authorized to assess sanctions for such violations pursuant to the FAA's statutory authority. General guidance applicable to FAA sanction determinations is in FAA Order 2150.3C, FAA Compliance and Enforcement Program, Chapter 9.[14]

The FAA continues to develop the process and system for requesting authorizations.[15] The system under development will issue or deny an authorization consistent with the policy set forth in this document.[16] An operator of a non-equipped aircraft will not be allowed to operate in ADS–B Out airspace without a preflight authorization obtained through the system. If an operator obtains an authorization through the system to enter certain ADS–B Out airspace, the operator will be presumed to have complied with the requirements of § 91.225(g) with respect to that ADS–B Out airspace. Having a system that issues trackable authorizations and denials to the operator will also enable the FAA to provide proper oversight to ensure compliance.

F. Summary

After January 1, 2020, unless otherwise authorized by ATC, all aircraft operating in the airspace identified in § 91.225 must be equipped with ADS–B Out equipment. Pursuant to § 91.225(g), however, persons may request authorization from ATC to operate in ADS–B airspace with aircraft that do not transmit ADS–B Out.

To operate in ADS–B airspace, an operator who has chosen not to equip with ADS–B Out equipment must obtain a preflight authorization in accordance with § 91.225(g). The operator has the responsibility to obtain a preflight authorization from ATC for all ADS–B Out airspace on the planned flight path. For the reasons explained above, however, the FAA will be very unlikely to issue routine and regular authorizations to scheduled operators seeking to operate non-equipped aircraft in rule airspace. Likewise, although unscheduled operators may request authorizations for airspace at capacity constrained airports, issuance of an authorization may prove difficult to obtain.

The FAA continues to develop the specific mechanisms that would be used to issue authorizations to operators of aircraft that are not equipped with ADS–B Out equipment.

Issued in Washington, DC, on March 26, 2019.

Teri L. Bristol,

Chief Operating Officer, Air Traffic Organization.

[FR Doc. 2019–06184 Filed 3–29–19; 8:45 am]

BILLING CODE 4910–13–P

authorization, may receive an in-flight clearance that would place the aircraft in airspace for which ADS–B Out equipage is required. Because ATC needs the flexibility to address real-time conditions in the NAS (*e.g.,* adverse weather conditions), ATC may elect to provide a clearance into ADS–B airspace. The FAA advises that the pilot should accept the clearance and immediately advise ATC of the lack of authorization. The FAA will normally not take enforcement action for non-equipage in these circumstances.

[14] Order 2150.3C applies to the compliance and enforcement programs and activities of all FAA offices that have statutory and regulatory compliance and enforcement responsibilities.

[15] The FAA notes that simply obtaining a preflight clearance from ATC under another regulatory requirement will not satisfy the requirement for a preflight authorization to deviate from § 91.225(g). For example, if ATC has provided the operator of a non-equipped aircraft a pre-departure ATC clearance under § 91.173 (ATC clearance and flight plan required), that clearance would not constitute an authorization to operate the non-equipped aircraft in the ADS–B Out airspace. Likewise, a preflight authorization to operate a non-equipped aircraft in ADS–B Out airspace would not constitute an ATC clearance for entering Class B airspace. If an operator plans to operate a non-equipped aircraft in airspace that requires ADS–B Out and an ATC clearance, the responsibility is on that operator to obtain both a preflight authorization pursuant to § 91.225(g)(2) and an ATC clearance.

[16] This policy will not result in additional costs to operators affected by the 2010 ADS–B Out rule establishing equipage and performance requirements that apply to all aircraft operating in certain U.S. airspace. The FAA determined these aircraft will equip in order to operate in ADS–B Out airspace. These costs are summarized in the final rule (75 FR 30160) and detailed in the Final Regulatory Impact Analysis available in the docket (FAA–2007–29305).

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 23

[3038–AE85]

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

AGENCY: Commodity Futures Trading Commission.

ACTION: Interim final rule; request for comments.

SUMMARY: The United Kingdom (''UK'') has provided formal notice of its intention to withdraw from the European Union (''EU''). The withdrawal may happen as soon as April 12, 2019 and may transpire without a negotiated agreement between the UK and EU (''No-deal Brexit''). To the extent there is a No-deal Brexit, affected swap dealers (''SDs'') and major swap participants (''MSPs'') may need to effect legal transfers of uncleared swaps that were entered into before the relevant compliance dates under the CFTC Margin Rule or Prudential Margin Rule (each, as defined herein) and that are not now subject to such rules, in whole or in part. The Commodity Futures Trading Commission (''Commission'' or ''CFTC'') is adopting, and invites comments on, an interim final rule amending its margin requirements for uncleared swaps for SDs and MSPs for which there is no prudential regulator (''CFTC Margin Rule'') such that the date used for purposes of determining whether an uncleared swap was entered into prior to an applicable compliance date will not change under the CFTC Margin Rule if the swap is transferred, and thereby amended, in accordance with the terms of the interim final rule in respect of any such transfer, including that the transfer be made solely in connection with a party to the swap's planning for or response to a No-deal Brexit. The interim final rule is designed to allow an uncleared swap to retain its legacy status under the CFTC Margin Rule or Prudential Margin Rule when so transferred.

DATES: *Effective Date:* This rule is effective April 1, 2019.

Comment Date: Comments must be received on or before May 31, 2019. Comments submitted by mail will be accepted as timely if they are postmarked on or before this comment due date.

ADDRESSES: You may submit comments, identified by RIN 3038–AE85, 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.

Instructions: All submissions received must include the agency name and RIN number for this rulemaking. For additional details on submitting comments, see the ''Public Participation'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Matthew Kulkin, Director, 202–418–5213, *mkulkin@cftc.gov;* Frank Fisanich, Chief Counsel, 202–418–5949,

ffisanich@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 CFTC Margin Rule

Section 731 of the Wall Street Reform and Consumer Protection Act (''Dodd-Frank Act'') [1] added a new section 4s to the Commodity Exchange Act (''CEA'') [2] setting forth various requirements for SDs and MSPs. Section 4s(e) of the CEA directs the Commission to adopt rules establishing minimum initial and variation margin requirements on all swaps [3] that are (i) entered into by an SD or MSP for which there is no Prudential Regulator [4] (collectively, ''covered swap entities'' or ''CSEs'') and (ii) not cleared by a registered derivatives clearing organization (''uncleared swaps'').[5] To offset the greater risk to the SD or MSP [6] and the financial system arising from the use of uncleared swaps, these requirements must (i) help ensure the safety and soundness of the SD or MSP and (ii) be appropriate for the risk associated with the uncleared swaps held as an SD or MSP.[7]

To this end, the Commission promulgated the CFTC Margin Rule in January 2016,[8] establishing requirements for a CSE to collect and post initial margin [9] and variation margin [10] for uncleared swaps. These requirements vary based on the type of counterparty to such swaps and the location of the CSE and its counterparty.[11] These requirements also generally apply only to uncleared swaps entered into on or after the compliance date applicable to a particular CSE and its counterparty (''covered swap'').[12] 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.[13]

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.[14] 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'').[15] 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.[16] 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.[17] However, if a netting portfolio contains any covered swaps, the entire netting portfolio (including all legacy swaps) is subject to such requirements.[18]

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

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

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

[3] 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.

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

[5] *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.

[6] 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.

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

[8] 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 through 23.159, 23.161. In May 2016, the Commission amended the CFTC Margin Rule to add Commission regulation 23.160, providing rules on its cross border application. Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants—Cross-Border Application of the Margin Requirements, 81 FR 34818 (May 31, 2016). 17 CFR 23.160.

[9] 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.

[10] 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.

[11] *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). *See* Commission regulation 23.160 on the cross-border application of the CFTC Margin Rule. 17 CFR 23.160.

[12] Pursuant to Commission regulation 23.161, compliance dates for the CFTC Margin Rule are staggered such that CSEs must come into compliance in a series of phases over four years. The first phase affected CSEs and their counterparties, each with the largest aggregate outstanding notional amounts of uncleared swaps and certain other financial products. These CSEs 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 CSEs 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. On each September 1 thereafter ending with September 1, 2020, CSEs must comply with the initial margin requirements with counterparties with successively lesser outstanding notional amounts.

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

[14] *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).

[15] *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 form Master Agreement may be an EMNA, if it meets the specified requirements in the EMNA definition.

[16] *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).

[17] *Id.*

[18] *Id.*

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.[19] 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. In that case, 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. Brexit and Transfers of Uncleared Swaps

The UK has provided formal notice of its intention to withdraw from the EU (''Brexit''). The withdrawal may occur as soon as April 12, 2019.[20] Financial entities, including CSEs in the UK,[21] face uncertainty about the applicable regulatory framework they will operate within after such withdrawal, especially a UK exit from the EU absent a negotiated agreement (a ''Withdrawal Agreement'') on the specific terms of the UK's exit (a ''No-deal Brexit'').[22] These firms have been mindful that one consequence of a No-deal Brexit would be an inability of the firms, if located in the UK, to continue providing investment services in the EU under the current passporting regime. As a result, they might not be in a position to perform certain operations in relation to swaps they presently have with EU clients. In order to address this situation, these firms could attempt to transfer their swaps to a related establishment in an EU Member State, which in turn would benefit from the passporting regime,[23] or to another related entity outside of the EU.

Similarly, EU financial entities, including CSEs, may also be directly affected by a No-deal Brexit if, for example, they have entered into uncleared swaps with financial entities located in the UK. They might face UK counterparties that request to transfer their swaps to an affiliate or other related establishment as discussed above or might themselves desire to transfer such swaps (*e.g.,* to a U.K entity) in response to a No-deal Brexit.

In addition, financial entities, including CSEs, regardless of their location may also be affected by a No-deal Brexit and choose to engage in various reorganizations or consolidations of their swaps business in planning for or responding to such an event.[24]

Each of the transfers and reorganizations described above would require the amendment of transferred swaps. As discussed above, to the extent that these swaps are legacy swaps and a CSE is either a remaining party or a transferee of such swaps, these amendments may cause the swaps to lose their legacy status, thereby converting them into covered swaps and causing them and any uncleared swaps in the same netting portfolio to become subject to the applicable margin requirements of the CFTC Margin Rule. If these requirements were to apply to such swaps following a No-Deal Brexit, the change in the status of the swaps could cause CSEs and other market participants to incur significant costs, potentially in a short period of time following a No-deal Brexit, due to the additional requirement to post variation and possibly initial margin. This could cause disruptions or have unanticipated negative consequences for affected market participants and swap markets that could, for example, create cash flow or liquidity concerns for some swap counterparties.

II. Interim Final Rule

The Commission is issuing this interim final rule (this ''Interim Final Rule'') in order to maintain the status quo for legacy swaps with respect to the CFTC Margin Rule to the extent any amendments thereto are made solely to transfer such swaps in response to a No-deal Brexit, as discussed above, and otherwise pursuant to the requirements of this Interim Final Rule.[25] Specifically, this Interim Final Rule amends Commission regulation 23.161 [26] to provide that in a No-Deal Brexit, subject to certain conditions,[27] a legacy swap may be transferred and amended without revising the date (''swap date'') used for purposes of determining whether such uncleared swap was entered into prior to the applicable compliance date under the CFTC Margin Rule. By preserving the swap date and limiting the transferees of each party to its margin affiliate,[28] or a

[19] *See* CFTC Margin Rule, 81 FR at 675. The Commission notes that certain limited relief has been given from this standard. *See* Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants, 83 FR 60341 (Nov. 26, 2018) and CFTC Staff Letter No. 17–52 (Oct. 27. 2017), available at *http://www.cftc.gov/ucm/groups/public/@lrlettergeneral/documents/letter/17-52.pdf.*

[20] *See* Special meeting of the European Council (Art. 50) (21 March 2019)—Conclusions, at *https://data.consilium.europa.eu/doc/document/XT-20004-2019-INIT/en/pdf* (visited March 22, 2019).

[21] In many instances, these firms made a strategic decision decades ago to use a UK establishment as their base of operations to provide financial services to customers across the EU, consistent with the EU's system of cross-border authorizations to engage in regulated financial activities (known as ''passporting'').

[22] *See https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/759019/25_November_Agreement_on_the_withdrawal_of_the_United_Kingdom_of_Great_Britain_and_Northern_Ireland_from_the_European_Union_and_the_European_Atomic_Energy_Community.pdf* (visited February 21, 2019). The Commission notes that if a No-deal Brexit occurs, it will be as a result of political events beyond the control of the parties to the legacy swap and not driven by U.S. regulatory policy.

[23] In recent months, for example, some financial entities have initiated processes under which a UK court sanctions a bulk transfer of their business, including derivatives, from the balance sheets of their UK establishments to a different location established by the dealer in another EU Member State. *See, e.g.,* Barclays Bank plc Part VII Business transfer to Barclays Bank Ireland plc *(2019) EWHC 129 (Ch),* at *http://www.bailii.org/ew/cases/EWHC/Ch/2019/129.pdf* (visited February 21, 2019); ''Two Banks Begin Moving Swaps out of London, Pre-Brexit,'' Risk.net (November 30, 2018), at *https://www.risk.net/derivatives/6168671/banks-begin-moving-swaps-out-of-london-pre-brexit* (visited February 21, 2019); ''UBS Wins Approval for €32bn Brexit Swaps Transfer,'' Risk.net (February 6, 2019), at *https://www.risk.net/derivatives/6367306/ubs-wins-approval-for-eu32bn-brexit-swaps-transfer (visited* February 21, 2019).

[24] As discussed later in this **SUPPLEMENTARY INFORMATION**, the Commission has designed this Interim Final Rule to recognize the need for flexibility on the part of financial entities as they attempt to work through the unanticipated effects of a No-deal Brexit. For example, this Interim Final Rule, subject to its requirements, is designed to allow CSEs who, as a result of a No-deal Brexit, make a strategic decision to refrain from opening a new EU establishment post-withdrawal, to pull their UK uncleared swap portfolios to related entities outside of the EU, or to otherwise restructure their swaps business as they deem appropriate.

[25] The Commission notes that the Prudential Regulators and the European Supervisory Authorities (''ESAs'') have provided or proposed similar relief for certain swaps subject to their respective margin requirements. *See* Margin and Capital Requirements for Covered Swap Entities, 84 FR 9940 (Mar. 19, 2019) and ESAs Propose to Amend Bilateral Margin Requirements to Assist Brexit Preparations for OTC Derivative Contracts (November 29, 2018), at *https://www.esma.europa.eu/press-news/esma-news/esas-propose-amend-bilateral-margin-requirements-assist-brexit-preparations-otc* (visited February 21, 2019). In addition, certain EU Member states are providing related relief. *See* British Banks Are Getting a Last-Minute Break From the EU (February 20, 2018), at *https://www.bloomberg.com/news/articles/2019-02-20/brexit-fears-drive-eu-nations-to-seek-reprieve-for-london-banks* (visited February 21, 2019).

[26] 17 CFR 23.161.

[27] *See* 17 CFR 23.161(d)(2).

[28] As defined in Commission regulation 23.151 (17 CFR 23.151), a company is a margin affiliate of another company if: (1) Either company consolidates the other on a financial statement prepared in accordance with U.S. Generally Accepted Accounting Principles, the International Financial Reporting Standards, or other similar standards, (2) Both companies are consolidated with a third company on a financial statement prepared in accordance with such principles or standards, or (3) For a company that is not subject to such principles or standards, if consolidation as described in paragraph (1) or (2) of this definition would have occurred if such principles or standards had applied.

Under Commission regulation 23.161, 17 CFR 23.161, a margin affiliate's relevant swaps are

Continued

branch or other authorized form of establishment [29] of the party (an ''Eligible Transferee''), the Interim Final Rule allows an uncleared swap to retain its legacy status under the CFTC Margin Rule or Prudential Margin Rule when transferred.[30]

To be effective, the Commission believes this Interim Final Rule must cover all the different scenarios that would trigger the need for a CSE or its counterparty to participate in amending an uncleared swap in order to ''relocate'' the swap in preparation for or in response to a No-deal Brexit. However, to benefit from the treatment of this amendment, the financial entity must arrange to make the amendments to the uncleared swap solely for the purpose of transferring the uncleared swap to an Eligible Transferee once the UK has withdrawn from the EU, as further discussed herein.[31] This purpose test also contains a requirement that the transfer be made in connection with the entity's planning for the possibility of a No-deal Brexit, or the entity's response to such event.[32]

For compliance purposes, this Interim Final Rule makes one distinction between a transfer initiated by the financial entity standing as the CSE at the completion of the transaction, versus a transfer initiated by the CSE's counterparty. For the latter, the transferor must make a representation to the CSE that the transferee is an Eligible Transferee, and the transfer was made solely in connection with the transferor's planning for or response to a No-deal Brexit.[33]

The Interim Final Rule is designed to permit only such amendments as financial entities find necessary to relocate uncleared swap portfolios under the purpose test. These changes may be carried out using any of the methods typically employed for effecting uncleared swap transfers, including industry protocols, contractual amendments, or contractual tear-up and replacement. To the extent they would otherwise trigger margin requirements, judicially-supervised changes that result in an uncleared swap being booked at or held by a related establishment, including by means of the court-sanctioned process available under Part VII of the UK's Financial Services and Markets Act of 2000, are similarly within the scope of this Interim Final Rule.

However, the Commission does not believe the relief being provided for relocation purposes should be expansively applied to encompass economic changes to a legacy swap. Accordingly, the benefits of this Interim Final Rule are unavailable if the amendments to an uncleared swap modify the payment amount calculation methods, the maturity date, or the notional amount of the uncleared swap.[34] Thus, for example, if the day count convention of an uncleared swap changes as a consequence of re-locating a uncleared interest rate swap several time zones away from the UK, the parties to the swap would not be changing the payment amount calculation methods. On the other hand, a change to one of the payment amount calculation economic factors (*e.g.,* an interest rate margin or base rate) would be a change outside the scope of this Interim Final Rule and could trigger application of the CFTC's margin requirements.

The Commission also seeks to establish a reasonable period of time for the necessary work to achieve the transfers to be performed. The Interim Final Rule permits transfers for a period of one year after a UK withdrawal.[35] The 1-year period commences at the point at which the law of the EU ceases to apply in the UK pursuant to Article 50(3) of the Treaty on European Union, without conclusion of a Withdrawal Agreement between the UK and EU pursuant to Article 50(2).[36] If the present withdrawal date is extended, and withdrawal later occurs at the end of that extension without a Withdrawal Agreement, this Interim Final Rule's 1-year period would begin at that time.[37] The Commission contemplates that, if the withdrawal date is extended, financial entities may negotiate and document their desired transfers during the intervening period, under terms that delay consummation of any transfer until withdrawal takes place without an agreement and this Interim Final Rule's substantive provisions are thereby triggered.

The Commission believes that this Interim Final Rule would be most effective if the timeframe allowed takes into account the timeframe under corresponding EU legislation. The ESAs have submitted novation amendments for their margin rules in proposed form to the European Commission, but the relief that would be afforded thereby has not yet been finalized under the EU process.[38] The ESAs' draft Regulatory Technical Standards provides relief for one year after the amendments are finalized by official publication, after parliamentary approval. If the EU amendments are not yet finalized at the time of a UK withdrawal, affected financial entities may delay consummation of their uncleared swap transfers until the ESA's proposed amendments apply. The Commission anticipates some transferring financial entities will operate under both sets of

included in determining the applicable compliance date for the CSE and counterparty under Commission regulation 23.161, 17 CFR 23.161, and thus the compliance date of a CSE and its margin affiliates facing the same counterparty (or its margin affiliates) should generally be the same.

[29] The text of this Interim Final Rule is intended to be flexible as to the nature of the legal establishment of the financial entity to which a legacy swap is transferred so long as that financial entity is the party or a margin affiliate of that party to the swap. *See* § 23.161(d)(2)(ii). The Commission's references to an establishment of a financial entity is intended to be flexible as to whether the relationship of the financial entity to the business unit is due to an affiliation between separately-incorporated entities, branching of a single business entity in different jurisdictions, or some other form of business establishment through which an arm of the financial entity may be legally authorized to conduct business in that location. A financial entity may, for example, use its establishment in the EU to take on uncleared swap portfolios from its swap dealing affiliate in the UK. In a different case, the financial entity's establishments in the EU and the UK may both be branches of the same financial entity. Alternatively, there may be yet a different relationship due to the structure of the specific financial entity involved. On the other hand, the financial entity may not move its operations in any way, but it may have existing portfolios of uncleared swaps facing counterparties who are themselves relocating out of or into the UK, to an affiliate, or a branch, or some other type of form of establishment of the party outside of or in the UK.

[30] The Commission notes that to the extent that the parties to a transferred legacy swap are subject to the Prudential Margin Rule in addition to the CFTC Margin Rule, the legacy swap may become subject to the margin requirements of the Prudential Margin Rule notwithstanding this Interim Final Rule.

[31] *See* § 23.161(d)(2)(ii).

[32] *Id.*

[33] *See* § 23.161(d)(2)(ii)(B).

[34] *See* 17 CFR 23.161(d)(2)(iii). The Commission does not intend that this Interim Final Rule provide an opportunity for parties to renegotiate the economic terms of their legacy swaps, but rather is providing the Interim Final Rule solely to allow a party to a legacy swap to transfer the swap to an Eligible Transferee in connection with the transferor's planning for the possibility of a No-deal Brexit, or its response to such event. *See* § 23.161(d)(2)(ii). If any amendment to a legacy swap does not meet this purpose test in the Interim Final Rule, the legacy swap would not be eligible for the relief provided by it.

[35] *See* § 23.161(d)(2)(iv) and (v).

[36] *See* § 23.161(d)(2)(iv). For an overview of the process by which an EU Member State may withdraw from the EU, *see* the European Parliament Briefing, Article 50 TEU: Withdrawal of a Member State from the EU (February 2016), available at *http://www.europarl.europa.eu/RegData/etudes/BRIE/2016/577971/EPRS_BRI(2016)577971_EN.pdf* (visited February 21, 2019).

[37] *Id.*

[38] *See* Final Report on EMIR RTS on the novation of bilateral contracts not subject to bilateral margins, ESAs 2018 25 (November 27, 2018), at *https://eiopa.europa.eu/Publications/Reports/ESAs%202018%2025%20-%20Final%20Report%20-%20Bilateral%20margining%20%28novation%29.pdf* (visited February 21, 2019).

regulations and will accordingly seek to coordinate their transfer operations for compliance purposes under both sets of amendments. To facilitate this, this Interim Final Rule has a ''tacking'' provision that will extend the provided 1-year period by the amount of any additional time available under the ESAs' 1-year period.[39]

III. Public Participation

The Commission is issuing this Interim Final Rule to revise Commission regulation 23.161 to address certain concerns relating to a No-deal Brexit, as discussed above. This approach enables these regulatory changes to take effect sooner than would be possible with the publication of a notice of proposed rulemaking in advance. Nonetheless, the Commission welcomes public comments from interested persons regarding any aspect of the changes made by this Interim Final Rule as well as on the following specific questions.

(1) This Interim Final Rule permits certain amendments to uncleared swaps without changing their swap date in order to facilitate the transfer of uncleared swaps in response to a No-deal Brexit. As explained above, the Commission seeks to encompass changes through a variety of methods, including industry protocols, contractual amendments, transfers permitted by judicial proceedings, and contractual tear-up and replacement. What, if any, additional clarification in the rule as to types of permissible amendments should the Commission provide? What specifically should be added or clarified, and why is it necessary in order to achieve the Commission's policy objectives in the context of a No-deal Brexit?

(2) This Interim Final Rule only accommodates transfers to an Eligible Transferee. The Commission does not intend the relief provided by this Interim Final Rule to provide an opportunity for financial entities to seek out a new dealer relationship and retain legacy swap treatment. However, the Commission requests comment on whether there may be financial entities that are unable to arrange a transfer of legacy swaps unless the transfer is to an entity that is not an Eligible Transferee and are thus not covered under the terms of this Interim Final Rule. Commenters should provide descriptions of the factual circumstances, including the frequency of its occurrence.

(3) This Interim Final Rule is intended to limit relief to only those amendments to legacy swaps that satisfy the purpose test in this Interim Final Rule (*i.e.,* that are made to transfer them to an Eligible Transferee in connection with the transferor's planning for the possibility of a No-deal Brexit, or its response to such event). Should any of the conditions be modified or should other conditions be included to achieve this limitation?

All comments must be submitted in English, or if not, accompanied by an English translation. Please refer to the **ADDRESSES** section above. Except as described herein regarding confidential business information, all comments are considered part of the public record and will be posted as received to *https://comments.cftc.gov* for public inspection. The information made available online includes personal identifying information (such as name and address) which is voluntarily submitted by the commenter. You should submit only information that you wish to make available publicly.

If you want to submit material that you consider to be confidential business information as part of your comment, but do not want it to be posted online, you must submit your comment by mail or hand delivery/courier and include a petition for confidential treatment as described in § 145.9 of the Commission's regulations.[40]

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 rulemaking record and will be considered as required under the Administrative Procedure Act (''APA'')[41] and other applicable laws, and may be accessible under the Freedom of Information Act.[42]

IV. Related Matters

A. Administrative Procedure Act

The APA generally requires federal agencies to publish a notice of proposed rulemaking and provide an opportunity for public comment before issuing a new rule.[43] However, an agency may issue a new rule without a pre-publication public comment period when it for ''good cause'' finds that prior notice and comment is ''impracticable, unnecessary, or contrary to the public interest.''[44] The Commission has determined that there is good cause to find that a pre-publication comment period is impracticable and contrary to the public interest here. The UK's exit may occur on April 12, 2019, or soon thereafter, and the Interim Final Rule addresses a potential impact of a No-deal Brexit. The Interim Final Rule facilitates the ability of financial entities with uncleared swaps to relocate existing swap portfolios over to an Eligible Transferee, without causing the swap dates of legacy swaps in their portfolios to change. As such, this Interim Final Rule benefits financial entities by removing an impediment to the transfer, and allowing them to maintain the status quo, of certain of their legacy swaps. The Interim Final Rule does not impose any requirements or mandatory burden on any financial entity, including CSEs.

The Commission believes that the public interest is best served by making this Interim Final Rule effective as soon as possible as a result of the potential timing of events in the UK. The Commission believes that issuing this Interim Final Rule will provide the certainty necessary to facilitate the industry's efforts to begin arranging their transfers immediately upon a No-deal Brexit. In addition, the Commission believes that providing a notice and comment period prior to issuance of this Interim Final Rule is impracticable given the potential need for relief to begin on April 12, 2019. For these reasons, the Commission's implementation of this rule as an Interim Final Rule, with provision for post-promulgation public comment, is in accordance with section 553(b) of the APA.[45]

Similarly, for the same reasons set forth above under the discussion of section 553(b)(B) of the APA, the Commission, for good cause, finds that no transitional period, after publication in the **Federal Register**, is necessary before the amendment to § 23.161 made by this Interim Final Rule becomes effective. Accordingly, this Interim Final Rule shall be effective immediately upon publication in the **Federal Register**.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act[46] requires federal agencies to consider whether the rules they propose will have a significant economic impact on a substantial number of small entities

[39] *See* § 23.161(d)(2)(v).

[40] 17 CFR 145.9.

[41] 5 U.S.C. 553 *et seq.*

[42] 5 U.S.C. 552.

[43] *See* 5 U.S.C. 553(b).

[44] *See* 5 U.S.C. 553(b)(3)(B).

[45] 5 U.S.C. 553(b)(B); 553(d)(3).

[46] 5 U.S.C. 601 *et seq.*

and, if so, to provide a regulatory flexibility analysis regarding the economic impact on those entities. Because, as discussed above, the Commission is not required to publish a notice of proposed rulemaking for this rule, a regulatory flexibility analysis is not required.[47]

C. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (''PRA'')[48] 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 (''OMB'') control number.

The Commission believes that this Interim Final Rule does not affect the current recordkeeping or information collection requirements in a significant manner. However, by requiring that in certain transfers of legacy swaps the transferor makes certain representations to a CSE that is a party to the swap, this Interim Final Rule modifies a collection of information for which the Commission has previously received a control number from OMB. The title for this collection of information is ''Confirmation, Portfolio Reconciliation, Portfolio Compression, and Swap Trading Relationship Documentation Requirements for Swap Dealers and Major Swap Participants, OMB control number 3038–0088,''[49] which is currently in force with its control number having been provided by OMB. Collection 3038–0088 already includes requirements for creating and maintaining swap trading relationship documentation, and this Interim Final Rule would require only that an additional standard representation be added to that documentation if amendments are entered into, and the Commission estimates that the burden change required by this Interim Final Rule is de minimis. Nevertheless, the Commission will, by separate action, publish in the **Federal Register** a notice and request for comment on the amended PRA burden associated with the Interim Final Rule, and submit to OMB an information collection request to amend the information collection, in accordance with 44 U.S.C. 3507(c) and 5 CFR 1320.10.

D. 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 Interim Final Rule provides that an amendment to transfer a legacy swap, subject to certain limitations, and solely in planning for or responding to a No-deal Brexit will not cause its swap date to change.[50] The purpose of this Interim Final Rule is to allow market participants to maintain the status quo of their legacy swaps with respect to the CFTC Margin Rule or Prudential Margin Rule when so transferred.

The baseline against which the benefits and costs associated with this Interim Final Rule is compared is the uncleared swaps markets as they exist today.[51] With this as the baseline for this Interim Final Rule, the following are the benefits and costs of this Interim Final Rule.

1. Benefits

As described above, this Interim Final Rule allows legacy swaps to maintain their swap date, notwithstanding that they are transferred and amended as provided in the rule text to this release in connection with a No-deal Brexit, so that they can maintain their legacy status with respect to the CFTC Margin Rule or Prudential Margin Rule, as applicable. This Interim Final Rule provides certainty to CSEs and their counterparties about the treatment of certain of their legacy swaps and any applicable netting arrangements in light of amendments to legacy swaps that may be made in connection with their transfer in a No-deal Brexit. In addition, the Interim Final Rule can be expected to benefit the parties to the affected legacy swaps by allowing them to maintain the existing margin status for the legacy swaps. Without this Interim Final Rule, the imposition of margin requirements on these legacy swaps and swaps in the same netting portfolio could have negative consequences for some of the affected parties, which could include, for example, changing the cash flow and liquidity characteristics of those parties.

2. Costs

Because this Interim Final Rule does not require market participants to take any action, the Commission believes that this Interim Final Rule will not impose any additional required costs on market participants. Nevertheless, some market participants that elect to rely on this Interim Final Rule may incur legal costs to include the representations required by it in their transfer documentation.

3. Section 15(a) Considerations

In light of the foregoing, the CFTC has evaluated the costs and benefits of this Interim Final Rule 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 Interim Final Rule will allow market participants, subject to certain limitations, to transfer their legacy swaps in connection with a No-deal Brexit without being disadvantaged under the CFTC Margin Rule. As such, this Interim Final Rule should give affected market participants more flexibility in negotiating the transfer of their legacy swaps but it is unclear whether or not participants who might use this Interim Final Rule are better protected by facing the new counterparty or not relative to their current counterparty. If this Interim Final Rule were not adopted and some of these legacy swaps and swaps in the same netting portfolio became subject to

[47] *See* 5 U.S.C. 603(a).

[48] 44 U.S.C. 3501 *et seq.*

[49] *See* OMB Control No. 3038–0088, *http://www.reginfo.gov/public/do/PRAOMBHistory?ombControlNumber=3038-0055#* (last visited June 12, 2018).

[50] The Commission notes that in a Brexit with a Withdrawal Agreement or where there is no Brexit this Interim Final Rule does not provide any relief. In these cases, there are no costs and benefits other than the costs of requiring parties to read and understand this Interim Final Rule.

[51] The Commission notes that the consideration of costs and benefits below is based on the understanding that the markets function internationally, with many transactions involving United States firms taking place across international boundaries; with some Commission registrants being organized outside of the United States; with leading industry members typically conducting operations both within and outside the United States; and with industry members commonly following substantially similar business practices wherever located. Where the Commission does not specifically refer to matters of location, the below discussion of costs and benefits refers to the effects of this Interim Final Rule on all activity subject to it, whether by virtue of the activity's physical location in the United States or by virtue of the activity's connection with or effect on United States commerce under CEA section 2(i). In particular, the Commission notes that some persons affected by this rulemaking are located outside of the United States.

the CFTC Margin Rule's margin requirements and, thus, required more collateral to be posted by counterparties, there would be a reduction in counterparty credit risk in the financial system overall. However, as noted above, the imposition of such margin requirements on these swaps could negatively impact the cash flow and liquidity characteristics of those parties.

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

Absent this Interim Final Rule, market participants that transfer their legacy swaps in a No-deal Brexit may thereafter be required to comply with the applicable margin requirements of the CFTC Margin Rule for such swaps, and may be placed at a competitive disadvantage as compared to those market participants that do not transfer their legacy swaps in a No-deal Brexit. Therefore, this Interim Final Rule may increase the competitiveness of the uncleared swaps markets. In addition, providing the relief may increase efficiency by reducing the impact of a No-deal Brexit by allowing the parties to undertake swap transfers without having to establish new margining arrangements that were not contemplated for the legacy swaps.

(c) Price Discovery

The Commission has not identified an impact on price discovery as a result of this Interim Final Rule. To the extent that a transfer of a legacy swap in accordance with the conditions of this Interim Final Rule triggers a real-time public reporting obligation of pricing information under part 43 of the Commission's rules,[52] such rules require that transfers of swaps carry a notation so that the public will be aware that the swap is not a new swap and can consider the reported pricing information of such swap accordingly.[53]

(d) Sound Risk Management

The Commission has not identified a significant impact on sound risk management as a result of this Interim Final Rule. The Commission notes that without this Interim Final Rule, some market participants may have to pay and collect margin on certain legacy swaps, which may lower the overall credit risk in the financial system. However, as discussed above, these are legacy swaps that were not intended to be covered by the CFTC Margin Rule and, but for a No-deal Brexit, would not be amended pursuant to the terms of the Interim Final Rule. Further, the Commission notes that a market participant might be facing a counterparty with better or worse credit standing as a result of the transfers. Inasmuch as there is no collateral required to be posted as collateral in these transactions to mitigate credit risk, there may be a change in the credit risk for some of these legacy swaps when the counterparties change.

(e) Other Public Interest Considerations

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

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 herein. 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.

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.[54]

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 Interim Final Rule implicates any other specific public interest to be protected by the antitrust laws.

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

Because the Commission has preliminarily determined that this Interim Final Rule 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 Interim Final Rule.

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 amends 17 CFR chapter I 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 § 23.161, revise 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:

(1) 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; or

(2) Amendments to the uncleared swap that were entered into in compliance with each of the following conditions:

(i) The law of the European Union ceases to apply to the United Kingdom pursuant to Article 50(3) of the Treaty on European Union, without conclusion of a withdrawal agreement between the United Kingdom and the European Union pursuant to Article 50(2) thereof; and

(ii) Solely in connection with a party to the swap's planning for or response to the event described in paragraph (d)(2)(i) of this section, one or both parties to the swap transfers the swap to its margin affiliate, or a branch or other

[52] *See* paragraph 1(ii) of the definition of ''publicly reportable swap transaction'' in § 43.2, 17 CFR 43.2.

[53] *See* Table A1 to Appendix A to Part 43. The data field in such table labeled ''Price-forming continuation data'' requires an indication of whether a publicly reportable swap transaction is a post-execution event that affects the price of such transaction, including whether the event was a transfer or novation.

[54] 7 U.S.C. 19(b).

authorized form of establishment of the transferor, and the parties make no other transfers of the swap; and

(A) A covered swap entity is a transferee from a party to the swap; or

(B) A covered swap entity is a remaining party to the swap, and the transferor represents to the covered swap entity that the transferee is a margin affiliate, or a branch or other authorized form of establishment of the transferor, and the transfer was made solely in connection with the transferor's planning for or response to the event described in paragraph (d)(2)(i) of this section; and

(iii) The amendments do not modify any of the following: the payment amount calculation methods, the maturity date, or the notional amount of the swap; and

(iv) The amendments take effect no earlier than the date of the event described in paragraph (d)(2)(i) of this section transpires; and

(v) The amendments take effect no later than:

(A) The date that is one year after the date of the event described in paragraph (d)(2)(i) of this section; or

(B) Such other date permitted by transitional provisions under Article 35 of Commission Delegated Regulation (EU) No. 2016/2251, as amended.

Issued in Washington, DC, on March 26, 2019, by the Commission.

Christopher Kirkpatrick,

Secretary of the Commission.

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

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

Appendix 1—Commission Voting Summary

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

Appendix 2—Statement of Chairman J. Christopher Giancarlo

As we well know at the CFTC, trading markets crave certainty. Thus, market regulators have a responsibility to avoid creating market apprehension and doubt, whenever possible.

At a time of heightened market uncertainty caused by Brexit, this Commission has worked over the past several weeks to bring clarity to participants in global derivatives markets by a series of separate actions and statements with its regulatory counterparts in London, Brussels and Singapore.

Four weeks ago, the Commission and the Bank of England, including the Prudential Regulation Authority and the Financial Conduct Authority, issued a statement regarding derivatives trading and clearing activities between the United Kingdom and the United States after the UK's withdrawal from the European Union.

The statement assured market participants of the continuity of derivatives trading and clearing activities between the UK and U.S., after the UK's withdrawal from the EU.

Today the Commission takes another important step to bring certainty to the global derivatives markets.

Consistent with actions already taken by U.S. prudential regulators, we are providing regulatory certainty regarding the transfer of uncleared legacy swaps to facilitate global swaps market participants' needs in the event that the UK withdraws from the EU without a negotiated withdrawal agreement.

Soon the Commission and the Financial Conduct Authority intend to sign two memoranda of understanding related to the UK's withdrawal from the EU.

The two signed MOUs will update existing MOUs originally signed in 2016 and 2013 to provide for continued supervisory cooperation with respect to certain firms in the derivatives and the alternative investment fund industry.

The signing of these supervisory MOUs with the FCA will ensure continuity in effective cross-border oversight of derivatives markets and participants.

These measures will help support financial stability and the sound functioning of financial markets. They also will give confidence to market participants about their ability to trade and manage risk through these markets.

I compliment the DSIO staff for putting together this interim final rule and request for comment.

I commend them for their many hours of hard work, the quality of the results and their thoughtfulness and engagement throughout.

I also am grateful to my fellow Commissioners for their commitment and engagement in these critical actions.

Appendix 3—Statement of Commissioner Brian D. Quintenz

I support today's interim final rule providing relief from the Commission's uncleared margin requirements [1] for legacy swaps transferred to counterparties outside of the UK, in the case of a British exit from the European Union in the absence of a withdrawal agreement (''No-deal Brexit'').

I believe the rule will provide necessary legal certainty to market participants as they consider how they will respond to the possibility of a No-deal Brexit. I believe it is correct for the rule to exempt a legacy swap from the Commission's uncleared margin requirements if the swap is amended due to a No-deal Brexit. When the Commission issued margin regulations for uncleared swaps in 2016, the Commission adopted a compliance timetable such that swaps entered into prior to a particular compliance date would not be subject to the new margin requirements.[2] An event such as a No-deal Brexit, one that is outside of counterparties' control, should not cause counterparties to bear the costs and operational challenges of margining a swap that the Commission had previously exempted. I note that last year, the Commission similarly granted relief to a legacy swap that is amended to comply with the ''Qualified Financial Contracts'' rules issued by the U.S. prudential regulators in 2017.[3]

I would like to thank the CFTC staff for having coordinated with the U.S. prudential regulators on this matter to ensure that their interim final rule [4] and ours are consistent. I look forward to supporting any future efforts by the CFTC to assist derivatives market participants address complications arising from Brexit.

Appendix 4—Statement of Commissioner Dan M. Berkovitz

I am voting in favor of the Interim Final Rule (''IFR''), which provides relief from certain margin requirements for certain legacy swap transfers in case of a ''No-deal Brexit.''

Although we do not yet know the date of the United Kingdom's withdrawal from the European Union (''EU''), the form it will take, or whether it will even take place, market participants worldwide are preparing for Brexit. The Commission is committed to working with our domestic and international partners to facilitate regulatory continuity and provide stability to the derivatives markets if and when Brexit occurs. Today's action is a continuation of that effort.

I commend the Chairman and Commission staff for their efforts to address these and other Brexit-related cross-border issues. I note in particular that these actions are all taken pursuant to, and are consistent with, the existing regulations and guidance in place at the CFTC governing cross-border activities.

The IFR will maintain the legacy status of swaps that were executed prior to the relevant compliance dates for the CFTC swap margin rule if those swaps are legally transferred solely as a result of a No-deal Brexit. The transfer of these swaps to affiliates outside the United Kingdom would be needed so that the swaps can continue to be properly serviced under EU law.

A No-deal Brexit would be the result of political events beyond the control or anticipation of the parties at the time they first entered into the legacy swaps in question. Under these circumstances, if the

[1] Commission regulations 23.150 through 23.161 (17 CFR 23.150 through 23.161).

[2] Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants, 81 FR 636, 674–677 (Jan. 6, 2016) (new regulation 23.161).

[3] Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants, 83 FR 60341, 60344 (Nov. 26, 2018) (new regulation 23.161(d)).

[4] Margin and Capital Requirements for Covered Swap Entities, Office of the Comptroller of the Currency, Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corp., Farm Credit Administration, and the Federal Housing Finance Agency, March 15, 2019, *https://www.federalreserve.gov/newsevents/pressreleases/bcreg20190315a.htm.*

CFTC's margin rules were applied, the transfer of these legacy swaps could entail significant expenses, which could impede such transfers. The failure to effectively and efficiently accomplish these transfers could introduce new systemic risks globally.

The IFR release makes clear that legacy swap transfers get relief solely if they are undertaken in connection with a No-deal Brexit. The release also makes clear that the IFR does not create an opportunity for the parties to renegotiate the economic terms of legacy swaps. Swaps that are amended or renegotiated, other than to the extent permitted by the IFR, would still be subject to the CFTC margin rules. These limitations are important as they prevent abuse of the flexibility provided by the IFR.

[FR Doc. 2019–06103 Filed 3–29–19; 8:45 am]

BILLING CODE 6351–01–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 232

[Release Nos. 33–10615; 34–85296; 39–2525; IC–33398]

Adoption of Updated EDGAR Filer Manual

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission (the ''Commission'') adopted revisions to the Electronic Data Gathering, Analysis, and Retrieval System (''EDGAR'') Filer Manual (''EDGAR Filer Manual'' or ''Filer Manual'') and related rules. The EDGAR system is scheduled to be upgraded on March 11, 2019.

DATES: Effective April 1, 2019. The incorporation by reference of the EDGAR Filer Manual is approved by the Director of the **Federal Register** as of April 1, 2019.

FOR FURTHER INFORMATION CONTACT: In the Division of Trading and Markets, for questions concerning Form ATS–N, contact Michael R. Broderick at (202) 551–5058. In the Office of Municipal Securities, for questions regarding Forms MA, MA–A and MA–I, contact Ahmed A. Abonamah at (202) 551–3887. In the Division of Corporation Finance, for questions concerning Forms 1–A and DOS, contact Heather Mackintosh at (202) 551–8111. In the Division of Investment Management, for question concerning Form N–PORT XML, contact Heather Fernandez at (202) 551–6708. In the Division of Economic and Risk Analysis, for questions concerning Inline XBRL submission requirements, contact Mike Willis at (202) 551–6627.

SUPPLEMENTARY INFORMATION: We adopted an updated EDGAR Filer Manual, Volume II. The Filer Manual describes the technical formatting requirements for the preparation and submission of electronic filings through the EDGAR system.[1] It also describes the requirements for filing using EDGARLink Online and the EDGAR Online Forms website.

The revisions to the Filer Manual reflect changes within Volume II, entitled EDGAR Filer Manual, Volume II: ''EDGAR Filing,'' (Version 50) (March 2019). The updated manual is incorporated by reference into the Code of Federal Regulations.

The Filer Manual contains all the technical specifications for filers to submit filings using the EDGAR system. Filers must comply with the applicable provisions of the Filer Manual in order to assure the timely acceptance and processing of filings made in electronic format.[2] Filers should consult the Filer Manual in conjunction with our rules governing mandated electronic filings when preparing documents for electronic submission.

The EDGAR System and Filer Manual will be updated in Release 19.1 and reflect the changes described below.

EDGAR introduces changes associated with the adoption of Inline eXtensible Business Reporting Language (''Inline XBRL'') requirements for the submission of operating company financial information and fund risk/return summaries.[3] The EDGAR system is updated to implement changes that expand the submission form types that are permitted to include Inline XBRL submissions. Accordingly, the following additional submission form types permit the primary document to be in Inline XBRL format: S–1, S–1/A, S–1MEF, S–3, S–3/A, S–3ASR, S–3D, S–3DPOS, S–3MEF, S–4, S–4/A, S–4EF, S–4MEF, S–4 POS, S–11, S–11/A, S–11MEF, F–1, F–1/A, F–1MEF, F–3, F–3/A, F–3ASR, F–3D, F–3DPOS, F–3MEF, F–4, F–4/A, F–4EF, F–4MEF, F–4 POS, F–10, F–10/A, F–10EF, F–10POS, N–1A, N–1A/A, 485APOS, 485BPOS, 485BXT, and 497. The EDGAR system also is updated to allow more than one Inline XBRL file attachment per submission to be pre-validated, submitted, validated, accepted, rendered, and viewed. In addition, given the termination of the Voluntary XBRL program, the EDGAR Filer Manual and the EDGAR system are updated to remove and no longer permit submissions having EX–100 Voluntary XBRL attachments. Also, the EDGAR Filer Manual updates instructions regarding the layout specifications for Risk Return Summary Information submissions tagged with Inline XBRL. Finally, the revised EDGAR Filer Manual clarifies how EDGAR processes submissions that contain Inline XBRL presentations that do not pass validation. Please refer to Chapter 5 (Constructing Attached Documents and Document Types), Chapter 6 (Interactive Data), and Appendix E (Automated Conformance Rules for EDGAR Data Fields) of the EDGAR Filer Manual, Volume II: ''EDGAR Filing.''

EDGAR Release 19.1 updates Item 2 for submission form types 1–A, 1–A/A, 1–A POS, DOS, and DOS/A to clarify that filers subject to Section 13 or 15(d) of the Securities Exchange Act of 1934 are no longer ineligible to use the form. Please refer to Chapter 8 (Preparing and Transmitting Online Submissions) of the EDGAR Filer Manual, Volume II: ''EDGAR Filing.''

EDGAR permits the display of Schedule B data in submission form types MA–A and MA/A, provided that information for Schedule B was included in the filer's most recent Form MA, MA–A or MA/A filing. Corresponding changes are reflected in the EDGAR Filer Manual. Please refer to Chapter 8 (Preparing and Transmitting Online Submissions) of the EDGAR Filer Manual, Volume II: ''EDGAR Filing.''

In EDGAR Release 18.4, EDGAR was updated to accept submissions of Form ATS–N and its related EDGAR submission types. In EDGAR Release 19.1, the EDGAR Filer Manual is revised to provide clarifying information for filers regarding the processing of Form ATS–N submissions. Please refer to Chapter 8 (Preparing and Transmitting Online Submissions) of the EDGAR Filer Manual, Volume II: ''EDGAR Filing.''

EDGAR Release 19.1 also introduces changes to the ''EDGAR Form N–PORT XML Technical Specification'' document, which is available on the SEC's public website at *https://www.sec.gov/info/edgar/tech-specs.*

In EDGAR Release 19.1, the EDGAR system is upgraded to support the 2019 GAAP, 2019 EXCH, 2019 Currency and 2019 SRT Taxonomies. Please see *https://www.sec.gov/info/edgar/edgartaxonomies.shtml* for a complete listing of supported standard taxonomies.

[1] We originally adopted the Filer Manual on April 1, 1993, with an effective date of April 26, 1993. Release No. 33–6986 (April 1, 1993) [58 FR 18638]. We implemented the most recent update to the Filer Manual on December 14, 2018. See Release No. 33–10585 (December 14, 2018) [83 FR 66100].

[2] *See* Rule 301 of Regulation S–T (17 CFR 232.301).

[3] See Release No. 33–10514 (June 28, 2018) [83 FR 40846].