.<sup>199</sup> The Commission also proposed to amend Commission regulation 23.105(e)(6),<sup>200</sup> to more explicitly require nonbank SDs and nonbank MSPs also registered as FCMs to fully comply with the requirements of Commission regulation 1.16.<sup>201</sup> Commission regulation 23.105(e)<sup>202</sup> requires nonbank SDs and nonbank MSPs to submit an annual audited financial report with the Commission and with NFA.<sup>203</sup> Included with the financial report is, among other things, a reconciliation of any material differences from the unaudited financial reports prepared as of the nonbank SD's or nonbank MSP's year-end date.

For instances in which no material differences exist between the unaudited and audited year-end financial statements, however, Commission regulation 1.10(d)(2)(vi)<sup>204</sup> requires FCMs to include a statement indicating that no such differences exist. Currently, Commission regulation 23.105(e)<sup>205</sup> does not provide for such a statement in this parallel provision for audits of nonbank SDs or nonbank MSPs. The Commission proposed to amend Commission regulation 23.105(e)(4)(v)<sup>206</sup> so that when nonbank SDs and nonbank MSPs file their audited annual report, a statement that there are no material differences between the audited annual report and the unaudited annual report is included, if no such differences exist.<sup>207</sup>

The Commission requested comment on the proposed amendment to Commission regulation 23.105(e)(4)(v)<sup>208</sup> to require nonbank SDs and nonbank MSPs to explicitly

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<sup>199</sup> The Proposal, 89 FR 2562.

<sup>200</sup> 17 CFR 23.105(e)(6).

<sup>201</sup> 17 CFR 1.16.

<sup>202</sup> 17 CFR 23.105(e).

<sup>203</sup> 17 CFR 23.105(e).

<sup>204</sup> 17 CFR 1.10(d)(2)(vi).

<sup>205</sup> 17 CFR 23.105(e).

<sup>206</sup> 17 CFR 23.105(e)(4)(v).

<sup>207</sup> The Proposal, 89 FR 2562.

<sup>208</sup> 17 CFR 23.105(e)(4)(v).

provide a statement, if applicable, that there are no material differences between the audited annual report and the unaudited annual report of the same date.<sup>209</sup> In response, the Commission received comments generally supporting the amendments.<sup>210</sup> One commenter stated that requiring a specific statement that no material differences exist when none are otherwise reported will provide more complete and meaningful information to users of the financial reports and align the filing approach for auditors of nonbank SDs and nonbank MSPs with that of FCMs.<sup>211</sup> The Commission agrees with commenters and believes that these amendments will enhance the reliability of the annual reports by ensuring auditors assess the materiality of any discovered audit differences, and that nonbank SDs and nonbank MSPs also registered as FCMs fully comply with FCM annual report requirements. As such, the Commission is adopting the amendments to Commission regulation 23.105(e)<sup>212</sup> as proposed.

### **III. Related Matters**

#### *A. Regulatory Flexibility Act*

The Regulatory Flexibility Act (“RF Act”) requires that Federal agencies consider whether the regulations they propose will have a significant economic impact on a substantial number of small entities, and if so, provide a regulatory flexibility analysis respecting the impact.<sup>213</sup> This rulemaking would affect the obligations of SDs, MSPs, and FCMs. The Commission has previously determined that SDs, MSPs, and FCMs are

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<sup>209</sup> The Proposal, 89 FR 2562.

<sup>210</sup> See IIB/ISDA/SIFMA Letter; Shell Letter; Barnard Letter; Ravnitzky Letter.

<sup>211</sup> Barnard Letter at 2.

<sup>212</sup> 17 CFR 23.105(e).

<sup>213</sup> 5 U.S.C. 601 *et seq.*

not small entities for purposes of the RF Act.<sup>214</sup> Therefore, the requirements of the RF Act do not apply to those entities.

Accordingly, for the reasons stated above, the Commission has determined that this rulemaking will not have a significant economic impact on a substantial number of small entities. Therefore, the Chairman, on behalf of the Commission, hereby certifies, pursuant to 5 U.S.C. 605(b), that the Commission regulations being published today by this *Federal Register* release will not have a significant economic impact on a substantial number of small entities.

## *B. Paperwork Reduction Act*

### *1. Background*

The Paperwork Reduction Act of 1995 (“PRA”)<sup>215</sup> imposes certain requirements on Federal agencies, including the Commission, in connection with conducting or sponsoring any “collection of information” as defined by the PRA. Under the PRA, 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 from the Office of Management and Budget (“OMB”). The PRA is intended, in part, to minimize the paperwork burden created for individuals, businesses, and other persons as a result of the collection of information by federal agencies, and to ensure the greatest possible benefit and utility of information created, collected, maintained, used, shared, and disseminated by or for the federal government. The PRA applies to all information, regardless of form or format, whenever the federal government is obtaining, causing to be obtained, or soliciting information, and includes required disclosure to third parties or the public, of facts or opinions, when the information collection calls for answers to identical

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<sup>214</sup> Policy Statement and Establishment of Definitions of “Small Entities” for Purposes of the Regulatory Flexibility Act, 47 FR 18618 (Apr. 30, 1982) (FCMs) and Registration of Swap Dealers and Major Swap Participants, 77 FR 2613, 2620 (Jan. 19, 2012) (SDs and MSPs).

<sup>215</sup> 44 U.S.C. 3501 *et seq.*

questions posed to, or identical reporting or recordkeeping requirements imposed on, ten or more persons.

The final rulemaking modifies an existing collection of information previously approved by OMB and for which the Commission has received an OMB control number: OMB control number 3038-0024, “Regulations and Forms Pertaining to Financial Integrity of the Market Place; Margin Requirements for SDs/MSPs” (OMB Collection 3038-0024).<sup>216</sup> The responses to this collection of information are mandatory. The Commission does not believe the Final Rule as adopted imposes any other new collections of information that require approval of OMB under the PRA.

The Commission did not receive any comments regarding its PRA burden analysis in the preamble to the Proposal. The Commission is revising collection number 3038-0024 to reflect the adoption of amendments to parts 1 and 23 of its regulations, as discussed below.

2. *OMB Collection 3038-0024—Regulations and Forms Pertaining to Financial Integrity of the Market Place; Margin Requirements for SDs/MSPs*

As of March 2024, there are approximately 107 SDs and no MSPs registered with the Commission that may be impacted by this rulemaking and, in particular, the collection of information discussed below.

Commission regulation 23.105<sup>217</sup> requires that each SD and MSP maintain certain specified records, report certain financial information, and notify or request permission from the Commission under certain specified circumstances, in each case, as provided in the Commission regulation. For example, the Commission regulation requires generally that SDs and MSPs maintain current books and records, provide notice to the

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<sup>216</sup> For the previously approved estimates, see ICR Reference No. 202207-3038-001, available at [https://www.reginfo.gov/public/do/PRAViewICR?ref\\_nbr=202207-3038-001](https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=202207-3038-001).

<sup>217</sup> 17 CFR 23.105.

Commission of regulatory capital deficiencies and related documentation, provide notice of certain other events specified in the rule, and file financial reports and related materials with the Commission (including the information in Appendices B and C, as applicable). Commission regulation 23.105<sup>218</sup> also requires the SD or MSP to furnish information about its custodians that hold margin for uncleared swap transactions and the amounts of margin so held, and for SDs approved to use models (as discussed above), provide additional information regarding such models, as further described in Commission regulation 23.105(k).<sup>219</sup>

The Commission estimates that there are 31 SD firms required to fulfill their financial reporting, recordkeeping, and notification obligations under Commission regulations 23.105(a)-(n)<sup>220</sup> because they are not subject to a prudential regulator, not already registered as an FCM, and not dually-registered as a SBSB. The Commission does not anticipate that its estimates of burden associated with these obligations will change as a result of any of the amendments to Commission regulation 23.105<sup>221</sup> adopted herein.

Commission regulation 23.105(p)<sup>222</sup> and its accompanying Appendix C impose quarterly financial reporting and notification obligations on SDs subject to a prudential regulator. Approximately 55 of the 107 registered SDs are subject to a prudential regulator. The Commission has previously estimated that these reporting and notification requirements impose an ongoing burden of 33 hours annually. This results in a total aggregate burden of 1,815 hours annually. The Commission estimates this burden will

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<sup>218</sup> *Id.*

<sup>219</sup> 17 CFR 23.105(k).

<sup>220</sup> 17 CFR 23.105(a)-(n).

<sup>221</sup> 17 CFR 23.105.

<sup>222</sup> 17 CFR 23.105(p).

remain unchanged by the amendments to Commission regulation 23.105(p)<sup>223</sup> adopted herein, as the burden associated with requirements to file quarterly financial reporting and notifications previously were based on these entities filing their existing information contained in Call Reports along with Schedule 1 information. Under the amendments adopted herein, these obligations will remain the same for bank SDs, except for Non-U.S. bank SDs who will also still file existing financial reporting information as reported to their home country supervisor, along with Appendix C Schedule 1 information.

*C. Section 15(b) 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)), 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.<sup>224</sup>

The Commission believes that the public interest to be protected by the antitrust laws is generally to protect competition. The Commission has considered the rule to determine whether it is anticompetitive and has identified no anticompetitive effects. The Commission requested and received no comments on whether the proposed rule is anticompetitive and, if it is, what the anticompetitive effects are. Further, the Commission requested and received no comments on whether there are less anticompetitive means of achieving the relevant purposes of the Act that would otherwise be served by adopting the rule. Finally, the Commission requested and received no comments on whether the proposed rule implicates any other specific public interest to be protected by the antitrust laws. The Commission has determined that the rule is not

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<sup>223</sup> *Id.*

<sup>224</sup> 7 U.S.C. 19(b).

anticompetitive and has no anticompetitive effects, and it has not identified any less anticompetitive means of achieving the purposes of the Act. As such, the Commission is adopting the rule as proposed subject to the modifications discussed herein.

#### **IV. Cost Benefit Considerations**

##### *A. Background*

Section 15(a) of the CEA requires the Commission to consider the costs and benefits of its discretionary actions before promulgating a regulation under the CEA or issuing certain orders.<sup>225</sup> Section 15(a) 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 futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations (collectively, the “Section 15(a) Factors”). In this cost benefit section, the Commission discusses the costs and benefits resulting from its discretionary determinations with respect to the Section 15(a) Factors.<sup>226</sup>

Section 4s(e) of the CEA, added by section 731 of the Dodd-Frank Act, provides the Commission with mandatory and discretionary rulemaking authority to adopt capital requirements for nonbank SDs and nonbank MSPs,<sup>227</sup> as well as financial reporting requirements for SDs and MSPs.<sup>228</sup> Section 4s(e) of the CEA requires the Commission to adopt minimum capital requirements for nonbank SDs and nonbank MSPs that are designed to help ensure their safety and soundness and are appropriate for the risk associated with the uncleared swaps held by such nonbank SD or nonbank MSP. In addition, section 4s(e)(2)(C) of the CEA, requires the Commission to establish capital

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<sup>225</sup> 7 U.S.C. 19(a).

<sup>226</sup> The Commission notes that the costs and benefits considered in this proposed rulemaking, and highlighted below, have informed the policy choices described throughout this release.

<sup>227</sup> Section 4s(e)(2)(B) of the CEA, 7 U.S.C. 6s(e)(2)(B).

<sup>228</sup> Section 4s(f) of the CEA, 7 U.S.C. 6s(f).

requirements for nonbank SDs or nonbank MSPs that account for the risks associated with their entire swaps portfolio and all other activities conducted. Lastly, section 4s(e)(3)(D) of the CEA provides that the Commission, the prudential regulators, and the SEC, must “to the maximum extent practicable” establish and maintain comparable capital rules. Accordingly, this rulemaking includes certain capital and financial reporting requirements related to SDs and MSPs.

The baseline for the Commission’s consideration of the costs and benefits of this rulemaking is the existing statutory and regulatory framework applicable to SDs and MSPs, including the capital and margin requirements for SDs and MSPs under subpart E of part 23. The Commission recognizes, however, that to the extent that SDs<sup>229</sup> have arranged their business in reliance on Division interpretations and no-action positions in CFTC Staff Letters No. 21-15 and 21-18, as extended under CFTC Staff Letter No. 23-11, the actual costs and benefits of this rulemaking may be mitigated.

The Commission recognizes that the amendments adopted herein may impose costs. The Commission has endeavored to assess the expected costs and benefits of the amendments in quantitative terms, including PRA-related costs, where possible. In situations where the Commission is unable to quantify the costs and benefits, the Commission identifies and considers the costs and benefits of the rules in qualitative terms. The lack of data and information to estimate those costs and benefits is attributable in part to the nature of the amendments, which are tailored financial reporting requirements based on the specific businesses and types of SDs registered with the Commission. Further, SDs represent a wide diversity of business models catering towards different swap counterparties, from financial end users to commercial

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<sup>229</sup> Currently, there are no MSPs registered with the Commission and there have not been any MSPs registered with the Commission for several years. Thus, this section regarding the Commission’s consideration of the costs and benefits of this proposed rulemaking will only refer to SDs that may have relied on CFTC Staff Letters No. 21-15 and 21-18 and may benefit from the compliance exceptions set forth herein.

enterprises. As a result, the Commission expects each SD to have developed its corporate entity in a unique manner by employing different corporate cost structures, making it particularly difficult to estimate the quantitative impacts of both costs and benefits on each SD.

As previously discussed, the Commission received four substantive comments expressing support for the Proposal.<sup>230</sup> Commenters generally noted that the proposed amendments are beneficial for market participants and characterized them as helpful and practical accommodations that reflect the realities of the marketplace and facilitate compliance with the CFTC financial reporting requirements.<sup>231</sup> Several commenters elaborated on specific benefits of the amendments, noting for instance that the proposed amendments would reduce regulatory burden and costs for some SDs, including those that are predominantly engaged in non-financial activities and have a high level of tangible net worth.<sup>232</sup>

#### *B. CFTC Staff Letters and Other Amendments*

The Commission is adopting technical amendments to its definitions in Commission regulation 23.100<sup>233</sup> for “predominantly engaged in non-financial activities” and “tangible net worth.” Further, the Commission is adopting amendments to Commission regulation 23.105(p)<sup>234</sup> to add exceptions to the financial reporting requirements for Non-U.S. bank SDs, and permitting bank SDs to file the relevant schedules under the Call Report (Schedule RC and Schedule RC-R) instead of as required by Appendix C. In addition, the Commission is making a number of clarifying amendments including: (1) amending the heading and scope provisions of Commission

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<sup>230</sup> See IIB/ISDA/SIFMA Letter; Shell Letter; Barnard Letter; Ravnitzky Letter.

<sup>231</sup> See *id.*

<sup>232</sup> Ravnitzky Letter at 1.

<sup>233</sup> 17 CFR 23.100.

<sup>234</sup> 17 CFR 23.105(p).

regulation 23.105(k)<sup>235</sup> and the titles of certain schedules included in Appendix B; (2) changing public disclosure requirements under Commission regulation 23.105(i);<sup>236</sup> (3) amending Form 1-FR-FCM to more accurately address net capital changes; (4) adding language to Commission regulations 23.103(a) and (c)(1)<sup>237</sup> to clarify that standardized charges are the same as applicable to all SDs not using the Bank-Based Capital Approach; and (5) amending the cross reference in Commission regulation 23.102(d)<sup>238</sup> to make clear that either 12 CFR part 217 or Appendix A should be utilized as applicable by the nonbank SD depending on the respective capital approach elected.

*1. Benefits*

The amendments to definitions of “predominantly engaged in non-financial activities” and “tangible net worth” aligning the regulatory text with the terms of CFTC Staff Letter No.21-15 are intended to ensure that the Tangible Net Worth Capital Approach can be utilized by certain nonbank SDs as was originally intended in the Final Rule. These amendments are expected to benefit certain nonbank SDs by ensuring clear and effective compliance with regulatory requirements under the Tangible Net Worth Capital Approach as amended, ultimately reducing operational costs for such nonbank SDs. In particular, nonbank SDs would no longer be required to calculate asset and revenue tests separately between the entity and the ultimate parent level or compute such tests under U.S. GAAP even if such entity was permitted to use IFRS. Further, these amendments would allow nonbank SDs meeting such qualifications to file their supplemental position reports at the same time as routine financial reporting for all nonbank SDs set forth within Commission regulation 23.105(d).<sup>239</sup>

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<sup>235</sup> 17 CFR 23.105(k).

<sup>236</sup> 17 CFR 23.105(i).

<sup>237</sup> 17 CFR 23.103(a) and (c)(1).

<sup>238</sup> 17 CFR 23.102(d).

<sup>239</sup> 17 CFR 23.105(d).

Similarly, the amendments to Commission regulation 23.105(p)<sup>240</sup> that are consistent with the terms of CFTC Staff Letter No. 21-18, as extended under CFTC Staff Letter No. 23-11, are expected to benefit bank SDs by permitting: (1) Non-U.S. bank SDs to file reports by their home country regulators subject to certain conditions; (2) bank SDs to file comparable Call Report schedules in accordance with, and within the timeframe permitted by, the prudential regulators; (3) Non-U.S. bank SDs to file balance sheet and statement of regulatory capital information in accordance with home country requirements provided they are in English, converted to U.S. dollars and filed within 90 calendar days following quarter-end; and (4) dually-registered Non-U.S. bank SDs to file comparable SEC-approved financial reports and schedules. The Commission anticipates that these amendments will eliminate duplicative and superfluous reporting and streamline financial reporting for both Non-U.S. and dually-registered bank SDs.

Lastly, the amendments regarding financial reporting and computation include: (1) amendments to the heading and scope provision of Commission regulations 23.105(k) and (l);<sup>241</sup> (2) titles of certain schedules included in Appendix B; (3) alignment of the public disclosure of unaudited financial information with the periodicity permitted by routine financial filings in Commission regulation 23.105(d),<sup>242</sup> and to remove reference to a statement disclosing the amounts of minimum regulatory capital; (4) amending Form 1-FR-FCM to add the 2 percent of uncleared swap margin capital requirement and swaps and security-based swaps haircuts; and (5) addition of clarifying language to Commission regulations 23.103(a)(1) and (c)(1)<sup>243</sup> to provide additional clarity to registrants that the same standardized market and credit risk charges are applicable to nonbank SDs utilizing the Tangible Net Worth Capital Approach as are applicable to all other nonbank SDs if

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<sup>240</sup> 17 CFR 23.105(p).

<sup>241</sup> 17 CFR 23.105(k) and (l).

<sup>242</sup> 17 CFR 23.105(d).

<sup>243</sup> 17 CFR 23.103(a)(1) and (c)(1).

not approved to use models. These amendments are meant to clarify what was originally intended in the Final Rule or what is already included within the existing Commission regulations, as well as align the schedules as currently required by the SEC and the NFA. The Commission anticipates that these amendments will remove uncertainty amongst SDs about the type of form and the extent of detail that they should be reporting.

## 2. *Costs*

The Commission generally does not anticipate any costs associated with the above amendments as they are intended to streamline and clarify existing financial reporting and capital requirements. Of the above, only the amendments to Commission regulation 23.105(l)<sup>244</sup> would impose additional financial reporting requirements on nonbank SDs and nonbank MSPs not approved to use models to file Schedules 2-4 of Appendix B.

Currently, there are 8 nonbank SDs not approved to use models that are not currently filing Schedules 2-4 of Appendix B, but that would be required to do so under the amendments to Commission regulation 23.105(l).<sup>245</sup> The information required under Appendix B is nearly identical in all material respects to corresponding forms found in the SEC Form FOCUS Report Part II, as well as the capital and financial reporting requirements by the NFA for its member nonbank SDs and nonbank MSPs. Thus, the Commission has determined that these nonbank SDs already have developed policies, procedures, and systems to aggregate, monitor, and track their swap activities and risks as is required under Schedules 2-4 of Appendix B, which should mitigate some of the burdens of the additional reporting and recordkeeping requirements. Finally, the amendments to Commission regulation 23.105(k)<sup>246</sup> clarify that nonbank SDs and

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<sup>244</sup> 17 CFR 23.105(l).

<sup>245</sup> *Id.*

<sup>246</sup> 17 CFR 23.105(k).

nonbank MSPs approved to use models may comply with the requirements to provide specific financial information required by Commission regulation 23.105(k)<sup>247</sup> by filing Appendix B. Such nonbank SDs and nonbank MSPs have already been filing Appendix B with the Commission, and thus the Commission has determined that the amendments to Commission regulation 23.105(k)<sup>248</sup> would not impose any additional burden for such nonbank SDs and nonbank MSPs.

### *3. Section 15(a) Factors*

The following is a discussion of the cost and benefit considerations of this rulemaking, as it relates to the five broad areas of market and public concern identified in section 15(a) of the CEA: (1) protection of market participants and the public; (2) efficiency, competitiveness, and financial integrity of swaps markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations.

#### *a. Protection of Market Participants and the Public*

The rules adopted herein are intended to enhance the clarity of financial reporting and computation requirements by revising the language of the regulations with respect to the type of forms and the tests that SDs should be using as part of their financial reporting process. The changes to the computation of tangible net worth are anticipated to benefit the public by allowing investors to monitor tangible net worth at the consolidated parent's level, and the financial reporting requirements for both bank SDs and nonbank SDs set out in this rulemaking should help the Commission and market participants monitor and assess the financial condition of such SDs more accurately and as was intended in the Final Rule. These amendments are also intended to harmonize financial reporting requirements with those of the prudential regulators, and the SEC, through which market participants and the Commission can gain a clearer and more directly

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<sup>247</sup> *Id.*

<sup>248</sup> *Id.*

comparable understanding of the financial reports received. Clarifying rules should safeguard both market participants and the public by improving transparency and reducing ambiguity.

*b. Efficiency, Competitiveness, and Financial Integrity of Swaps Markets*

In this rulemaking, the Commission seeks to promote efficiency and financial integrity of the swaps market by streamlining many of the financial reporting requirements. For example, the amendments to Commission regulation 23.105(p)<sup>249</sup> permit certain bank SDs to file with the Commission comparable Call Report schedules in accordance with, and within the timeframe permitted by, the prudential regulators that they currently file with the prudential regulators, or comparable SEC-approved financial reports and schedules, as applicable. The amendments to Commission regulation 23.105(p)<sup>250</sup> would also allow certain Non-U.S. bank SDs to file with the Commission what they currently file with their respective home country regulators, subject to certain conditions. In addition, the amendments to Commission regulation 23.105(k)<sup>251</sup> are meant to ensure that the information listed in Appendix B is completed by all nonbank SDs and nonbank MSPs as was intended, and is consistent with that required by the SEC and NFA, and the amendments to Form 1-FR-FCM are meant to harmonize with the SEC's requirements in its FOCUS Report Part II. Harmonizing requirements should foster a more level playing field, ultimately promoting trust and integrity within the market.

The Commission anticipates that these amendments will promote greater operational efficiencies for both bank and nonbank SDs that are already regulated, either prudentially or through comparable foreign regulators, as they may be able to avoid

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<sup>249</sup> 17 CFR 23.105(p).

<sup>250</sup> *Id.*

<sup>251</sup> 17 CFR 23.105(k).

creating duplicative compliance and operational infrastructures. The amendments should allow the Commission to monitor the financial integrity of swaps markets more clearly and efficiently, including in the case of any default or financial contagion.

Lastly, the Commission is amending the definition of “predominantly engaged in non-financial activities” as used in the Tangible Net Worth Capital Approach by permitting entities to determine whether they are predominantly engaged in non-financial activities at either the parent or subsidiary level to be consistent with the Commission’s intention in the Final Rule.<sup>252</sup> As discussed above, this amendment properly calibrates the wording of the definition in establishing eligibility for the Tangible Net Worth Capital Approach by assessing non-financial activities at a consolidated parent level. In doing so, it clarifies the Commission’s intention to permit more entities that are predominately engaged in non-financial activities to be eligible for the Tangible Net Worth Capital Approach, thereby creating greater market efficiency.

*c. Price Discovery*

The Commission anticipates that the amendments adopted herein may enhance price discovery. By clarifying financial reporting and computation requirements and harmonizing reporting practices, a more efficient operating environment would be created for SDs, which are important intermediaries within the swaps markets. This improved data quality reported to regulators has the potential to enhance supervision, leading to improved market quality. Consequently, this could lead to a more effective and accurate price discovery process.

*d. Sound Risk Management Practices*

The Commission has determined that, as a result of the adopted reporting and recordkeeping requirements, SDs may more effectively track their trading and risk

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<sup>252</sup> Final Rules, 85 FR 57502.

exposure in swaps and other financial activities. To the extent that these SDs can better monitor and track their risks, the Commission anticipates that this should help them better manage risk within the entity.

*e. Other Public Interest Considerations*

The Commission has not identified any additional public interest considerations related to the costs and benefits of the rule.

*C. Other Amendments*

The Commission is adopting a number of clarifying amendments intended to align with existing Commission regulations, including: (1) amending Commission regulation 23.105(c)(4)<sup>253</sup> to add a two-business days reporting timeframe to the requirement for nonbank SD notice filing of a substantial reduction in capital; (2) amending Commission regulations 23.101(a)(1)(i)(B) and 23.101(a)(1)(ii)(C)<sup>254</sup> to establish that the use of subordinated debt as regulatory capital is subject to the approval of either an RFA of which the nonbank SD is a member, or the Commission; and (3) amending Commission regulation 23.105(e)(4)(v)<sup>255</sup> for SDs and MSPs to include an explicit statement, if applicable, that there are no material differences between the audited annual report and the unaudited annual report of the same date.

*1. Benefits*

The amendments to the notice requirements in Commission regulation 23.105(c)(4)<sup>256</sup> would add a two-business day requirement for nonbank SDs filing a notice of substantial reduction in capital. The Commission has determined that adding a reporting timeframe to the notice requirement will enhance compliance by providing regulatory certainty to nonbank SDs of when such a filing is due.

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<sup>253</sup> 17 CFR 23.105(c)(4).

<sup>254</sup> 17 CFR 23.101(a)(1)(i)(B) and (a)(1)(ii)(C).

<sup>255</sup> 17 CFR 23.105(e)(4)(v).

<sup>256</sup> 17 CFR 23.105(c)(4).

The amendments to Commission regulation 23.101(a)(1)(i)(B)<sup>257</sup> would establish that the use of subordinated debt as regulatory capital is subject to the approval of either an RFA of which the nonbank SD is a member, or the Commission. The amendments should further provide regulatory clarity by establishing the process for approving subordinated debt for nonbank SDs, which was not explicitly articulated in the Final Rule and had led to uncertainty among nonbank SDs.

Lastly, the amendments to Commission regulation 23.105(e)(4)(v)<sup>258</sup> would require that the SDs and MSPs include an explicit statement, if applicable, of no material differences between the audited and the unaudited annual report of the same date. Doing so should not only align the filing approach for auditors of SDs with that of FCMs, but also enhance the reliability of such annual reports by encouraging auditors to more rigorously assess the materiality of reporting any discovered audit findings.

## 2. *Costs*

The Commission does not anticipate that compliance with the above amendments will lead to any significant costs. The amendments to Commission regulations 23.105(c)(4) and 23.105(e)(4)(v)<sup>259</sup> are meant to align the financial reporting requirements of SDs with that of FCMs. Based on the Commission's experience with existing filings and discussions with registered SDs, the Commission has determined that the registrants will be able to file necessary information within the timeframe provided. The amendments to Commission regulation 23.101(a)(1)(i)(B)<sup>260</sup> are meant to establish a process of approving subordinated debt for nonbank SDs, and as such they would not levy any additional costs to the nonbank SDs.

## 3. *Section 15(a) Factors*

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<sup>257</sup> 17 CFR 23.101(a)(1)(i)(B).

<sup>258</sup> 17 CFR 23.105(e)(4)(v).

<sup>259</sup> 17 CFR 23.105(c)(4) and (e)(4)(v).

<sup>260</sup> 17 CFR 23.101(a)(1)(i)(B).

The following is a discussion of the cost and benefit considerations of the rulemaking as it relates to the aforementioned five broad areas of market and public concern identified in section 15(a) of the CEA.

*a. Protection of Market Participants and the Public*

The Commission anticipates that the amendment to Commission regulation 23.105(c)(4)<sup>261</sup> adopted herein should protect market participants and the public against possible market disruption by requiring that all SDs file a notice of a substantial reduction in capital within two business days after such an incident has occurred. Similarly, the amendments to Commission regulation 23.101(a)(1)(i)(B)<sup>262</sup> should provide market clarity on how subordinated debt is approved for consideration as capital, and the amendments to Commission regulation 23.105(e)(4)(v)<sup>263</sup> should allow the Commission and the public to effectively monitor cases where there are no material differences between the audited and unaudited annual report of the same date filed by nonbank SDs and nonbank MSPs. These amendments should enable market participants to have better insights into SD's capital and financial positions. This, in turn, should enhance the protection of both market participants and the public.

*b. Efficiency, Competitiveness, and Financial Integrity of Swaps Markets*

The amendments adopted herein should improve the accuracy and completeness of nonbank SDs' and nonbank MSPs' financial reporting by imposing a two-business day deadline for notice of substantial reduction in capital, and an affirmative statement of no material differences between the audited and unaudited annual financial statement, as applicable. The establishment of a process for approving subordinated debt should lead to increased efficiency in how such subordinated debt is monitored. Further, these

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<sup>261</sup> 17 CFR 23.105(c)(4).

<sup>262</sup> 17 CFR 23.101(a)(1)(i)(B).

<sup>263</sup> 17 CFR 23.105(e)(4)(v).

amendments are also intended to harmonize financial reporting requirements with those of the prudential regulators, as well as the Commission's existing framework regarding FCMs. Harmonizing requirements should foster a more level playing field, ultimately promoting trust and integrity within the market.

*c. Price Discovery*

The Commission anticipates that the amendments adopted herein will enhance price discovery. By improving financial reporting requirements for nonbank SDs and nonbank MSPs, a more efficient operating environment should be created for SDs, which are important intermediaries within the swaps markets. This improved data quality reported to regulators has the potential to enhance supervision, leading to improved market quality. Consequently, this could lead to a more effective and accurate price discovery process.

*d. Sound Risk Management Practices*

The Commission anticipates that the above amendments will lead to better risk management practices among SDs and MSPs, particularly by requiring them to monitor for potential reduction in capital and material differences between the audited and the unaudited annual financial statements.

*e. Other Public Interest Considerations*

The Commission has not identified any additional public interest considerations related to the costs and benefits of the rule.

**Note:** The following appendix to this preamble pertains to a form that does not appear in the Code of Federal Regulations.



12. Charges as specified in section 240.15c3-1(c)(2)(vi) and (vii) against securities owned by firm, including securities representing investments of domestic and foreign customers' funds:

	Market Value	Charge	
A. U.S. and Canadian government obligations	3160	3170	
B. State and Municipal government obligations	3180	3190	
C. Certificates of deposit, commercial paper and bankers' acceptances	3200	3210	
D. Corporate obligations	3220	3230	
E. Stocks and warrants	3240	3250	
F. Other securities	3260	3270	
G. Total charges (add lines 12.A. - 12.F.)			3280
13. Charges as specified in section 240.15c3-1(c)(2)(iv)(F)			
A. Against securities purchased under agreements to resell			3290
B. Against securities sold under agreements to repurchase			3300
14. Charges on securities options as specified in section 240.15c3-1, Appendix A			3310
15. Undermargined commodity futures and commodity options accounts - amount in each account required to meet maintenance margin requirements, less the amount of current margin calls in that account and the amount of any noncurrent deficit in the account			
A. Customer accounts			3320
B. Noncustomer accounts			3330
C. Omnibus accounts			3340
16. Charges against open commodity and cleared OTC derivatives positions in proprietary accounts and swaps			
A. Uncovered exchange-traded futures, cleared OTC derivatives positions and granted options contracts			
i. percentage of margin requirements applicable to such contracts	3350		
ii. Less: equity in proprietary accounts included in liabilities	3360		3370
B. Ten percent (10%) of the market value of commodities which underlie commodity options not traded on a contract market carried long by the applicant or registrant which has value and such value increased adjusted net capital (this charge is limited to the value attributed to such options)			3380
C. Commodity options which are traded on contract markets and carried long in proprietary accounts. Charge is the same as would be applied if the applicant or registrant was the grantor of the options (this charge is limited to the value attributed to such options)			3390
D. Haircuts on swaps and security-based swaps pursuant to 1.17(c)(5)(iii), (iv), (xv), and (xvi) (itemize to the subparagraph level on separate page)			3395
17. Five percent (5%) of all unsecured receivables from foreign brokers			3410
18. Deficiency in collateral for secured demand notes			3420
19. Adjustment to eliminate benefits of consolidation (explain on separate page)			3430
20. Total charges (add lines 7 through 19)			3440



## List of Subjects in 17 CFR Part 23

Reporting and recordkeeping requirements, Swaps.

For the reasons stated in the preamble, the Commodity Futures Trading Commission amends 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 § 23.100 by adding, in alphabetical order, a definition of the term “Call Report” and revising the definitions of the terms “Predominantly engaged in non-financial activities” and “Tangible net worth” to read as follows:

#### **§ 23.100 Definitions applicable to capital requirements.**

\* \* \* \* \*

*Call Report.* This term means the Federal Financial Institutions Examination Council Form 031 that a swap dealer or major swap participant for which there is a prudential regulator is required to file with its applicable prudential regulator.

\* \* \* \* \*

*Predominantly engaged in non-financial activities.* A swap dealer is predominantly engaged in non-financial activities if:

(1) The swap dealer’s consolidated annual gross financial revenues, or if the swap dealer is a wholly owned subsidiary, then the swap dealer’s consolidated parent’s annual gross financial revenues, in either of its two most recently completed fiscal years represents less than 15 percent of the swap dealer’s or the swap dealer’s consolidated parent’s consolidated gross revenue in that fiscal year (“15% revenue test”), and

(2) The consolidated total financial assets of the swap dealer, or if the swap dealer is wholly owned subsidiary, then the consolidated total financial assets of the swap

dealer's parent, at the end of its two most recently completed fiscal years represents less than 15 percent of the swap dealer's or the swap dealer's consolidated parent's consolidated total assets as of the end of the fiscal year ("15% asset test").

(3) For purpose of computing the 15% revenue test or the 15% asset test, a swap dealer's activities or swap dealer's parent's activities shall be deemed financial activities if such activities are defined as financial activities under 12 CFR 242.3 and appendix A to 12 CFR part 242, including lending, investing for others, safeguarding money or securities for others, providing financial or investment advisory services, underwriting or making markets in securities, providing securities brokerage services, and engaging as principal in investing and trading activities; *provided, however*, a swap dealer or a swap dealer's consolidated parent may exclude from its financial activities accounts receivable resulting from non-financial activities.

\* \* \* \* \*

*Tangible net worth.* This term means the net worth of a swap dealer or major swap participant as determined in accordance with U.S. generally accepted accounting principles, or International Financial Reporting Standards issued by the International Accounting Standards Board if the swap dealer or major swap participant is permitted under § 23.105(b) to prepare and maintain books and records in accordance with such standards, but in either case, excluding goodwill and other intangible assets. In determining net worth, all long and short positions in swaps, security-based swaps and related positions must be marked to their market value. A swap dealer or major swap participant must include in its computation of tangible net worth all liabilities or obligations of a subsidiary or affiliate that the swap dealer or major swap participant guarantees, endorses, or assumes either directly or indirectly.

\* \* \* \* \*

3. Amend § 23.101 by revising paragraphs (a)(1)(i)(B), (a)(1)(ii)(B) and (C), and adding paragraph (a)(1)(ii)(D) to read as follows:

**§ 23.101 Minimum financial requirements for swap dealers and major swap participants.**

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

(i) \* \* \*

(B) An aggregate of common equity tier 1 capital, additional tier 1 capital, and tier 2 capital, all as defined under the bank holding company regulations in 12 CFR 217.20, equal to or greater than eight percent of the swap dealer's BHC equivalent risk-weighted assets; *provided, however*, that the swap dealer must maintain a minimum of common equity tier 1 capital equal to six point five percent of its BHC equivalent risk-weighted assets; *provided further*, that any capital that is subordinated debt under 12 CFR 217.20 and that is included in the swap dealer's capital for purposes of this paragraph (a)(1)(i)(B) must qualify as subordinated debt under § 240.18a-1d of this title in accordance with a qualification determination of the Commission or a registered futures association of which the swap dealer is a member;

\* \* \* \* \*

(ii) \* \* \*

(B) A swap dealer that uses internal models to compute market risk for its proprietary positions under § 240.18a-1(d) of this title must calculate the total market risk as the sum of the VaR measure, stressed VaR measure, specific risk measure, comprehensive risk measure, and incremental risk measure of the portfolio of proprietary positions in accordance with § 23.102 and appendix A to subpart E of this part;

(C) A swap dealer may recognize as a current asset, receivables from third-party custodians that maintain the swap dealer's initial margin deposits associated with uncleared swap and security-based swap transactions pursuant to the margin rules of the

Commission, the Securities and Exchange Commission, a prudential regulator, as defined in section 1a(39) of the Act, or a foreign jurisdiction that has received a margin Comparability Determination under § 23.160; and

(D) The qualification of any subordinated debt used to meet any capital requirements shall be as determined by the Commission or a registered futures association of which the swap dealer is a member.

\* \* \* \* \*

4. In § 23.102, revise paragraph (d) to read as follows:

**§ 23.102 Calculation of market risk exposure requirement and credit risk exposure requirement using internal models.**

\* \* \* \* \*

(d) The Commission, or registered futures association upon obtaining the Commission's determination that its requirements and model approval process are comparable to the Commission's requirements and process, may approve or deny the application, or approve or deny an amendment to the application, in whole or in part, subject to any conditions or limitations the Commission or registered futures association may require, if the Commission or registered futures association finds the approval to be appropriate in the public interest, after determining, among other things, whether the applicant has met the requirements of this section. A swap dealer that has received Commission or registered futures association approval to compute market risk exposure requirements and credit risk exposure requirements pursuant to internal models must compute such charges in accordance with paragraph (c) of this section.

\* \* \* \* \*

5. In § 23.103, revise paragraphs (a)(1) and (c)(1) to read as follows:

**§ 23.103 Calculation of market risk exposure requirement and credit risk requirement when models are not approved.**

(a) \* \* \*

(1) Computes its regulatory capital requirements under § 23.101(a)(1)(ii) or (a)(2), and

\* \* \* \* \*

(c) \* \* \*

(1) A swap dealer that computes regulatory capital under § 23.101(a)(1)(ii) or (a)(2) shall compute counterparty credit risk charges using the applicable standardized credit risk charges set forth in § 240.18a-1 of this title and § 1.17 of this chapter for such positions.

\* \* \* \* \*

6. In § 23.105, revise paragraphs (c)(2) and (4), (d)(2) through (4), (e)(4)(v), (e)(6), (i)(1)(i) and (ii), (i)(2)(ii), (k)(1) introductory text, (l), and (p)(2) and (7) to read as follows:

**§23.105 Financial recordkeeping, reporting and notification requirements for swap dealers and major swap participants.**

\* \* \* \* \*

(c) \* \* \*

(2) A swap dealer or major swap participant who knows or should have known that its regulatory capital at any time is less than 120 percent of its minimum regulatory capital requirement as determined under § 23.101, or less than the amounts identified in § 1.12(b) of this chapter for a swap dealer or major swap participant that is also a futures commission merchant, must provide written notice to the Commission and to the registered futures association of which it is a member to that effect within 24 hours of such event.

\* \* \* \* \*

(4) A swap dealer or major swap participant must provide written notice within two business days to the Commission and to the registered futures association of which it is a member of a substantial reduction in capital as compared to that last reported in a financial report filed with the Commission pursuant to this section. The notice shall be provided if the swap dealer or major swap participant experiences a 30 percent or more decrease in the amount of capital that the swap dealer or major swap participant holds in excess of its regulatory capital requirement as computed under § 23.101.

\* \* \* \* \*

(d) \* \* \*

(2) The financial reports required by this section must be prepared in the English language and be denominated in United States dollars. The financial reports shall include a statement of financial condition, a statement of income/loss, a statement of changes in liabilities subordinated to the claims of general creditors, a statement of changes in ownership equity, a statement demonstrating compliance with and calculation of the applicable regulatory capital requirement under § 23.101, and such further material information as may be necessary to make the required statements not misleading. The monthly or quarterly report and schedules must be prepared in accordance with generally accepted accounting principles as established in the United States; *provided, however*, that a swap dealer or major swap participant that is not otherwise required to prepare financial statements in accordance with U.S. generally accepted accounting principles, may prepare the monthly or quarterly report and schedules required by this section in accordance with International Financial Reporting Standards issued by the International Accounting Standards Board.

(3) A swap dealer or major swap participant that is also registered with the Securities and Exchange Commission as a broker or dealer, security-based swap dealer, or a major security-based swap participant and files a monthly Form X-17A-5 FOCUS

Report Part II with the Securities and Exchange Commission pursuant to § 240.18a-7 or 240.17a-5 of this title, as applicable, must file such Form X-17A-5 FOCUS Report Part II with the Commission and with the registered futures association in lieu of the financial reports required under paragraphs (d)(1) and (2) of this section. The swap dealer or major swap participant must file the form with the Commission and registered futures association when it files the Form X-17A-5 FOCUS Report Part II with the Securities and Exchange Commission; *provided, however*, that the swap dealer or major swap participant must file the Form X-17A-5 FOCUS Report Part II with the Commission and registered futures association no later than 17 business days after the end of each month.

(4) A swap dealer or major swap participant that is also registered with the Commission as a futures commission merchant must file a Form 1-FR-FCM or such other form as the futures commission merchant is permitted to file under § 1.10 of this chapter, in lieu of the monthly financial reports required under paragraphs (d)(1) and (2) of this section.

(e) \* \* \*

(4) \* \* \*

(v) A reconciliation of any material differences from the unaudited financial report prepared as of the swap dealer's or major swap participant's year-end date under paragraph (d) of this section and the swap dealer's or major swap participant's annual financial report prepared under this paragraph (e) or, if no material differences exist, a statement so indicating; and

\* \* \* \* \*

(6) A swap dealer or major swap participant that is also registered with the Commission as a futures commission merchant must file an audited Form 1-FR-FCM or such other form as the futures commission merchant is permitted to file under § 1.10 of this chapter, and must comply with the requirements of § 1.16 of this chapter, including

filing a supplemental accountant's report on material inadequacies concurrently with the audited annual report, in lieu of the annual financial report required under this paragraph (e).

\* \* \* \* \*

(i) \* \* \*

(1) \* \* \*

(i) The statement of financial condition including applicable footnotes; and

(ii) The amounts of the swap dealer's or major swap participant's regulatory capital and minimum regulatory capital requirement, computed in accordance with § 23.101.

\* \* \* \* \*

(2) \* \* \*

(ii) The amounts of the swap dealer's or major swap participant's regulatory capital as of the fiscal year-end and its minimum regulatory capital requirement, computed in accordance with § 23.101.

\* \* \* \* \*

(k) \* \* \*

(1) A swap dealer that has received approval or filed an application for provisional approval under § 23.102(d) from the Commission, or from a registered futures association of which the swap dealer is a member, to use internal models to compute its market risk exposure requirement and credit risk exposure requirement in computing its regulatory capital under § 23.101 must file with the Commission and with the registered futures association of which the swap dealer is a member the specific information contained in appendix B to subpart E of this part and the following information within 17 business days of the end of each month or quarter as applicable:

\* \* \* \* \*

(l) *Additional position and counterparty reporting requirements for swap dealers and major swap participants not approved to use models.* A swap dealer or major swap participant which is not subject to paragraph (k) of this section must provide the Commission and the registered futures association of which the swap dealer or major swap participant is a member, the additional specific information contained in appendix B to subpart E of this part on a monthly or quarterly basis as applicable to its required frequency of financial reporting under paragraph (d) of this section.

\* \* \* \* \*

(p) \* \* \*

(2) *Financial report and position information.* (i) A swap dealer or major swap participant that files a Call Report with its applicable prudential regulator shall file Schedule RC – Balance Sheet and Schedule RC – R Regulatory Capital from its Call Report filed with the prudential regulator, and schedule 1 of appendix C to subpart E of this part, with the Commission on a quarterly basis. The swap dealer or major swap participant shall file the schedules with the Commission on the date the Call Report is due to be filed with the swap dealer’s or major swap participant’s prudential regulator.

(ii) A swap dealer or major swap participant domiciled in a non-U.S. jurisdiction that is not required to file a Call Report by its applicable prudential regulator shall file a statement of financial condition and regulatory capital information containing comparable financial information as required by Schedule RC – Balance Sheet and Schedule RC – R Regulatory Capital of the Call Report, and shall file schedule 1 of appendix C to subpart E of this part, with the Commission on a quarterly basis. The statement of financial condition, regulatory capital information, and schedule 1 of appendix C to subpart E of this part shall be prepared and presented in accordance with the accounting standards permitted by the swap dealer’s or major swap participant’s home country regulatory authorities; *provided, however,* that the schedules and

information must be in the English language with balances converted to U.S. dollars. The swap dealer or major swap participant shall file the statement of financial condition, regulatory capital information, and schedule 1 of appendix C to subpart E of this part with the Commission no later than 90 calendar days after the end of the swap dealer's or major swap participant's fiscal quarter.

\* \* \* \* \*

(7) A swap dealer or major swap participant that is subject to the capital requirements of a prudential regulator and is also registered with the Securities and Exchange Commission as a security-based swap dealer or a major security-based swap participant and files a quarterly Form X-17A-5 FOCUS Report Part IIC with the Securities and Exchange Commission pursuant to § 240.18a-7 of this title, must file such Form X-17A-5 FOCUS Report Part IIC with the Commission in lieu of the financial reports required under paragraph (p)(2) of this section. The swap dealer or major swap participant must file the form with the Commission when it files the Form X-17A-5 FOCUS Report Part IIC with the Securities and Exchange Commission; *provided, however,* that the swap dealer or major swap participant must file the Form X-17A-5 FOCUS Report Part IIC with the Commission no later than 35 calendar days from the date the report is made.

7. In appendix B to subpart E of part 23, revise the schedule headings of schedules 1, 2, 3, and 4, and republish the schedules, to read as follows:

**Appendix B to Subpart E of Part 23—Swap Dealer and Major Swap Participant  
Position Information**

SCHEDULE 1 – AGGREGATE SECURITIES, COMMODITIES, AND SWAPS POSITIONS

Items on this page to be reported by: Swap Dealers (Authorized and not authorized to use models)  
Major Swap Participants (Authorized and not authorized to use models)

Aggregate Securities, Commodities, and Swaps Positions	LONG/BOUGHT	SHORT/SOLD
1. U.S. treasury securities.....	\$ 8200	\$ 8201
2. U.S. government agency and U.S. government-sponsored enterprises.....	\$ 8210	\$ 8211
A. Mortgage-backed securities issued by U.S. government agency and U.S. government-sponsored enterprises.....	\$ 18001	\$ 18002
B. Debt securities issued by U.S. government agency and U.S. government-sponsored enterprises.....	\$ 18003	\$ 18004
3. Securities issued by states and political subdivisions in the U.S.....	\$ 8220	\$ 8221
4. Foreign securities		
A. Debt securities.....	\$ 8230	\$ 8231
B. Equity securities.....	\$ 8235	\$ 8236
5. Money market instruments.....	\$ 8240	\$ 8241
6. Private label mortgage backed securities.....	\$ 8250	\$ 8251
7. Other asset-backed securities.....	\$ 8260	\$ 8261
8. Corporate obligations.....	\$ 8270	\$ 8271
9. Stocks and warrants (other than arbitrage positions).....	\$ 8280	\$ 8281
10. Arbitrage.....	\$ 8290	\$ 8291
11. Spot commodities.....	\$ 8330	\$ 8331
12. Other securities and commodities.....	\$ 8360	\$ 8361
13. Securities with no ready market		
A. Equity.....	\$ 8340	\$ 8341
B. Debt.....	\$ 8345	\$ 8346
C. Other.....	\$ 8350	\$ 8351
D. Total securities with no ready market.....	\$ 12777	\$ 12782
14. Total net securities and spot commodities (sum of Lines 1-12 and 13D).....	\$ 12778	\$ 12783
15. Security-based swaps		
A. Cleared.....	\$ 12106	\$ 12114
B. Non-cleared.....	\$ 12107	\$ 12115
16. Mixed swaps		
A. Cleared.....	\$ 12108	\$ 12116
B. Non-cleared.....	\$ 12109	\$ 12117
17. Swaps		
A. Cleared.....	\$ 12110	\$ 12118
B. Non-cleared.....	\$ 12111	\$ 12119
18. Other derivatives and options.....	\$ 8295	\$ 8296
19. Counterparty netting.....	\$ 12779	\$ 12784
20. Cash collateral netting.....	\$ 12780	\$ 12785
21. Total derivative receivables and payables (sum of Lines 15-20).....	\$ 12781	\$ 12786
22. Total net securities, commodities, and swaps positions (sum of Lines 14 and 21).....	\$ 8370	\$ 8371

Name of firm: \_\_\_\_\_  
As of: \_\_\_\_\_

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SCHEDULE 2 – CREDIT CONCENTRATION REPORT FOR FIFTEEN LARGEST EXPOSURES IN DERIVATIVES

Items on this page to be reported by: Swap Dealers (Authorized and not authorized to use models)  
Major Swap Participants (Authorized and not authorized to use models)

I. By Current Net Exposure

Counterparty Identifier	Gross Replacement Value		Net Replacement Value	Current Net Exposure	Current Net and Potential Exposure	Margin Collected
	Receivable (Gross Gain)	Payable (Gross Loss)				
1.	12120	12135	12151	12167	12183	12199
2.	12121	12136	12152	12168	12184	12200
3.	12122	12137	12153	12169	12185	12201
4.	12123	12138	12154	12170	12186	12202
5.	12124	12139	12155	12171	12187	12203
6.	12125	12140	12156	12172	12188	12204
7.	12126	12141	12157	12173	12189	12205
8.	12127	12142	12158	12174	12190	12206
9.	12128	12143	12159	12175	12191	12207
10.	12129	12144	12160	12176	12192	12208
11.	12130	12145	12161	12177	12193	12209
12.	12131	12146	12162	12178	12194	12210
13.	12132	12147	12163	12179	12195	12211
14.	12133	12148	12164	12180	12196	12212
15.	12134	12149	12165	12181	12197	12213
All other counterparties		12150	12166	12182	12198	12214
Totals:		7810	7811	7812	7813	7814

II. By Current Net and Potential Exposure

Counterparty Identifier	Gross Replacement Value		Net Replacement Value	Current Net Exposure	Current Net and Potential Exposure	Margin Collected
	Receivable (Gross Gain)	Payable (Gross Loss)				
1.	12232	12247	12264	12281	12298	12315
2.	12233	12248	12265	12282	12299	12316
3.	12234	12249	12266	12283	12300	12317
4.	12235	12250	12267	12284	12301	12318
5.	12236	12251	12268	12285	12302	12319
6.	12237	12252	12269	12286	12303	12320
7.	12238	12253	12270	12287	12304	12321
8.	12239	12254	12271	12288	12305	12322
9.	12240	12255	12272	12289	12306	12323
10.	12241	12256	12273	12290	12307	12324
11.	12242	12257	12274	12291	12308	12325
12.	12243	12258	12275	12292	12309	12326
13.	12244	12259	12276	12293	12310	12327
14.	12245	12260	12277	12294	12311	12328
15.	12246	12261	12278	12295	12312	12329
All other counterparties		12262	12279	12296	12313	12330
Totals:		12263	12280	12297	12314	12331

Name of firm: \_\_\_\_\_  
As of: \_\_\_\_\_

NOTE: The information required to be reported within this form is intended to be identical to that required to be reported by Security Based Swap Dealers and Major Security Based Swap Participants under SEC FORM X-17a-5 FOCUS Report Part II. Please refer to FOCUS REPORT II INSTRUCTIONS and related interpretations published by the SEC in the preparation of this form.

SCHEDULE 3 – PORTFOLIO SUMMARY OF DERIVATIVES EXPOSURES BY INTERNAL CREDIT RATING

Items on this page to be reported by: Swap Dealers (Authorized and not authorized to use models)  
Major Swap Participants (Authorized and not authorized to use models)

Internal Credit Rating	Gross Replacement Value		Net Replacement Value	Current Net Exposure	Current Net and Potential Exposure	Margin Collected
	Receivable	Payable				
1.	12349	\$ 12386	\$ 12423	\$ 12460	\$ 12497	\$ 12534
2.	12350	\$ 12387	\$ 12424	\$ 12461	\$ 12498	\$ 12535
3.	12351	\$ 12388	\$ 12425	\$ 12462	\$ 12499	\$ 12536
4.	12352	\$ 12389	\$ 12426	\$ 12463	\$ 12500	\$ 12537
5.	12353	\$ 12390	\$ 12427	\$ 12464	\$ 12501	\$ 12538
6.	12354	\$ 12391	\$ 12428	\$ 12465	\$ 12502	\$ 12539
7.	12355	\$ 12392	\$ 12429	\$ 12466	\$ 12503	\$ 12540
8.	12356	\$ 12393	\$ 12430	\$ 12467	\$ 12504	\$ 12541
9.	12357	\$ 12394	\$ 12431	\$ 12468	\$ 12505	\$ 12542
10.	12358	\$ 12395	\$ 12432	\$ 12469	\$ 12506	\$ 12543
11.	12359	\$ 12396	\$ 12433	\$ 12470	\$ 12507	\$ 12544
12.	12360	\$ 12397	\$ 12434	\$ 12471	\$ 12508	\$ 12545
13.	12361	\$ 12398	\$ 12435	\$ 12472	\$ 12509	\$ 12546
14.	12362	\$ 12399	\$ 12436	\$ 12473	\$ 12510	\$ 12547
15.	12363	\$ 12400	\$ 12437	\$ 12474	\$ 12511	\$ 12548
16.	12364	\$ 12401	\$ 12438	\$ 12475	\$ 12512	\$ 12549
17.	12365	\$ 12402	\$ 12439	\$ 12476	\$ 12513	\$ 12550
18.	12366	\$ 12403	\$ 12440	\$ 12477	\$ 12514	\$ 12551
19.	12367	\$ 12404	\$ 12441	\$ 12478	\$ 12515	\$ 12552
20.	12368	\$ 12405	\$ 12442	\$ 12479	\$ 12516	\$ 12553
21.	12369	\$ 12406	\$ 12443	\$ 12480	\$ 12517	\$ 12554
22.	12370	\$ 12407	\$ 12444	\$ 12481	\$ 12518	\$ 12555
23.	12371	\$ 12408	\$ 12445	\$ 12482	\$ 12519	\$ 12556
24.	12372	\$ 12409	\$ 12446	\$ 12483	\$ 12520	\$ 12557
25.	12373	\$ 12410	\$ 12447	\$ 12484	\$ 12521	\$ 12558
26.	12374	\$ 12411	\$ 12448	\$ 12485	\$ 12522	\$ 12559
27.	12375	\$ 12412	\$ 12449	\$ 12486	\$ 12523	\$ 12560
28.	12376	\$ 12413	\$ 12450	\$ 12487	\$ 12524	\$ 12561
29.	12377	\$ 12414	\$ 12451	\$ 12488	\$ 12525	\$ 12562
30.	12378	\$ 12415	\$ 12452	\$ 12489	\$ 12526	\$ 12563
31.	12379	\$ 12416	\$ 12453	\$ 12490	\$ 12527	\$ 12564
32.	12380	\$ 12417	\$ 12454	\$ 12491	\$ 12528	\$ 12565
33.	12381	\$ 12418	\$ 12455	\$ 12492	\$ 12529	\$ 12566
34.	12382	\$ 12419	\$ 12456	\$ 12493	\$ 12530	\$ 12567
35.	12383	\$ 12420	\$ 12457	\$ 12494	\$ 12531	\$ 12568
36.	12384	\$ 12421	\$ 12458	\$ 12495	\$ 12532	\$ 12569
Unrated	12385	\$ 12422	\$ 12459	\$ 12496	\$ 12533	\$ 12570
Totals:		\$ 7822	\$ 7823	\$ 7821	\$ 7820	\$ 12571

Name of firm: \_\_\_\_\_  
As of: \_\_\_\_\_

NOTE: The information required to be reported within this form is intended to be identical to that required to be reported by Security Based Swap Dealers and Major Security Based Swap Participants under SEC FORM X-17a-5 FOCUS Report Part II. Please refer to FOCUS REPORT II INSTRUCTIONS and related interpretations published by the SEC in the preparation of this form.



SCHEDULE 4 – GEOGRAPHIC DISTRIBUTION OF DERIVATIVES EXPOSURES FOR TEN LARGEST COUNTRIES

Items on this page to be reported by: Swap Dealers (Authorized and not authorized to use models)  
Major Swap Participants (Authorized and not authorized to use models)

I. By Current Net Exposure

Country	Gross Replacement Value		Net Replacement Value	Current Net Exposure	Current Net and Potential Exposure	Margin Collected
	Receivable	Payable				
1.	12610	\$ 12620	\$ 12630	\$ 12640	\$ 12650	\$ 12661
2.	12611	\$ 12621	\$ 12631	\$ 12641	\$ 12651	\$ 12662
3.	12612	\$ 12622	\$ 12632	\$ 12642	\$ 12652	\$ 12663
4.	12613	\$ 12623	\$ 12633	\$ 12643	\$ 12653	\$ 12664
5.	12614	\$ 12624	\$ 12634	\$ 12644	\$ 12654	\$ 12665
6.	12615	\$ 12625	\$ 12635	\$ 12645	\$ 12655	\$ 12666
7.	12616	\$ 12626	\$ 12636	\$ 12646	\$ 12656	\$ 12667
8.	12617	\$ 12627	\$ 12637	\$ 12647	\$ 12657	\$ 12668
9.	12618	\$ 12628	\$ 12638	\$ 12648	\$ 12658	\$ 12669
10.	12619	\$ 12629	\$ 12639	\$ 12649	\$ 12659	\$ 12670
Totals:	\$	7803	\$ 7804	\$ 7802	\$ 12660	\$ 7801

II. By Current Net and Potential Exposure

Country	Gross Replacement Value		Net Replacement Value	Current Net Exposure	Current Net and Potential Exposure	Margin Collected
	Receivable	Payable				
1.	12682	\$ 12692	\$ 12703	\$ 12714	\$ 12725	\$ 12736
2.	12683	\$ 12693	\$ 12704	\$ 12715	\$ 12726	\$ 12737
3.	12684	\$ 12694	\$ 12705	\$ 12716	\$ 12727	\$ 12738
4.	12685	\$ 12695	\$ 12706	\$ 12717	\$ 12728	\$ 12739
5.	12686	\$ 12696	\$ 12707	\$ 12718	\$ 12729	\$ 12740
6.	12687	\$ 12697	\$ 12708	\$ 12719	\$ 12730	\$ 12741
7.	12688	\$ 12698	\$ 12709	\$ 12720	\$ 12731	\$ 12742
8.	12689	\$ 12699	\$ 12710	\$ 12721	\$ 12732	\$ 12743
9.	12690	\$ 12700	\$ 12711	\$ 12722	\$ 12733	\$ 12744
10.	12691	\$ 12701	\$ 12712	\$ 12723	\$ 12734	\$ 12745
Totals:	\$	12702	\$ 12713	\$ 12724	\$ 12735	\$ 12746

Name of firm: \_\_\_\_\_  
As of: \_\_\_\_\_

NOTE: The information required to be reported within this form is intended to be identical to that required to be reported by Security Based Swap Dealers and Major Security Based Swap Participants under SEC FORM X-17a-5 FOCUS Report Part II. Please refer to FOCUS REPORT II INSTRUCTIONS and related interpretations published by the SEC in the preparation of this form.

8. Revise appendix C to subpart E of part 23 to read as follows:

**Appendix C to Subpart E of Part 23—Specific Position Information for Swap Dealers and Major Swap Participants Subject to the Capital Requirements of a Prudential Regulator**

Reg. 23.105(p) Appendix C	SCHEDULE 1 – AGGREGATE SECURITY-BASED SWAP AND SWAP POSITIONS	
	Items on this page to be reported by: Bank SDs Bank MSPs	
<u>Aggregate Positions</u>	LONG/BOUGHT	SHORT/SOLD
1. Security-based swaps		
A. Cleared	\$ _____ <span style="border: 1px solid black; padding: 0 2px;">12801</span>	\$ _____ <span style="border: 1px solid black; padding: 0 2px;">12809</span>
B. Non-cleared	\$ _____ <span style="border: 1px solid black; padding: 0 2px;">12802</span>	\$ _____ <span style="border: 1px solid black; padding: 0 2px;">12810</span>
2. Mixed swaps		
A. Cleared	\$ _____ <span style="border: 1px solid black; padding: 0 2px;">12803</span>	\$ _____ <span style="border: 1px solid black; padding: 0 2px;">12811</span>
B. Non-cleared	\$ _____ <span style="border: 1px solid black; padding: 0 2px;">12804</span>	\$ _____ <span style="border: 1px solid black; padding: 0 2px;">12812</span>
3. Swaps		
A. Cleared	\$ _____ <span style="border: 1px solid black; padding: 0 2px;">12805</span>	\$ _____ <span style="border: 1px solid black; padding: 0 2px;">12813</span>
B. Non-cleared	\$ _____ <span style="border: 1px solid black; padding: 0 2px;">12806</span>	\$ _____ <span style="border: 1px solid black; padding: 0 2px;">12814</span>
4. Other derivatives	\$ _____ <span style="border: 1px solid black; padding: 0 2px;">12807</span>	\$ _____ <span style="border: 1px solid black; padding: 0 2px;">12815</span>
5. Total (sum of Lines 1-4)	\$ _____ <span style="border: 1px solid black; padding: 0 2px;">12808</span>	\$ _____ <span style="border: 1px solid black; padding: 0 2px;">12816</span>

Name of firm: \_\_\_\_\_

As of: \_\_\_\_\_

NOTE: The information required to be reported within this form is intended to be identical to that required to be reported by Security Based Swap Dealers and Major Security Based Swap Participants under SEC FORM X-17A-5 FOCUS Report Part IIC. Please refer to FOCUS REPORT PART IIC INSTRUCTIONS and related interpretations published by the SEC in the preparation of this form.

Issued in Washington, DC, on May 8, 2024, by the Commission.

Christopher Kirkpatrick,

*Secretary of the Commission.*

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

**Appendices to Capital and Financial Reporting Requirements for Swap Dealers and Major Swap Participants – Commission Voting Summary, Chairman’s Statement, and Commissioners’ Statements**

**Appendix 1 – Commission Voting Summary**

On this matter, Chairman Behnam and Commissioners Johnson, Goldsmith Romero, Mersinger, and Pham voted in the affirmative. No Commissioner voted in the negative.

**Appendix 2 – Statement of Support of Chairman Rostin Behnam**

I support the final rule to amend certain requirements in part 23 of the Commission's regulations to facilitate compliance by swap dealers (SDs) and major swap participants (MSPs) with the CFTC’s financial reporting obligations and demonstrate compliance with the minimum capital requirements. The changes are intended to address specific issues identified during the implementation of the Commission's 2020 final rule on capital and financial reporting requirements for SDs and MSPs,<sup>1</sup> which serve as the cornerstone of the post-Dodd Frank Act reforms to ensure SDs and MSPs remain sufficiently capitalized. Although the amendments do not change the Commission’s capital framework for SDs and MSPs, these amendments serve as an important step to ensure the Commission’s capital rule is strong, comprehensive, and clear.

I thank the public for their comments on the proposal and staff in the Market Participants Division, Office of the General Counsel, and the Office of the Chief Economist for their work on the final rule.

**Appendix 3 – Statement of Commissioner Kristin N. Johnson**

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<sup>1</sup> Capital Requirements of Swap Dealers and Major Swap Participants, 85 FR 57462 (Sept. 15, 2020).

Today [April 29, 2024], the Commodity Futures Trading Commission (Commission or CFTC) adopts a final rule to amend certain of the Commission's part 23 regulations. The Commission introduces updates that underscore the critical importance of capital and reporting rules in maintaining the integrity and stability of swaps markets and broader domestic and global derivatives markets. These regulations aim to mitigate known systemic risk concerns.

These well-tailored regulations update capital requirements and financial reporting obligations for swap dealers (SDs) and major swap participants (MSPs) (Final Rule).<sup>1</sup> The Final Rule ensures compliance with the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act). The Final Rule aligns with the statutory mandate established in the Dodd-Frank Act that requires the Commission to adopt and implement robust capital and reporting requirements in swaps markets. The Final Rule includes several technical corrections improved by consultation with the prudential regulators and the Securities and Exchange Commission (SEC) on the adoption and implementation of the Commission's capital rules. Consequently, I support the Final Rule.<sup>2</sup>

### **CFTC Dodd-Frank Act Capital Adequacy Reforms**

The Commission introduced new capital and financial reporting requirements for SDs in 2020, as mandated by the Dodd-Frank Act.<sup>3</sup> Section 4s(e) of the CEA introduced minimum capital requirements for SDs,<sup>4</sup> and section 4s(f) of the CEA created financial reporting and recordkeeping requirements for all SDs.<sup>5</sup> Bank SDs subject to regulation by

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<sup>1</sup> Since no MSP is currently registered with the Commission, in this statement, I will refer to SDs only.

<sup>2</sup> Kristin N. Johnson, Commissioner, CFTC, Statement Regarding Notice of Proposed Rulemaking to Amend Capital and Financial Reporting Requirements for Swap Dealers and Major Swap Participants (Dec. 15, 2023), <https://www.cftc.gov/PressRoom/SpeechesTestimony/johnsonstatement121523b>.

<sup>3</sup> Capital Requirements of Swap Dealers and Major Swap Participants, 85 FR 57462 (Sept. 15, 2020).

<sup>4</sup> 7 U.S.C. 6s(e).

<sup>5</sup> 7 U.S.C. 6s(f).

a prudential regulator are required to comply with the minimum capital requirements adopted by the applicable prudential regulator, while non-bank SDs and security-based swap dealers not subject to regulation by a prudential regulator are required to meet the minimum capital requirements of the Commission and SEC, respectively. Banking regulators and the SEC have adopted capital rules for swaps and security-based swaps activities.

Given the complexities of our markets, the Commission regulates SDs that may also be regulated by prudential regulators and the SEC. The Commission's overall capital approach permits SDs to select one of three methods to calculate their capital requirements, as permitted under the rule: the net liquid assets capital approach; the bank-based capital requirements; or the tangible net worth capital approach. The Commission's capital approach evidences the Commission's recognition of the complexity and interconnectedness of the derivatives markets.

### **Final Rule's Codification of No-Action Letters**

The Commission published a Notice of Proposed Rulemaking (Proposed Rule) on January 16, 2024.<sup>6</sup> The comment period for the proposal closed on February 13, 2024, and the Commission received 4 substantive comment letters, all of which expressed general support for the Proposed Rule. Other than two revisions to the timing for the submission of reports, the proposed amendments were adopted as proposed.

My statement in support of the Proposed Rule details the amendments adopted today. The Commission is primarily codifying Interpretive Letter 21-15, which applies to commercial non-bank SDs, and No-Action Letter (NAL) 21-18, which was extended under NAL 23-11 and applies to bank SDs, including non-U.S. bank SDs. The Final Rule, which also addresses several other recommended amendments, is a result of

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<sup>6</sup> Capital and Financial Reporting Requirements for Swap Dealers and Major Swap Participants, 89 FR 2554 (Jan. 16, 2024).

collaboration with the banking regulators and the SEC. The Final Rule aims to harmonize processes, procedures, and forms for financial reports and notifications.

Importantly, the amendments do not change the substantive capital requirements, “which serve as a cushion during times of severe market stress to ensure our registrants’ safety and soundness, protect the financial stability of our financial system, and prevent a run on our financial institutions.”<sup>7</sup> The amendments buttress the financial condition reporting requirements, as the Commission retains “visibility and insight into the business and financial health of our registrants and enables us to require corrective action and prevent a failure of a single entity or group of entities or segment of the derivatives market, which could raise system risk concerns.”<sup>8</sup> These are important policy considerations I mentioned in my statement supporting the Proposed Rule.

### **Conclusion**

It is the Commission’s duty to ensure that the implementation of the capital reforms under the Dodd-Frank Act is effective yet sensible and practical, and the Final Rule does just that. I want to thank the Market Participants Division for the excellent work bringing forth this final rulemaking, in particular Joshua Beale, Jennifer Bauer, Maria Aguilar-Rocha, Andrew Pai, and Christine McKeveny.

### **Appendix 4 – Statement of Support of Commissioner Caroline D. Pham**

I support the Capital and Financial Reporting Requirements for Swap Dealers (SD) and Major Swap Participants (MSP) Final Rule (SD Financial Reporting Rule Amendments) because it aligns the timing of financial reporting for entities that have a bank regulator or are registered with the Securities and Exchange Commission (SEC). This simplifies the filing process for these reports to minimize unnecessary costs and administrative burdens. I would like to thank Jennifer Bauer, Andrew Pai, Maria Aguilar-

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<sup>7</sup> Johnson, *supra* note 2.

<sup>8</sup> *Id.*

Rocha, Christine McKeveny, Josh Beale, Tom Smith, and Amanda Olear in the Market Participants Division for their work on the SD Financial Reporting Rule Amendments. I truly appreciate the time staff took to discuss my questions and concerns.

However, I believe that the Commission should have taken an evergreen approach to SEC harmonization of the filing time period. The Commission proposed to amend Regulation 23.105(p)(7)<sup>1</sup> to include a 30-day deadline for dually-registered non-U.S. bank swap dealers and major swap participants to file comparable SEC-approved financial reports and schedules with the CFTC following the date on which the report is made.<sup>2</sup> One comment letter pointed out that the 30-day deadline is inconsistent with the Commission's alignment of the deadline for U.S. bank swap dealers and major swap participants that are not dually registered to submit the report when required by the prudential regulators, and that the SEC had aligned its deadline for all bank security-based swap dealers to submit such reports to the same 35-day deadline.<sup>3</sup>

While the Commission agreed with the comment letter and extended the deadline to 35 days to allow dual registrants to submit the reports on the same day as they do with the SEC, the Commission should have made the deadline "on the date Form X-17A-5 FOCUS Report Part IIC is due to be filed with the [SEC]."<sup>4</sup> This would avoid the

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<sup>1</sup> Existing Regulation 23.105(p)(7) allows swap dealers or major swap participants that are subject to rules of a prudential regulator and are also registered with the SEC as a security-based swap dealer or a major security-based swap participant, and files a quarterly Form X-17A-5 FOCUS Report Part IIC with the SEC pursuant to 17 CFR 240.18a-7, to file such Form X-17A-5 FOCUS Report Part IIC with the CFTC in lieu of the financial reports required under Regulation 23.105(p)(2). The swap dealer or major swap participant must file the form with the Commission when it files the Form X-17A-5 FOCUS Report Part IIC with the SEC, provided, however, that the swap dealer or major swap participant must file the Form X-17A-5 FOCUS Report Part IIC with the CFTC no later than 30 calendar days from the date the report is made. *See* 17 CFR 23.105(p)(7).

<sup>2</sup> *See* Proposed Rule, Capital and Financial Reporting Requirements for Swap Dealers and Major Swap Participants, 89 FR 2554, 2558 (Jan. 16, 2024), <https://www.govinfo.gov/content/pkg/FR-2024-01-16/pdf/2023-28649.pdf>.

<sup>3</sup> *See* Comment Letter, Institute of International Bankers (IIB), the International Swaps and Derivatives Association (ISDA), and the Securities Industry and Financial Markets Association (SIFMA), Capital Requirements for Swap Dealers and Major Swap Participants (RIN 3038-AD54), 5 (Feb. 13, 2024), <https://comments.cftc.gov/Handlers/PdfHandler.ashx?id=35181>.

<sup>4</sup> *Id.* at 7.

Commission having to do another rulemaking to harmonize if the SEC updates its FOCUS report filing deadlines in the future. This would have anticipated a future problem and adopted a forward-looking solution, rather than setting up an issue we may have to react to in the future.

[FR Doc. 2024-10342 Filed: 5/22/2024 8:45 am; Publication Date: 5/23/2024]