is current on the rabies vaccine as that vaccine is required by all 50 states for dogs and by most states for cats. Finally, should airlines be permitted to require passengers to obtain signed statements from veterinarians regarding the animal's behavior. And if so, what recourse should be available for service animal users if the veterinarian refuses to fill out the behavior form.

10. Code-Share Flights

Currently, foreign airlines are only required to transport service dogs, including emotional support and psychiatric service dogs, barring a conflict with a foreign nation's legal requirements. However, a U.S. carrier that code-shares with a foreign carrier could legally be held liable for its foreign codes-share partner's failure to transport other service animal species on code-share flights. While the Department's Office of Aviation Enforcement and Proceedings has not taken action against U.S. carriers under these circumstances, the Department seeks comment on whether the rule should explicitly state that U.S. carriers would not be held responsible for its foreign code-share partner's refusal to transport transportation service animals other than dogs.

Regulatory Notices

A. Executive Order 13771, 12866 and 13563 and DOT's Regulatory Policies and Procedures

This action has been determined to be significant under Executive Order 12866, as amended by Executive Order 13563, and the Department of Transportation's Regulatory Policies and Procedures. It has been reviewed by the Office of Management and Budget under that Order. Executive Orders 12866 (Regulatory Planning and Review) and 13563 (Improving Regulation and Regulatory Review) require agencies to regulate in the ''most cost-effective manner,'' to make a ''reasoned determination that the benefits of the intended regulation justify its costs,'' and to develop regulations that ''impose the least burden on society.'' Additionally, Executive Orders 12866 and 13563 require agencies to provide a meaningful opportunity for public participation. Accordingly, we have asked commenters to answer a variety of questions to elicit practical information about alternative approaches and relevant technical data. These comments will help the Department evaluate whether a proposed rulemaking is needed and appropriate. This action is not subject to the requirements of E.O. 13771 (82 FR 9339, February 3, 2017) because it is an advance notice of proposed rulemaking.

B. Executive Order 13132 (Federalism)

This ANPRM has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 (Federalism). This document does not propose any regulation that (1) has substantial direct effects on the States, the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government, (2) imposes substantial direct compliance costs on State and local governments, or (3) preempts State law. States are already preempted from regulating in this area by the Airline Deregulation Act, 49 U.S.C. 41713. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

C. Executive Order 13084

This ANPRM has been analyzed in accordance with the principles and criteria contained in Executive Order 13084 (Consultation and Coordination with Indian Tribal Governments). Because none of the topics on which we are seeking comment would significantly or uniquely affect the communities of the Indian tribal governments or impose substantial direct compliance costs on them, the funding and consultation requirements of Executive Order 13084 do not apply.

D. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires an agency to review regulations to assess their impact on small entities unless the agency determines that a rule is not expected to have a significant economic impact on a substantial number of small entities. A direct air carrier or foreign air carrier is a small business if it provides air transportation only with small aircraft (*i.e.,* aircraft with up to 60 seats/18,000-pound payload capacity). See 14 CFR 399.73. If the Department proposes to adopt the regulatory initiative discussed in this ANPRM, it is possible that it may have some impact on some small entities but we do not believe that it would have a significant economic impact on a substantial number of small entities. We invite comment to facilitate our assessment of the potential impact of these initiatives on small entities.

E. Paperwork Reduction Act

Under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), no person is required to respond to a collection of information unless it displays a valid OMB control number. This ANPRM does not propose any new information collection burdens.

F. Unfunded Mandates Reform Act

The Department has determined that the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply to this document.

G. National Environmental Policy Act

The Department has analyzed the environmental impacts of this ANPRM pursuant to the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*) and has determined that it is categorically excluded pursuant to DOT Order 5610.1C, Procedures for Considering Environmental Impacts (44 FR 56420, Oct. 1, 1979). Categorical exclusions are actions identified in an agency's NEPA implementing procedures that do not normally have a significant impact on the environment and therefore do not require either an environmental assessment (EA) or environmental impact statement (EIS). See 40 CFR 1508.4. In analyzing the applicability of a categorical exclusion, the agency must also consider whether extraordinary circumstances are present that would warrant the preparation of an EA or EIS. Id. Paragraph 3.c.6.i of DOT Order 5610.1C categorically excludes ''[a]ctions relating to consumer protection, including regulations.'' The purpose of this rulemaking is to seek public comment on the Department's service animal regulations. The Department does not anticipate any environmental impacts, and there are no extraordinary circumstances present in connection with this rulemaking.

Issued this 9th day of May, 2018, in Washington, DC under authority delegated in 49 CFR Part 1.27(n).

James C. Owens,

Deputy General Counsel.

[FR Doc. 2018–10815 Filed 5–22–18; 8:45 am]

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COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 23

RIN 3038–AE71

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

AGENCY: Commodity Futures Trading Commission.

ACTION: Proposed rule.

SUMMARY: The Commodity Futures Trading Commission (''Commission'' or ''CFTC'') is seeking comment on

proposed amendments to the margin requirements for uncleared swaps for swap dealers (''SD'') and major swap participants (''MSP'') for which there is no prudential regulator (''CFTC Margin Rule''). The Commission is proposing these amendments in light of the rules recently adopted by the Board of Governors of the Federal Reserve System (''Board''), the Federal Deposit Insurance Corporation (''FDIC''), and the Office of the Comptroller of the Currency (''OCC'') (collectively, the ''QFC Rules'') that impose restrictions on certain uncleared swaps and uncleared security-based swaps and other financial contracts. Specifically, the Commission proposes to amend the definition of ''eligible master netting agreement'' in the CFTC Margin Rule to ensure that master netting agreements of firms subject to the CFTC Margin Rule are not excluded from the definition of ''eligible master netting agreement'' based solely on such agreements' compliance with the QFC Rules. The Commission also proposes that any legacy uncleared swap (*i.e.,* an uncleared swap entered into before the applicable compliance date of the CFTC Margin Rule) that is not now subject to the margin requirements of the CFTC Margin Rule would not become so subject if it is amended solely to comply with the QFC Rules. These proposed amendments are consistent with proposed amendments that the Board, FDIC, OCC, the Farm Credit Administration (''FCA''), and the Federal Housing Finance Agency (''FHFA'' and, together with the Board, FDIC, OCC, and FCA, the ''Prudential Regulators''), jointly published in the **Federal Register** on February 21, 2018.

DATES: Comments must be received on or before July 23, 2018.

ADDRESSES: You may submit comments, identified by RIN 3038–AE71, by any of the following methods:

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

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

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

FOR FURTHER INFORMATION CONTACT: Matthew Kulkin, Director, (202) 418–5213, *mkulkin@cftc.gov*; Frank Fisanich, Chief Counsel, (202) 418–5949, *ffisanich@cftc.gov*; Katherine Driscoll, Associate Chief Counsel, (202) 418–5544, *kdriscoll@cftc.gov*; or Jacob Chachkin, Special Counsel, (202) 418–5496, *jchachkin@cftc.gov,* Division of Swap Dealer and Intermediary Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581.

SUPPLEMENTARY INFORMATION:

I. Background

A. The Dodd-Frank Act and the CFTC Margin Rule

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

Section 731 of the Dodd-Frank Act added a new section 4s to the CEA setting forth various requirements for SDs and MSPs. In particular, section 4s(e) of the CEA directs the Commission to adopt rules establishing minimum initial and variation margin requirements on all swaps[4] that are (i) entered into by an SD or MSP for which there is no Prudential Regulator[5] (collectively, ''covered swap entities'' or ''CSEs'') and (ii) not cleared by a registered derivatives clearing organization (''uncleared swaps'').[6] To offset the greater risk to the SD or MSP[7] and the financial system arising from the use of uncleared swaps, these requirements must (i) help ensure the safety and soundness of the SD or MSP and (ii) be appropriate for the risk associated with the uncleared swaps held as an SD or MSP.[8]

To this end, the Commission promulgated the CFTC Margin Rule in January 2016,[9] establishing requirements for a CSE to collect and

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

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

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

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

[5] *See* 7 U.S.C. 6s(e)(1)(B). SDs and MSPs for which there is a Prudential Regulator must meet the margin requirements for uncleared swaps established by the applicable Prudential Regulator. 7 U.S.C. 6s(e)(1)(A). *See also* 7 U.S.C. 1a(39) (defining the term ''Prudential Regulator'' to include the Board; the OCC; the FDIC; the FCA; and the FHFA). The definition further specifies the entities for which these agencies act as Prudential Regulators. The Prudential Regulators published final margin requirements in November 2015. *See* Margin and Capital Requirements for Covered Swap Entities, 80 FR 74840 (Nov. 30, 2015) (''Prudential Margin Rule'').

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

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

[8] 7 U.S.C. 6s(e)(3)(A).

[9] Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants, 81 FR 636 (Jan. 6, 2016). The CFTC Margin Rule, which became effective April 1, 2016, is codified in part 23 of the Commission's regulations. 17 CFR 23.150–23.159, 23.161.

post initial [10] and variation margin [11] for uncleared swaps, which requirements vary based on the type of counterparty to such swaps.[12] These requirements generally apply only to uncleared swaps entered into on or after the compliance date applicable to a particular CSE and its counterparty (''covered swap'').[13] An uncleared swap entered into prior to a CSE's applicable compliance date for a particular counterparty (''legacy swap'') is generally not subject to the margin requirements in the CFTC Margin Rule.[14]

To the extent that more than one uncleared swap is executed between a CSE and its covered counterparty, the CFTC Margin Rule permits the netting of required margin amounts of each swap under certain circumstances.[15] In particular, the CFTC Margin Rule, subject to certain limitations, permits a CSE to calculate initial margin and variation margin, respectively, on an aggregate net basis across uncleared swaps that are executed under the same eligible master netting agreement (''EMNA'').[16] Moreover, the CFTC Margin Rule permits swap counterparties to identify one or more separate netting portfolios (*i.e.,* a specified group of uncleared swaps the margin obligations of which will be netted only against each other) under the same EMNA, including having separate netting portfolios for covered swaps and legacy swaps.[17] A netting portfolio that contains only legacy swaps is not subject to the initial and variation margin requirements set out in the CFTC Margin Rule.[18] However, if a netting portfolio contains any covered swaps, the entire netting portfolio (including all legacy swaps) is subject to such requirements.[19]

A legacy swap may lose its legacy treatment under the CFTC Margin Rule, causing it to become a covered swap and causing any netting portfolio in which it is included to be subject to the requirements of the CFTC Margin Rule. For reasons discussed in the CFTC Margin Rule, the Commission elected not to extend the meaning of legacy swaps to include (1) legacy swaps that are amended in a material or nonmaterial manner; (2) novations of legacy swaps; and (3) new swaps that result from portfolio compression of legacy swaps.[20] Therefore, and as relevant here, a legacy swap that is amended after the applicable compliance date may become a covered swap subject to the initial and variation margin requirements in the CFTC Margin Rule, and netting portfolios that were intended to contain only legacy swaps and, thus, not be subject to the CFTC Margin Rule may become so subject.

B. The QFC Rules

In late 2017, as part of the broader regulatory reform effort following the financial crisis to promote U.S. financial stability and increase the resolvability and resiliency of U.S. global systemically important banking institutions (''U.S. GSIBs'') [21] and the U.S. operations of foreign global systemically important banking institutions (together with U.S. GSIBS, ''GSIBs''), the Board, FDIC, and OCC adopted the QFC Rules. The QFC Rules establish restrictions on and requirements for uncleared qualified financial contracts [22] (collectively, ''Covered QFCs'') of GSIBs, the subsidiaries of U.S. GSIBs, and certain other very large OCC-supervised national banks and Federal savings associations (collectively, ''Covered QFC Entities'').[23] They are designed to help ensure that a failed company's passage through a resolution proceeding—such as bankruptcy or the special resolution process created by the Dodd-Frank Act—would be more orderly, thereby helping to mitigate destabilizing effects on the rest of the financial system.[24] To help achieve this goal, the QFC Rules respond in two ways.[25]

First, the QFC Rules generally require the Covered QFCs of Covered QFC Entities to contain contractual provisions explicitly providing that any default rights or restrictions on the transfer of the Covered QFC are limited to the same extent as they would be

[10] Initial margin, as defined in Commission regulation 23.151 (17 CFR 23.151), is the collateral (calculated as provided by § 23.154 of the Commission's regulations) that is collected or posted in connection with one or more uncleared swaps. Initial margin is intended to secure potential future exposure following default of a counterparty (*i.e.,* adverse changes in the value of an uncleared swap that may arise during the period of time when it is being closed out), while variation margin is provided from one counterparty to the other in consideration of changes that have occurred in the mark-to-market value of the uncleared swap. *See* CFTC Margin Rule, 81 FR at 664 and 683.

[11] Variation margin, as defined in Commission regulation 23.151 (17 CFR 23.151), is the collateral provided by a party to its counterparty to meet the performance of its obligation under one or more uncleared swaps between the parties as a result of a change in the value of such obligations since the trade was executed or the last time such collateral was provided.

[12] *See* Commission regulations 23.152 and 23.153, 17 CFR 23.152 and 23.153. For example, the CFTC Margin Rule does not require a CSE to collect margin from, or post margin to, a counterparty that is neither a swap entity nor a financial end user (each as defined in 17 CFR 23.151). Pursuant to section 2(e) of the CEA, 7 U.S.C. 2(e), each counterparty to an uncleared swap must be an eligible contract participant (''ECP''), as defined in section 1a(18) of the CEA, 7 U.S.C. 1a(18).

[13] Pursuant to Commission regulation 23.161, compliance dates for the CFTC Margin Rule are staggered such that SDs must come into compliance in a series of phases over four years. The first phase affected SDs and their counterparties, each with the largest aggregate outstanding notional amounts of uncleared swaps and certain other financial products. These SDs began complying with both the initial and variation margin requirements of the CFTC Margin Rule on September 1, 2016. The second phase began March 1, 2017, and required SDs to comply with the variation margin requirements of Commission regulation 23.153 with all relevant counterparties not covered in the first phase. *See* 17 CFR 23.161.

[14] *See* CFTC Margin Rule, 81 FR at 651 and Commission regulation 23.161. 17 CFR 23.161.

[15] *See* CFTC Margin Rule, 81 FR at 651 and Commission regulations 23.152(c) and 23.153(d). 17 CFR 23.152(c) and 23.153(d).

[16] *Id.* The term EMNA is defined in Commission regulation 23.151. 17 CFR 23.151. Generally, an EMNA creates a single legal obligation for all individual transactions covered by the agreement upon an event of default following certain specified permitted stays. For example, an International Swaps and Derivatives Association (''ISDA'') form Master Agreement may be an EMNA, if it meets the specified requirements in the EMNA definition.

[17] *See* CFTC Margin Rule, 81 FR at 651 and Commission regulations 23.152(c)(2)(ii) and 23.153(d)(2)(ii). 17 CFR 23.152(c)(2)(ii) and 23.153(d)(2)(ii).

[18] *Id.*

[19] *Id.*

[20] *See* CFTC Margin Rule, 81 FR at 675. The Commission notes that certain limited relief has been given from this standard. *See* CFTC Staff Letter No. 17–52 (Oct. 27. 2017), available at *http://www.cftc.gov/ucm/groups/public/@lrlettergeneral/documents/letter/17-52.pdf.*

[21] *See* 12 CFR 217.402 (defining global systemically important banking institution).

[22] Qualified financial contract (''QFC'') is defined in section 210(c)(8)(D) of the Dodd-Frank Act to mean any securities contract, commodity contract, forward contract, repurchase agreement, swap agreement, and any similar agreement that the FDIC determines by regulation, resolution, or order to be a qualified financial contract. 12 U.S.C. 5390(c)(8)(D).

[23] *See, e.g.,* 12 CFR 252.82(c) (defining Covered QFC). *See also* 82 FR 42882 (Sep. 12, 2017) (for the Board's QFC Rule). *See also* 82 FR 50228 (Oct. 30, 2017) (for FDIC's QFC Rule). *See also* 82 FR 56630 (Nov. 29, 2017) (for the OCC's QFC Rule). The effective date of the Board's QFC Rule is November 13, 2017, and the effective date for the OCC's QFC Rule and the substance of the FDIC's QFC Rule is January 1, 2018. The QFC Rules include a phased-in conformance period for a Covered QFC Entity, beginning on January 1, 2019 and ending on January 1, 2020, that varies depending upon the counterparty type of the Covered QFC Entity. *See, e.g.,* 12 CFR 252.82(f).

[24] *See, e.g.,* Board's QFC Rule at 42883. In particular, the QFC Rules seek to facilitate the orderly resolution of a failed GSIB by limiting the ability of the firm's Covered QFC counterparties to terminate such contracts immediately upon entry of the GSIB or one of its affiliates into resolution. Given the large volume of QFCs to which covered entities are a party, the exercise of default rights en masse as a result of the failure or significant distress of a covered entity could lead to failure and a disorderly resolution if the failed firm were forced to sell off assets, which could spread contagion by increasing volatility and lowering the value of similar assets held by other firms, or to withdraw liquidity that it had provided to other firms.

[25] *Id.*

pursuant to the Federal Deposit Insurance Act (''FDI Act'') [26] and Title II of the Dodd-Frank Act, thereby reducing the risk that those regimes would be challenged by a court in a foreign jurisdiction.[27]

Second, the QFC Rules generally prohibit Covered QFCs from allowing counterparties to Covered QFC Entities to exercise default rights related, directly or indirectly, to the entry into resolution of an affiliate of the Covered QFC Entity (''cross-default rights'').[28] This is to ensure that counterparties of solvent affiliates of a failed entity cannot terminate their contracts with the solvent affiliate based solely on that failure.[29]

Covered QFC Entities are required to enter into amendments to certain pre-existing Covered QFCs to explicitly provide for these requirements and to ensure that Covered QFCs entered into after the applicable compliance date for the rule explicitly provide for the same.[30]

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

A. Proposed Amendment to the Definition of EMNA in Commission Regulation 23.151

As noted above, the current definition of EMNA in Commission regulation 23.151 allows for certain specified permissible stays of default rights of the CSE. Specifically, consistent with the QFC Rules, the current definition provides that such rights may be stayed pursuant to a special resolution regime such as Title II of the Dodd-Frank Act, the FDI Act, and substantially similar foreign resolution regimes.[31] However, the current EMNA definition does not explicitly recognize certain restrictions on the exercise of a CSE's cross-default rights required under the QFC Rules.[32] Therefore, a pre-existing EMNA that is amended in order to become compliant with the QFC Rules or a new master netting agreement that conforms to the QFC Rules will not meet the current definition of EMNA. A CSE that is a counterparty under such a master netting agreement—one that does not meet the definition of EMNA—would be required to measure its exposures from covered swaps on a gross basis, rather than aggregate net basis, for purposes of the CFTC Margin Rule.[33]

The Commission wants to protect market participants from being disadvantaged due to their master netting agreements not meeting the requirements of an EMNA solely as a result of such agreements' compliance with the QFC Rules. Accordingly, the Commission proposes to add a new paragraph (2)(ii) to the definition of ''eligible master netting agreement'' in Commission regulation 23.151 and make other minor related changes to that definition such that a master netting agreement may be an EMNA even though the agreement limits the right to accelerate, terminate, and close-out on a net basis all transactions under the agreement and to liquidate or set-off collateral promptly upon an event of default of the counterparty to the extent necessary for the counterparty to comply with the requirements of part 47, subpart I of part 252, or part 382 of title 12, as applicable. These enumerated provisions contain the relevant requirements that have been added by the QFC Rules.

B. Proposed Amendment to Commission Regulation 23.161, Compliance Dates

Covered QFC Entities must conform to the requirements of the QFC Rules for Covered QFCs entered into on or after January 1, 2019 and, in some instances, Covered QFCs entered into before that date.[34] To do so, a Covered QFC Entity may need to amend the contractual provisions of its pre-existing Covered QFCs.[35] Legacy swaps that are so amended by a Covered QFC Entity and its counterparty would become covered swaps under the current CFTC Margin Rule.[36] Therefore, in order not to disadvantage market participants who are parties to legacy swaps that are required to be amended to comply with the QFC Rules, the Commission proposes to amend the CFTC Margin Rule such that a legacy swap will not be a covered swap under the CFTC Margin Rule if it is amended solely to conform to the QFC Rules. That is, the Commission proposes to add a new paragraph (d) to the end of Commission regulation 23.161, as shown in the proposed rule text in this document.

This proposed addition is intended to provide certainty to a CSE and its counterparties about the treatment of legacy swaps and any applicable netting arrangements in light of the QFC Rules. However, if, in addition to amendments required to comply with the QFC Rules, the parties enter into any other amendments, the amended legacy swap will be a covered swap in accordance with the application of the existing CFTC Margin Rule.

C. Consistent With the Proposed Amendments to the Prudential Margin Rule

The amendments to the CFTC Margin Rule described above are consistent with proposed amendments to the Prudential Margin Rule that the Prudential Regulators jointly published in the **Federal Register** on February 21, 2018.[37] Proposing amendments to the CFTC Margin Rule that are consistent with those proposed by the Prudential Regulators furthers the Commission's efforts to harmonize its margin regime with the Prudential Regulators' margin regime and is responsive to suggestions received as part of the Commission's Project KISS initiative.[38]

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[26] 12 U.S.C. 1811 *et seq.*

[27] *See, e.g.,* Board's QFC Rule at 42883 and 42890 and 12 CFR 252.83(b).

[28] *See, e.g.,* Board's QFC Rule at 42883 and 12 CFR 252.84(b). Covered QFC Entities are similarly generally prohibited from entering into Covered QFCs that would restrict the transfer of a credit enhancement supporting the Covered QFC from the Covered QFC Entity's affiliate to a transferee upon the entry into resolution of the affiliate. *See, e.g.,* Board's QFC Rule at 42890 and 12 CFR 252.84(b)(2).

[29] *Id.*

[30] *See, e.g.,* 12 CFR 252.82(a) and (c). The QFC Rules require a Covered QFC Entity to conform Covered QFCs (i) entered into, executed, or to which it otherwise becomes a party on or after January 1, 2019 or (ii) entered into, executed, or to which it otherwise became a party before January 1, 2019, if the Covered QFC Entity or any affiliate that is a Covered QFC Entity also enters, executes, or otherwise becomes a party to a new Covered QFC with the counterparty to the pre-existing Covered QFC or a consolidated affiliate of the counterparty on or after January 1, 2019.

[31] 17 CFR 23.151.

[32] *Id.*

[33] *See* CFTC Margin Rule, 81 FR at 651 and Commission regulations 23.152(c) and 23.153(d). 17 CFR 23.152(c) and 23.153(d).

[34] *See supra,* n.30.

[35] *Id.*

[36] *See supra,* n.20. Note, therefore, that such amendment would affect all parties to the legacy swap, not only the Covered QFC Entity subject to the QFC Rules.

[37] Margin and Capital Requirements for Covered Swap Entities; Proposed Rule, 83 FR 7413 (Feb. 21, 2018).

[38] *See* Project KISS Initiatives, available at *https://comments.cftc.gov/KISS/KissInitiative.aspx.* The Commission received requests to coordinate revisions to the CFTC Margin Rule with the Prudential Regulators. *See* comments from Credit Suisse (''CS''), the Financial Services Roundtable (''FSR''), ISDA, the Managed Funds Association (''MFA''), and SIFMA Global Foreign Exchange Division (''GFMA''). GFMA requested that the Commission coordinate with the Prudential Regulators on proposing or making any changes to the CFTC Margin Rule to ensure harmonization and consistency across the respective rule sets. In addition, CS, FSR, ISDA, and MFA, as well as GFMA requested that the Commission make certain specific changes to the CFTC Margin Rule in coordination with the Prudential Regulators relating to, for example, initial margin calculations and requirements, margin settlement timeframes, netting product sets, inter-affiliate margin exemptions, and cross-border margin issues. Project KISS suggestions are available at *https://comments.cftc.gov/KISS/KissInitiative.aspx.*

III. Related Matters

A. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (''PRA'')[39] imposes certain requirements on Federal agencies, including the Commission, in connection with their conducting or sponsoring any collection of information, as defined by the PRA. The Commission may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid Office of Management and Budget control number. This Proposal contains no requirements subject to the PRA.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (''RFA'') requires that agencies consider whether the regulations they propose will have a significant economic impact on a substantial number of small entities.[40] This Proposal only affects certain SDs and MSPs that are subject to the QFC Rules and their covered counterparties, all of which are required to be ECPs.[41] The Commission has previously determined that SDs, MSPs, and ECPs are not small entities for purposes of the RFA.[42] Therefore, the Commission believes that this Proposal will not have a significant economic impact on a substantial number of small entities, as defined in the RFA.

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

C. Cost-Benefit Considerations

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

This Proposal prevents certain CSEs and their counterparties from being disadvantaged because their master netting agreements do not satisfy the definition of an EMNA, solely because such agreements' comply with the QFC Rules or because such agreements would have to be amended to achieve compliance. It revises the definition of EMNA such that a master netting agreement that meets the requirements of the QFC Rules may be an EMNA and provides that an amendment to a legacy swap solely to conform to the QFC Rules will not cause that swap to be a covered swap under the CFTC Margin Rule.

The baseline against which the benefits and costs associated with this Proposal is compared is the uncleared swaps markets as they exist today, with the QFC Rules in effect.[43] With this as the baseline for this Proposal, the following are the benefits and costs of this Proposal.

1. Benefits

As described above, this Proposal will allow parties whose master netting agreements satisfy the proposed revised definition of EMNA to continue to calculate initial margin and variation margin, respectively, on an aggregate net basis across uncleared swaps that are executed under that EMNA. Otherwise, a CSE that is a counterparty under a master netting agreement that complies with the QFC Rules and, thus, does not satisfy the current definition of EMNA, would be required to measure its exposures from covered swaps on a gross basis for purposes of the CFTC Margin Rule. In addition, this Proposal allows legacy swaps to maintain their legacy status, notwithstanding that they are amended to comply with the QFC Rules. Otherwise, such swaps would become covered swaps subject to initial and variation margin requirements under the CFTC Margin Rule. This Proposal provides certainty to CSEs and their counterparties about the treatment of legacy swaps and any applicable netting arrangements in light of the QFC Rules.

2. Costs

Because this Proposal (i) will solely expand the definition of EMNA to potentially include those master netting agreements that meet the requirements of the QFC Rules and allow the amendment of legacy swaps solely to conform to the QFC Rules without causing such swaps to become covered swaps and (ii) does not require market participants to take any action to benefit from these changes, the Commission believes that this Proposal will not impose any additional costs on market participants.

3. Section 15(a) Considerations

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

(a) Protection of Market Participants and the Public

As noted above, this Proposal will protect market participants by allowing them to comply with the QFC Rules without being disadvantaged under the CFTC Margin Rule. This Proposal will allow market participants to hedge more, because without this Proposal, posting gross margin would be more costly to transact and thus likely reduce the amount of hedging for market participants.

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

This Proposal will make the uncleared swap markets more efficient by not requiring the payment of gross margin under EMNAs that are amended pursuant to the QFC Rules. Absent this Proposal, market participants that are required to amend their EMNAs to comply with the QFC Rules and, thereafter, required to measure their exposure on a gross basis and to post margin on their legacy swaps, would be placed at a competitive disadvantage as compared to those market participants that are not so required to amend their EMNAs. Therefore, this Proposal may increase the competitiveness of the uncleared swaps markets.

(c) Price Discovery

This Proposal prevents the payment of gross margin, which would result in additional costs to swaps transactions. This Proposal could potentially reduce the cost to transact these swaps, and thus might lead to more trading, which could potentially improve liquidity and benefit price discovery.

(d) Sound Risk Management

This Proposal prevents the payment of gross margin, which does not reflect true economic counterparty credit risk for swap portfolios transacted with counterparties. Therefore, this Proposal supports sound risk management.

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[39] 44 U.S.C. 3501 *et seq.*

[40] 5 U.S.C. 601 *et seq.*

[41] *See supra,* n.12.

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

[43] Although, as described above, the QFC Rules will be gradually phased in, for purposes of the cost benefit considerations, we assume that the affected CSEs are in compliance with the QFC Rules.

(e) Other Public Interest Considerations

The Commission has not identified an impact on other public interest considerations as a result of this Proposal.

4. Request for Comments on Cost-Benefit Considerations

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

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

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

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

D. Antitrust Laws

Section 15(b) of the CEA requires the Commission to take into consideration the public interest to be protected by the antitrust laws and endeavor to take the least anticompetitive means of achieving the purposes of the CEA, in issuing any order or adopting any Commission rule or regulation (including any exemption under section 4(c) or 4c(b) of the CEA), or in requiring or approving any bylaw, rule, or regulation of a contract market or registered futures association established pursuant to section 17 of the CEA.[44]

The Commission believes that the public interest to be protected by the antitrust laws is generally to protect competition. The Commission requests comment on whether this Proposal implicates any other specific public interest to be protected by the antitrust laws.

[44] 7 U.S.C. 19(b).

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

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

List of Subjects in 17 CFR Part 23

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

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

PART 23—SWAP DEALERS AND MAJOR SWAP PARTICIPANTS

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

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

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

■ 2. In § 23.151, revise paragraph (2) of the definition of *Eligible master netting agreement* to read as follows:

§ 23.151 Definitions applicable to margin requirements.

* * * * *

Eligible master netting agreement

* * *

(2) The agreement provides the covered swap entity the right to accelerate, terminate, and close-out on a net basis all transactions under the agreement and to liquidate or set-off collateral promptly upon an event of default, including upon an event of receivership, conservatorship, insolvency, liquidation, or similar proceeding, of the counterparty, provided that, in any such case:

(i) Any exercise of rights under the agreement will not be stayed or avoided under applicable law in the relevant jurisdictions, other than:

(A) In receivership, conservatorship, or resolution under the Federal Deposit Insurance Act (12 U.S.C. 1811 *et seq.*), Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 5381 *et seq.*), the Federal Housing Enterprises Financial Safety and Soundness Act of 1992, as amended (12 U.S.C. 4617), or the Farm Credit Act of 1971, as amended (12 U.S.C. 2183 and 2279cc), or laws of foreign jurisdictions that are substantially similar to the U.S. laws referenced in this paragraph (2)(i)(A) in order to facilitate the orderly resolution of the defaulting counterparty; or

(B) Where the agreement is subject by its terms to, or incorporates, any of the laws referenced in paragraph (2)(i)(A) of this definition; and

(ii) The agreement may limit the right to accelerate, terminate, and close-out on a net basis all transactions under the agreement and to liquidate or set-off collateral promptly upon an event of default of the counterparty to the extent necessary for the counterparty to comply with the requirements of 12 CFR part 47; 12 CFR part 252, subpart I; or 12 CFR part 382, as applicable;

* * * * *

■ 3. In § 23.161, add paragraph (d) to read as follows:

§ 23.161 Compliance dates.

* * * * *

(d) For purposes of determining whether an uncleared swap was entered into prior to the applicable compliance date under this section, a covered swap entity may disregard amendments to the uncleared swap that were entered into solely to comply with the requirements of 12 CFR part 47; 12 CFR part 252, subpart I; or 12 CFR part 382, as applicable.

Issued in Washington, DC, on May 18, 2018, by the Commission.

Christopher Kirkpatrick,

Secretary of the Commission.

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

Appendix to Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants—Commission Voting Summary

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

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