Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 45

[Docket No. OCC–2019–0023]

RIN 1557–AE69

FEDERAL RESERVE SYSTEM

12 CFR Part 237

[Docket No. R–1682]

RIN 7100–AF62

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 349

RIN 3064–AF08

FARM CREDIT ADMINISTRATION

12 CFR Part 624

RIN 3052–AD38

FEDERAL HOUSING FINANCE AGENCY

12 CFR Part 1221

RIN 2590–AB03

Margin and Capital Requirements for Covered Swap Entities

AGENCY: Office of the Comptroller of the Currency, Treasury (OCC); Board of Governors of the Federal Reserve System (Board); Federal Deposit Insurance Corporation (FDIC); Farm Credit Administration (FCA); and the Federal Housing Finance Agency (FHFA).

ACTION: Proposed rule and request for comment.

SUMMARY: The OCC, Board, FDIC, FCA, and FHFA (each, an agency, and collectively, the agencies) request comment on a proposed rule that would amend the agencies' regulations that require swap dealers and security-based swap dealers under the agencies' respective jurisdictions to exchange margin with their counterparties for swaps that are not centrally cleared (Swap Margin Rule). The Swap Margin Rule as adopted in 2015 takes effect under a phased compliance schedule spanning from 2016 through 2020, and the dealers covered by the rule continue to hold swaps in their portfolios that were entered into before the effective dates of the rule. Such swaps are grandfathered from the Swap Margin Rule's requirements until they expire according to their terms. The proposed rule would permit swaps entered into prior to an applicable compliance date (legacy swaps) to retain their legacy status in the event that they are amended to replace an interbank offered rate (IBOR) or other discontinued rate, repeal the inter-affiliate initial margin provisions, introduce an additional compliance date for initial margin requirements, clarify the point in time at which trading documentation must be in place, permit legacy swaps to retain their legacy status in the event that they are amended due to technical amendments, notional reductions, or portfolio compression exercises, and make technical changes to relocate the provision addressing amendments to legacy swaps that are made to comply with the Qualified Financial Contract Rules, as defined in the Supplementary Information section.

DATES: Comments should be received on or before December 9, 2019.

ADDRESSES: Interested parties are encouraged to submit written comments jointly to all of the agencies. Commenters are encouraged to use the title ''Margin and Capital Requirements for Covered Swap Entities'' to facilitate the organization and distribution of comments among the agencies.

OCC: You may submit comments to the OCC by any of the methods set forth below. Commenters are encouraged to submit comments through the Federal eRulemaking Portal or email, if possible. Please use the title ''Margin and Capital Requirements for Covered Swap Entities'' to facilitate the organization and distribution of the comments. You may submit comments by any of the following methods:

- *Federal eRulemaking Portal—Regulations.gov Classic or Regulations.gov Beta*

Regulations.gov Classic: Go to *https://www.regulations.gov/*. Enter ''Docket ID OCC–2019–0023'' in the Search Box and click ''Search.'' Click on ''Comment Now'' to submit public comments. For help with submitting effective comments please click on ''View Commenter's Checklist.'' Click on the ''Help'' tab on the *Regulations.gov* home page to get information on using *Regulations.gov*, including instructions for submitting public comments.

Regulations.gov Beta: Go to *https://beta.regulations.gov/* or click ''Visit New *Regulations.gov* Site'' from the *Regulations.gov* classic homepage. Enter ''Docket ID OCC–2019–0023'' in the Search Box and click ''Search.'' Public comments can be submitted via the ''Comment'' box below the displayed document information or click on the document title and click the ''Comment'' box on the top-left side of the screen. For help with submitting effective comments please click on ''Commenter's Checklist.'' For assistance with the *Regulations.gov* Beta site please call (877) 378–5457 (toll free) or (703) 454–9859 Monday–Friday, 9 a.m.–5 p.m. ET or email to *regulations@erulemakinghelpdesk.com*.

- *Email: regs.comments@occ.treas.gov*.
- *Mail:* Chief Counsel's Office, Attention: Comment Processing, Office of the Comptroller of the Currency, 400 7th Street SW, Suite 3E–218, Washington, DC 20219.
- *Hand Delivery/Courier:* 400 7th Street SW, Suite 3E–218, Washington, DC 20219.
- *Fax:* (571) 465–4326.

Instructions: You must include ''OCC'' as the agency name and ''Docket ID OCC–2019–0023'' in your comment. In general, the OCC will enter all comments received into the docket and publish the comments on the *Regulations.gov* website without change, including any business or personal information that you provide such as name and address information, email addresses, or phone numbers. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

You may review comments and other related materials that pertain to this

rulemaking action by any of the following methods:

• *Viewing Comments Electronically—Regulations.gov Classic or Regulations.gov Beta*

Regulations.gov Classic: Go to *https://www.regulations.gov/*. Enter ''Docket ID OCC–2019–0023'' in the Search box and click ''Search.'' Click on ''Open Docket Folder'' on the right side of the screen. Comments and supporting materials can be viewed and filtered by clicking on ''View all documents and comments in this docket'' and then using the filtering tools on the left side of the screen. Click on the ''Help'' tab on the *Regulations.gov* home page to get information on using *Regulations.gov*. The docket may be viewed after the close of the comment period in the same manner as during the comment period.

Regulations.gov Beta: Go to *https://beta.regulations.gov/* or click ''Visit New *Regulations.gov* Site'' from the *Regulations.gov* classic homepage. Enter ''Docket ID OCC–2019–0023'' in the Search Box and click ''Search.'' Click on the ''Comments'' tab. Comments can be viewed and filtered by clicking on the ''Sort By'' drop-down on the right side of the screen or the ''Refine Results'' options on the left side of the screen. Supporting Materials can be viewed by clicking on the ''Documents'' tab and filtered by clicking on the ''Sort By'' drop-down on the right side of the screen or the ''Refine Results'' options on the left side of the screen. For assistance with the *Regulations.gov* Beta site please call (877)-378–5457 (toll free) or (703) 454–9859 Monday–Friday, 9 a.m.–5 p.m. ET or email to *regulations@erulemakinghelpdesk.com*.

The docket may be viewed after the close of the comment period in the same manner as during the comment period.

• *Viewing Comments Personally:* You may personally inspect comments at the OCC, 400 7th Street SW, Washington, DC 20219. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 649–6700 or, for persons who are deaf or hearing impaired, TTY, (202) 649–5597. Upon arrival, visitors will be required to present valid government-issued photo identification and submit to security screening in order to inspect comments.

Board: You may submit comments, identified by Docket No. R–1682 and RIN No. 7100–AF62, by any of the following methods:

• *Agency Website: http://www.federalreserve.gov*. Follow the instructions for submitting comments at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm*.

• *Email: regs.comments@federalreserve.gov*. Include the docket number and RIN number in the subject line of the message.

• *Fax:* (202) 452–3819.

• *Mail:* Address to Ann E. Misback, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW, Washington, DC 20551.

All public comments are available from the Board's website at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, unless modified for technical reasons or to remove personally identifiable information at the commenter's request. Accordingly, comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper in Room 146, 1709 New York Avenue NW, Washington, DC 20006 between 9:00 a.m. and 5:00 p.m. on weekdays.

FDIC: You may submit comments, identified by RIN 3064–AF08, by any of the following methods:

• *Agency Website: https://www.FDIC.gov/regulations/laws/federal*.

• *Mail:* Robert E. Feldman, Executive Secretary, Attention: Comments/Legal ESS, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.

• *Hand Delivered/Courier:* The guard station at the rear of the 550 17th Street Building (located on F Street) on business days between 7:00 a.m. and 5:00 p.m.

• *Email: Comments@FDIC.gov*. Comments submitted must include ''FDIC'' and ''RIN 3064–AF08—Margin Amendments'': Margin and Capital Requirements for Covered Swap Entities.'' Comments received will be posted without change to *https://www.fdic.gov/regulations/laws/federal,* including any personal information provided.

FCA: We offer a variety of methods for you to submit your comments. For accuracy and efficiency reasons, commenters are encouraged to submit comments by email or through the FCA's website. As facsimiles (fax) are difficult for us to process and achieve compliance with section 508 of the Rehabilitation Act, we are no longer accepting comments submitted by fax. Regardless of the method you use, please do not submit your comments multiple times via different methods. You may submit comments by any of the following methods:

• *Email:* Send us an email at *reg-comm@fca.gov*.

• *FCA Website: http://www.fca.gov*. Click inside the ''I want to . . .'' field near the top of the page; select ''comment on a pending regulation'' from the dropdown menu; and click ''Go.'' This takes you to an electronic public comment form.

• *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.

• *Mail:* Barry F. Mardock, Deputy Director, Office of Regulatory Policy, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090.

You may review copies of all comments we receive at our office in McLean, Virginia or on our website at *http://www.fca.gov*. Once you are on the website, click inside the ''I want to . . .'' field near the top of the page; select ''find comments on a pending regulation'' from the dropdown menu; and click ''Go.'' This will take you to the Comment Letters page where you can select the regulation for which you would like to read the public comments. We will show your comments as submitted, including any supporting data provided, but for technical reasons we may omit items such as logos and special characters. Identifying information that you provide, such as phone numbers and addresses, will be publicly available. However, we will attempt to remove email addresses to help reduce internet spam.

FHFA: You may submit your written comments on the proposed rulemaking, identified by regulatory information number: (RIN) 2590–AB03, by any one of the following methods:

• *Agency Website: www.fhfa.gov/open-for-comment-or-input*.

• *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments. If you submit your comment to the Federal eRulemaking Portal, please also send it by email to FHFA at *RegComments@fhfa.gov* to ensure timely receipt by the agency. Please include ''RIN 2590–AB03'' in the subject line of the message.

• *Hand Delivery/Courier:* The hand delivery address is: Alfred M. Pollard, General Counsel, Attention: Comments/RIN 2590–AB03, Federal Housing Finance Agency, Constitution Center (OGC Eighth Floor), 400 7th St. SW, Washington, DC 20219. Deliver the package to the Seventh Street entrance Guard Desk, First Floor, on business days between 9:00 a.m. and 5:00 p.m.

• *U.S. Mail, United Parcel Service, Federal Express, or Other Mail Service:* The mailing address for comments is: Alfred M. Pollard, General Counsel, Attention: Comments/RIN 2590–AB03, Federal Housing Finance Agency, Constitution Center (OGC Eighth Floor), 400 7th St. SW, Washington, DC 20219.

Please note that all mail sent to FHFA via U.S. Mail is routed through a national irradiation facility, a process that may delay delivery by approximately two weeks.

All comments received by the deadline will be posted for public inspection without change, including any personal information you provide, such as your name, address, email address and telephone number on the FHFA website at *http://www.fhfa.gov*. In addition, copies of all comments received will be available for examination by the public through the electronic rulemaking docket for this proposed rule also located on the FHFA website.

FOR FURTHER INFORMATION CONTACT:

OCC: Chris McBride, Director for Market Risk, Treasury and Market Risk Policy, (202) 649–6402, or Allison Hester-Haddad, Counsel, Chief Counsel's Office, (202) 649–5490, for persons who are deaf or hearing impaired, TTY (202) 649–5597, Office of the Comptroller of the Currency, 400 7th Street SW, Washington, DC 20219.

Board: Constance Horsley, Deputy Associate Director, (202) 452–5239, Lesley Chao, Lead Financial Institution Policy Analyst, (202) 974–7063, or John Feid, Principal Economist, (202) 452–2385, Division of Supervision and Regulation; Patricia Yeh, Senior Counsel, (202) 452–3089, Jason Shafer, Senior Counsel, (202) 728–5811, or Justyna Bolter, Senior Attorney, (202) 452–2686, Legal Division; for users of Telecommunication Devices for the Deaf (TDD) only, contact 202–263–4869; Board of Governors of the Federal Reserve System, 20th and C Streets NW, Washington, DC 20551.

FDIC: Irina Leonova, Senior Policy Analyst, *ileonova@fdic.gov,* Capital Markets Branch, Division of Risk Management Supervision, (202) 898–3843; Thomas F. Hearn, Counsel, *thohearn@fdic.gov,* Legal Division, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.

FCA: Jeremy R. Edelstein, Associate Director, Finance & Capital Market Team, Timothy T. Nerdahl, Senior Policy Analyst, Clayton D. Milburn, Senior Financial Analyst, Office of Regulatory Policy, (703) 883–4414, TTY (703) 883–4056, or Richard A. Katz, Senior Counsel, Office of General Counsel, (703) 883–4020, TTY (703) 883–4056, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090.

FHFA: Christopher Vincent, Senior Financial Analyst, Office of Financial Analysis, Modeling & Simulations, (202) 649–3685, *Christopher.Vincent@fhfa.gov,* or James P. Jordan, Associate General Counsel, Office of General Counsel, (202) 649–3075, *James.Jordan@fhfa.gov,* Federal Housing Finance Agency, Constitution Center, 400 7th St. SW, Washington, DC 20219. The telephone number for the Telecommunications Device for the Hearing Impaired is (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. Background on the Swap Margin Rule

The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) required the OCC, Board, FDIC, FCA, and FHFA (each, an agency, and collectively, the agencies) to jointly adopt rules that establish capital and margin requirements for swap entities that are prudentially regulated by one of the agencies (covered swap entities).[1] These capital and margin requirements apply to swaps that are not cleared by a registered derivatives clearing organization or a registered clearing agency (non-cleared swaps).[2] For the remainder of this preamble, the term ''non-cleared swaps'' refers to non-cleared swaps and non-cleared security-based swaps unless the context requires otherwise.

The Basel Committee on Banking Supervision (BCBS) and the Board of the International Organization of Securities Commissions (IOSCO) established an international framework for margin requirements on non-cleared derivatives in September 2013 (BCBS/IOSCO framework).[3] Following the establishment of the BCBS/IOSCO framework, on November 30, 2015, the agencies published regulations that require swap dealers and security-based swap dealers under the agencies' respective jurisdictions to exchange margin with their counterparties for swaps that are not centrally cleared (Swap Margin Rule or Rule), which includes many of the principles and other aspects of the BCBS/IOSCO framework.[4] In particular, the Swap Margin Rule adopted the implementation schedule set forth in the BCBS/IOSCO framework, including the revised implementation schedule adopted on March 18, 2015.[5]

The Swap Margin Rule established an effective date of April 1, 2016, with a phased-in compliance schedule for the initial and variation margin requirements.[6] On or after March 1, 2017, all covered swap entities were required to comply with the variation margin requirements for transactions with other swap entities and financial end user counterparties. The Swap Margin Rule presently requires all covered swap entities to comply with the initial margin requirements for non-cleared swaps with all financial end users with a material swaps exposure and with all swap entities by September 1, 2020.

The Swap Margin Rule's requirements generally apply only to a non-cleared swap entered into on or after the applicable compliance date.[7] A non-cleared swap entered into prior to an entity's applicable compliance date is essentially ''grandfathered'' by this regulatory provision, in that the non-cleared swap is generally not subject to the margin requirements in the Swap Margin Rule (legacy swap). However, the agencies explained in the preamble of the Swap Margin Rule that a legacy swap that is later amended or novated on or after the applicable compliance

[1] Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111–203, 124 Stat. 1376 (2010). *See* 7 U.S.C. 6s; 15 U.S.C. 78o–10. Sections 731 and 764 of the Dodd-Frank Act added a new section 4s to the Commodity Exchange Act of 1936, as amended, and a new section, section 15F, to the Securities Exchange Act of 1934, as amended, respectively, which require registration with the Commodity Futures Trading Commission (CFTC) of swap dealers and major swap participants and the U.S. Securities and Exchange Commission (SEC) of security-based swap dealers and major security-based swap participants (each a swap entity and, collectively, swap entities). Section 1a(39) of the Commodity Exchange Act of 1936, as amended, defines the term ''prudential regulator'' for purposes of the margin requirements applicable to swap dealers, major swap participants, security-based swap dealers and major security-based swap participants. *See* 7 U.S.C. 1a(39).

[2] A ''swap'' is defined in section 721 of the Dodd-Frank Act to include, among other things, an interest rate swap, commodity swap, equity swap, and credit default swap, and a security-based swap is defined in section 761 of the Dodd-Frank Act to include a swap based on a single security or loan or on a narrow-based security index. *See* 7 U.S.C. 1a(47); 15 U.S.C. 78c(a)(68).

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

[4] 80 FR 74840 (November 30, 2015).

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

[6] The applicable compliance date for a covered swap entity is based on the average daily aggregate notional amount of non-cleared swaps, foreign exchange forwards and foreign exchange swaps of the covered swap entity and its counterparty (accounting for their respective affiliates) for each business day in March, April, and May of that year. The applicable compliance dates for initial margin requirements that are currently in place, and the corresponding average daily aggregate notional amount thresholds, are: September 1, 2016, $3 trillion; September 1, 2017, $2.25 trillion; September 1, 2018, $1.5 trillion; September 1, 2019, $0.75 trillion; and September 1, 2020, all swap entities and counterparties. *See* § __.1(e) of the Swap Margin Rule. In this proposed rule, the agencies are also proposing to add one additional year to this schedule for certain counterparties.

[7] *See* § __.1(e) of the Swap Margin Rule.

date should be subject to the requirements of the Swap Margin Rule, in the interests of preventing evasion of the Rule's margin requirements.[8]

The Swap Margin Rule has recently been amended to (1) provide relief to legacy swaps that are amended to achieve compliance with final rules that established restrictions on and requirements for certain non-cleared swaps and certain other qualified financial contracts of U.S. global systemically important banking organizations and their subsidiaries and the U.S. operations of foreign global systemically important banking organizations (QFC Rules) [9] and (2) subject to certain conditions, provide relief for entities located in the United Kingdom to transfer their existing swap portfolios that face counterparties located in the European Union to an affiliate or other related establishment located within the European Union or the United States while maintaining legacy status for such portfolios.[10] This notice of proposed rulemaking would make the following changes to the Swap Margin Rule:

First, the proposal would provide relief by allowing legacy swaps to be amended to replace existing interest rate provisions based on certain interbank offered rates (IBORs) and other interest rates that are reasonably expected to be discontinued or are reasonably determined to have lost their relevance as a reliable benchmark due to a significant impairment, without such swaps losing their legacy status.

Second, the proposal would amend the Swap Margin Rule's requirements for inter-affiliate swaps. The proposal would repeal the requirement for a covered swap entity to collect initial margin from its affiliates, but would retain the requirement that variation margin be exchanged for affiliate transactions.

Third, the proposal would add an additional initial margin compliance period for certain smaller counterparties, and clarify the existing trading documentation requirements in § __.10 of the Rule.

Fourth, the proposal would amend the Swap Margin Rule to permit amendments caused by conducting certain routine life-cycle activities that covered swap entities may conduct for legacy swaps, such as reduction of notional amounts and portfolio compression exercises, without triggering margin requirements.

These aspects of the proposal are each discussed in greater detail below.

II. Interbank Offered Rates

A. Background on IBORs

The proposed rule would amend the Swap Margin Rule to permit a covered swap entity to amend a legacy swap in order to replace an IBOR with an alternative reference rate or rates, without triggering margin requirements.

An IBOR is a benchmark interest rate that is intended to represent banks' cost of unsecured wholesale borrowing. IBORs [11] have been used as the benchmark interest rate for a large volume and broad range of existing financial products and contracts, including for an estimated $190 trillion US Dollar LIBOR (USD LIBOR) exposure, of which $145 trillion represents over-the-counter derivatives exposure (as of year-end 2016).[12] However, the discovery of, and numerous regulatory actions to seek redress of, market manipulation and false reporting of the many IBORs, together with the post-crisis decline in liquidity in interbank unsecured funding markets, have undermined confidence in the reliability and robustness of IBORs.

As a result, the Financial Stability Board (FSB) and the U.S. Financial Stability Oversight Council (FSOC) requested that government and industry stakeholders undertake implementation of new designs and methodologies for IBORs, and the identification of viable alternative near risk-free rates in their respective currencies (U.S. dollar in the case of the United States) with a focus on the feasibility of new rate methodologies, including identification of suitable administrators and any necessary infrastructure to support these rates.[13]

The Federal Reserve Board and Federal Reserve Bank of New York convened the Alternative Reference Rates Committee (ARRC) [14] in 2014 to identify an alternative reference rate for USD LIBOR and create an implementation plan to promote the use of the selected alternative on a voluntary basis. In 2017, the ARRC selected the Secured Overnight Funding Rate (SOFR), which is designed to be representative of general funding conditions in the overnight Treasury repo market. The ARRC has noted that use of SOFR is voluntary and that other benchmarks can also be considered as potential alternatives for USD LIBOR. For example, the American Financial Exchange is offering Ameribor as a potential USD LIBOR replacement rate.[15] In addition, benchmarks such as an Overnight Bank Funding Rate were suggested by some market participants as a potential alternative.

In July 2017, the U.K. Financial Conduct Authority (UKFCA), which regulates ICE Benchmark Administration, the administrator of LIBOR, announced that it has sought commitments from LIBOR panel banks to continue to contribute to LIBOR through the end of 2021, but that the UKFCA will not use its powers to compel or persuade contributions beyond that date. The UKFCA has also warned that it may judge LIBOR to no longer be representative of its underlying market should it persist past this date. Thus, it is possible that LIBOR will cease to be published at the end of 2021. Consequently, it is likely that derivatives contracts that reference LIBOR will need to be amended to replace LIBOR.

In consideration of this uncertainty, the International Swaps and Derivatives Association, Inc. (ISDA), which produces standard documentation used by parties to derivatives contracts, indicated that it plans to amend its documentation to ''include fallbacks that would apply upon the permanent discontinuation of certain key

[8] 80 FR 74850–51.

[9] 83 FR 50805 (October 10, 2018). The QFC Rules are codified as follows: 12 CFR part 47 (OCC's QFC Rule); 12 CFR part 252, subpart I (Board's QFC Rule); 12 CFR part 382 (FDIC's QFC Rule).

[10] 84 FR 9940 (March 19, 2019).

[11] IBORs include the London Interbank Offered Rate (LIBOR), the Tokyo Interbank Offered Rate (TIBOR), the Bank Bill Swap Rate (BBSW), the Singapore Interbank Offered Rate (SIBOR), the Canadian Dollar Offered Rate (CDOR), the Euro Interbank Offered Rate (EURIBOR), and the Hong Kong Interbank Offered Rate (HIBOR).

[12] ''Second Report of the Alternative Reference Rates Committee'' published in March 2018, available at *https://www.newyorkfed.org/medialibrary/Microsites/arrc/files/2018/ARRC-Second-report.*

[13] ''Reforming Major Interest Rate Benchmarks'' published by the Financial Stability Board on July 22, 2014, available at *http://www.fsb.org/wp-content/uploads/r_140722.pdf.* Several central banks responded to this request and convened working groups of market participants and official sector representatives, including the United Kingdom, Japan, Switzerland, and the Eurozone. The work has also been coordinated at the international level by the FSB's Official Sector Steering Group (OSSG).

[14] The voting members of the 2014 ARRC were Bank of America, Barclays, BNP Paribas, Citigroup, Credit Suisse, Deutsche Bank, Goldman Sachs, HSBC, JP Morgan Chase & Co., Morgan Stanley, Nomura, RBS, Société Générale, UBS, and Wells Fargo; the non-voting members were Bank of New York Mellon, CME, DTCC, ISDA and LCH.Clearnet; the ex officio members were Board of Governors of the Federal Reserve System, Federal Reserve Bank of New York, U.S. Commodity Futures Trading Commission, U.S. Treasury Department and Office of Financial Research. The ARRC's membership has changed over time. For a list of the latest members, *see https://www.newyorkfed.org/arrc.*

[15] *See https://ameribor.net/.*

IBORs.'' [16] For new non-cleared swaps, market participants will have an option to amend their documentation via an ISDA benchmark supplement. For non-cleared swaps that are already in place, market participants will have the option to utilize an ISDA protocol that will specify amended definitions, triggers, and other adjustments.[17]

Due to the potential discontinuation of LIBOR at the end of 2021, covered swap entities face uncertainty about the way their swap contracts based on LIBOR and other IBORs will operate after the permanent discontinuation date without a reliable benchmark rate. A benchmark rate is a critical term for calculating payments under a swap contract. In many instances, these firms may decide to amend existing swap contracts to replace an IBOR before the IBOR becomes discontinued. Such amendments may also trigger follow-on amendments [18] that the counterparties determine are necessary to maintain the economics of the contract. Absent the proposed revisions to the Swap Margin Rule, one or more of these amendments could affect the legacy status of a non-cleared swap and make it subject to the requirements of the Rule. In order to enable covered swap entities and their counterparties to avoid the risk of future financial instability, the agencies believe it is appropriate to permit covered swap entities to amend the reference rates in a legacy swap contract and to adopt necessary follow-on amendments without converting the legacy swap into a swap subject to the Swap Margin Rule. The conditions of eligibility for the amendments are described in the next section of this **SUPPLEMENTARY INFORMATION.**

B. Proposed Rule on IBORs

In recognition of the ongoing efforts to transition away from key IBORs due to their potential discontinuation, the agencies are proposing to amend the Swap Margin Rule to remove impediments that would limit the ability of covered swap entities to replace certain rates in their legacy non-cleared swaps. Specifically, the agencies propose to amend § __.1(h) to preserve the legacy status of a non-cleared swap after a covered swap entity replaces certain reference rates. Proposed § __.1(h) recognizes that these replacements could be carried out using a variety of legal mechanisms by permitting amendments accomplished by the parties': Adherence to a protocol; contractual amendment of an agreement or confirmation; or execution of a new contract in replacement of and immediately upon termination of an existing contract (*i.e.,* tear-up), subject to the limitations discussed below.

The proposed rule is intended to be flexible with respect to the method of amendment. The proposal would permit amendments to be executed with respect to an individual non-cleared swap or on a netting set level, as long as the other proposed criteria are met.

The proposed rule describes the type of rate that can be replaced and the accompanying changes that would be permitted. Proposed section § __ .1(h)(3)(i) would permit amendments that are made solely to accommodate the replacement of an IBOR or a replacement of any other non-IBOR interest rate that a covered swap entity reasonably expects to be discontinued or reasonably determines has lost its relevance as a reliable benchmark due to a significant impairment with an alternate reference rate.[19] For example, if a benchmark administrator materially changes the inputs in the benchmark calculation because an input is no longer available, a covered swap entity may determine that the benchmark has lost its relevance as a reliable benchmark due to a significant impairment.

The proposed rule lists the IBORs that could be replaced, including LIBOR, TIBOR, BBSW, SIBOR, CDOR, EURIBOR, and HIBOR. Although the current uncertainty surrounding reference rates is tied to IBORs, the agencies are also proposing a second, more qualitative standard that would be applicable to other categories of reference rates, should the need arise in the future. This forward-looking standard is designed to encourage covered swap entities to resolve critical uncertainties before an interest rate benchmark is discontinued, or loses its market relevance, in order to minimize disturbance to the markets.

The agencies also anticipate that a reference rate may need to be replaced more than one time. For example, an IBOR may first be replaced with fallback provisions at a time when a permanent alternative rate is not yet available or amendment documentation has not yet been developed. Subsequently, fallback provisions may be replaced with permanent alternative rates. If the original rate that is being replaced is an IBOR or any other non-IBOR interest rate benchmark that otherwise meets the requirements of the proposed rule that a covered swap entity reasonably expects it to be discontinued or reasonably determines that it has lost its relevance as a reliable benchmark due to a significant impairment, the non-cleared swap may be amended more than once to accommodate ongoing developments toward a permanent replacement rate. There is no limit to the number of amendments that can take place, as long as the rate that was originally present in the non-cleared swap met the criteria in either § __ .1(h)(3)(i)(A) or § __.1(h)(3)(i)(B). The proposed approach of permitting subsequent amendments takes into account that any subsequent changes to the reference rate will be the subject of negotiations among counterparties that are incentivized to agree to a reasonable rate. The proposed rule would not permit subsequent amendments that change rates or other terms of the non-cleared swap for any purpose other than for those purposes explicitly set out in § __.1(h), without triggering application of the margin requirements.

To benefit from the treatment of this new legacy swap provision, a covered swap entity must make the amendments to the non-cleared swap solely to accommodate the replacement of a rate described in the proposed rule. The proposed rule is flexible as to the incoming replacement rate by leaving it up to the counterparties to select a mutually agreeable replacement rate. The agencies expect that any replacement rate, including any subsequent replacement rate, would be agreed upon by the parties after assessing its complexity, safety and soundness, and taking into

[16] ISDA Consultation on Pre-Cessation Issues for LIBOR and Certain Other Interbank Offered Rates (IBORs), May 16, 2019, available at *https://www.isda.org/a/md6ME/FINAL-Pre-cessation-issues-Consultation.pdf.*

[17] ISDA Supplemental Consultation on Spread and Term Adjustments for Fallbacks in Derivatives Referencing USD LIBOR, CDOR and HIBOR and Certain Aspects of Fallbacks for Derivatives Referencing SOR, May 16, 2019, available at *https://www.isda.org/a/n6tME/Supplemental-Consultation-on-USD-LIBOR-CDOR-HIBOR-and-SOR.pdf.*

[18] Follow-on amendments may include a variety of spread adjustments resulting from the move from a term rate to an overnight rate, from unsecured to secured, or could result from a change in tenor, among others.

[19] Under the EU Benchmark Regulation (Regulation (EU) 2016/1011 (June 8, 2016)), a benchmark administrator is expected to regularly assess whether a critical benchmark measures the underlying market or economic reality. In certain circumstances, a regulatory authority of a benchmark administrator may complete its own assessment of a benchmark's representativeness as well. Covered swap entities may refer to such assessments or other public statements by benchmark administrators or regulatory authorities in order to inform their expectations about whether a benchmark will be discontinued or continues to be reliable. In addition, covered swap entities may consult the IOSCO Principles for Financial Benchmarks (July 2013), to assist in determining whether a benchmark has lost its relevance as a reliable benchmark, available at *http://www.iosco.org/library/pubdocs/pdf/IOSCOPD415.pdf.*

consideration associated risk management practices.[20]

The agencies also acknowledge that replacing a reference rate could require other contractual changes to maintain the economics of the non-cleared swap and to preserve the relative values to the parties after incorporating changes in the reference rate. The proposed rule would permit changes that incorporate spreads and other adjustments that accompany and implement the replacement rate amendment. The rule would also permit other, more administrative and technical changes necessary to operationalize the determination of payments or other exchanges of economic value using the replacement rate, including changes to determination dates, calculation agents, and payment dates. These types of administrative changes may be necessary to adjust computations and operational provisions to reflect the differences between an IBOR and the replacement rate or rates.

The agencies envision that a number of contractual changes could be necessary to maintain the economics of the non-cleared swap, and for this reason, have drafted the proposed rule so it permits these changes. For example, legacy swaps that contain USD LIBOR may be referencing 1-day LIBOR, 1-week LIBOR, 1-month LIBOR, 2-month LIBOR, 3-month LIBOR, 6-month LIBOR or 12-month LIBOR. In these cases, a replacement rate that could be overnight and could be based, for example, on a fully secured funding rate (*e.g.,* SOFR) may need to incorporate a market risk (term structure) spread to substitute for the market risk component of LIBOR that is of a longer maturity than overnight. Similarly, because LIBOR is unsecured and therefore includes an element of bank credit risk, it is likely that a replacement rate that could be overnight and could be based, for example, on a fully secured funding rate (*e.g.,* SOFR) would need a credit spread to adjust the new reference rate to a comparable legacy LIBOR rate. This may also be the case for non-USD IBORs that could be replaced by overnight funding rates.

The proposed rule would also permit administrative and technical changes necessary for operational purposes. For example, for an overnight rate, interest on financial instruments that pay periodically (*e.g.,* quarterly) may be set in arrears by compounding or averaging the daily observations over the relevant period. To offer flexibility in the transition to a new reference rate, the proposed rule would permit the replacement of an IBOR or other discontinued reference rate in the floating leg of a fixed-floating rate swap, and would also permit the interest rate in the fixed leg to be modified in order to maintain the economics of the non-cleared swap.

However, the agencies do not believe that the relief being provided for rate replacement purposes should be expansively applied to encompass all changes to a legacy swap. Accordingly, the proposed rule text clarifies that the proposed safe harbor for legacy swaps would be unavailable if the amendments extend the maturity or increase the total effective notional amount of the non-cleared swap. For example, a one time, lump-sum compensatory payment in lieu of a spread adjustment would not increase the total effective notional amount and would be permitted. On the other hand, extending the maturity date to allow for additional payments to be made under the non-cleared swap would be a change outside the scope of the proposed rule.

The agencies envision that covered swap entities may carry out certain amendments, including those executed by method of termination and replacement, for the purpose of implementing changes that might qualify for more than one exemption provided under § __.1(h). When a legacy swap is replaced with a new contract that reflects more than one exemption, each of the provisions in the replacement contract that differs from the terminated contract must be permitted under the respective subsection of § __.1(h). For example, a covered swap entity and its counterparty may decide to replace an IBOR with a different reference rate and, at the same time, make changes to comply with the QFC Rules. The IBOR-related changes must comply with § __.1(h)(3) and the QFC Rules changes must comply with § __.1(h)(1) for the replacement contract to meet the ''solely to comply'' standard and, in the case of § __.1(h)(3), the ''solely to accommodate'' standard.

III. Non-Cleared Swaps Between CSEs and an Affiliate

The proposal would amend the treatment of affiliate transactions in the Swap Margin Rule by creating an exemption from the initial margin requirements for non-cleared swaps between affiliates.[21] The proposal would, however, retain the requirement that affiliates exchange variation margin.

Currently, § __.11 of the Swap Margin Rule establishes special rules for transactions between a covered swap entity and an ''affiliate,'' generally defined in the Swap Margin Rule as an entity that is consolidated with the dealer on an accounting basis, or consolidated on a common basis by another entity.[22] The rules applicable to transactions with affiliates differ from the rules applicable to transactions with non-affiliates. For example, a covered swap entity is not required to post initial margin to an affiliate or use an independent custodian for most forms of initial margin collected from an affiliate. In addition, the covered swap entity does not need to apply a $50 million initial margin threshold amount to the covered swap entity's affiliates on an aggregate basis, and the covered swap entity is not required to use the ten-day holding period for calculating initial margin using an initial margin model under § __.8(d)(1).[23] Consistent with the requirements for non-cleared swaps between non-affiliated counterparties, current § __.11 requires the exchange of variation margin for affiliate transactions. As discussed in the preamble to the final Swap Margin Rule, the initial and variation margin requirements applicable to affiliate transactions were intended to advance the mandate under the Dodd-Frank Act to ''offset the greater risk to swap entities from the use of swaps that are not cleared and help ensure the safety and soundness of the covered swap entity and are appropriate for the risk associated with the non-cleared swap entity.'' [24] The agencies noted that the requirement to collect initial margin from, but not post initial margin to, affiliates ''should help to protect the safety and soundness of covered swap entities in the event of an affiliated counterparty default.'' [25] Furthermore, by requiring that inter-affiliate swaps be margined, the requirement was intended

[20] The replacement rate is also expected to be consistent with international standards, such as the IOSCO Principles for Financial Benchmarks. *See https://www.iosco.org/library/pubdocs/pdf/IOSCOPD415.pdf.*

[21] Under the BCBS/IOSCO framework, no common standard was set for inter-affiliate transactions, in recognition of the existing and varied approaches to the topic across jurisdictions.

[22] Section __.2 provides that two companies are ''affiliates'' if either company consolidates the other on financial statements prepared in accordance with U.S. Generally Accepted Accounting Principles, the International Financial Reporting Standards, or other similar standards, or if both companies are consolidated with a third company.

[23] For a description of the application of this set of exemptions, *see* the preamble to the final rule, 80 FR at 74887.

[24] 80 FR at 74889.

[25] *Id.*

to prevent unmargined swaps from posing a risk to systemic stability.[26]

Since the Swap Margin Rule was implemented, supervisory experience has shown that inter-affiliate swaps are used by covered swap entities for internal risk management purposes whereby a banking organization transfers risk to a centralized risk management function, which is considered to be a prudent risk management practice. As more covered swap entities have come into scope, the amount of inter-affiliate initial margin collected by covered swap entities has increased. This has led the affected banking organizations to borrow increasing amounts of cash in the debt markets to fund eligible collateral, placing additional demands on their asset-liability management structure and increasing their liability exposure to depositors and other creditors in the market. The removal of the inter-affiliate initial margin requirement would provide these banking organizations with additional flexibility for internal allocation of collateral. The agencies believe that such risk management practices often improve the safety and soundness of a covered swap entity, and therefore, to encourage such prudent risk management, propose to exempt inter-affiliate swaps from the Rule's initial margin requirements. The proposal does not remove the requirement that covered swap entities must collect and post initial margin with other non-affiliate covered swap entities.

The agencies also note that because other jurisdictions (as well as the U.S. market regulators) do not consistently apply swap margin rules to inter-affiliate swaps, the Rule's imposition of initial margin requirements for inter-affiliate swaps may have provided limited systemic risk benefits and put U.S. banking firms at a competitive disadvantage. For example, many covered swap entities subject to the Swap Margin Rule are banking organizations that are typically internationally active with operations in many jurisdictions that may exempt or not impose initial margin requirements on inter-affiliate transactions.[27] In addition, the imposition of initial margin requirements may depend on the banking organization's home country, presence in the United States, corporate organization, or business strategy. For example, internationally active banking organizations that have a cross-border organizational structure that relies on separate legal entities must currently use inter-affiliate swaps to centralize risk management of the overall banking organization's outward-facing derivatives exposures, whereas other internationally active banks that operate cross-border through branching structures do not have a comparable risk management need for such inter-affiliate swaps. The agencies do not believe this difference in corporate organization justifies different initial margin requirements under the Swap Margin Rule.

The agencies are not proposing to alter the Rule's uniform requirements for covered swap entities to exchange variation margin with their affiliates. The agencies note it has become routine in recent years for covered swap entities to exchange variation margin on non-cleared swaps with their affiliates. As a best practice for risk management, the exchange of variation margin serves to reflect ongoing economic transfers of current exposure for assets and liabilities between the various parts of the banking organization over the life of each non-cleared swap. This in turn contributes to the safety and soundness of the covered swap entity, and the larger banking organization as a whole. The exchange of variation margin will remain a requirement under the general rules of § __.4 and will continue to be applicable to inter-affiliate swaps.

The proposal would also supplement the definition of ''affiliate'' for purposes of § __.11 to include not only the definition of ''affiliate'' found in § __.2 of the Swap Margin Rule, focusing on consolidation under applicable accounting rules, but also the established ''catch-all'' legal standard for affiliation in banking focusing on the direct or indirect exercise of controlling influence over the management or policies of the controlled company. Absent this change, the Swap Margin Rule would, by its general provisions, require covered swap entities to post initial margin to, and collect initial margin from, unconsolidated entities that are treated as affiliates of the covered swap entity for other legal or regulatory purposes.

Finally, the agencies note that certain affiliate transactions are subject to the requirements of sections 23A and 23B of the Federal Reserve Act as implemented by the Federal Reserve's Regulation W, as these requirements continue to apply to affiliate transactions with an insured depository institution.[28] Currently, almost all U.S. covered swap entities are insured depository institutions that would be subject to Sections 23A, 23B, and Regulation W. These provisions are specifically tailored to address risks arising from transactions, including non-cleared swaps, between affiliates. As such, the agencies believe that they are the more effective tools to address risks arising from transactions between affiliates. The Board continues to consider how inter-affiliate non-cleared swaps can be addressed under Regulation W.

IV. Additional Compliance Date for Initial Margin Requirements

The agencies are proposing to give covered swap entities an additional year to implement initial margin requirements for certain smaller counterparties. The implementation of both initial and variation margin requirements started on September 1, 2016. With respect to initial margin requirements, the requirements in the Swap Margin Rule are implemented in five phases from September 1, 2016, through September 1, 2020, depending on the size of the covered swap entity's portfolio of non-cleared swaps and the counterparty's portfolio of non-cleared swaps. Variation margin requirements for all covered swap entities and counterparties were completely phased in by March 1, 2017. This schedule was consistent with BCBS/IOSCO framework when the Swap Margin Rule was adopted in 2015.

The phase-in schedule for initial margin is based on the average daily aggregate notional amount (AANA) of non-cleared swaps held in each party's market-wide portfolio, measured separately from the standpoint of the covered swap entity and the standpoint of the counterparty.[29] With the recent

[26] 80 FR at 74889.

[27] Under the BCBS/IOSCO framework, no common standard was set for inter-affiliate swap transactions, in recognition of these existing and varied approaches to the topic of inter-affiliate transactions generally. 79 FR at 57353; Article 6 of the BCBS and IOSCO ''Margin Requirements for Non-Centrally Cleared Derivatives'' (September 2013), available at *https://www.bis.org/publ/bcbs261.pdf.*

[28] 12 U.S.C. 371c and 371c–1; 12 CFR part 223. In adopting the Swap Margin Rule, the agencies noted that transactions between banks and their affiliates have long been subject to their own special set of regulatory restrictions, particularly in the case of U.S. banks pursuant to sections 23A and 23B of the Federal Reserve Act. *See* 80 FR at 74889 (noting the obligation of banks that are covered swap entities to comply with additional regulatory restrictions on inter-affiliate swap transactions, such as those required by sections 23A and 23B).

[29] As noted above, the AANA is determined based on the non-cleared swaps, foreign exchange forwards and foreign exchange swaps of each of the covered swap entity and its counterparty (accounting for their respective affiliates) for each business day in March, April and May of that year. The corresponding average daily notional thresholds for each compliance date currently are: September 1, 2016, $3 trillion; September 1, 2017, $2.25 trillion; September 1, 2018, $1.5 trillion; September 1, 2019, $0.75 trillion; and September 1, 2020, all covered swap entities and their counterparties. *See* § __.1(e) of the Swap Margin Rule.

occurrence of the fourth phase of initial margin compliance obligations on September 1, 2019—for covered swap entities and counterparties with an AANA of $750 billion to $1.5 trillion—the group currently scheduled for the fifth phase of compliance in the upcoming year includes all remaining entities within the scope of the initial margin requirements, spanning AANAs from $8 billion up to $750 billion.[30]

The industry's implementation work to execute new trading documentation to meet variation margin compliance obligations by 2017 largely excluded any rule-compliant documentation for initial margin, due to the greater operational complexity associated with ''T+1'' portfolio reconciliation of internally-modeled initial margin amounts and third-party segregation of initial margin collateral. The industry has raised significant concerns about the operational and other difficulties associated with beginning to exchange initial margin with the large number of relatively small counterparties encompassed in the Swap Margin Rule's fifth phase. In recognition of these difficulties, the BCBS/IOSCO framework was recently revised to permit an additional phase for smaller counterparties, and the agencies believe it is appropriate to amend the Swap Margin Rule in a similar manner. [31] Accordingly, the agencies are proposing to amend the compliance schedule to add a sixth phase of compliance for certain smaller entities that are currently subject to the ''phase five'' compliance deadline. The proposed amendments would require compliance by September 1, 2020, for counterparties with an AANA ranging from $50 billion up to $750 billion, while the compliance date for all other counterparties (with an AANA ranging from a ''material swaps exposure'' of $8 billion up to $50 billion) would be extended to September 1, 2021.

V. Documentation Requirements

Complying with initial margin requirements creates regulatory obligations for covered swap entities and implications for their counterparties.[32] Covered swap entities must calculate initial margin to be collected and posted to determine if and when collection or posting of initial margin is required. Under § __.3, a covered swap entity must collect or post initial margin when it calculates an initial margin amount that, after subtracting the initial margin threshold amount (not including any portion of the initial margin threshold amount already applied by the covered swap entity or its affiliates to other non-cleared swaps or non-cleared security-based swaps with the counterparty or its affiliates), exceeds zero. It is only at the time at which the covered swap entity is required to collect or post initial margin pursuant to § __.3 that it is required to have completed the initial margin trading documentation required by § __.10. For the avoidance of doubt, the agencies are proposing to amend § __.10 to expressly state that a covered swap entity is not required to execute initial margin trading documentation with a counterparty prior to the time that it is required to collect or post initial margin pursuant to § __.3.[33]

As discussed in the Swap Margin Rule, a covered swap entity must execute trading documentation with each counterparty that falls within the scope of the Rule's definition of a swap entity or a financial end user regarding credit support arrangements unless the swap entity or financial end user is explicitly exempt from the Rule pursuant to § __.1(d).[34] The documentation must provide the covered swap entity the contractual rights and obligations to collect and post initial and variation margin in such amounts, in such form, and under such circumstances as are required by the Rule. The documentation must also specify the methods, procedures, rules, and inputs for determining the value of each non-cleared swap for purposes of calculating variation margin and the procedures by which any disputes concerning the valuation of non-cleared swaps or the valuation of assets collected or posted as initial margin or variation margin may be resolved. Finally, the documentation must also describe the methods, procedures, rules, and inputs used to calculate initial margin for non-cleared swaps entered into between the covered swap entity and the counterparty.[35]

The custody agreement requirements in § __.7 of the Swap Margin Rule require such agreements to be in place only after initial margin is required to be collected or posted pursuant to § __.3, or when initial margin is posted by a covered swap entity beyond an amount required by the Rule. The agencies expect that covered swap entities will closely monitor their exposures and take appropriate steps to ensure that trading documentation is in place at such time as initial margin is required to be exchanged pursuant to § __.3. The agencies note that this view is consistent with statements of the BCBS and IOSCO with respect to internationally agreed standards for margin requirements for non-centrally cleared derivatives.[36]

VI. Portfolio Compression Exercises and Other Amendments

The Swap Margin Rule applies to non-cleared swaps entered into on or after the applicable compliance date. As discussed above, the agencies have also expressed concerns about amendments to a swap that was entered into before the applicable compliance date if the amendments would have the effect of allowing covered swap entities and their counterparties to evade or otherwise artificially delay implementation of margin requirements. In particular, the agencies have been concerned whether market participants would amend legacy swaps, rather than entering into new ones and exchanging margin pursuant to the Rule once the legacy swaps expire according to their original terms. The industry has raised concerns whether certain amendments, particularly non-material amendments to non-economic terms, as well as amendments that are made to reduce operational or counterparty risk, such as notional reductions and portfolio

[30] The Swap Margin Rule does not require initial margin to be exchanged with any counterparty whose AANA is less than $8 billion as of the previous June, July, and August. *See* § __.3 and the definition of ''material swaps exposure'' in § __.1.

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

[32] *See* § __.1(f) (providing that once a covered swap entity must comply with the margin requirements for non-cleared swaps and non-cleared security-based swaps with respect to a particular counterparty, the covered swap entity remains subject to the requirements of the Swap Margin Rule with respect to that counterparty).

[33] Section __.10 has parallel requirements for covered swap entities to execute trading documentation providing the covered swap entity with the contractual right to collect and post variation margin in such amounts, in such form, and under such circumstances as are required by the Swap Margin Rule. There is no threshold margin amount for variation margin pursuant to § __.4, and § __.10 requires covered swap entities to execute variation margin trading documentation no later than the time the covered swap entity commences trading non-cleared swaps with any swap entity or financial end user covered by the Swap Margin Rule.

[34] 80 FR 74886–74887 (describing the trading documentation requirements of § __.10).

[35] *Id.*

[36] BCBS/IOSCO statement on the final implementation phases of the *Margin requirements for non-centrally cleared derivatives,* March 5, 2019, available at *https://www.iosco.org/library/pubdocs/pdf/IOSCOPD624.pdf,* stating that ''the framework does not specify documentation, custodial or operational requirements if the bilateral initial margin amount does not exceed the framework's €50 million initial margin threshold. It is expected, however, that covered entities will act diligently when their exposures approach the threshold to ensure that the relevant arrangements needed are in place if the threshold is exceeded.''

compressions, could be executed while still allowing those amended legacy swaps to remain exempt from the Swap Margin Rule.

The agencies are proposing amendments to clarify the agencies' implementation of the legacy swaps provisions of the Swap Margin Rule since its adoption in 2015. These amendments are intended to permit amendments to legacy swaps arising from certain routine industry practices over the life-cycle of a non-cleared swap that are carried out for logistical reasons or risk-management purposes. The proposed amendments are those that do not raise concerns that the covered swap entity is seeking to evade or otherwise delay the application of margin requirements for non-cleared swaps.

One of these proposed amendments recognizes the legacy status of a non-cleared swap that has been amended to reflect technical changes, such as addresses, the identities of parties for delivery of formal notices, and other administrative or operational provisions of the non-cleared swap that do not alter the non-cleared swap's underlying asset or indicator, such as a security, currency, interest rate, commodity, or price index, the remaining maturity, or the total effective notional amount. The types of technical changes described are necessary to reflect changes in a counterparty's circumstances, but are not associated with a desire by either party to increase or decrease its exposure to market risk factors. While the technical changes listed above would be permitted, a change in the non-cleared swap's underlying index would not be a technical change.

The second proposed amendment recognizes the legacy status of a non-cleared swap that has been amended solely to reduce the notional amount of the non-cleared swap, without altering other terms of the original non-cleared swap. For these purposes, a reduction in notional amount may be achieved through a partial termination of the original non-cleared swap, with the remaining non-terminated non-cleared swap being able to retain its legacy status. A reduction in notional amount could also be achieved by novating a portion of the original non-cleared swap's notional amount to a third party. The original non-cleared swap, with a lower notional amount, would retain legacy status, but the novated portion would not retain legacy status.

The third proposed amendment recognizes the legacy status of non-cleared swaps that have been modified as part of certain portfolio compression exercises used as a risk management tool. In compression, offsetting trades between two or more parties are amended or torn up and replaced, which reduces the size of gross derivatives exposures and generally reduces the number or frequency of payments between parties, thus maintaining or reducing the overall risk profile of the portfolio. In general, these compression exercises make use of third party service providers to assist in the choice of trades to be modified and the risk composition of the resulting portfolios.

In a simple bilateral form of compression between two counterparties, the dealer agrees with another dealer to compress trades so that offsetting positions are cancelled and only the net amount remains, without any change to the overall market exposures. The resulting net position is documented by amending one of the original swaps. This ''amended swap'' method is the predominant method used in compressions of non-cleared interest rate swaps. Compression can also be done on a multilateral basis among more than two counterparties, and is often even more efficient, as trades across multiple dealers involved in a compression exercise can be offset, reducing the risk in each relationship across the various counterparties involved in the compression. The resulting net position is documented by creating a replacement swap reflecting the net position. This ''replacement swap'' method is predominantly used in compression exercises for non-cleared credit default swaps, but it can also be used for interest rate swap compression. Compression often results in the cancellation of offsetting positions, but it could also result in new trades being booked into an existing non-cleared portfolio to reflect the netted-down risk of the original portfolio.

One reason that the agencies are permitting amendments resulting from compression exercises is to reduce the operational burden associated with IBOR replacements. While protocols to amend non-cleared swaps that reference an IBOR or another discontinued rate are in development, there is a possibility that counterparties may choose to replace portfolios of IBOR-based non-cleared swaps with replacement swaps generated through compression exercises.

In recognition of the value of risk-reducing compression exercises, the agencies are proposing to amend the Swap Margin Rule to expressly recognize the benefits of amending or replacing non-cleared swaps solely to accomplish risk-reducing or risk-neutral portfolio compression between or among covered swap entities and their counterparties, without converting the legacy swap into a swap subject to the Swap Margin Rule.

Under the proposed rule, amended swaps that reflect the outcome of a compression exercise are treated slightly differently than replacement swaps that are issued as a result of the compression exercise. If a non-cleared swap is amended solely as a result of a compression exercise, the amendments cannot extend the remaining maturity of the amended non-cleared swap or increase the total effective notional amount of the non-cleared swap.

Example 1: The limitations on remaining maturity and total effective notional amount in a compression exercise resulting in a replacement swap are different. For example, if swap 1 entered into by a covered swap entity and counterparty A has a total effective notional amount of $10 (long position) and a remaining maturity of 5 years, and swap 2 entered into by the same covered swap entity and the same counterparty A has a total effective notional amount of $5 (short position) and a remaining maturity of 4 years, the compression exercise might result in a cancellation of swap 2 and an amendment to swap 1 such that the total effective notional amount would become $5 (long position) and the remaining maturity would remain at 5 years. This amendment would be permitted under the proposed rule since the maturity of the amended swap is not longer than the maturity of swap 1 (5 years) and the total effective notional amount of the amended swap is not greater than the total effective notional amount of swap 1 ($10 long position). However, an amendment to swap 1 that extends the remaining maturity of the amended swap beyond the original 5 years or increases the total effective notional amount higher than the original $10 would not be able to take advantage of the proposed safe harbor.

A replacement swap cannot extend the longest remaining maturity of all of the swaps in the compression exercise and cannot have a total effective notional amount that exceeds the total effective notional amount of that longest remaining maturity swap.

Example 2: Using the terms of swap 1 in the example above, assume that swap 2 has a total effective notional amount of $5 (short position) and a remaining maturity of 3 years. The two swaps could be in a compression exercise in which both swaps are terminated and replaced with a new swap. The replacement swap must have a remaining maturity that does not extend the longest remaining maturity of swaps 1 and 2 (swap 1 has the longer remaining maturity of 5 years). The replacement swap must also have a total effective notional amount that does not exceed the total effective notional amount of the swap with the longest remaining maturity (swap 1 has the longer remaining maturity of 5 years, so the replacement swap cannot exceed swap 1's total effective notional amount of $10 long position).

Example 3: Assume that the following swaps are part of a compression exercise:

Swap contract No.	Total effective notional amount	Remaining maturity
1	10 (long)	5
2	4 (short)	4
3	7 (long)	3
4	3 (short)	2
5	17 (short)	1

If a compression exercise terminates all the swaps listed above and replaces them with a new replacement swap, the total effective notional amount of the replacement swap cannot exceed the sum of the total effective notional amounts for all swaps with the same or longer remaining maturity than the replacement swap. Therefore, if one assumes the compression exercise results in a remaining maturity of 3 years for the replacement swap, the replacement swap with a remaining maturity of 3 years could have a maximum total effective notional amount of the sum of the total effective notional amounts of the 5 year swap, the 4 year swap, and the 3 year swap, or 10 + 4 + 7 = $21.[37] Alternatively, if one assumes the compression exercise results in a remaining maturity of 2 years for the replacement swap, the replacement swap with a remaining maturity of 2 years could have a maximum total effective notional amount of the sum of the total effective notional amounts of the 5 year swap, the 4 year swap, the 3 year swap, and the 2 year swap or 10 + 4 + 7 + 3 = $24.

The agencies are also concerned about clarifying the legacy status of swaptions that are entered into before the applicable compliance date but exercised after that compliance date. As a general matter, a swaption is created when a covered swap entity and its counterparty enter into a derivative transaction granting one party an option to, at a later time, call for the transaction to be converted into a non-cleared swap between the two parties, the terms of which are set out in the derivative contract itself. The agencies believe it is not necessary to propose rule text to address the legacy status of swaptions that become non-cleared swaps once exercised. Although the exchange of payments under the non-cleared swap does not commence until after the applicable compliance date, the terms of that non-cleared swap were established and entered into during the original creation of the swaption contract, which was entered into before the applicable compliance date and therefore the resulting non-cleared swap retains legacy status. The exercise of the option under the derivative is not an amendment of the contract, but rather a second phase that operationalizes the original contract.

[37] Note, however, that a replacement swap with a total effective notional amount of $21 would only be acceptable if the result is also risk-neutral or risk-reducing based on the long or short positions of each swap's total effective notional amount. The overall effect of the compression exercise must be either risk-neutral or risk-reducing.

VII. Technical Changes

The proposed rule would delete § __.1(e)(7), which includes an amendment relating to the QFC Rules. The text of § __.1(e)(7), with slight modifications, would be moved to § __.1(h)(1), so that it would reside in the section of the Swap Margin Rule dedicated to legacy swap amendments. The methods of amendment listed in § __.1(h) would apply not only to IBOR replacements, but also to any other contractual modifications permitted under § __.1(h), including amendments relating to the QFC Rules.

VIII. Request for Comments

A. IBORs

The agencies request comment on all aspects of the proposed rule as well as on the following specific questions.

(1) The proposed rule permits amendments to non-cleared swaps by method of adherence to a protocol, contractual amendment of an agreement or confirmation, or execution of a new contract in replacement of and immediately upon termination of an existing contract (*i.e.,* tear-up). Should the agencies provide additional clarification in the rule as to types of permissible amendments to better reflect established or emerging industry practices? What specifically should be added or clarified, and why?

(2) Does the proposed rule provide sufficient flexibility regarding contract-by-contract, netting set, and compression amendments to the reference rate? What, if any, additional flexibility is needed, and why?

(3) The agencies have listed a number of IBORs as examples of rates that would be permitted to be replaced. To what extent should this list be revised to remove or to include any additional rates, such as the Swap Offer Rate of Singapore?

(4) The relief provided by the proposed rule would apply to the replacement of an IBOR. The agencies are also proposing to allow replacement of other non-IBOR reference rates if the covered swap entity reasonably expects that the rate will be discontinued or reasonably determines has lost its relevance as a reliable benchmark due to a significant impairment. Is there a need to provide relief for replacement of rates under other circumstances? What potential criteria could the agencies impose on non-IBOR interest rate benchmarks in order for such a benchmark to be considered to have lost its relevance as a reliable benchmark due to a significant impairment? If so, please provide a description of the circumstances creating this need and a description of the rates that may need to be replaced, either now or in the future.

(5) The proposed rule anticipates that a reference rate may need to be amended more than once. What types of criteria should the regulation establish for subsequent amendments to reference rates? Please explain how those criteria maintain the robustness of the new reference rate and avoid the problems that plagued LIBOR, such as market manipulation, etc. Should the agencies impose a cap on the number of times a reference rate may be amended and, if so, how should that cap be structured?

(6) The proposed rule does not specify any criteria for a replacement rate, but rather leaves this open to the parties. What types of rates might parties settle on? Should the agencies limit the scope of the replacement rate to specific criteria, such as that the rate must be based on observable, risk-free characteristics? If so, what other criteria might be appropriate, or what specific rates might be appropriate?

(7) The proposed rule intends to be accommodating to accompanying amendments that may be necessary to maintain the relative economics of the non-cleared swap following the replacement of a reference rate. Do the accompanying amendments provide sufficient flexibility to permit the additional modifications that parties plan to make? If not, please explain what changes the agencies should contemplate and why, and explain how

they should be permitted under the rule. Alternatively, would the accompanying amendments change the non-cleared swap such that it does not resemble the original legacy contract? If this is a concern, how should the rule address it? For example, should the agencies prohibit an amendment to the currency from being eligible for the safe harbor?

(8) The proposed rule does not specify an end date by which these IBOR-related amendments must be completed. Should the agencies include an end date? Should it be one year, two years, five years, ten years? Are there legacy contracts that would still be in place in ten years such that a ten-year timeframe would be realistic?

(9) As noted above, the agencies propose to permit the replacement of an IBOR in the floating-rate leg of the swap with a new reference rate, and would also permit the fixed-rate leg in a fixed-floating interest rate swap to be modified to maintain the economics of the non-cleared swap. Is this approach appropriate in order for the fixed-floating swap to retain its legacy status, and if not, how should it be modified?

B. Non-Cleared Swaps Between CSEs and an Affiliate

(1) What, if any, additional conditions or limitations should the agencies impose before allowing a covered swap entity to take advantage of the exemption from initial margin requirements for inter-affiliate swaps? For example, the CFTC imposes certain limitations and conditions on its initial margin exemption for inter-affiliate swaps. Discuss why any additional conditions may be appropriate to ensure the safety and soundness of the covered swap entity.

(2) Should the definitions of ''affiliate'' and ''control'' in § _.11 be revised to match with the definitions of the Board's Regulation W, Regulation Y, Regulation Q, or any other regulations? Why or why not?

C. Additional Compliance Date for Initial Margin Requirements

(1) Does the proposed one-year extension of the final implementation timeline to September 1, 2021 substantially address all implementation challenges? Please explain.

D. Documentation Requirements

(1) What issues are there, if any, related to how parties document transactions in compliance with the Swap Margin Rule that should be considered by the agencies?

(2) Are there any reasons why covered swap entities would not be able to reasonably anticipate the point in time at which they will cross the $50 million initial margin threshold amount such that they can prepare the required documentation in time? Please explain.

E. Portfolio Compression Exercises and Other Amendments

(1) What are the methods used by covered swap entities to determine whether portfolio compression exercises would meet the requirements set out in the proposal, including not extending the remaining maturity or increasing the total effective notional amounts?

(2) Should the Rule limit compression exercises to mitigating only certain types of risk and if so, which types of risk?

(3) For a replacement swap that results from a compression exercise, should the agencies consider a different method of restricting either the total effective notional amount or the remaining maturity? Would commenters be supportive of an approach that limits the remaining maturity to an ''effective maturity'' calculation based on the total effective notional amounts in the exercise? For example, swap 1 has a notional amount of 10 and 3 years remaining maturity and swap 2 has a notional amount of 8 and 5 years remaining maturity. Under the ''effective maturity'' calculation, the replacement swap could not exceed an effective maturity of 3 years and 10 months, calculated as (3*10 + 5*8)/(10+8). The replacement swap with a 3 year and 10 month maturity would also not be able to exceed a total effective notional amount of 18 (10+8).

(4) How should the Rule be more specific about technical amendments that are permitted? How can the Rule better explain that amending a swap's underlying asset or indicator, such as a security, currency, interest rate, commodity, or price index, is not a technical amendment?

IX. Administrative Law Matters

A. Solicitation of Comments on Use of Plain Language

Section 722 of the Gramm-Leach-Bliley Act [38] requires the OCC, Board, and FDIC to use plain language in all proposed and final rules published after January 1, 2000. The OCC, Board, and FDIC have sought to present the proposed rule in a simple and straightforward manner and invite comments on whether the proposal is clearly stated and effectively organized, and how to make this proposal easier to understand. For example:

- Have we organized the material to suit your needs? If not, how could this material be better organized?
- Are the requirements in the proposed rule clearly stated? If not, how could the proposed rule be more clearly stated?
- Does the proposed rule contain language or jargon that is not clear? If so, which language requires clarification?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the proposed rule easier to understand? If so, what changes to the format would make the proposed rule easier to understand?
- What else could we do to make the proposed rule easier to understand?

B. Paperwork Reduction Act Analysis

Certain provisions of the proposed rulemaking contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521). In accordance with the requirements of the PRA, the agencies may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number.

The agencies reviewed the proposed rulemaking and determined that it revises certain recordkeeping requirements that have been previously cleared under various OMB control numbers. In order to be consistent across the agencies, the agencies are also applying a conforming methodology for calculating the burden estimates. The agencies are proposing to extend for three years, with revision, these information collections. The OCC and FDIC have submitted to OMB for review under section 3507(d) of the PRA (44 U.S.C. 3507(d)) and section 1320.11 of the OMB's implementing regulations (5 CFR 1320). The Board has reviewed the information collection under its delegated authority. The OMB control numbers are 1557–0251 (OCC), 3064–0204 (FDIC), and 7100–0364 (Board). The FCA has determined the notice of proposed rulemaking has no PRA implications because Farm Credit System institutions are Federally chartered instrumentalities of the United States and instrumentalities of the United States are specifically excepted from the definition of ''collection of information'' contained in 44 U.S.C. 3502(3). The FHFA has determined that the notice of proposed rulemaking does not contain any

[38] Public Law 106–102, 113 Stat. 1338, 1471 (codified at 12 U.S.C. 4809).

collection of information for which the agency must obtain clearance under the PRA.

Comments are invited on:

a. Whether the collections of information are necessary for the proper performance of the agencies' functions, including whether the information has practical utility;

b. The accuracy or the estimate of the burden of the information collections, including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of the information collections on respondents, including through the use of automated collection techniques or other forms of information technology; and

e. Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

All comments will become a matter of public record. Comments on aspects of this notice that may affect reporting, recordkeeping, or disclosure requirements and burden estimates should be sent to the addresses listed in the **ADDRESSES** section of this document. A copy of the comments may also be submitted to the OMB desk officer by mail to U.S. Office of Management and Budget, 725 17th Street NW, #10235, Washington, DC 20503; facsimile to (202) 395–6974; or email to *oira_submission@omb.eop.gov,* Attention, Federal Banking Agency Desk Officer.

Current Actions

The proposed rulemaking removes the recordkeeping requirement in section __.11(b) that a covered swap entity shall calculate the amount of initial margin that would be required to be posted to an affiliate that is a financial end user with material swaps exposure pursuant to section _.3(b) and provide documentation of such amount to each affiliate on a daily basis.

Proposed Revision, With Extension, of the Following Information Collections

Title of Information Collection: Reporting and Recordkeeping Requirements Associated with Swaps Margin and Swaps Push-Out.

Frequency: Annual and event generated.

Affected Public: Businesses or other for-profit.

Estimated average hours per response:

Reporting

Section _.1(d)—1 hour (on average of 1,000 times per year).

Sections _.8(c) and _.8(d)—240 hours.

Section _.8(f)(3)—50 hours.

Section _.9(e)—10 hours (on average of 3 times per year).

Sections 237.22(a)(1) and 237.22(e) (*Board only*)—7 hours.

Recordkeeping

Sections _.2 (definition of ''eligible master netting agreement,'' item 4), 237.8(g), and 237.10—5 hours.

Section _.5(c)(2)(i)—4 hours.

Section _.7(c)—100 hours.

Sections _.8(e) and 237.8(f)—40 hours.

Section _.8(h)—20 hours.

Disclosure

Section _.1(h)—1 hour.

OCC

Respondents: Any national bank or a subsidiary thereof, Federal savings association or a subsidiary thereof, or Federal branch or agency of a foreign bank that is registered as a swap dealer, major swap participant, security-based swap dealer, or major security-based swap participant.

Estimated number of respondents: 10.

Proposed revisions only estimated annual burden: –2,500 hours.

Total estimated annual burden: 14,900 hours.

Board

Respondents: Any state member bank (as defined in 12 CFR 208.2(g)), bank holding company (as defined in 12 U.S.C. 1841), savings and loan holding company (as defined in 12 U.S.C. 1467a), foreign banking organization (as defined in 12 CFR 211.21(o)), foreign bank that does not operate an insured branch, state branch or state agency of a foreign bank (as defined in 12 U.S.C. 3101(b)(11) and (12)), or Edge or agreement corporation (as defined in 12 CFR 211.1(c)(2) and (3)) that is registered as a swap dealer, major swap participant, security-based swap dealer, or major security-based swap participant.

Estimated number of respondents: 41.

Proposed revisions only estimated annual burden: –10,209 hours.

Total estimated annual burden: 61,104 hours.

FDIC

FDIC: Any FDIC-insured state-chartered bank that is not a member of the Federal Reserve System or FDIC-insured state-chartered savings association that is registered as a swap dealer, major swap participant, security-based swap dealer, or major security-based swap participant.

Estimated number of respondents: 1.[39]

Proposed revisions only estimated annual burden: –249 hours.

Total estimated annual burden: 1,490 hours.

C. Regulatory Flexibility Act Analysis

OCC: In general, the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) requires that in connection with a rulemaking, an agency prepare and make available for public comment a regulatory flexibility analysis that describes the impact of the rule on small entities. Under section 605(b) of the RFA, this analysis is not required if an agency certifies that the rule will not have a significant economic impact on a substantial number of small entities and publishes its certification and a brief explanatory statement in the **Federal Register** along with its rule.

As part of our analysis, we consider whether, pursuant to the RFA, the proposed rule would have a significant economic impact on a substantial number of small entities. The OCC currently supervises approximately 782 small entities.[40] Among these 782 small entities, 44 could be affected by the proposed rule if one or more of these small entities are a party to a financial contract with a covered swap entity. Because we believe banks will incur *de minimis* costs, if any, to comply with the proposed rule, we conclude that the proposed rule, if implemented, would not have a significant economic impact on a substantial number of small entities.[41]

Board: The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* (RFA), generally requires that an agency prepare and make available for public comment an initial regulatory flexibility analysis in connection with a notice of proposed

[39] The FDIC estimates zero entities, but is estimating one here as a placeholder.

[40] We base our estimate of the number of small entities on the Small Business Administration's (SBA's) size thresholds for commercial banks and savings institutions, and trust companies, which are $600 million and $41.5 million, respectively. Consistent with the General Principles of Affiliation, 13 CFR 121.103(a), we count the assets of affiliated financial institutions when determining if we should classify an OCC-supervised institution as a small entity. We use December 31, 2018, to determine size because a ''financial institution's assets are determined by averaging the assets reported on its four quarterly financial statements for the preceding year.'' *See* footnote 8 of the SBA's Table of Size Standards.

[41] As one way of determining whether any of the small entities is a covered swap entity, the OCC reviewed the CFTC's listing of registered swap dealers at *http://www.cftc.gov/LawRegulation/DoddFrankAct/registerswapdealer.* The SEC has not yet imposed a registration requirement on entities that meet the definition of security-based swap dealer or major security-based swap participant.

rulemaking or certify that the proposed rule will not have a significant economic impact on a substantial number of small entities.[42] The Board welcomes comment on all aspects of the initial regulatory flexibility analysis. A final regulatory flexibility analysis will be conducted after consideration of comments received during the public comment period.

As described above, the proposed rule would (i) permit legacy swaps to retain their legacy status in the event that they are amended to replace an IBOR or other discontinued rate, (ii) repeal the inter-affiliate initial margin provisions, introduce an additional compliance date for initial margin requirements, (iii) introduce an additional compliance date for initial margin requirements, (iv) clarify the point in time at which trading documentation must be in place, (v) permit legacy swaps to retain their legacy status in the event that they are amended due to technical amendments, notional reductions, or portfolio compression exercises, and (vi) make technical changes to relocate the provision addressing amendments to legacy swaps that are made to comply with the QFC Rules.

This proposed rule applies to financial institutions that are covered swap entities that are subject to the requirements of the Swap Margin Rule. Under SBA regulations, the finance and insurance sector includes commercial banking, savings institutions, credit unions, other depository credit intermediation and credit card issuing entities (financial institutions). With respect to financial institutions that are covered swap entities under the Swap Margin Rule, a financial institution generally is considered small if it has assets of $600 million or less.[43] Covered swap entities would be considered financial institutions for purposes of the RFA in accordance with SBA regulations. The Board does not expect that any covered swap entity is likely to be a small financial institution, because a small financial institution is unlikely to engage in the level of swap activity that would require it to register as a swap dealer or a major swap participant with the CFTC or a security-based swap dealer or security-based major swap participant with the U.S. Securities and Exchange Commission (SEC).[44] None of the current Board-regulated covered swap entities are small entities.

The Board does not believe the proposed rule will result in any new reporting, recordkeeping or other compliance requirements. In light of the foregoing, the Board does not believe that this proposed rule would have a significant economic impact on a substantial number of small entities and therefore there are no significant alternatives to the proposed rule that would reduce the impact on small entities.

FDIC: The RFA generally requires that, in connection with a proposed rulemaking, an agency prepare and make available for public comment an initial regulatory flexibility analysis describing the impact of the proposed rule on small entities. However, a regulatory flexibility analysis is not required if the agency certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities. The SBA has defined ''small entities'' to include banking organizations with total assets of less than or equal to $600 million that are independently owned and operated or owned by a holding company with less than or equal to $600 million in total assets.[45] Generally, the FDIC considers a significant effect to be a quantified effect in excess of 5 percent of total annual salaries and benefits per institution, or 2.5 percent of total non-interest expenses. The FDIC believes that effects in excess of these thresholds typically represent significant effects for FDIC-supervised institutions. For the reasons described below, the FDIC certifies pursuant to section 605(b) of the RFA that the proposed rule will not have a significant economic impact on a substantial number of small entities.

According to data from recent Consolidated Reports of Income and Condition (Call Report),[46] the FDIC supervised 3,465 institutions. Of those, 2,705 are considered ''small,'' according to the terms of the RFA. As discussed previously, the proposed rule directly applies to covered swap entities (which includes persons registered with the CFTC as swap dealers or major swap participants pursuant to the Commodity Exchange Act of 1936 and persons registered with the SEC as security-based swap dealers and major security-based swap participants under the Securities Exchange Act of 1934) that are subject to the requirements of the Swap Margin Rule. The FDIC has identified 105 swap dealers and major swap participants that, as of May 22, 2019, have registered as swap entities.[47] None of these institutions are supervised by the FDIC.

As an amendment to the Swap Margin Rule, the proposed rule also affects counterparties to swaps entered into by covered swap entities. However, the Terrorism Risk Insurance Program Reauthorization Act of 2015 excludes non-cleared swaps entered into for hedging purposes by a financial institution with total assets of $10 billion or less from the requirements of the Swap Margin Rule. Given this exclusion, a non-cleared swap between a covered swap entity and a small FDIC-supervised entity that is used to hedge a commercial risk of the small entity will not be subject to the Swap Margin Rule. The FDIC believes that it is unlikely that any small entity it supervises will engage in non-cleared swaps for purposes other than hedging.

Given that no FDIC-supervised small entities are covered swap entities and that it is unlikely that FDIC-supervised small entities enter into non-cleared swaps for purposes other than hedging, this proposed rule is not expected to have a significant economic impact on

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

[43] *See* 13 CFR 121.201 (effective December 2, 2014, as amended by 84 FR 34261, effective August 19, 2019); *see also* 13 CFR 121.103(a)(6) (noting factors that the SBA considers in determining whether an entity qualifies as a small business, including receipts, employees, and other measures of its domestic and foreign affiliates).

[44] The CFTC has published a list of provisionally registered swap dealers as of October 17, 2017 that does not include any small financial institutions. *See http://www.cftc.gov/LawRegulation/DoddFrankAct/registerswapdealer.* The SEC has not yet imposed a registration requirement on entities that meet the definition of security-based swap dealer or major security-based swap participant.

[45] The SBA defines a small banking organization as having $600 million or less in assets, where an organization's ''assets are determined by averaging the assets reported on its four quarterly financial statements for the preceding year.'' *See* 13 CFR 121.201 (as amended by 84 FR 34261, effective August 19, 2019). In its determination, the ''SBA counts the receipts, employees, or other measure of size of the concern whose size is at issue and all of its domestic and foreign affiliates.'' *See* 13 CFR 121.103. Following these regulations, the FDIC uses a covered entity's affiliated and acquired assets, averaged over the preceding four quarters, to determine whether the covered entity is ''small'' for the purposes of RFA.

[46] FDIC Call Report, March 31, 2019.

[47] While the SEC had adopted a regulation that would require registration of security-based swap dealers and major security-based swap participants, as of June 28, 2019, there was no date established as the compliance date and no SEC-published list of any such entities that so registered (*see* 84 FR 4906 at 4925). Accordingly, no security-based swap dealers and no major security-based swap participants have been identified as swap entities by the FDIC. In identifying the 105 institutions referred to in the text, the FDIC used the list of swap dealers set forth, on June 28, 2019 (providing data as of May 22, 2019) at *https://www.cftc.gov/LawRegulation/DoddFrankAct/registerswapdealer.html.* Major swap participants, among others, are required to apply for registration through a filing with the National Futures Association. Accordingly, the FDIC reviewed the National Futures Association *https://www.nfa.futures.org/members/sd/index.html* to determine whether there were registered major swap participants. As of June 21, 2019, there were no major swap participants listed on this link.

a substantial number of small entities supervised by the FDIC. For these reasons, the FDIC certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities, within the meaning of those terms as used in the RFA. Accordingly, a regulatory flexibility analysis is not required.

The FDIC invites comments on all aspects of the supporting information provided in this section, and in particular, whether the proposed rule would have any significant effects on small entities that the FDIC has not identified.

FCA: Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), FCA hereby certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities. Each of the banks in the Farm Credit System, considered together with its affiliated associations, has assets and annual income in excess of the amounts that would qualify them as small entities; nor does the Federal Agricultural Mortgage Corporation meet the definition of ''small entity.'' Therefore, Farm Credit System institutions are not ''small entities'' as defined in the Regulatory Flexibility Act.

FHFA: The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires that a regulation that has a significant economic impact on a substantial number of small entities, small businesses, or small organizations must include an initial regulatory flexibility analysis describing the regulation's impact on small entities. FHFA need not undertake such an analysis if the agency has certified the regulation will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605(b). FHFA has considered the impact of the proposed rule under the Regulatory Flexibility Act, and certifies that the proposed rule does not have a significant economic impact on a substantial number of small entities because the proposed rule is applicable only to FHFA's regulated entities, which are not small entities for purposes of the Regulatory Flexibility Act.

D. Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995 (Unfunded Mandates Act) (2 U.S.C. 1532) requires that the OCC prepare a budgetary impact statement before promulgating a rule that includes any Federal mandate that may result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation, currently $154 million) in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires the OCC to identify and consider a reasonable number of regulatory alternatives before promulgating a rule.

The OCC analyzed the amendments proposed in this notice of proposed rulemaking, and has determined that they would not result in expenditures by State, local, and Tribal governments, in the aggregate, or by the private sector, of $154 million in any one year. Accordingly, the OCC has not prepared a written statement under sections 202 and 205.

E. Riegle Community Development and Regulatory Improvement Act of 1994

Pursuant to section 302(a) of the Riegle Community Development and Regulatory Improvement Act of 1994 (RCDRIA), in determining the effective date and administrative compliance requirements for new regulations that impose additional reporting, disclosure, or other requirements on insured depository institutions, each Federal banking agency must consider, consistent with principles of safety and soundness and the public interest, any administrative burdens that such regulations would place on depository institutions, including small depository institutions, and customers of depository institutions, as well as the benefits of such regulations.[48] In addition, section 302(b) of RCDRIA requires new regulations and amendments to regulations that impose additional reporting, disclosures, or other new requirements on insured depository institutions generally to take effect on the first day of a calendar quarter that begins on or after the date on which the regulations are published in final form.[49] Each Federal banking agency has determined that the proposed rule would not impose additional reporting, disclosure, or other requirements; therefore the requirements of the RCDRIA do not apply. However, the agencies note that comments on these matters have been solicited in other sections of this Supplementary Information section, and that the requirements of RCDRIA will be considered as part of the overall rulemaking process. In addition, the agencies also invite any other comments that will further inform the agencies' consideration of RCDRIA.

[48] 12 U.S.C. 4802(a).

[49] 12 U.S.C. 4802.

List of Subjects

12 CFR Part 45

Administrative practice and procedure, Capital, Margin requirements, National Banks, Federal Savings Associations, Reporting and recordkeeping requirements, Risk.

12 CFR Part 237

Administrative practice and procedure, Banks, banking, Foreign banking, Holding companies, Reporting and recordkeeping requirements, Swaps.

12 CFR Part 349

Administrative practice and procedure, Banks, banking, Holding companies, Capital, Margin Requirements, Reporting and recordkeeping requirements, Savings associations, Risk, Swaps.

12 CFR Part 624

Accounting, Agriculture, Banks, Banking, Capital, Cooperatives, Credit, Margin requirements, Reporting and recordkeeping requirements, Risk, Rural areas, Swaps.

12 CFR Part 1221

Government-sponsored enterprises, Mortgages, Securities.

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Chapter I

Authority and Issuance

For the reasons set forth in the common preamble and under the authority of 12 U.S.C. 93a and 5412(b)(2)(B), the Office of the Comptroller of the Currency proposes to amend part 45 of Title 12, Code of Federal Regulations, as follows:

PART 45—MARGIN AND CAPITAL REQUIREMENTS FOR COVERED SWAP ENTITIES

■ 1. The authority citation for part 45 continues to read as follows:

Authority: 7 U.S.C. 6s(e), 12 U.S.C. 1 *et seq.*, 12 U.S.C. 93a, 161, 481, 1818, 3907, 3909, 5412(b)(2)(B), and 15 U.S.C. 78o–10(e).

■ 2. Section 45.1 is amended by:

■ a. Revising paragraphs (e)(6), (e)(7), (h) introductory text, and (h)(1); and

■ b. Adding paragraphs (h)(3) through (h)(5).

The revisions and additions read as follows:

§ 45.1 Authority, purpose, scope, exemptions and compliance dates.

* * * * *

(e) *Compliance dates.* * * *

* * * * *

(6) September 1, 2020 with respect to requirements in § 45.3 for initial margin for any non-cleared swaps and non-cleared security-based swaps, where both:

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

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

(iii) In calculating the amounts in paragraphs (e)(6)(i) and (ii) of this section, an entity shall count the average daily aggregate notional amount of a non-cleared swap, a non-cleared security-based swap, a foreign exchange forward or a foreign exchange swap between the entity and an affiliate only one time, and shall not count a swap or security-based swap that is exempt pursuant to paragraph (d) of this section.

(7) September 1, 2021 with respect to requirements in § 45.3 for initial margin for any other covered swap entity with respect to non-cleared swaps and non-cleared security-based swaps entered into with any other counterparty.

* * * * *

(h) *Legacy swaps.* Covered swaps entities are required to comply with the requirements of this part for non-cleared swaps and non-cleared security-based swaps entered into on or after the relevant compliance dates for variation margin and for initial margin established in paragraph (e) of this section. Any non-cleared swap or non-cleared security-based swap entered into before such relevant date shall remain outside the scope of this part if amendments are made to the non-cleared swap or non-cleared security-based swap by method of adherence to a protocol, contractual amendment of an agreement or confirmation, or execution of a new contract in replacement of and immediately upon termination of an existing contract, as follows:

(1) Amendments to the non-cleared swap or non-cleared security-based swap solely to comply with the requirements of part 47, subpart I of part 252 or part 382 of title 12, as applicable;

* * * * *

(3)(i) Amendments to the non-cleared swap or non-cleared security-based swap that are made solely to accommodate the replacement of:

(A) An interbank offered rate (IBOR) including, but not limited to, the London Interbank Offered Rate (LIBOR), the Tokyo Interbank Offered Rate (TIBOR), the Bank Bill Swap Rate (BBSW), the Singapore Interbank Offered Rate (SIBOR), the Canadian Dollar Offered Rate (CDOR), Euro Interbank Offered Rate (EURIBOR), and the Hong Kong Interbank Offered Rate (HIBOR);

(B) Any other interest rate that a covered swap entity reasonably expects to be discontinued or reasonably determines has lost its relevance as a reliable benchmark due to a significant impairment; or

(C) Any other interest rate that succeeds a rate referenced in paragraph (h)(3)(i)(A) or (h)(3)(i)(B) of this section. An amendment made under this paragraph (h)(3)(i)(C) could be one of multiple amendments made under this paragraph (h)(3)(i)(C). For example, an amendment could replace an IBOR with a temporary interest rate and later replace the temporary interest rate with a permanent interest rate.

(ii) Amendments to accommodate replacement of a rate described in paragraph (h)(3)(i) may also incorporate spreads or other adjustments to the replacement rate and make other necessary technical changes to operationalize the determination of payments or other exchanges of economic value using the replacement rate, including changes to determination dates, calculation agents, and payment dates, so long as the changes do not extend the maturity or increase the total effective notional amount of the non-cleared swap or non-cleared security-based swap.

(4) The non-cleared swap or non-cleared security-based swap was amended or replaced solely to reduce risk or remain risk-neutral through portfolio compression between or among covered swap entities and their counterparties as long as:

(i) A non-cleared swap or non-cleared security-based swap that is amended to reflect the outcome of the compression exercise does not:

(A) Extend the remaining maturity; or

(B) Increase the total effective notional amount of that swap; or

(ii) A non-cleared swap or non-cleared security-based swap that is entered into as a replacement to reflect the outcome of the compression exercise does not:

(A) Exceed the sum of the total effective notional amounts of all of the swaps that were submitted to the compression exercise that had the same or longer remaining maturity as the replacement swap; or

(B) Exceed the longest remaining maturity of all the swaps submitted to the compression exercise.

(5) The non-cleared swap or non-cleared security-based swap was amended solely for one of the following reasons:

(i) To reflect technical changes, such as addresses, identities of parties for delivery of formal notices, and other administrative or operational provisions as long as they do not alter the non-cleared swap's or non-cleared security-based swap's underlying asset or indicator, the remaining maturity, or the total effective notional amount; or

(ii) To reduce the notional amount, so long as:

(A) All payment obligations attached to the total effective notional amount being eliminated as a result of the amendment are fully terminated; or

(B) All payment obligations attached to the total effective notional amount being eliminated as a result of the amendment are fully novated to a third party, who complies with applicable margin rules for the novated portion upon the transfer.

■ 3. Amend § 45.10 by revising paragraph (a) to read as follows:

§ 45.10 Documentation of margin matters.

* * * * *

(a) Provides the covered swap entity and its counterparty with the contractual right to collect and post initial margin and variation margin in such amounts, in such form, and under such circumstances as are required by this subpart, and at such time as initial margin or variation margin is required to be collected or posted under § 45.3 or § 45.4, as applicable; and

* * * * *

■ 4. Section 45.11 is revised to read as follows:

§ 45.11 Initial margin exemption for affiliates.

(a) The requirement for a covered swap entity to collect or post initial margin under § 45.3 does not apply with respect to any non-cleared swap or non-cleared security-based swap with a counterparty that is an affiliate.

(b) For purposes of this section, *an affiliate* means:

(1) An affiliate as defined in § 45.2; and

(2) Any company that controls, is controlled by, or is under common control with the covered swap entity through the direct or indirect exercise of controlling influence over the management or policies of the controlled company.

Board of Governors of the Federal Reserve System

12 CFR Chapter II

Authority and Issuance

For the reasons set forth in the common preamble, the Board of Governors of the Federal Reserve System proposes to amend 12 CFR part 237 to read as follows:

PART 237—SWAPS MARGIN AND SWAPS PUSH–OUT

■ 5. The authority citation for part 237 continues to read as follows:

Authority: 7 U.S.C. 6s(e), 15 U.S.C. 78o–10(e), 15 U.S.C. 8305, 12 U.S.C. 221 *et seq.,* 12 U.S.C. 343–350, 12 U.S.C. 1818, 12 U.S.C. 1841 *et seq.,* 12 U.S.C. 3101 *et seq.,* and 12 U.S.C. 1461 *et seq.*

Subpart A— Margin and Capital Requirements for Covered Swap Entities (Regulation KK)

■ 6. Section 237.1 is amended by:
■ a. Revising paragraphs (e)(6), (e)(7), (h) introductory text, and (h)(1); and
■ b. Adding paragraphs (h)(3) through (h)(5).

The revisions and additions read as follows:

§ 237.1 Authority, purpose, scope, exemptions and compliance dates.

* * * * *

(e) * * *

(6) September 1, 2020 with respect to requirements in § 237.3 for initial margin for any non-cleared swaps and non-cleared security-based swaps, where both:

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

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

(iii) In calculating the amounts in paragraphs (e)(6)(i) and (ii) of this section, an entity shall count the average daily aggregate notional amount of a non-cleared swap, a non-cleared security-based swap, a foreign exchange forward or a foreign exchange swap between the entity and an affiliate only one time, and shall not count a swap or security-based swap that is exempt pursuant to paragraph (d) of this section.

(7) September 1, 2021 with respect to requirements in § 237.3 for initial margin for any other covered swap entity with respect to non-cleared swaps and non-cleared security-based swaps entered into with any other counterparty.

* * * * *

(h) *Legacy swaps.* Covered swaps entities are required to comply with the requirements of this subpart for non-cleared swaps and non-cleared security-based swaps entered into on or after the relevant compliance dates for variation margin and for initial margin established in paragraph (e) of this section. Any non-cleared swap or non-cleared security-based swap entered into before such relevant date shall remain outside the scope of this subpart if amendments are made to the non-cleared swap or non-cleared security-based swap by method of adherence to a protocol, contractual amendment of an agreement or confirmation, or execution of a new contract in replacement of and immediately upon termination of an existing contract, as follows:

(1) Amendments to the non-cleared swap or non-cleared security-based swap solely to comply with the requirements of part 47, subpart I of part 252 or part 382 of title 12, as applicable;

* * * * *

(3)(i) Amendments to the non-cleared swap or non-cleared security-based swap that are made solely to accommodate the replacement of:

(A) An interbank offered rate (IBOR) including, but not limited to, the London Interbank Offered Rate (LIBOR), the Tokyo Interbank Offered Rate (TIBOR), the Bank Bill Swap Rate (BBSW), the Singapore Interbank Offered Rate (SIBOR), the Canadian Dollar Offered Rate (CDOR), Euro Interbank Offered Rate (EURIBOR), and the Hong Kong Interbank Offered Rate (HIBOR);

(B) Any other interest rate that a covered swap entity reasonably expects to be discontinued or reasonably determines has lost its relevance as a reliable benchmark due to a significant impairment; or

(C) Any other interest rate that succeeds a rate referenced in paragraph (h)(3)(i)(A) or (h)(3)(i)(B) of this section. An amendment made under this paragraph (h)(3)(i)(C) could be one of multiple amendments made under this paragraph (h)(3)(i)(C). For example, an amendment could replace an IBOR with a temporary interest rate and later replace the temporary interest rate with a permanent interest rate.

(ii) Amendments to accommodate replacement of a rate described in paragraph (h)(3)(i) may also incorporate spreads or other adjustments to the replacement rate and make other necessary technical changes to operationalize the determination of payments or other exchanges of economic value using the replacement rate, including changes to determination dates, calculation agents, and payment dates, so long as the changes do not extend the maturity or increase the total effective notional amount of the non-cleared swap or non-cleared security-based swap.

(4) The non-cleared swap or non-cleared security-based swap was amended or replaced solely to reduce risk or remain risk-neutral through portfolio compression between or among covered swap entities and their counterparties as long as:

(i) A non-cleared swap or non-cleared security-based swap that is amended to reflect the outcome of the compression exercise does not:

(A) Extend the remaining maturity; or

(B) Increase the total effective notional amount of that swap; or

(ii) A non-cleared swap or non-cleared security-based swap that is entered into as a replacement to reflect the outcome of the compression exercise does not:

(A) Exceed the sum of the total effective notional amounts of all of the swaps that were submitted to the compression exercise that had the same or longer remaining maturity as the replacement swap; or

(B) Exceed the longest remaining maturity of all the swaps submitted to the compression exercise.

(5) The non-cleared swap or non-cleared security-based swap was amended solely for one of the following reasons:

(i) To reflect technical changes, such as addresses, identities of parties for delivery of formal notices, and other administrative or operational provisions as long as they do not alter the non-cleared swap's or non-cleared security-based swap's underlying asset or indicator, the remaining maturity, or the total effective notional amount; or

(ii) To reduce the notional amount, so long as:

(A) All payment obligations attached to the total effective notional amount being eliminated as a result of the amendment are fully terminated; or

(B) All payment obligations attached to the total effective notional amount being eliminated as a result of the amendment are fully novated to a third party, who complies with applicable margin rules for the novated portion upon the transfer.

■ 7. Amend § 237.10 by revising paragraph (a) to read as follows:

§ 237.10 Documentation of margin matters.

* * * * *

(a) Provides the covered swap entity and its counterparty with the contractual right to collect and post initial margin and variation margin in such amounts, in such form, and under such circumstances as are required by this subpart, and at such time as initial margin or variation margin is required to be collected or posted under § 237.3 or § 237.4, as applicable; and

* * * * *

■ 8. Section 237.11 is revised to read as follows:

§ 237.11 Initial margin exemption for affiliates.

(a) The requirement for a covered swap entity to collect or post initial margin under § 237.3 does not apply with respect to any non-cleared swap or non-cleared security-based swap with a counterparty that is an affiliate.

(b) For purposes of this section, *an affiliate* means:

(1) An affiliate as defined in § 237.2; and

(2) Any company that controls, is controlled by, or is under common control with the covered swap entity through the direct or indirect exercise of controlling influence over the management or policies of the controlled company.

Federal Deposit Insurance Corporation

12 CFR Chapter III

Authority and Issuance

For the reasons set forth in the Supplementary Information section, the Federal Deposit Insurance Corporation proposes to amend 12 CFR Chapter III as follows:

PART 349—DERIVATIVES

■ 9. The authority citation for subpart A of part 349 continues to read as follows:

Authority: 7 U.S.C. 6s(e), 15 U.S.C. 78o–10(e), and 12 U.S.C. 1818 and 12 U.S.C. 1819(a)(Tenth), 12 U.S.C. 1813(q), 1818, 1819, and 3108.

■ 10. Section 349.1 is amended by:

■ a. Revising paragraphs (e)(6), (e)(7), (h) introductory text, and (h)(1); and

■ b. Adding paragraphs (h)(3) through (h)(5).

The revisions and additions read as follows:

§ 349.1 Authority, purpose, scope, exemptions and compliance dates.

* * * * *

(e) * * *

* * * * *

(6) September 1, 2020 with respect to requirements in § 349.3 for initial margin for any non-cleared swaps and non-cleared security-based swaps, where both:

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

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

(iii) In calculating the amounts in paragraphs (e)(6)(i) and (ii) of this section, an entity shall count the average daily aggregate notional amount of a non-cleared swap, a non-cleared security-based swap, a foreign exchange forward or a foreign exchange swap between the entity and an affiliate only one time, and shall not count a swap or security-based swap that is exempt pursuant to paragraph (d) of this section.

(7) September 1, 2021 with respect to requirements in § 349.3 for initial margin for any other covered swap entity with respect to non-cleared swaps and non-cleared security-based swaps entered into with any other counterparty.

* * * * *

(h) *Legacy swaps.* Covered swaps entities are required to comply with the requirements of this part for non-cleared swaps and non-cleared security-based swaps entered into on or after the relevant compliance dates for variation margin and for initial margin established in paragraph (e) of this section. Any non-cleared swap or non-cleared security-based swap entered into before such relevant date shall remain outside the scope of this part if amendments are made to the non-cleared swap or non-cleared security-based swap by method of adherence to a protocol, contractual amendment of an agreement or confirmation, or execution of a new contract in replacement of and immediately upon termination of an existing contract, as follows:

(1) Amendments to the non-cleared swap or non-cleared security-based swap solely to comply with the requirements of part 47, subpart I of part 252 or part 382 of title 12, as applicable;

* * * * *

(3)(i) Amendments to the non-cleared swap or non-cleared security-based swap that are made solely to accommodate the replacement of:

(A) An interbank offered rate (IBOR) including, but not limited to, the London Interbank Offered Rate (LIBOR), the Tokyo Interbank Offered Rate (TIBOR), the Bank Bill Swap Rate (BBSW), the Singapore Interbank Offered Rate (SIBOR), the Canadian Dollar Offered Rate (CDOR), Euro Interbank Offered Rate (EURIBOR), and the Hong Kong Interbank Offered Rate (HIBOR);

(B) Any other interest rate that a covered swap entity reasonably expects to be discontinued or reasonably determines has lost its relevance as a reliable benchmark due to a significant impairment; or

(C) Any other interest rate that succeeds a rate referenced in paragraph (h)(3)(i)(A) or (h)(3)(i)(B) of this section. An amendment made under this paragraph (h)(3)(i)(C) could be one of multiple amendments made under this paragraph (h)(3)(i)(C). For example, an amendment could replace an IBOR with a temporary interest rate and later replace the temporary interest rate with a permanent interest rate.

(ii) Amendments to accommodate replacement of a rate described in paragraph (h)(3)(i) may also incorporate spreads or other adjustments to the replacement rate and make other necessary technical changes to operationalize the determination of payments or other exchanges of economic value using the replacement rate, including changes to determination dates, calculation agents, and payment dates, so long as the changes do not extend the maturity or increase the total effective notional amount of the non-cleared swap or non-cleared security-based swap.

(4) The non-cleared swap or non-cleared security-based swap was amended or replaced solely to reduce risk or remain risk-neutral through portfolio compression between or among covered swap entities and their counterparties as long as:

(i) A non-cleared swap or non-cleared security-based swap that is amended to reflect the outcome of the compression exercise does not:

(A) Extend the remaining maturity; or

(B) Increase the total effective notional amount of that swap; or

(ii) A non-cleared swap or non-cleared security-based swap that is entered into as a replacement to reflect the outcome of the compression exercise does not:

(A) Exceed the sum of the total effective notional amounts of all of the swaps that were submitted to the compression exercise that had the same or longer remaining maturity as the replacement swap; or

(B) Exceed the longest remaining maturity of all the swaps submitted to the compression exercise.

(5) The non-cleared swap or non-cleared security-based swap was amended solely for one of the following reasons:

(i) To reflect technical changes, such as addresses, identities of parties for delivery of formal notices, and other administrative or operational provisions as long as they do not alter the non-cleared swap's or non-cleared security-based swap's underlying asset or indicator, the remaining maturity, or the total effective notional amount; or

(ii) To reduce the notional amount, so long as:

(A) All payment obligations attached to the total effective notional amount being eliminated as a result of the amendment are fully terminated; or

(B) All payment obligations attached to the total effective notional amount being eliminated as a result of the amendment are fully novated to a third party, who complies with applicable margin rules for the novated portion upon the transfer.

■ 11. Amend § 349.10 by revising paragraph (a) to read as follows:

§ 349.10 Documentation of margin matters.

* * * * *

(a) Provides the covered swap entity and its counterparty with the contractual right to collect and post initial margin and variation margin in such amounts, in such form, and under such circumstances as are required by this subpart, and at such time as initial margin or variation margin is required to be collected or posted under § 349.3 or § 349.4, as applicable; and

* * * * *

■ 12. Section 349.11 is revised to read as follows:

§ 349.11 Initial margin exemption for affiliates.

(a) The requirement for a covered swap entity to collect or post initial margin under § 349.3 does not apply with respect to any non-cleared swap or non-cleared security-based swap with a counterparty that is an affiliate.

(b) For purposes of this section, *an affiliate* means:

(1) An affiliate as defined in § 349.2; and

(2) Any company that controls, is controlled by, or is under common control with the covered swap entity through the direct or indirect exercise of controlling influence over the management or policies of the controlled company.

Farm Credit Administration

Authority and Issuance

For the reasons set forth in the preamble, the Farm Credit Administration proposes to amend chapter VI of title 12, Code of Federal Regulations, as follows:

PART 624—MARGIN AND CAPITAL REQUIREMENTS FOR COVERED SWAP ENTITIES

■ 13. The authority citation for part 624 continues to read as follows:

Authority: 7 U.S.C 6s(e), 15 U.S.C. 78o–10(e), 12 U.S.C. 2154, 12 U.S.C. 2243, 12 U.S.C. 2252, 12 U.S.C. 2279bb–1.

■ 14. Section 624.1 is amended by

■ a. Revising paragraphs (e)(6), (e)(7), (h) introductory text, and (h)(1); and

■ b. Adding paragraphs (h)(3) through (h)(5).

The revisions and additions read as follows:

§ 624.1 Authority, purpose, scope, exemptions and compliance dates.

* * * * *

(e) * * *

* * * * *

(6) September 1, 2020 with respect to requirements in § 624.3 for initial margin for any non-cleared swaps and non-cleared security-based swaps, where both:

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

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

(iii) In calculating the amounts in paragraphs (e)(6)(i) and (ii) of this section, an entity shall count the average daily aggregate notional amount of a non-cleared swap, a non-cleared security-based swap, a foreign exchange forward or a foreign exchange swap between the entity and an affiliate only one time, and shall not count a swap or security-based swap that is exempt pursuant to paragraph (d) of this section.

(7) September 1, 2021 with respect to requirements in § 624.3 for initial margin for any other covered swap entity with respect to non-cleared swaps and non-cleared security-based swaps entered into with any other counterparty.

* * * * *

(h) *Legacy swaps.* Covered swaps entities are required to comply with the requirements of this part for non-cleared swaps and non-cleared security-based swaps entered into on or after the relevant compliance dates for variation margin and for initial margin established in paragraph (e) of this section. Any non-cleared swap or non-cleared security-based swap entered into before such relevant date shall remain outside the scope of this part if amendments are made to the non-cleared swap or non-cleared security-based swap by method of adherence to a protocol, contractual amendment of an agreement or confirmation, or execution of a new contract in replacement of and immediately upon termination of an existing contract, as follows:

(1) Amendments to the non-cleared swap or non-cleared security-based swap solely to comply with the requirements of part 47, subpart I of part 252 or part 382 of title 12, as applicable;

* * * * *

(3)(i) Amendments to the non-cleared swap or non-cleared security-based swap that are made solely to accommodate the replacement of:

(A) An interbank offered rate (IBOR) including, but not limited to, the London Interbank Offered Rate (LIBOR), the Tokyo Interbank Offered Rate (TIBOR), the Bank Bill Swap Rate (BBSW), the Singapore Interbank Offered Rate (SIBOR), the Canadian Dollar Offered Rate (CDOR), Euro Interbank Offered Rate (EURIBOR), and the Hong Kong Interbank Offered Rate (HIBOR);

(B) Any other interest rate that a covered swap entity reasonably expects to be discontinued or reasonably determines has lost its relevance as a reliable benchmark due to a significant impairment; or

(C) Any other interest rate that succeeds a rate referenced in paragraph (h)(3)(i)(A) or (h)(3)(i)(B) of this section. An amendment made under this paragraph (h)(3)(i)(C) could be one of multiple amendments made under this paragraph (h)(3)(i)(C). For example, an amendment could replace an IBOR with a temporary interest rate and later replace the temporary interest rate with a permanent interest rate.

(ii) Amendments to accommodate replacement of a rate described in paragraph (h)(3)(i) may also incorporate spreads or other adjustments to the replacement rate and make other necessary technical changes to operationalize the determination of payments or other exchanges of economic value using the replacement rate, including changes to determination dates, calculation agents, and payment dates, so long as the changes do not extend the maturity or increase the total effective notional amount of the non-cleared swap or non-cleared security-based swap.

(4) The non-cleared swap or non-cleared security-based swap was amended or replaced solely to reduce risk or remain risk-neutral through portfolio compression between or

among covered swap entities and their counterparties as long as:

(i) A non-cleared swap or non-cleared security-based swap that is amended to reflect the outcome of the compression exercise does not:

(A) Extend the remaining maturity; or

(B) Increase the total effective notional amount of that swap; or

(ii) A non-cleared swap or non-cleared security-based swap that is entered into as a replacement to reflect the outcome of the compression exercise does not:

(A) Exceed the sum of the total effective notional amounts of all of the swaps that were submitted to the compression exercise that had the same or longer remaining maturity as the replacement swap; or

(B) Exceed the longest remaining maturity of all the swaps submitted to the compression exercise.

(5) The non-cleared swap or non-cleared security-based swap was amended solely for one of the following reasons:

(i) To reflect technical changes, such as addresses, identities of parties for delivery of formal notices, and other administrative or operational provisions as long as they do not alter the non-cleared swap's or non-cleared security-based swap's underlying asset or indicator, the remaining maturity, or the total effective notional amount; or

(ii) To reduce the notional amount, so long as:

(A) All payment obligations attached to the total effective notional amount being eliminated as a result of the amendment are fully terminated; or (B) All payment obligations attached to the total effective notional amount being eliminated as a result of the amendment are fully novated to a third party, who complies with applicable margin rules for the novated portion upon the transfer.

■ 15. Amend § 624.10 by revising paragraph (a) to read as follows:

§ 624.10 Documentation of margin matters.

* * * * *

(a) Provides the covered swap entity and its counterparty with the contractual right to collect and post initial margin and variation margin in such amounts, in such form, and under such circumstances as are required by this subpart, and at such time as initial margin or variation margin is required to be collected or posted under § 624.3 or § 624.4, as applicable; and

* * * * *

■ 16. Section 624.11 is revised to read as follows:

§ 624.11 Initial margin exemption for affiliates.

(a) The requirement for a covered swap entity to collect or post initial margin under § 624.3 does not apply with respect to any non-cleared swap or non-cleared security-based swap with a counterparty that is an affiliate.

(b) For purposes of this section, *an affiliate* means:

(1) An affiliate as defined in § 624.2, and

(2) Any company that controls, is controlled by, or is under common control with the covered swap entity through the direct or indirect exercise of controlling influence over the management or policies of the controlled company.

Federal Housing Finance Agency

Authority and Issuance

For the reasons set forth in the preamble, the Federal Housing Finance Agency proposes to amend chapter XII of title 12, Code of Federal Regulations, as follows:

PART 1221—MARGIN AND CAPITAL REQUIREMENTS FOR COVERED SWAP ENTITIES

■ 17. The authority citation for part 1221 continues to read as follows:

Authority: 7 U.S.C. 6s(e), 15 U.S.C. 78o–10(e), 12 U.S.C. 4513, and 12 U.S.C. 4526(a).

■ 18. Section 1221.1 is amended by:

■ a. Revising paragraphs (e)(6), (e)(7), (h) introductory text, and (h)(1); and

■ b. Adding paragraphs (h)(3) through (h)(5).

The revisions and additions read as follows:

§ 1221.1 Authority, purpose, scope, exemptions and compliance dates.

* * * * *

(e) * * *

* * * * *

(6) September 1, 2020 with respect to requirements in § 1221.3 for initial margin for any non-cleared swaps and non-cleared security-based swaps, where both:

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

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

(iii) In calculating the amounts in paragraphs (e)(6)(i) and (ii) of this section, an entity shall count the average daily aggregate notional amount of a non-cleared swap, a non-cleared security-based swap, a foreign exchange forward or a foreign exchange swap between the entity and an affiliate only one time, and shall not count a swap or security-based swap that is exempt pursuant to paragraph (d) of this section.

(7) September 1, 2021 with respect to requirements in § 1221.3 for initial margin for any other covered swap entity with respect to non-cleared swaps and non-cleared security-based swaps entered into with any other counterparty.

(h) *Legacy swaps.* Covered swaps entities are required to comply with the requirements of this part for non-cleared swaps and non-cleared security-based swaps entered into on or after the relevant compliance dates for variation margin and for initial margin established in paragraph (e) of this section. Any non-cleared swap or non-cleared security-based swap entered into before such relevant date shall remain outside the scope of this part if amendments are made to the non-cleared swap or non-cleared security-based swap by method of adherence to a protocol, contractual amendment of an agreement or confirmation, or execution of a new contract in replacement of and immediately upon termination of an existing contract, as follows:

(1) Amendments to the non-cleared swap or non-cleared security-based swap solely to comply with the requirements of part 47, subpart I of part 252 or part 382 of title 12, as applicable;

* * * * *

(3)(i) Amendments to the non-cleared swap or non-cleared security-based swap that are made solely to accommodate the replacement of:

(A) An interbank offered rate (IBOR) including, but not limited to, the London Interbank Offered Rate (LIBOR), the Tokyo Interbank Offered Rate (TIBOR), the Bank Bill Swap Rate (BBSW), the Singapore Interbank Offered Rate (SIBOR), the Canadian Dollar Offered Rate (CDOR), the Euro Interbank Offered Rate (EURIBOR), and the Hong Kong Interbank Offered Rate (HIBOR);

(B) Any other interest rate that a covered swap entity reasonably expects to be discontinued or reasonably determines has lost its relevance as a reliable benchmark due to a significant impairment; or

(C) Any other interest rate that succeeds a rate referenced in paragraph (h)(3)(i)(A) or (h)(3)(i)(B) of this section. An amendment made under this paragraph (h)(3)(i)(C) could be one of multiple amendments made under this

paragraph (h)(3)(i)(C). For example, an amendment could replace an IBOR with a temporary interest rate and later replace the temporary interest rate with a permanent interest rate.

(ii) Amendments to accommodate replacement of a rate described in paragraph (h)(3)(i) may also incorporate spreads or other adjustments to the replacement rate and make other necessary technical changes to operationalize the determination of payments or other exchanges of economic value using the replacement rate, including changes to determination dates, calculation agents, and payment dates, so long as the changes do not extend the maturity or increase the total effective notional amount of the non-cleared swap or non-cleared security-based swap.

(4) The non-cleared swap or non-cleared security-based swap was amended or replaced solely to reduce risk or remain risk-neutral through portfolio compression between or among covered swap entities and their counterparties as long as:

(i) A non-cleared swap or non-cleared security-based swap that is amended to reflect the outcome of the compression exercise does not:

(A) Extend the remaining maturity; or

(B) Increase the total effective notional amount of that swap; or

(ii) A non-cleared swap or non-cleared security-based swap that is entered into as a replacement to reflect the outcome of the compression exercise does not:

(A) Exceed the sum of the total effective notional amounts of all of the swaps that were submitted to the compression exercise that had the same or longer remaining maturity as the replacement swap; or

(B) Exceed the longest remaining maturity of all the swaps submitted to the compression exercise.

(5) The non-cleared swap or non-cleared security-based swap was amended solely for one of the following reasons:

(i) To reflect technical changes, such as addresses, identities of parties for delivery of formal notices, and other administrative or operational provisions as long as they do not alter the non-cleared swap's or non-cleared security-based swap's underlying asset or indicator, the remaining maturity, or the total effective notional amount; or

(ii) To reduce the notional amount, so long as:

(A) All payment obligations attached to the total effective notional amount being eliminated as a result of the amendment are fully terminated; or

(B) All payment obligations attached to the total effective notional amount being eliminated as a result of the amendment are fully novated to a third party, who complies with applicable margin rules for the novated portion upon the transfer.

■ 19. Amend § 1221.10 by revising paragraph (a) to read as follows:

§ 1221.10 Documentation of margin matters.

* * * * *

(a) Provides the covered swap entity and its counterparty with the contractual right to collect and post initial margin and variation margin in such amounts, in such form, and under such circumstances as are required by this part, and at such time as initial margin or variation margin is required to be collected or posted under § 1221.3 or § 1221.4, as applicable; and

* * * * *

■ 20. Section 1221.11 is revised to read as follows:

§ 1221.11 Initial margin exemption for affiliates.

(a) The requirement for a covered swap entity to collect or post initial margin under § 1221.3 does not apply with respect to any non-cleared swap or non-cleared security-based swap with a counterparty that is an affiliate.

(b) For purposes of this section, *an affiliate* means:

(1) An affiliate as defined in § 1221.2; and

(2) Any company that controls, is controlled by, or is under common control with the covered swap entity through the direct or indirect exercise of controlling influence over the management or policies of the controlled company.

Dated: September 17th, 2019.

Joseph M. Otting,

Comptroller of the Currency.

By order of the Board of Governors of the Federal Reserve System, October 21, 2019.

Ann E. Misback,

Secretary of the Board. Federal Deposit Insurance Corporation. By order of the Board of Directors.

Dated at Washington, DC, on September 17, 2019.

Robert E. Feldman,

Executive Secretary.

By order of the Board of the Farm Credit Administration.

Dated at McLean, VA, this 17th day of September, 2019.

Dale L. Aultman,

Secretary.

Dated: August 27, 2019.

Mark A. Calabria,

Director, Federal Housing Finance Agency.

[FR Doc. 2019–23541 Filed 11–6–19; 8:45 am]

BILLING CODE 4810–33–P; 6210–01–P; 6714–01–P; 8070–01–P; 6705–01–P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 701

RIN 3133–AF06

Chartering and Field of Membership

AGENCY: National Credit Union Administration (NCUA).

ACTION: Proposed rule and supplemental statement.

SUMMARY: The NCUA Board (Board) is proposing to amend its chartering and field of membership (FOM) rules with respect to applicants for a community charter approval, expansion, or conversion. Specifically, the Board is proposing to re-adopt a provision to allow an applicant to designate a Combined Statistical Area (CSA), or an individual, contiguous portion thereof, as a well-defined local community (WDLC), provided that the chosen area has a population of 2.5 million or less. Separately, in accordance with an August 2019 opinion and order issued by the D.C. Circuit Court of Appeals (court) with respect to communities based on a Core-Based Statistical Area (CBSA) or a portion thereof, the Board is providing further explanation and support for its elimination of the requirement to serve the CBSA's core area as provided for in a 2016 rulemaking. In addition, the Board is proposing to clarify existing requirements and add an explicit provision to its rules to address concerns about potential discrimination in the FOM selection for CSAs and CBSAs.

DATES: Comments must be received by December 9, 2019.

ADDRESSES: You may submit comments by any of the following methods (Please send comments by one method only):

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *NCUA Website: http://www.ncua.gov/RegulationsOpinionsLaws/proposed_regs/proposed_regs.html*. Follow the instructions for submitting comments.