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Contents

Federal Register

Vol. 80, No. 92

Wednesday, May 13, 2015

Separate Parts In This Issue

Reader Aids

Consult the Reader Aids section at the end of this page for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

To subscribe to the Federal Register Table of Contents LISTSERV electronic mailing list, go to http://listserv.access.gpo.gov and select Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings); then follow the instructions.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

Federal Register
Vol. 80, No. 92
Wednesday, May 13, 2015

Presidential Documents

Title 3—

The President

Proclamation 9276 of May 8, 2015

National Defense Transportation Day and National Transportation Week, 2015

By the President of the United States of America

A Proclamation

American infrastructure is the foundation of our economy—helping businesses move products, getting workers to the job, and ensuring families make it home to their loved ones each night. All year, we rely on our transportation networks to sustain our way of life, and on National Defense Transportation Day and during National Transportation Week, we pause to reaffirm the importance of infrastructure and the role it plays in growing our economy and keeping us safe.

Today, our Nation's investment in transportation lags behind the rest of the world. Over half of America's major roads are in less than good condition, and a quarter of our bridges require significant repair or cannot handle today's traffic, costing businesses and consumers billions in unnecessary freight expenses. Countless hours and dollars are lost navigating bad roads, making transportation costs—from wasted gas to commercial trucking costs that are passed on to the consumer—one of the biggest expenses for the average American family.

America's commitment to connect two coasts forged the Transcontinental Railroad, and our need for a robust network of roads fueled the Interstate Highway System. The United States was once a leader in infrastructure, and my Administration is dedicated to restoring this legacy by making investments that will improve the competitiveness of our economy while creating jobs and expanding opportunity for all hardworking Americans. Last year, we launched the Build America Investment Initiative to give cities and States innovative opportunities to partner with the private sector on infrastructure funding. We are continuing to advance major highway and port projects, and this year, we announced new infrastructure tax proposals that will level the playing field for municipalities seeking public–private infrastructure partnerships.

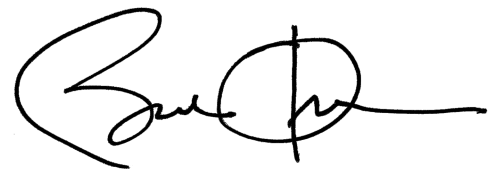
Keeping our infrastructure up-to-date is not only crucial to our economy, it is essential to our safety and security. The same roads, bridges, and ports that we depend on to carry goods to market also enable us to deliver lifesaving resources to victims during emergencies. In the face of a changing climate, resilient infrastructure that can withstand more frequent and more devastating natural disasters is more important than ever. To ensure our Nation is prepared in the face of crisis and to guarantee service members and first responders can do their jobs safely and effectively, we must continue to invest in our vital transportation networks.

In a 21st-century economy, businesses set up shop wherever they can find the best roads and bridges, the fastest rail and Internet, and the most reliable airports and power grids. This week, let us continue our work to build the best transportation systems possible and recommit to investing in our infrastructure in a way that will keep our economy growing—not just for the next few years, but for generations to come.

In recognition of the importance of our Nation's transportation infrastructure, and of the men and women who build, maintain, and utilize it, the Congress has requested, by joint resolution approved May 16, 1957, as amended (36 U.S.C. 120), that the President designate the third Friday in May of each year as ''National Defense Transportation Day,'' and, by joint resolution approved May 14, 1962, as amended (36 U.S.C. 133), that the week during which that Friday falls be designated as ''National Transportation Week.''

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, do hereby proclaim Friday, May 15, 2015, as National Defense Transportation Day and May 10 through May 16, 2015, as National Transportation Week. I call upon all Americans to recognize the importance of our Nation's transportation infrastructure and to acknowledge the contributions of those who build, operate, and maintain it.

IN WITNESS WHEREOF, I have hereunto set my hand this eighth day of May, in the year of our Lord two thousand fifteen, and of the Independence of the United States of America the two hundred and thirty-ninth.



[FR Doc. 2015–11675
Filed 5–12–15; 8:45 am]
Billing code 3295–F5

Presidential Documents

Proclamation 9277 of May 8, 2015

Peace Officers Memorial Day and Police Week, 2015

By the President of the United States of America

A Proclamation

Each May, our Nation salutes the American women and men who put their lives on the line every day to maintain public safety and hold accountable those who break the law. On Peace Officers Memorial Day and during Police Week, we recognize all those who have dedicated their lives to this vital task. With heavy hearts, we mourn the heroes taken from us only because they chose to serve, and we rededicate ourselves to carrying forward their noble legacy.

Our law enforcement officers have extraordinarily tough jobs. They regularly work in dangerous environments and in difficult, high-tension situations. And they often face challenges deeply rooted in systemic problems and broader social issues. These professionals serve to protect their communities and strengthen their Nation, and they deserve to go home safely to their loved ones at the end of each shift. As President, I am committed to making sure America's dedicated police officers receive the support and recognition they have earned, and to doing all I can to protect those who protect us.

One important way to make policing safer and more effective is by continuing to enhance relations and trust between law enforcement and the neighborhoods they serve. This will make it easier and safer for police officers to do their jobs, and it will strengthen the places we live and work. This important task will require our Nation—our communities, our law enforcement, and our leaders at every level—to come together to commit to meeting this challenge and moving our country forward, block by block and neighborhood by neighborhood. As President, I firmly believe it is within our power to make progress in our time, and I am dedicated to partnering with all those who are willing to do this necessary work.

My Administration is taking concrete steps to implement the commonsense, pragmatic recommendations my Task Force on 21st Century Policing put forward based on input from law enforcement personnel as well as criminal justice experts, community leaders, and civil liberties advocates. And we are engaging with local jurisdictions so they can begin to make the changes that will help ensure that police officers and their communities are partners in battling crime and that everyone feels safe on and off the job.

Our Nation's police officers are mentors in our schools, familiar faces on the corner, and pillars of our communities. They keep our borders secure and our roads safe, and in times of crisis, they rush toward tragedy. They are hardworking mothers, fathers, daughters, and sons who have dedicated their lives to public service, working every day to build a brighter future for their families and their Nation. Their selfless commitment and daily sacrifice represent what is possible for every city, town, and reservation in America, and our country has an enormous opportunity to lift up the very best law enforcement personnel as examples—not just to other officers, but to all who aspire to lives of good citizenship. This week and every week, let us remember the patriots who laid down their lives for ours and honor all who strive to make our Nation more safe, more free, and more just.

By a joint resolution approved October 1, 1962, as amended (76 Stat. 676), and by Public Law 103–322, as amended (36 U.S.C. 136–137), the President has been authorized and requested to designate May 15 of each year as ''Peace Officers Memorial Day'' and the week in which it falls as ''Police Week.''

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, do hereby proclaim May 15, 2015, as Peace Officers Memorial Day and May 10 through May 16, 2015, as Police Week. I call upon all Americans to observe these events with appropriate ceremonies and activities. I also call on the Governors of the United States and its Territories, and appropriate officials of all units of government, to direct that the flag be flown at half-staff on Peace Officers Memorial Day. I further encourage all Americans to display the flag at half-staff from their homes and businesses on that day.

IN WITNESS WHEREOF, I have hereunto set my hand this eighth day of May, in the year of our Lord two thousand fifteen, and of the Independence of the United States of America the two hundred and thirty-ninth.

[FR Doc. 2015–11680
Filed 5–12–15; 8:45 am]
Billing code 3295–F5

Presidential Documents

Proclamation 9278 of May 8, 2015

Mother's Day, 2015

By the President of the United States of America

A Proclamation

Each May, Americans dedicate a day to honor the remarkable women who strive and sacrifice all year to ensure ours is a Nation where all things are possible. Whether married or single, LGBT or straight, biological, adoptive, or foster, mothers are the bedrocks of our lives and the foundation of our society. They are our first friends and teachers, inspiring us to reach great heights and supporting us no matter the challenges we face or the paths we choose. Today, we come together to celebrate the women who raised us and who love us unconditionally—who do whatever it takes to set us on the road to success and want nothing more than for us to lead happy, healthy lives.

Our Nation's mothers are breadwinners, community leaders, and pillars of family. For generations, they have blazed new paths—from Seneca Falls and Selma to the boardroom, the laboratory, and the forefronts of our military conflicts—opening up new possibilities and widening the circle of opportunity. Today, these pioneers show us what is possible for ourselves and our country. They are our Nation's innovators, tireless workers, engines of economic growth, and drivers of progress. And through their example, they teach our future dreamers and doers about the value of hard work, compassion, service, and personal responsibility.

Today, women are nearly half of the American workforce, and as a Nation, we must ensure our policies reflect this reality because no woman should have to choose between being a productive employee and a responsible mother. All women deserve equal pay for equal work and a living wage, and as President, I have fought tirelessly to advance these commonsense measures. I continue to call for increased workplace flexibility and access to paid leave, including paid sick days, and I have proposed a plan that would make quality child care available to every middle-class and low-income family with young children. I remain committed to tearing down the remaining barriers to mothers' full and equal participation in our economy and society—because when mothers succeed, America succeeds and policies that benefit women and working families benefit us all.

We owe so much to our mothers, and they deserve policies that support them, as well as our profound love and gratitude. On Mother's Day, we give thanks to our mothers who lift us up every day. Let us pay respect to those who continue to offer us generous love and patient counsel and hold fast to the memories of all who live on in our hearts.

The Congress, by a joint resolution approved May 8, 1914 (38 Stat. 770), has designated the second Sunday in May each year as ''Mother's Day'' and requested the President to call for its appropriate observance.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, do hereby proclaim May 10, 2015, as Mother's Day. I urge all Americans to express love and gratitude to mothers everywhere, and I call upon all citizens to observe this day with appropriate programs, ceremonies, and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this eighth day of May, in the year of our Lord two thousand fifteen, and of the Independence of the United States of America the two hundred and thirty-ninth.

[FR Doc. 2015–11681
Filed 5–12–15; 8:45 am]
Billing code 3295–F5

Rules and Regulations

Federal Register

Vol. 80, No. 92

Wednesday, May 13, 2015

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 925

[Doc. No. AMS–FV–14–0106; FV15–925–2 FR]

Grapes Grown in a Designated Area of Southeastern California; Increased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule implements a recommendation from the California Desert Grape Administrative Committee for an increase of the assessment rate established for the 2015 and subsequent fiscal periods from $0.0200 to $0.0250 per 18-pound lug of grapes handled under the marketing order. The Committee locally administers the order and is comprised of producers and handlers of grapes grown and handled in a designated area of southeastern California. Assessments upon grape handlers are used by the Committee to fund reasonable and necessary expenses of the program. The fiscal period began on January 1 and ends December 31. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

DATES: *Effective Date:* May 14, 2015.

FOR FURTHER INFORMATION CONTACT: Kathie Notoro, Marketing Specialist, or Martin Engeler, Regional Director, California Marketing Field Office, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA; Telephone: (559) 487–5901, Fax: (559) 487–5906, or Email: *Kathie.Notoro@ams.usda.gov* or *Martin.Engeler@ams.usda.gov.*

Small businesses may request information on complying with this regulation by contacting Jeffrey Smutny, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, or Email: *Jeffrey.Smutny@ams.usda.gov.*

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Order No. 925 (7 CFR part 925), regulating the handling of grapes grown in a designated area of southeastern California, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Orders 12866, 13563, and 13175.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, grape handlers in a designated area of southeastern California are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein would be applicable to all assessable grapes beginning on January 1, 2015, and continue until amended, suspended, or terminated.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule increases the assessment rate established for the Committee for the 2015 and subsequent fiscal periods from $0.0200 to $0.0250 per 18-pound lug of grapes handled.

The grape order provides authority for the Committee, with the approval of USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are producers and handlers of grapes grown in a designated area of southeastern California. They are familiar with the Committee's needs and with the costs of goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 2014 and subsequent fiscal periods, the Committee recommended, and the USDA approved, an assessment rate that would continue in effect from fiscal period to fiscal period unless modified, suspended, or terminated by USDA based upon recommendation and information submitted by the Committee or other information available to USDA.

The Committee met on October 30, 2014, and unanimously recommended 2015 expenditures of $135,500, a contingency reserve fund of $9,500, and an assessment rate of $0.0250 per 18-pound lug of grapes handled. In comparison, last year's budgeted expenditures were $110,000. The Committee recommended a crop estimate of 5,800,000 18-pound lugs, which is higher than the 5,500,000 18-pound lugs handled last year. The Committee also recommended carrying over a financial reserve of $40,000, which would increase to $49,500 if the contingency fund is not expended. The assessment rate of $0.0250 per 18-pound lug of grapes handled recommended by the Committee is $0.0050 higher than the $0.0200 rate currently in effect. The higher assessment rate, applied to shipments of 5,800,000 18-pound lugs, is expected to generate $145,000 in revenue and be sufficient to cover the anticipated expenses.

The major expenditures recommended by the Committee for the 2015 fiscal period include $15,500 for research, $17,000 for general office expenses, $62,750 for management and compliance expenses, $25,000 for consultation services, and $9,500 for a contingency reserve. The $15,500 research project is a continuation of a vine study in progress by the University of California, Riverside. In comparison, major expenditures for the 2014 fiscal period included $15,500 for research, $22,000 for general office expenses, and $62,500 for management and compliance expenses. Overall 2015 expenditures include an increase in management and compliance expenses and a decrease in general office expenses and additional funds for a contingency reserve.

The assessment rate recommended by the Committee was derived by evaluating several factors, including estimated shipments for the 2015 season, budgeted expenses, and the level of available financial reserves. The Committee determined that the $0.0250 assessment rate should generate $145,000 in revenue to cover the budgeted expenses of $135,500, and a contingency reserve fund of $9,500.

Reserve funds by the end of 2015 are projected to be $40,000 if the $9,500 added to the contingency fund is expended or $49,500 if it is not expended. Both amounts are well within the amount authorized under the order. Section 925.41 of the order permits the Committee to maintain approximately one fiscal period's expenses in reserve.

The assessment rate established in this rule will continue in effect indefinitely unless modified, suspended, or terminated by USDA based upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate will be in effect for an indefinite period, the Committee will continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or USDA. Committee meetings are open to the public and interested persons may express their views at these meetings. USDA will evaluate the Committee's recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The Committee's 2015 budget and those for subsequent fiscal periods will be reviewed and, as appropriate, approved by USDA.

Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are approximately 14 handlers of southeastern California grapes who are subject to regulation under the marketing order and about 41 grape producers in the production area. Small agricultural service firms are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than $7,000,000, and small agricultural producers are defined as those whose annual receipts are less than $750,000. Eleven of the 14 handlers subject to regulation have annual grape sales of less than $7,000,000, according to USDA Market News Service and Committee data. In addition, information from the Committee and USDA's Market News indicates that at least 10 of 41 producers have annual receipts of less than $750,000. Thus, it may be concluded that a majority of the grape handlers regulated under the order and about 10 of the producers could be classified as small entities under the Small Business Administration's definitions.

This rule increases the assessment rate established for the Committee and collected from handlers for the 2015 and subsequent fiscal periods from $0.0200 to $0.0250 per 18-pound lug of grapes. The Committee unanimously recommended 2015 expenditures of $135,500, a contingency reserve fund of $9,500, and an assessment rate of $0.0250 per 18-pound lug of grapes handled. The assessment rate of $0.0250 is $0.0050 higher than the 2014 rate. The quantity of assessable grapes for the 2015 season is estimated at 5,800,000 18-pound lugs. Thus, the $0.0250 rate should generate $145,000 in income. In addition, reserve funds at the end of the year are projected to be $49,500, which is well within the order's limitation of approximately one fiscal period's expenses.

The major expenditures recommended by the Committee for the 2015 fiscal period include $15,500 for research, $17,000 for general office expenses, $62,750 for management and compliance expenses, $25,000 for consultation services and $9,500 for the contingency reserve. In comparison, major expenditures for the 2014 fiscal period included $15,500 for research, $22,000 for general office expenses, $62,500 for management and compliance expenses and $10,000 for the contingency reserve. Overall expenditures included an increase in management and compliance expenses, a decrease in general office expenses, and funding of a contingency reserve.

Prior to arriving at this budget and assessment rate, the Committee considered alternative expenditures and assessment rates to include not increasing the $0.0200 assessment rate. Based on a crop estimate of 5,800,000 18-pound lugs, the Committee ultimately determined that increasing the assessment rate to $0.0250 would generate sufficient funds to cover budgeted expenses. Reserve funds at the end of the 2015 fiscal period are projected to be $40,000 if the $9,500 contingency fund is expended or $49,500 if it is not expended. These amounts are well within the amount authorized under the order.

A review of historical crop and price information, as well as preliminary information pertaining to the upcoming fiscal period, indicates that the producer price for the 2014 season averaged about $22.00 per 18-pound lug of California grapes handled. If the 2015 producer price is similar to the 2014 price, estimated assessment revenue as a percentage of total estimated producer revenue would be 0.11 percent for the 2015 season ($0.0250 divided by $22.00 per 18-pound lug).

This action increases the assessment obligation imposed on handlers. While assessments impose some additional costs on handlers, the costs are minimal and uniform on all handlers. Some of the additional costs may be passed on to producers. However, these costs are offset by the benefits derived from the operation of the marketing order. In addition, the Executive Subcommittee and the Committee's meetings were widely publicized throughout the grape production area and all interested persons were invited to attend and participate in Committee deliberations on all issues. Like all Committee meetings, the October 30, 2014, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the order's information collection requirements have been previously approved by the Office of Management and Budget (OMB) and assigned OMB No. 0581–0189 Generic Fruit Crops. No changes in those requirements as a result of this action are necessary. Should any changes become necessary, they would be submitted to OMB for approval.

This rule imposes no additional reporting or recordkeeping requirements on either small or large California grape handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. As noted in the initial regulatory flexibility analysis, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this final rule.

AMS is committed to complying with the E-Government Act to promote the use of the internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

A proposed rule concerning this action was published in the **Federal Register** on March 31, 2015 (80 FR 16998). Copies of the proposed rule were also mailed or sent via facsimile to all grape handlers. Finally, the proposal was made available through the internet by USDA and the Office of the Federal Register. A 15-day comment period ending April 15, 2015, was provided for interested persons to respond to the proposal. No comments were received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/MarketingOrdersSmallBusinessGuide.* Any questions about the compliance guide should be sent to Jeffrey Smutny at the previously-mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) The 2015 fiscal period began on January 1, 2015, and the marketing order requires that the rate of assessment for each fiscal period apply to all assessable grapes handled during such fiscal period; (2) the Committee needs to have sufficient funds to pay its expenses, which are incurred on a continuous basis; and (3) handlers are aware of this action, which was unanimously recommended by the Committee at a public meeting and is similar to other assessment rate actions issued in past years. Also, a 15-day comment period was provided for in the proposed rule and no comments were received.

List of Subjects in 7 CFR Part 925

Grapes, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 925 is amended as follows:

PART 925—GRAPES GROWN IN A DESIGNATED AREA OF SOUTHEASTERN CALIFORNIA

■ 1. The authority citation for 7 CFR part 925 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. Section 925.215 is revised to read as follows:

§ 925.215 Assessment rate.

On and after January 1, 2015, an assessment rate of $0.0250 per 18-pound lug is established for grapes grown in a designated area of southeastern California.

Dated: May 7, 2015.

Rex A. Barnes,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 2015–11468 Filed 5–12–15; 8:45 am]

BILLING CODE P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 985

[Doc. No. AMS–FV–14–0096; FV15–985–1 FR]

Marketing Order Regulating the Handling of Spearmint Oil Produced in the Far West; Salable Quantities and Allotment Percentages for the 2015–2016 Marketing Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule implements a recommendation from the Spearmint Oil Administrative Committee (Committee) to establish the quantity of spearmint oil produced in the Far West, by class, that handlers may purchase from, or handle on behalf of, producers during the 2015–2016 marketing year, which begins on June 1, 2015. The Committee locally administers the Far West spearmint marketing order (order) and is comprised of producers of spearmint oil operating in the Far West. The Far West includes the states of Washington, Idaho, and Oregon, and designated parts of Nevada and Utah. This rule establishes salable quantities and allotment percentages for Class 1 (Scotch) spearmint oil of 1,265,853 pounds and 60 percent, respectively, and for Class 3 (Native) spearmint oil of 1,341,269 pounds and 56 percent, respectively. The Committee recommended these quantities to help maintain stability in the spearmint oil market.

DATES: *Effective Date:* May 14, 2015.

FOR FURTHER INFORMATION CONTACT: Barry Broadbent, Marketing Specialist, or Gary Olson, Regional Director, Northwest Marketing Field Office, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA; Telephone: (503) 326–2724, Fax: (503) 326–7440, or Email: *Barry.Broadbent@ams.usda.gov* or *GaryD.Olson@ams.usda.gov.*

Small businesses may request information on complying with this regulation by contacting Jeffrey Smutny, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, or Email: *Jeffrey.Smutny@ams.usda.gov.*

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Order No. 985 (7 CFR part 985), as amended, regulating the handling of spearmint oil produced in the Far West (Washington, Idaho, Oregon, and designated parts of Nevada and Utah), hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Orders 12866, 13175, and 13563.

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. Under the order now in effect, salable quantities and allotment percentages may be established for classes of spearmint oil produced in the Far West. This rule will establish the quantity of spearmint oil produced in the Far West, by class, which handlers may purchase from, or handle on behalf of, producers during the 2015–2016 marketing year, which begins on June 1, 2015.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

The Committee meets annually in the fall to adopt a marketing policy for the ensuing marketing year or years. In determining such marketing policy, the Committee considers a number of factors, including, but not limited to, the current and projected supply, estimated future demand, production costs, and producer prices for all classes of spearmint oil. Input from spearmint oil handlers and producers regarding prospective marketing conditions for the upcoming year is considered as well. If the Committee's marketing policy considerations indicate a need for limiting the quantity of any or all classes of spearmint oil marketed, the Committee subsequently recommends to USDA the establishment of a salable quantity and allotment percentage for such class or classes of oil for the forthcoming marketing year. Recommendations for volume control are intended to ensure that market requirements for Far West spearmint oil are satisfied and orderly marketing conditions are maintained.

The salable quantity represents the total amount of each class of spearmint oil that handlers may purchase from, or handle on behalf of, producers during the marketing year. The allotment percentage is the percentage used to calculate each producer's prorated share of the salable quantity. It is derived by dividing the salable quantity for each class of spearmint oil by the total of all producers' allotment bases for the same class of oil. Each producer's annual allotment of salable spearmint oil is calculated by multiplying their respective total allotment base by the allotment percentage for each class of spearmint oil. A producer's allotment base is their quantified share of the spearmint oil market based on a statistical representation of past spearmint oil production, with accommodation for reasonable and normal adjustments to such base as prescribed by the Committee and approved by USDA.

Salable quantities and allotment percentages are established at levels intended to fulfill market requirements and to maintain orderly marketing conditions. Committee recommendations for volume controls are made well in advance of the period in which the regulations are to be effective, thereby allowing producers the chance to adjust their production decisions accordingly.

Pursuant to authority in §§ 985.50, 985.51, and 985.52 of the order, the full eight-member Committee met on November 5, 2014, and recommended salable quantities and allotment percentages for both classes of oil for the 2015–2016 marketing year. The Committee unanimously recommended the establishment of a salable quantity and allotment percentage for Class 1 (Scotch) spearmint oil of 1,265,853 pounds and 60 percent, respectively. The Committee, also with a unanimous vote, recommended the establishment of a salable quantity and allotment percentage for Class 3 (Native) spearmint oil of 1,341,269 pounds and 56 percent, respectively.

This final rule establishes the amount of Scotch and Native spearmint oil that handlers may purchase from, or handle on behalf of, producers during the 2015–2016 marketing year, which begins on June 1, 2015. Salable quantities and allotment percentages have been placed into effect each season since the order's inception in 1980.

Class 1 (Scotch) Spearmint Oil

As noted above, the Committee unanimously recommended a salable quantity of Scotch spearmint oil of 1,265,853 pounds and an allotment percentage of 60 percent for the upcoming 2015–2016 marketing year. The Committee utilized 2015–2016 sales estimates for Scotch spearmint oil, as provided by several of the industry's handlers, as well as historical and current Scotch spearmint oil production and inventory statistics, to arrive at these recommendations.

Trade demand for Far West Scotch spearmint oil is expected to rise from 1,092,726 pounds in the 2014–2015 marketing year to 1,100,000 pounds in 2015–2016. Industry reports indicate that the increased trade demand estimate is the result of increased consumer demand for mint flavored products and low end-user inventories that need to be replenished. Information gathered from spearmint oil handlers supports this conclusion.

Production of Far West Scotch spearmint oil increased from 1,057,377 pounds in 2013 to 1,093,740 pounds in 2014. Committee members attribute the increase in production to both the low level of reserves and growing demand. Given that these factors are expected to continue in the coming 2015–2016 year, the Committee expects production to increase to as much as 1,300,000 pounds for the forthcoming marketing year.

The Committee also estimates that there will be zero carry-in of Scotch spearmint oil on June 1, 2015, the beginning of the 2015–2016 marketing year. This figure, which is the primary measure of excess supply, is down from 7,064 carried-in the previous year. This level of carry-in is below the minimum carry-in quantity that the Committee considers favorable. The demand for Scotch spearmint oil during the remainder of the 2014–2015 marketing year is expected to equal or exceed the remaining total supply, which will likely cause the zero carry-in.

The 2015–2016 salable quantity of 1,265,853 pounds recommended by the Committee represents an increase of 173,127 pounds over the total supply available during the previous marketing year. Total supply for 2014–2015 amounted to 1,092,726 pounds (7,064 carry-in, 989,643 pounds produced, and 96,019 pounds released from the reserve).

The Committee estimates 2015–2016 demand for Scotch spearmint oil at 1,100,000 pounds. When considered in conjunction with the forecast that there will be zero available carry-in of Scotch spearmint oil on June 1, 2015, the recommended salable quantity of 1,265,853 pounds is expected to satisfy market demand and yield a carry-in of 165,853 pounds available at the beginning of 2016–2017 marketing year.

The Committee's stated intent in the use of marketing order volume control regulations for Scotch spearmint oil is to keep adequate supplies available to meet market needs and maintain orderly marketing conditions. The salable quantity recommended for the upcoming marketing year is more than the salable quantity initially set for the previous year of 1,149,030. The Committee believes that the recommended salable quantity will adequately meet demand, as well as result in a larger carry-in for the following year. With that in mind, the Committee developed its recommendation for the Scotch spearmint oil salable quantity and allotment percentage for the 2015–2016 marketing year based on the information discussed above, as well as the data outlined below.

(A) *Estimated carry-in of Scotch spearmint oil on June 1, 2015—0 pounds.* This figure is the difference between the revised 2014–2015 marketing year total available supply of 1,092,726 pounds and the estimated 2014–2015 marketing year trade demand of 1,092,726 pounds.

(B) *Estimated trade demand of Scotch spearmint oil for the 2015–2016 marketing year—1,100,000 pounds.* This figure is based on input from producers at five Scotch spearmint oil production area meetings held in late September and early October 2014, as well as estimates provided by handlers and other meeting participants at the November 5, 2014, meeting. The average estimated trade demand derived from the five production area meetings was 1,192,400 pounds, which is 42,400 pounds more than the average of trade demand estimates submitted by handlers. Far West Scotch spearmint oil sales have averaged 979,520 pounds per year over the last three years. Given this information, the Committee decided it was prudent to anticipate the trade demand at 1,100,000 pounds. Should the initially established volume control levels prove insufficient to adequately supply the market, the Committee has the authority to recommend intra-seasonal increases as needed.

(C) *Salable quantity of Scotch spearmint oil required from the 2015–2016 marketing year production—1,100,000 pounds.* This figure is the difference between the estimated 2015–2016 marketing year trade demand (1,100,000 pounds) and the estimated carry-in on June 1, 2015 (0 pounds). This figure represents the minimum salable quantity that may be needed to satisfy estimated demand for the coming year with no carryover.

(D) *Total estimated allotment base of Scotch spearmint oil for the 2015–2016 marketing year—2,109,755 pounds.* This figure represents a one-percent increase over the revised 2014–2015 total allotment base. This figure is generally revised each year on June 1 due to producer base being lost because of the bona fide effort production provisions of § 985.53(e). The revision is usually minimal.

(E) *Computed Scotch spearmint oil 2015–2016 marketing year allotment percentage—52.1 percent.* This percentage is computed by dividing the minimum required salable quantity (1,100,000 pounds) by the total estimated allotment base (2,109,755 pounds).

(F) *Recommended Scotch spearmint oil 2015–2016 marketing year allotment percentage—60 percent.* This is the Committee's recommendation and is based on the computed allotment percentage (52.1 percent), the average of the computed allotment percentage figures from the five production area meetings (56.5 percent), and input from producers and handlers at the November 5, 2014, meeting. The recommended 60 percent allotment percentage is also based on the Committee's belief that the computed percentage (52.1 percent) may not adequately supply the potential 2015–2016 Scotch spearmint oil market.

(G) *Recommended Scotch spearmint oil 2015–2016 marketing year salable quantity—1,265,853 pounds.* This figure is the product of the recommended allotment percentage (60 percent) and the total estimated allotment base (2,109,755 pounds).

(H) *Estimated total available supply of Scotch spearmint oil for the 2015–2016 marketing year—1,265,853 pounds.* This figure is the sum of the 2015–2016 recommended salable quantity (1,265,853 pounds) and the estimated carry-in on June 1, 2015 (0 pounds).

Class 3 (Native) Spearmint Oil

At the November 5, 2014, meeting, the Committee also recommended a 2015–2016 Native spearmint oil salable quantity of 1,341,269 pounds and an allotment percentage of 56 percent. The Committee utilized Native spearmint oil sales estimates for 2015–2016 marketing year, as provided by several of the industry's handlers, as well as historical and current Native spearmint oil market statistics to establish these thresholds. The recommended volume control levels represent an increase of 250,448 pounds and 10 percentage points over the previous year's initially established salable quantity and allotment percentage.

The Committee also estimates that there will be 512,745 pounds of Native spearmint oil in the reserve pool on June 1, 2015. This figure, which is the oil held in reserve by producers, is down from an industry peak of 606,942 pounds in 2011. Reserve levels of Native spearmint oil are nearing the level that the Committee believes is optimal for the industry.

Committee statistics indicate that demand for Far West Native spearmint oil has been gradually increasing since 2009. Spearmint oil handlers, who previously projected the 2014–2015 trade demand for Far West Native spearmint oil to be in the range of 1,100,000 pounds to 1,400,000 pounds (with an average of 1,300,000 pounds), have projected trade demand for the 2015–2016 marketing period to be in the range of 1,290,000 pounds to 1,400,000 pounds (with an average of 1,347,500).

Given the above, the Committee estimates that approximately 1,300,000 pounds of Native spearmint oil may be sold during the 2015–2016 marketing year. When considered in conjunction with the estimated carry-in of 117,368 pounds of Native spearmint oil on June 1, 2015, the recommended salable quantity of 1,341,269 pounds results in an estimated total available supply of 1,458,637 pounds of Native spearmint oil during the 2015–2016 marketing year. Estimated carry-in of Native spearmint oil at the beginning of the 2016–2017 marketing year is expected to be approximately 152,137 pounds. Carry-in spearmint oil is distinct from reserve pool spearmint oil and represents the amount of salable spearmint oil produced, but not marketed, in previous years and is available for sale in the current year. It is the primary measure of excess spearmint oil supply under the order. Reserve pool oil represents the amount of excess oil held by the Committee, on behalf of the producers, that is not currently available to the market.

The Committee's stated intent in the use of marketing order volume control regulations for Native spearmint oil is to keep adequate supplies available to meet market needs and maintain orderly marketing conditions. With that in mind, the Committee developed its recommendation for the Native spearmint oil salable quantity and allotment percentage for the 2015–2016 marketing year based on the information discussed above, as well as the data outlined below.

(A) *Estimated carry-in of Native spearmint oil on June 1, 2015—117,368 pounds.* This figure is the difference between the revised 2014–2015 marketing year total available supply of 1,458,368 pounds and the estimated 2014–2015 marketing year trade demand of 1,341,000 pounds.

(B) *Estimated trade demand of Native spearmint oil for the 2015–2016 marketing year—1,306,500 pounds.* This estimate is established by the Committee and is based on input from producers at six Native spearmint oil production area meetings held in late September and early October 2014, as well as estimates provided by handlers and other meeting participants at the November 5, 2014, meeting. The average estimated trade demand provided at the six production area meetings was 1,330,167 pounds, whereas the handlers' estimates ranged from 1,250,000 pounds to 1,400,000 pounds, and averaged 1,356,750 pounds. The average of Far West Native spearmint oil sales over the last three years is 1,306,492 pounds.

(C) *Salable quantity of Native spearmint oil required from the 2015–2016 marketing year production—1,189,132 pounds.* This figure is the difference between the estimated 2015–2016 marketing year trade demand (1,306,500 pounds) and the estimated carry-in on June 1, 2015 (117,368 pounds). This is the minimum amount that the Committee believes will be required to meet the anticipated 2015–2016 Native spearmint oil trade demand.

(D) *Total estimated allotment base of Native spearmint oil for the 2015–2016 marketing year—2,395,124 pounds.* This figure represents a one-percent increase over the revised 2014–2015 total allotment base. This figure is generally revised each year on June 1 due to producer base being lost due to the bona fide effort production provisions of § 985.53(e). The revision is usually minimal.

(E) *Computed Native spearmint oil 2015–2016 marketing year allotment percentage—49.6 percent.* This percentage is computed by dividing the required salable quantity (1,189,132) by the total estimated allotment base (2,395,124 pounds).

(F) *Recommended Native spearmint oil 2015–2016 marketing year allotment percentage—56 percent.* This is the Committee's recommendation based on the computed allotment percentage (49.6 percent), the average of the computed allotment percentage figures from the six production area meetings (51.0 percent), and input from producers and handlers at the November 5, 2014, meeting. The recommended 56 percent allotment percentage is also based on the Committee's belief that the computed percentage (49.6 percent) may not adequately supply the potential 2015–2016 Native spearmint oil market.

(G) *Recommended Native spearmint oil 2015–2016 marketing year salable quantity—1,341,269 pounds.* This figure is the product of the recommended allotment percentage (56 percent) and the total estimated allotment base (2,395,124 pounds).

(H) *Estimated available supply of Native spearmint oil for the 2015–2016 marketing year—1,458,637 pounds.* This figure is the sum of the 2015–2016 recommended salable quantity (1,341,269 pounds) and the estimated carry-in on June 1, 2015 (117,368 pounds).

The salable quantity is the total quantity of each class of spearmint oil that handlers may purchase from, or handle on behalf of, producers during a marketing year. Each producer is allotted a share of the salable quantity by applying the allotment percentage to the producer's allotment base for the applicable class of spearmint oil.

The Committee's recommended Scotch and Native spearmint oil salable quantities and allotment percentages of 1,265,853 pounds and 60 percent, and 1,341,269 pounds and 56 percent, respectively, are based on the goal of maintaining market stability. The Committee anticipates that this goal will be achieved by matching the available supply of each class of Spearmint oil to the estimated demand of such, thus avoiding extreme fluctuations in inventories and prices.

The salable quantities established by this rule are not expected to cause a shortage of spearmint oil supplies. Any unanticipated or additional market demand for spearmint oil which may develop during the marketing year could be satisfied by an intra-seasonal increase in the salable quantity. The order contains a provision for intra-seasonal increases to allow the Committee the flexibility to respond quickly to changing market conditions.

Under volume regulation, producers who produce more than their annual allotments during the 2015–2016 marketing year may transfer such excess spearmint oil to producers who have produced less than their annual allotment. In addition, up until December 1, 2015, producers may place excess spearmint oil production into the reserve pool to be released in the future in accordance with market needs.

This regulation is similar to regulations issued in prior seasons. The average initial allotment percentage for the five most recent marketing years for Scotch spearmint oil is 44.0 percent, while the average initial allotment percentage for the same five-year period for Native spearmint oil is 48.8 percent.

Costs to producers and handlers resulting from this rule are expected to be offset by the benefits derived from a stable market and increased returns. In conjunction with the issuance of this final rule, USDA has reviewed the Committee's marketing policy statement for the 2015–2016 marketing year. The Committee's marketing policy statement, a requirement whenever the Committee recommends volume regulation, fully meets the intent of § 985.50 of the order.

During its discussion of potential 2015–2016 salable quantities and allotment percentages, the Committee considered: (1) The estimated quantity of salable oil of each class held by producers and handlers; (2) the estimated demand for each class of oil; (3) the prospective production of each class of oil; (4) the total of allotment bases of each class of oil for the current marketing year and the estimated total of allotment bases of each class for the ensuing marketing year; (5) the quantity of reserve oil, by class, in storage; (6) producer prices of oil, including prices for each class of oil; and (7) general market conditions for each class of oil, including whether the estimated season average price to producers is likely to exceed parity. Conformity with USDA's ''Guidelines for Fruit, Vegetable, and Specialty Crop Marketing Orders'' has also been reviewed and confirmed.

The establishment of these salable quantities and allotment percentages will allow for anticipated market needs. In determining anticipated market needs, the Committee considered historical sales, as well as changes and trends in production and demand. This rule also provides producers with information on the amount of spearmint oil that should be produced for the 2015–2016 season in order to meet anticipated market demand.

Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are eight spearmint oil handlers subject to regulation under the order, and approximately 37 producers of Scotch spearmint oil and approximately 91 producers of Native spearmint oil in the regulated production area. Small agricultural service firms are defined by the Small Business Administration (SBA) as those having annual receipts of less than $7,000,000, and small agricultural producers are defined as those having annual receipts of less than $750,000 (13 CFR 121.201).

Based on the SBA's definition of small entities, the Committee estimates that two of the eight handlers regulated by the order could be considered small entities. Most of the handlers are large corporations involved in the international trading of essential oils and the products of essential oils. In addition, the Committee estimates that 11 of the 37 Scotch spearmint oil producers, and 25 of the 91 Native spearmint oil producers could be classified as small entities under the SBA definition. Thus, a majority of handlers and producers of Far West spearmint oil may not be classified as small entities.

The Far West spearmint oil industry is characterized by producers whose farming operations generally involve more than one commodity, and whose income from farming operations is not exclusively dependent on the production of spearmint oil. A typical spearmint oil-producing operation has enough acreage for rotation such that the total acreage required to produce the crop is about one-third spearmint and two-thirds rotational crops. Thus, the typical spearmint oil producer has to have considerably more acreage than is planted to spearmint during any given season. Crop rotation is an essential cultural practice in the production of spearmint oil for purposes of weed, insect, and disease control. To remain economically viable with the added costs associated with spearmint oil production, a majority of spearmint oil-producing farms fall into the SBA category of large businesses.

Small spearmint oil producers generally are not as extensively diversified as larger ones and, as such, are more at risk from market fluctuations. Such small producers generally need to market their entire annual production of spearmint oil and are not financially able to hold spearmint oil for sale in future years. In addition, small producers generally do not have a large assortment of other crops to cushion seasons with poor spearmint oil returns. Conversely, large diversified producers have the potential to endure one or more seasons of poor spearmint oil markets because income from alternate crops could support the operation for a period of time. Being reasonably assured of a stable price and market provides all producing entities with the ability to maintain proper cash flow and to meet annual expenses. The benefits for this rule are expected to be equally available to all producers and handlers regardless of their size.

This final rule establishes the quantity of spearmint oil produced in the Far West, by class, that handlers may purchase from, or handle on behalf of, producers during the 2015–2016 marketing year. The Committee recommended this rule to help maintain stability in the spearmint oil market by matching supply to estimated demand, thereby avoiding extreme fluctuations in supplies and prices. Establishing quantities that may be purchased or handled during the marketing year through volume regulations allows producers to coordinate their spearmint oil production with the expected market demand. Authority for this action is provided in §§ 985.50, 985.51, and 985.52 of the order.

Instability in the spearmint oil sub-sector of the mint industry is much more likely to originate on the supply side than the demand side. Fluctuations in yield and acreage planted from season-to-season tend to be larger than fluctuations in the amount purchased by handlers. Historically, demand for spearmint oil tends to change slowly from year to year.

Demand for spearmint oil at the farm level is derived from retail demand for spearmint-flavored products such as chewing gum, toothpaste, and mouthwash. The manufacturers of these products are by far the largest users of spearmint oil. However, spearmint flavoring is generally a very minor component of the products in which it is used, so changes in the raw product price have virtually no impact on retail prices for those goods.

Spearmint oil production tends to be cyclical. Years of relatively high production, with demand remaining reasonably stable, have led to periods in which large producer stocks of unsold spearmint oil have depressed producer prices for a number of years. Shortages and high prices may follow in subsequent years, as producers respond to price signals by cutting back production.

The significant variability of the spearmint oil market is illustrated by the fact that the coefficient of variation (a standard measure of variability; ''CV'') of Far West spearmint oil grower prices for the period 1980–2013 (when the marketing order was in effect) is 0.23, compared to 0.36 for the decade prior to the promulgation of the order (1970–79) and 0.49 for the prior 20-year period (1960–79). This provides an indication of the price stabilizing impact of the marketing order.

Production in the shortest marketing year was about 47 percent of the 34-year average (1.92 million pounds from 1980 through 2013) and the largest crop was approximately 160 percent of the 34-year average. A key consequence is that, in years of oversupply and low prices, the season average producer price of spearmint oil is below the average cost of production (as measured by the Washington State University Cooperative Extension Service).

The wide fluctuations in supply and prices that result from this cycle, which was even more pronounced before the creation of the order, can create liquidity problems for some producers. The order was designed to reduce the price impacts of the cyclical swings in production. However, producers have been less able to weather these cycles in recent years because of the increase in production costs. While prices have been relatively steady, the cost of production has increased to the extent that plans to plant spearmint may be postponed or changed indefinitely. Producers may also be enticed by the prices of alternative crops and their lower cost of production.

In an effort to stabilize prices, the spearmint oil industry uses the volume control mechanisms authorized under the order. This authority allows the Committee to recommend a salable quantity and allotment percentage for each class of oil for the upcoming marketing year. The salable quantity for each class of oil is the total volume of oil that producers may sell during the marketing year. The allotment percentage for each class of spearmint oil is derived by dividing the salable quantity by the total allotment base.

Each producer is then issued an annual allotment certificate, in pounds, for the applicable class of oil, which is calculated by multiplying the producer's allotment base by the applicable allotment percentage. This is the amount of oil of each applicable class that the producer can market.

By December 1 of each year, the Committee identifies any oil that individual producers have produced above the volume specified on their annual allotment certificates. This excess oil is placed in a reserve pool administered by the Committee. A reserve pool is maintained for each class of oil that may not be sold during the current marketing year unless USDA approves a Committee recommendation to increase the salable quantity and allotment percentage for a class of oil and make a portion of the pool available.

Limited quantities of excess oil may be sold by one producer to another producer to fill production deficiencies in a marketing year. A deficiency occurs when on-farm production is less than a producer's allotment. When a producer has a deficiency, the producer's own reserve oil can be utilized to fill that deficiency, or excess production (production of spearmint oil in excess of the producer's annual allotment) from another producer may also be secured to fill the deficiency. All of these provisions need to be exercised prior to December 1 of each year.

In any given year, the total available supply of spearmint oil is composed of current production plus salable carryover stocks from the previous crop. The Committee seeks to maintain market stability by balancing supply and demand, and to close the marketing year with an appropriate level of salable spearmint oil to carry over into the subsequent marketing year. If the industry has production in excess of the salable quantity, then the reserve pool absorbs the surplus quantity of spearmint oil, which goes unsold during that year, unless the oil is needed for unanticipated sales.

Under its provisions, the order may attempt to stabilize prices by (1) limiting supply and establishing reserves in high production years, thus minimizing the price-depressing effect that excess producer stocks have on unsold spearmint oil, and (2) ensuring that stocks are available in short supply years when prices would otherwise increase dramatically. Reserve pool stocks, which increase in high production years, are drawn down in years where the crop is short.

An econometric model was used to assess the impact that volume control has on the prices producers receive for their commodity. Without volume control, spearmint oil markets would likely be over-supplied. This could result in low producer prices and a large volume of oil stored and carried over to the next crop year. The model estimates how much lower producer prices would likely be in the absence of volume controls.

The Committee estimated trade demand for the 2015–2016 marketing year for both classes of oil at 2,406,500 pounds, and that the expected combined salable carry-in will be 117,368 pounds. This results in a combined required salable quantity of 2,289,132 pounds. With volume control, sales by producers for the 2015–2016 marketing year will be limited to 2,607,122 pounds (the recommended salable quantity for both classes of spearmint oil).

The recommended allotment percentages, upon which 2015–2016 producer allotments are based, are 60 percent for Scotch and 56 percent for Native. Without volume controls, producers would not be limited to these allotment levels, and could produce and sell an unrestricted quantity of spearmint oil. The econometric model estimated a decline of about $1.30 in the season average producer price per pound (from both classes of spearmint oil) resulting from the higher quantities that would be produced and marketed without volume control. The surplus situation for the spearmint oil market that would exist without volume controls in 2015–2016 also would likely dampen prospects for improved producer prices in future years because of the buildup in stocks.

The use of volume control allows the industry to fully supply spearmint oil markets while avoiding the negative consequences of over-supplying these markets. The use of volume control is believed to have little or no effect on consumer prices of products containing spearmint oil and will not result in fewer retail sales of such products.

The Committee discussed alternatives to the recommendations submitted for approval for both classes of spearmint oil. The Committee discussed and rejected the idea of recommending that there not be any volume regulation for both classes of spearmint oil because of the severe price-depressing effects that would occur without volume control. The Committee also considered salable quantities and allotment percentages that were above and below the levels that were ultimately recommended.

After computing the initial 52.1 percent Scotch spearmint oil allotment percentage, the Committee considered various alternative levels of volume control for Scotch spearmint oil. Even with the moderately optimistic marketing conditions, there was consensus from the Committee that the Scotch spearmint oil allotment percentage for 2015–2016 should be more than the percentage initially established for the 2014–2015 marketing year (55 percent). After considerable discussion, the eight-member committee unanimously determined that 1,265,853 pounds and 60 percent will be the most effective Scotch spearmint oil salable quantity and allotment percentage, respectively, for the 2015–2016 marketing year.

The Committee was also able to reach a consensus regarding the level of volume control for Native spearmint oil. After first determining the computed allotment percentage at 49.6 percent, the Committee unanimously recommended 1,341,269 pounds and 56 percent for the effective Native spearmint oil salable quantity and allotment percentage, respectively, for the 2015–2016 marketing year.

As noted earlier, the Committee's recommendation to establish salable quantities and allotment percentages for both classes of spearmint oil was made after careful consideration of all available information including: (1) The estimated quantity of salable oil of each class held by producers and handlers; (2) the estimated demand for each class of oil; (3) the prospective production of each class of oil; (4) the total of allotment bases of each class of oil for the current marketing year and the estimated total of allotment bases of each class for the ensuing marketing year; (5) the quantity of reserve oil, by class, in storage; (6) producer prices of oil, including prices for each class of oil; and (7) general market conditions for each class of oil, including whether the estimated season average price to producers is likely to exceed parity.

Based on its review, the Committee believes that the salable quantities and allotment percentages established by this action achieve the objectives sought. As previously stated, annual salable quantities and allotment percentages have been issued for both classes of spearmint oil since the order's inception. The salable quantities and allotment percentages established herein are expected to facilitate the goal of maintaining orderly marketing conditions for Far West spearmint oil for the 2015–2016 and future marketing years.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the order's information collection requirements have been previously approved by the Office of Management and Budget (OMB) and assigned OMB No. 0581–0178, Vegetable and Specialty Crops. No changes in those requirements as a result of this action are necessary. Should any changes become necessary, they would be submitted to OMB for approval.

This rule establishes the salable quantities and allotment percentages for Class 1 (Scotch) spearmint oil and Class 3 (Native) spearmint oil produced in the Far West during the 2015–2016 marketing year. Accordingly, this action will not impose any additional reporting or recordkeeping requirements on either small or large spearmint oil producers or handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

As noted in the regulatory flexibility analysis, USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this final rule.

AMS is committed to complying with the E-Government Act to promote the use of the internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

The Committee's meeting was widely publicized throughout the spearmint oil industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the November 5, 2014, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

A proposed rule concerning this action was published in the **Federal Register** on March 16, 2015 (80 FR 13502). A copy of the rule was provided to Committee staff, who in turn made it available to all Far West spearmint oil producers, handlers, and interested persons. Finally, the rule was made available through the internet by USDA and the Office of the Federal Register. A 15-day comment period ending March 31, 2015, was provided to allow interested persons to respond to the proposal. No comments were received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/MarketingOrdersSmallBusinessGuide.* Any questions about the compliance guide should be sent to Jeffrey Smutny at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant matter presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

It is further found that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because the 2015–2016 marketing year starts on June 1, 2015, and handlers will need to begin purchasing the spearmint oil allotted under this rulemaking. Further, handlers are aware of this rule, which was recommended at a public meeting. Finally, a 15-day comment period was provided for in the proposed rule, and no comments were received.

List of Subjects in 7 CFR Part 985

Marketing agreements, Oils and fats, Reporting and recordkeeping requirements, Spearmint oil.

For the reasons set forth in the preamble, 7 CFR part 985 is amended as follows:

PART 985—MARKETING ORDER REGULATING THE HANDLING OF SPEARMINT OIL PRODUCED IN THE FAR WEST

■ 1. The authority citation for 7 CFR part 985 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. A new § 985.234 is added to read as follows:

§ 985.234 Salable quantities and allotment percentages—2015–2016 marketing year.

The salable quantity and allotment percentage for each class of spearmint oil during the marketing year beginning on June 1, 2015, shall be as follows:

(a) Class 1 (Scotch) oil—a salable quantity of 1,265,853 pounds and an allotment percentage of 60 percent.

(b) Class 3 (Native) oil—a salable quantity of 1,341,269 pounds and an allotment percentage of 56 percent.

Dated: May 7, 2015.

Rex A. Barnes,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 2015–11469 Filed 5–12–15; 8:45 am]

BILLING CODE 3410–02–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2011–0079; FRL–9927–59–Region 6]

Approval and Promulgation of Implementation Plans; Texas; Revision To Control Volatile Organic Compound Emissions From Storage Tanks and Transport Vessels

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a Texas State Implementation Plan (SIP) revision for control of volatile organic compound (VOC) emissions from degassing of storage tanks, transport vessels and marine vessels. The revision reformats the existing requirement to comply with current rule writing standards, adds additional control options for owner/operators to use when complying, clarifies the monitoring and testing requirements of the rule, and makes non-substantive changes to VOC control provisions that apply in the Beaumont-Port Arthur (BPA) nonattainment area (Hardin, Jefferson and Orange Counties), four counties in the Dallas-Fort Worth (DFW) nonattainment area (Collin, Dallas, Denton and Tarrant Counties), El Paso County, and the Houston-Galveston-Brazoria (HGB) nonattainment area (Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery and Waller Counties).

DATES: This rule is effective on *July 13, 2015* without further notice, unless EPA receives relevant adverse comment by June 12, 2015. If EPA receives such comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket No. EPA–R06–OAR–2011–0079, by one of the following methods:

- *www.regulations.gov.* Follow the online instructions.
- *Email:* Mr. Robert M. Todd at *todd.robert@epa.gov.*
- *Mail or delivery:* Mr. Guy Donaldson, Chief, Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733.

Instructions: Direct your comments to Docket No. EPA–R06–OAR–2011–0079. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: The index to the docket for this action is available electronically at *www.regulations.gov* and in hard copy at EPA Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (*e.g.,* copyrighted material), and some may not be publicly available at either location (*e.g.,* CBI).

FOR FURTHER INFORMATION CONTACT: Mr. Robert M. Todd, (214) 665–2156, *todd.robert@epa.gov.* To inspect the hard copy materials, please contact Mr. Todd or Mr. Bill Deese (214) 665–7253.

SUPPLEMENTARY INFORMATION: Throughout this document wherever ''we,'' ''us,'' or ''our'' is used, we mean the EPA.

Table of Contents

I. Background

A. CAA and SIPs

Section 110 of the Clean Air Act (CAA) requires states to develop and submit to EPA a SIP to ensure that state air quality meets National Ambient Air Quality Standards (NAAQS). These ambient standards currently address six criteria pollutants: carbon monoxide, nitrogen dioxide, ozone, lead, particulate matter, and sulfur dioxide. Each federally-approved SIP protects air quality primarily by addressing air pollution at its point of origin through air pollution regulations and control strategies. EPA approved SIP regulations and control strategies are federally enforceable. States revise the SIP as needed and submit revisions to EPA for approval.

Under Section 182(b)(2) of the Act, major stationary sources and sources covered by control technique guidelines are required to implement RACT in moderate and above ozone nonattainment areas.

B. Volatile Organic Compounds (VOC) and Degassing Emissions

Volatile organic compounds are an ''ozone precursor,'' as they react with oxygen, nitrogen oxides (NO_X) and sunlight to form ozone. Controlling sources of VOC and NO_X emissions can lower ozone levels in the ambient air. VOC degassing emissions occur when VOC storage tanks, transport vessels and marine vessels are vented and prepared for cleaning, maintenance or change of service. Requirements to control degassing emissions, use low-leaking tank fittings on some control options, monitor control effectiveness and report compliance from degassing operations were implemented in HGB and BPA (62 FR 27964, May 22, 1997). In DFW and El Paso County, these rules were adopted as contingency measures under the 1-hour ozone standard (62 FR 27964). These VOC requirements for HGB were later updated (75 FR 15348, March 29, 2010 and 78 FR 19599, April 2, 2013). For Collin, Dallas, Denton and Tarrant Counties in the DFW nonattainment area, the contingency measures were not triggered or otherwise implemented under the 1-hour ozone standard, and were left in place (applying only to Collin, Dallas, Denton and Tarrant Counties) as contingency measures under the 1997 8-hour ozone standard (74 FR 1903, January 14, 2009). Texas implemented these contingency measure rules for Collin, Dallas, Denton and Tarrant Counties on May 21, 2011 (35 TexReg 4268, May 21, 2010) when the area failed to meet the 1997 8-hour standard by the moderate area attainment date of June 15, 2010.

C. SIP Revision Submitted on February 18, 2011

A SIP submission revising the rules for controlling VOC emissions from degassing of storage tanks, transport vessels and marine vessels was adopted by Texas on January 26, 2011, and submitted to us on February 18, 2011. The revisions submitted by Texas Commission on Environmental Quality (TCEQ) apply to Brazoria, Chambers, Collin, Dallas, Denton, El Paso, Fort Bend, Galveston, Hardin, Harris, Jefferson, Liberty, Montgomery, Orange, Tarrant and Waller Counties.

The revision repeals Title 30, Chapter 115 of the Texas Administrative Code (30 TAC 115) sections 115.541, 115.542 and 115.545; adds new sections 115.540–115.542 and 115.545; and amends existing sections 115.543, 115.544, 115.546, 115.547 and 115.549. The revision (1) reformats the existing rule to simplify and clarify rule requirements; (2) modifies VOC control requirements in Brazoria, Chambers, Collin, Dallas, Denton, El Paso, Fort Bend, Galveston, Hardin, Harris, Jefferson, Liberty, Montgomery, Orange, Tarrant and Waller Counties; (3) makes changes to provide additional flexibility for affected owners and operators allowing for the use of alternative control options; and (4) makes non-substantive changes to VOC control provisions that apply in Brazoria, Chambers, Collin, Dallas, Denton, El Paso, Fort Bend, Galveston, Hardin, Harris, Jefferson, Liberty, Montgomery, Orange, Tarrant and Waller Counties.

Also, the regulation continues to apply to El Paso County on a contingency basis; *i.e.,* the control requirements of the rule will not apply to affected owner/operators in El Paso County unless the agency determines regulation is necessary as a result of a failure to attain the NAAQS for ozone by the attainment deadline or the State fails to demonstrate reasonable further progress in the El Paso County according to the requirements of the 1990 Amendments to the CAA, section 172(c)(9).

This revision clarifies that degassing emissions of storage tanks and transport vessels for sources in Collin, Dallas, Denton, and Tarrant Counties are required to meet the control requirements of the rule at this time. The requirements do not apply to storage tanks or vessels in Ellis, Johnson, Kaufman, Parker, Rockwall or Wise Counties.[1] When the DFW area was reclassified as a Serious ozone nonattainment area for the 1997 ozone standard (75 FR 79302, December 20, 2010) the TCEQ published the notice requiring compliance with degassing requirements in DFW by May 21, 2011 (35 TexReg 4268, May 21, 2010.). This action clarifies that the degassing requirements are in effect for Collin, Dallas, Denton and Tarrant Counties.

For the HGB area, the rule revisions maintain the existing requirement that VOC vapors generated during degassing operations be routed to a device that maintains a control efficiency of at least 90% for the affected sources.[2]

For DFW, HGB and BPA, the revisions add an explicit requirement that any flare used for control must be designed and operated according to 40 CFR 60.18(b)–(f) as amended through December 22, 2008, and that the flare must be lit at all times VOC vapors are routed to the device during degassing operations. The TCEQ added this requirement to clarify the intent of the rule is for both the flare flame and the

[1] On March 27, 2008 (73 FR 16436), the EPA promulgated a revised 8-hour ozone NAAQS of 0.075 ppm, known as the 2008 ozone standard. On April 30, 2012, the EPA promulgated designations under the 2008 ozone standard (77 FR 30088) and in that action, the EPA designated 10 counties in the DFW area as a Moderate ozone nonattainment area: Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, Tarrant, and Wise. The EPA's actions here with respect to DFW, only address the counties which comprised the DFW nonattainment area under the 1-hour ozone standard.

[2] The HGB area is classified as a severe ozone nonattainment area for the 1997 8-hour ozone NAAQS (73 FR 56983, October 1, 2008). Under the 2008 ozone standard the HGB area is classified as a Marginal ozone nonattainment area (77 FR 30088).

pilot to the flare be lit at all times VOC vapors are routed to the device.

The SIP revision submitted by Texas may be accessed online at *www.regulations.gov,* Docket No. EPA–R06–OAR–2010–0642.

D. CAA Requirements for the SIP Revision

The primary requirements pertaining to the SIP revision submitted by Texas are found in CAA sections 110(l) and 182(b)(2). CAA section 110(l) requires that a SIP revision submitted to EPA be adopted after reasonable notice and public hearing. Section 110(l) also requires that we not approve a SIP revision if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress, or any other applicable requirement of the CAA. Section 182(b)(2) of the Act requires States to adopt Reasonably Available Control Technology (RACT) rules for stationary sources of VOCs in ozone nonattainment areas classified as moderate or above.

II. EPA's Evaluation

The requirements to control degassing emissions, use low-leaking tank fittings on some control options, monitor control effectiveness and report compliance from degassing operations were previously implemented in HGB and BPA (62 FR 27966, May 22, 1997). The requirements were later revised for HGB (75 FR 15348, March 29, 2010 and 78 FR 19599, April 2, 2013). For DFW, we previously approved the rules as a contingency measure to be implemented by Texas if the area failed to reach attainment under the 1-hour ozone nonattainment standards (May 22, 1997, 62 FR 27964). We later approved these same rules as contingency measures to be implemented in the four counties comprising of the 1-hour ozone nonattainment area if DFW did not reach attainment under the 8-hour ozone nonattainment standard (January 14, 2009, 74 FR 1903). Because the nine counties in the DFW 8-hour nonattainment area failed to meet the attainment date, Texas implemented the contingency measure rules for Collin, Dallas, Denton and Tarrant Counties on May 21, 2011. For the El Paso area we initially approved these rules as a contingency measure on May 22, 1997. (62 FR 27966, May 22, 1997).

Under Section 182(b)(2) of the Act, Major stationary sources and sources covered by control technique guidelines are required to implement RACT in moderate ozone and above ozone nonattainment areas. At the time these rules were adopted by TCEQ, the four subject areas were all moderate or above nonattainment for the 1 hour ozone standard.

The VOC degassing rules control emissions from three source types: Stationary storage tanks, transport vessels and marine vessels. The latter two source types are not stationary sources and are therefore not subject to RACT requirements. Storage tanks are covered by Control Technique Guidelines (CTGs). As a result, RACT must be implemented for stationary storage tanks. If there were not a CTG for storage tanks emissions, any major source storage tanks would have had to implement RACT to control its emissions including degassing emissions.

The CTGs for storage tanks provide recommendations for types of controls including the types of seals necessary to reduce emissions from tanks. The CTGs, however, do not include a recommendation that emissions during degassing of the tanks be controlled. Texas has adopted rules based on the CTG recommendations. See 30 TAC 115, Storage of Volatile Organic Compounds, sections 115.110, 115.512–117 and 115.119. These rules have previously been approved as RACT and finding has been affirmed as RACT on a number of occasions. The rules Texas has adopted to control degassing emissions are in addition to the RACT level of control recommended by the CTG. The rules were adopted by TCEQ to address rate of progress requirements in HGB and to meet contingency measure requirements in DFW and El Paso County. Therefore, it is appropriate for the degassing controls in El Paso to remain as a contingency measure and changes to the degassing rules will not interfere with whether RACT is being implemented in these areas.

Moreover, our evaluation finds that the revision to the Texas SIP improves the rules by rewording them so that their intent is unambiguous, clarifying the compliance monitoring and reporting required for affected sources, and does not result in a change in the VOC emission reductions previously approved for degassing of storage tanks, transport vessels and marine vessel in DFW, HGB, BPA and El Paso County.

In our April 2, 2013 approval of Texas's revisions to the SIP for the HGB 1997 8-Hour ozone nonattainment area (78 FR 19599), we found that the Texas SIP met the RACT requirements for CTG and major Non-CTG sources of VOC in this nonattainment area (Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery and Waller Counties) under the 1997 8-Hour ozone NAAQS. We are not altering this finding in this action.

We found that the Texas SIP met the RACT requirements for CTG and major Non-CTG sources of VOC in DFW in our approval of Texas VOC rules for RACT (64 FR 3841). We are not altering this finding in this rule.

Also, the Degassing or Cleaning VOC control requirements approved in the DFW and El Paso County SIPs as contingency measures, for the 8-hour Ozone attainment demonstration, are not altered in this action (January 14, 2009, 74 FR 1903). These measures were triggered in DFW in 2010 and became effective May 21, 2010 (see the Texas Register, 35 TexReg 4268, dated May 21, 2010).

For additional information please see our Technical Support Document which may be accessed online at *www.regulations.gov,* Docket No. EPA–R06–2010–0642.

III. Final Action

We are approving a Texas SIP revision for control of VOC emissions from storage tank, transport vessel and marine vessel degassing operations adopted on January 26, 2011, and submitted on February 18, 2011. Specifically, we are approving revisions to 30 TAC 115 at sections 115.540–115.547 and 115.549. The revisions (1) reformat the existing rule to simplify and clarify rule requirements; (2) modify VOC control requirements in Brazoria, Chambers, Collin, Dallas, Denton, El Paso, Fort Bend, Galveston, Hardin, Harris, Jefferson, Liberty, Montgomery, Orange, Tarrant and Waller Counties; (3) make changes to provide additional flexibility for affected owners and operators allowing for the use of alternative control options; and (4) make non-substantive changes to VOC control provisions that apply in Brazoria, Chambers, Collin, Dallas, Denton, El Paso, Fort Bend, Galveston, Hardin, Harris, Jefferson, Liberty, Montgomery, Orange, Tarrant and Waller Counties.

We are publishing this rule without prior proposal because we view this as a non-controversial amendment and anticipate no adverse comments. However, in the proposed rules section of this **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the SIP revision if relevant adverse comments are received. This rule will be effective on July 13, 2015 without further notice unless we receive relevant adverse comment by June 12, 2015. If we receive relevant adverse comments, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. We will address all public comments in a subsequent final rule based on the proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so now. Please note that if we receive relevant adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

IV. Incorporation by Reference

In this rule, we are finalizing regulatory text that includes incorporation by reference. In accordance with the requirements of 1 CFR 51.4, we are finalizing the incorporation by reference of the revisions to the Texas regulations as described in the Final Action section above. We have made, and will continue to make, these documents generally available electronically through *www.regulations.gov* and/or in hard copy at the EPA Region 6 office.

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 13, 2015. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: May 4, 2015.

Ron Curry,

Regional Administrator, Region 6.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart SS—Texas

■ 2. In § 52.2270(c), the table titled ''EPA Approved Regulations in the Texas SIP'' is amended by:

■ a. Under ''Subchapter F—Miscellaneous Industrial Sources'', revising the title for ''Division 3'';

■ b. Adding, in sequential order, the entry for Section 115.540; and

■ c. Revising the entries for Sections 115.541 through 115.547 and 115.549.

The addition and revisions read as follows:

§ 52.2270 Identification of plan.

* * * * *

(c) * * *

EPA APPROVED REGULATIONS IN THE TEXAS SIP

State citation	Title/subject	State approval/submittal date	EPA approval date	Explanation
* * *	*	*	*	*
Chapter 115 (Reg 5)—Control of Air Pollution From Volatile Organic Compounds				
* * *	*	*	*	*
Subchapter F—Miscellaneous Industrial Sources				
* * *	*	*	*	*
Division 3: Degassing of Storage Tanks, Transport Vessels, and Marine Vessels				
Section 115.540	Applicability and Definitions	1/26/2011	5/13/15 *[Insert **Federal Register** citation]*.	
Section 115.541	Emission Specifications	1/26/2011	5/13/15 *[Insert **Federal Register** citation]*.	
Section 115.542	Control Requirements	1/26/2011	5/13/15 *[Insert **Federal Register** citation]*.	
Section 115.543	Alternate control Requirements	1/26/2011	5/13/15 *[Insert **Federal Register** citation]*.	
Section 115.544	Inspection, Monitoring, and Testing Requirements.	1/26/2011	5/13/15 *[Insert **Federal Register** citation]*.	
Section 115.545	Approved Test Methods	1/26/2011	5/13/15 *[Insert **Federal Register** citation]*.	
Section 115.546	Recordkeeping and Notification Requirements	1/26/2011	5/13/15 *[Insert **Federal Register** citation]*.	
Section 115.547	Exemptions	1/26/2011	5/13/15 *[Insert **Federal Register** citation]*.	
Section 115.549	Compliance Schedules	1/26/2011	5/13/15 *[Insert **Federal Register** citation]*.	
* * *	*	*	*	*

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[FR Doc. 2015–11451 Filed 5–12–15; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2014–0759; FRL–9927–70–Region 3]

Approval and Promulgation of Air Quality Implementation Plans; District of Columbia, Maryland, and Virginia; 2011 Base Year Emissions Inventories for the Washington DC-MD-VA Nonattainment Area for the 2008 Ozone National Ambient Air Quality Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking direct final action to approve the 2011 base year emissions inventories submitted by the District of Columbia, State of Maryland, and Commonwealth of Virginia (collectively, the States) for the 2008 8-hour ozone national ambient air quality standard (NAAQS). The emissions inventories were submitted to meet nonattainment requirements related to the Washington, DC-MD-VA nonattainment area (the DC Area or Area) for the 2008 8-hour ozone NAAQS. EPA is approving the 2011 base year emissions inventory for the 2008 8-hour ozone NAAQS for the DC Area in accordance with the requirements of the Clean Air Act (CAA).

DATES: This rule is effective on July 13, 2015 without further notice, unless EPA receives adverse written comment by June 12, 2015. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R03–OAR–2014–0759 by one of the following methods:

A. *www.regulations.gov.* Follow the on-line instructions for submitting comments.

B. *Email: fernandez.cristina@epa.gov.*

C. *Mail:* EPA–R03–OAR–2014–0759, Cristina Fernandez, Associate Director, Office of Air Program Planning, Mailcode 3AP30, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. *Hand Delivery:* At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R03–OAR–2014–0759. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, *i.e.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittals are available at the District of Columbia Department of the Environment, Air Quality Division, 1200 1st Street NE., 5th floor, Washington, DC 20002; the Maryland Department of the Environment, 1800 Washington Boulevard, Suite 705, Baltimore, Maryland 21230; and the Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia 23219.

FOR FURTHER INFORMATION CONTACT:
Marilyn Powers, (215) 814–2308, or by email at *powers.marilyn@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Ground-level ozone is formed when nitrogen oxides (NO_X) and volatile organic compounds (VOC) react in the presence of sunlight. Referred to as ozone precursors, these two pollutants are emitted by many types of pollution sources, including on- and off-road motor vehicles and engines, power plants and industrial facilities, and area-wide sources, such as consumer products and lawn and garden equipment. Scientific evidence indicates that adverse public health effects occur following a person's exposure to ozone, particularly children and adults with lung disease. Breathing air containing ozone can reduce lung function and inflame airways, which can increase respiratory symptoms and aggravate asthma or other lung diseases. As a consequence of this scientific evidence, EPA promulgated the 0.12 part per million (ppm) 1-hour ozone National Ambient Air Quality Standard. *See* 44 FR 8202 (February 8, 1979).

On July 18, 1997 (62 FR 38855), EPA promulgated a revised ozone NAAQS of 0.08 ppm, averaged over eight hours. This standard was determined to be more protective of public health than the previous 1979 1-hour ozone standard. On April 30, 2004 (69 FR 23858), EPA designated areas as attaining or not attaining the 1997 8-hour ozone NAAQS and classified the DC Area as a moderate nonattainment area with an applicable attainment date of June 15, 2010. EPA approved the States' submittals pertaining to reasonable further progress (RFP), RFP contingency measures, and Reasonably Available Control Measures (RACM), along with the Washington Area's 2002 base year inventory and 2008 transportation conformity motor vehicle emissions budgets (MVEBs) on September 20, 2011 (76 FR 58116). On February 28, 2012 (77 FR 11739), EPA determined that the DC Area had attained by its applicable attainment date.

Subsequently, EPA revised the 8-hour ozone NAAQS from 0.08 to 0.075 ppm. *See* 73 FR 16436 (March 27, 2008). On May 21, 2012 (77 FR 30088), the DC Area was designated marginal for the more stringent 8-hour ozone standard. As a marginal nonattainment area, the DC Area is required under section 172(c)(3) of the CAA to submit a comprehensive, accurate, and current inventory of actual emissions from all sources of the relevant pollutant or pollutants in the Area.

II. Summary of SIP Revision

On July 17, 2014, the District of Columbia Department of the Environment (DDOE) and the Virginia Department of Environmental Quality (VADEQ) submitted their 2011 base year inventories, and on August 4, 2014, the Maryland Department of the Environment (MDE) submitted its base year inventory. The 2011 base year inventories include emissions estimates that cover the general source categories of stationary point sources, stationary nonpoint sources, nonroad mobile sources and onroad mobile sources. The pollutants that comprise the inventory are NO_X and VOCs.

The CAA section 172(c)(3) emissions inventory is developed by the incorporation of data from multiple sources. States were required to develop and submit to EPA a triennial emissions inventory according to the Consolidated Emissions Reporting Rule (CERR) for all source categories (*i.e.,* point, nonpoint, nonroad mobile, and on-road mobile). The States developed the point source emissions inventory using actual emissions directly reported by electric generating unit (EGU) and non-EGU sources in the Area. For nonpoint source emissions, emissions were estimated by multiplying an emission factor by a known indicator of activity for each source category in the county (or county-equivalent). Nonroad mobile source emissions were determined using the EPA's NONROAD2008 model. Onroad mobile source emissions were developed using the EPA's highway mobile source emissions model MOVES 2010a. More information regarding the review of the base year inventory can be found in the technical support document (TSD) that is located in the docket for this rulemaking action.

III. Final Action

Pursuant to section 172(c) of the CAA, EPA is approving the 2011 base year emissions inventories submitted by the District of Columbia, Maryland, and Virginia for the 2008 8-hour ozone NAAQS as revisions to the States' respective SIPs. EPA is publishing this rule without prior proposal because EPA views this as a noncontroversial amendment and anticipates no adverse comment. However, in the ''Proposed Rules'' section of today's **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the SIP revisions if adverse comments are filed. This rule will be effective on July 13, 2015 without further notice unless EPA receives adverse comment by June 12, 2015. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

IV. General Information Pertaining to SIP Submittals From the Commonwealth of Virginia

In 1995, Virginia adopted legislation that provides, subject to certain conditions, for an environmental assessment (audit) ''privilege'' for voluntary compliance evaluations performed by a regulated entity. The legislation further addresses the relative burden of proof for parties either asserting the privilege or seeking disclosure of documents for which the privilege is claimed. Virginia's legislation also provides, subject to certain conditions, for a penalty waiver for violations of environmental laws when a regulated entity discovers such violations pursuant to a voluntary compliance evaluation and voluntarily discloses such violations to the Commonwealth and takes prompt and appropriate measures to remedy the violations. Virginia's Voluntary Environmental Assessment Privilege Law, Va. Code Sec. 10.1–1198, provides a privilege that protects from disclosure documents and information about the content of those documents that are the product of a voluntary environmental assessment. The Privilege Law does not extend to documents or information that: (1) Are generated or developed before the commencement of a voluntary environmental assessment; (2) are prepared independently of the assessment process; (3) demonstrate a clear, imminent and substantial danger to the public health or environment; or (4) are required by law.

On January 12, 1998, the Commonwealth of Virginia Office of the Attorney General provided a legal opinion that states that the Privilege Law, Va. Code Sec. 10.1–1198, precludes granting a privilege to documents and information ''required by law,'' including documents and information ''required by Federal law to maintain program delegation, authorization or approval,'' since Virginia must ''enforce Federally authorized environmental programs in a manner that is no less stringent than their Federal counterparts. . . .'' The opinion concludes that ''[r]egarding § 10.1–1198, therefore, documents or other information needed for civil or criminal enforcement under one of these programs could not be privileged because such documents and information are essential to pursuing enforcement in a manner required by Federal law to maintain program delegation, authorization or approval.'' Virginia's Immunity law, Va. Code Sec. 10.1–1199, provides that ''[t]o the extent consistent with requirements imposed by Federal law,'' any person making a voluntary disclosure of information to a state agency regarding a violation of an environmental statute, regulation, permit, or administrative order is granted immunity from administrative or civil penalty. The Attorney General's January 12, 1998 opinion states that the quoted language renders this statute inapplicable to enforcement of any Federally authorized programs, since ''no immunity could be afforded from administrative, civil, or criminal penalties because granting such immunity would not be consistent with Federal law, which is one of the criteria for immunity.''

Therefore, EPA has determined that Virginia's Privilege and Immunity statutes will not preclude the Commonwealth from enforcing its program consistent with the Federal requirements. In any event, because EPA has also determined that a state audit privilege and immunity law can affect only state enforcement and cannot have any impact on Federal enforcement authorities, EPA may at any time invoke its authority under the CAA, including, for example, sections 113, 167, 205, 211 or 213, to enforce the requirements or prohibitions of the state plan, independently of any state enforcement effort. In addition, citizen enforcement under section 304 of the CAA is likewise unaffected by this, or any, state audit privilege or immunity law.

V. Statutory and Executive Order Reviews

A. General Requirements

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 13, 2015. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of this **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking action. This action approving the 2011 emissions inventories for the states that comprise the Washington, DC Nonattainment Area for the 2008 ozone NAAQS may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: May 4, 2015.

William C. Early,

Acting Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart J—District of Columbia

■ 2. In § 52.470, the table in paragraph (e) is amended by adding an entry at the end of the table to read as follows:

§ 52.470 Identification of plan.

* * * * *

(e) * * *

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
*	*	*	*	*
2011 Base Year Emissions Inventory for the 2008 8-hour ozone standard.	District of Columbia portion of the Washington, DC-MD-VA 2008 ozone nonattainment area.	7/17/14	5/13/15 [*Insert* ***Federal Register*** *citation*].	§ 52.474(f).

■ 3. Section 52.474 is amended by adding paragraph (f) to read as follows:

§ 52.474 Base Year Emissions Inventory.

* * * * *

(f) EPA approves as a revision to the District of Columbia State Implementation Plan the 2011 base year emissions inventory for the District of Columbia portion of the Washington, DC-MD-VA 2008 8-hour ozone nonattainment area submitted by the District Department of the Environment on July 17, 2014. The 2011 base year emissions inventory includes emissions estimates that cover the general source categories of point sources, non-road mobile sources, area sources, on-road mobile sources, and biogenic sources. The pollutants that comprise the inventory are nitrogen oxides (NO_X) and volatile organic compounds (VOC).

Subpart V—Maryland

■ 4. In § 52.1070, the table in paragraph (e) is amended by adding an entry at the end of the table to read as follows:

§ 52.1070 Identification of plan.

* * * * *

(e) * * *

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
*	*	*	*	*
2011 Base Year Emissions Inventory for the 2008 8-hour Ozone standard.	Maryland portion of the Washington, DC-MD-VA 2008 ozone nonattainment area.	8/4/14	5/13/15 [*Insert* ***Federal Register*** *citation*].	§ 52.1075(o).

■ 5. Section 52.1075 is amended by adding paragraph (o) to read as follows:

§ 52.1075 Base year emissions inventory.

* * * * *

(o) EPA approves as a revision to the Maryland State Implementation Plan the 2011 base year emissions inventory for the Maryland portion of the Washington, DC-MD-VA 2008 8-hour ozone nonattainment area submitted by the Maryland Department of Environment on August 4, 2014. The 2011 base year emissions inventory includes emissions estimates that cover the general source categories of point sources, non-road mobile sources, area sources, on-road mobile sources, and biogenic sources. The pollutants that comprise the inventory are nitrogen oxides (NO_X) and volatile organic compounds (VOC).

Subpart VV—Virginia

■ 6. In § 52.2420, the table in paragraph (e) is amended by adding an entry at the end of the table to read as follows:

§ 52.2420 Identification of plan.

* * * * *

(e) * * *

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
*	*	*	*	*
2011 Base Year Emissions Inventory for the 2008 8-hour ozone standard.	Virginia portion of the Washington, DC-MD-VA 2008 ozone nonattainment area.	7/17/14	5/13/15 [*Insert **Federal Register** citation*].	§ 52.2425(g)

■ 7. Section 52.2425 is amended by adding paragraph (g) to read as follows:

§ 52.2425 Base Year Emissions Inventory.

* * * * *

(g) EPA approves as a revision to the Virginia State Implementation Plan the 2011 base year emissions inventory for the Virginia portion of the Washington, DC-MD-VA 2008 8-hour ozone nonattainment area submitted by the Virginia Department of Environmental Quality on July 17, 2014. The 2011 base year emissions inventory includes emissions estimates that cover the general source categories of point sources, non-road mobile sources, area sources, on-road mobile sources, and biogenic sources. The pollutants that comprise the inventory are nitrogen oxides (NO_X) and volatile organic compounds (VOC).

[FR Doc. 2015–11562 Filed 5–12–15; 8:45 am]

BILLING CODE 6560–50–P

GENERAL SERVICES ADMINISTRATION

41 CFR Parts 300–3, 301–10, and 301–70

[FTR Amendment 2015–03, FTR Case 2014–302; Docket 2014–0014, Sequence 1]

RIN 3090–AJ48

Federal Travel Regulation; Enhancement of Privately Owned Vehicle and Rental Vehicle Policy

AGENCY: Office of Government-wide Policy (OGP), General Services Administration (GSA).

ACTION: Final rule.

SUMMARY: GSA is amending the Federal Travel Regulation (FTR) by requiring agencies to have an internal policy for determining whether to authorize a privately owned vehicle (POV), as opposed to a rental car, in conjunction with temporary duty travel (TDY). Further, this rule specifies that travelers, who have been authorized to travel via common carrier or rental car, and choose to use a POV instead, will be reimbursed at the applicable POV mileage rate. Additionally, this rule adds specific provisions addressing the type of rental vehicles travelers must use, pre-paid refueling options, and other rental car surcharges. Finally, this rule makes certain miscellaneous corrections, where applicable.

DATES: *Effective Date:* May 13, 2015.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Mr. Cy Greenidge, Program Analyst, Office of Government-wide Policy, at 202–219–2349. Contact the Regulatory Secretariat (MVCB), 1800 F Street NW., Washington, DC 20405, 202–501–4755, for information pertaining to status or publication schedules. Please cite FTR Amendment 2015–03; FTR case 2014–302.

SUPPLEMENTARY INFORMATION:

A. Background

GSA published a proposed rule in the **Federal Register** on October 20, 2014 (79 FR 62588). That rule proposed amending the FTR to require that agencies have an internal policy for determining when to authorize a POV, as opposed to a rental car, in conjunction with TDY. Additionally, the rule proposed to amend the FTR to state that travelers who have been authorized by their agencies to travel via common carrier or rental car, and choose to use a POV instead, would be reimbursed at the applicable POV mileage rate up to the constructive cost of the authorized mode of transportation plus per diem. Further, the rule proposed amending the FTR to state that travelers who are authorized to use a rental car in conjunction with TDY must use the least expensive compact car available; addressed reimbursement pertaining to pre-paid refueling options for rental cars; denied reimbursement of surcharges involved when rental car companies purchase miles from airlines and provide those miles to their vehicle customers; and proposed to amend the FTR to make certain miscellaneous corrections, where applicable.

The public had 60 calendar days to comment on the proposed rule. GSA received a total of seven comments from three commenters, and made changes to the substance of this final rule, although changes are not considered to be significant.

B. Analysis of Public Comments

Comment: One respondent expressed concern that changing the term ''government-furnished automobile'' to ''government-owned automobile (GOA)'' would generate uncertainty as to how travelers should account for vehicles leased by the Federal Government.

Response: GSA agreed with these concerns and will amend the FTR to more consistently use the term ''government-furnished automobile.'' GSA is amending the current definition, however, as it pertains to use of the term ''GSA Fleet'' and the 120-day rental period to be consistent with the Federal Management Regulation.

Comment: One respondent stated that requiring a medical professional to recommend a suitable vehicle class is not feasible, since busy or indifferent medical authorities will merely sign statements prepared by travelers.

Response: We agreed that requiring a medical professional to recommend a suitable vehicle class is not feasible, and therefore, have removed this language from the final rule.

Comment: One respondent recommended an additional exception (§ 301–10.450(c)(6)) permitting the use of a non-compact car for safety reasons due to severe weather or terrain.

Response: We agreed with this recommendation and have added this language to the final rule.

Comment: One respondent stated that requiring an annual written statement from a medical authority (§ 301–10.450(c)(1)(i)) is unduly complex and contrary to existing law and regulation.

Response: Since the requirement for an annual written statement from a medical authority is stipulated in § 301–10.123(a)(2) when requesting the use of other than coach class accommodations, we believe this same requirement should apply when requesting the use of other than a compact car. Proposed language will not change.

Comment: One respondent stated that changing travel policy to not reimburse fees associated with rental car loyalty points will increase the chance of improper payments for such small dollar amounts and will slow down the voucher review process. The respondent recommended changing rental car agreements to prohibit charging such fees or offering them to Federal travelers. The respondent also recommended changing the ETS2 contract to not allow adding frequent flyer mileage numbers for car rentals.

Response: Travelers may not be reimbursed for rental car fees associated with rental car loyalty points because these are not official expenses. 5 U.S.C. 5706 permits reimbursement of actual and necessary travel expenses only. Changing the rental car agreements and the ETS2 contract are not within the scope of the Office of Government-wide Policy, thus proposed language will not change.

Comment: One respondent stated that the requirement to consider the total cost of travel using a rental car versus personal vehicle does not include the cost of official time spent obtaining a rental vehicle, which the commenter stated was comparatively large. The commenter argued that time spent in making detailed comparisons will eliminate any potential cost savings.

Response: A POV should be authorized only after the agency considers a common carrier, a Government-furnished automobile, and a rental car, and the employee agrees to use a POV. The final rule has been changed to make this order of preference clearer. The comparison should include all costs associated with the trip.

Comment: One commenter recommended adding the language, ''if the estimated cost for the use of a privately owned vehicle is $100 or less, no documentation of the cost savings should be required''. The commenter stated that this is because the direct costs (rental fees and local rental taxes, travel cost for driving to and parking at the rental car site), plus the indirect costs (time to book the rental vehicle, travel to and from the rental site, etc.) would likely always exceed $100.

Response: From a Government-wide perspective, because each agency has unique missions and fiscal considerations, it would not be prudent to artificially set a threshold or arbitrary number for cost comparison between different modes of transportation. If an agency can determine a break-even point through historical or empirical data, they may establish a threshold in their internal policy and procedures documentation. This way, the cost of comparison is not repeated for all trips when the cost is at or below that determined threshold. Proposed language will not change.

C. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives, and if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This final rule is not a significant regulatory action, and therefore, was not subject to review under Section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993.

D. Regulatory Flexibility Act

This final rule would not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* This final rule is also exempt from the Administrative Procedure Act pursuant to 5 U.S.C. 553(a)(2) because it applies to agency management or personnel.

E. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because these changes to the FTR do not impose recordkeeping or information collection requirements, or the collection of information from offerors, contractors, or members of the public that require the approval of the Office of Management and Budget (OMB) under 44 U.S.C. 3501, *et seq.*

F. Small Business Regulatory Enforcement Fairness Act

This final rule is also exempt from Congressional review prescribed under 5 U.S.C. 801. This final rule is not a major rule under 5 U.S.C. 804.

List of Subjects in 41 CFR Parts 300–3, 301–10, and 301–70

Administrative practices and procedures, Government employees, Travel and transportation expenses.

Dated: May 4, 2015.

Denise Turner Roth,

Acting Administrator of General Services.

For the reasons set forth in the preamble, pursuant to 5 U.S.C. 5701–5711, GSA amends 41 CFR parts 300–3, 301–10 and 301–70 as set forth below:

PART 300–3—GLOSSARY OF TERMS

■ 1. The authority citation for 41 CFR part 300–3 continues to read as follows:

Authority: 5 U.S.C. 5707; 40 U.S.C. 121(c); 49 U.S.C. 40118; 5 U.S.C. 5738; 5 U.S.C. 5741–5742; 20 U.S.C. 905(a); 31 U.S.C. 1353; E.O 11609, as amended, 3 CFR, 1971–1975 Comp. p. 586, Office of Management and Budget Circular No. A–126, revised May 22, 1992.

§ 300–3.1 [AMENDED]

■ 2. Amend § 300–3.1, in the definition of ''Government-furnished automobile'', by—

■ a. Removing from paragraph (b) the phrase ''the GSA Interagency Fleet Management System'' and adding the phrase ''GSA Fleet'' in its place.

■ b. Removing from paragraph (c) the phrase ''60 days'' and adding the phrase ''120 days'' in its place.

PART 301–10—TRANSPORTATION EXPENSES

■ 3. The authority citation for 41 CFR part 301–10 continues to read as follows:

Authority: 5 U.S.C. 5707; 40 U.S.C. 121(c); 49 U.S.C. 40118; OMB Circular No. A–126, revised May 22, 1992.

■ 4. Amend § 301–10.5 by revising the section heading and adding paragraphs (c) and (d) to read as follows:

§ 301–10.5 What are the presumptions as to the most advantageous method of transportation by order of precedence?

* * * * *

(c) *Rental car.* If no Government-furnished automobile is available, but your agency has determined that travel must be performed by automobile, then a rental car should be authorized.

(d) *Privately Owned Vehicle (POV).* POVs should be determined to be the most advantageous method of transportation only after your agency evaluates the use of a common carrier, a Government-furnished automobile, and a rental car.

■ 5. Revise the undesignated center heading preceding § 301.10–220 to read as follows:

Government-Furnished Automobiles

* * * * *

■ 6. Revise § 301–10.309 to read as follows:

§ 301–10.309 What will I be reimbursed if I am authorized to use common carrier transportation or a rental vehicle and I use a POV instead?

You will be reimbursed the applicable POV rate on a mileage basis, plus per diem, not to exceed the total constructive cost of the authorized method of common carrier transportation plus per diem. Your agency must determine the constructive cost of transportation and per diem by common carrier under the rules in § 301–10.310.

■ 7. Revise § 301–10.310 to read as follows:

§ 301–10.310 What will I be reimbursed if I am authorized to use a Government-furnished automobile and I use a privately owned automobile instead?

You will be reimbursed based on a constructive mileage rate limited to the cost that would be incurred for use of a Government automobile. This rate will be published in an FTR bulletin available at *http://www.gsa.gov/ftr.* If your agency determines the cost of providing a Government-furnished automobile would be higher because of unusual circumstances, it may allow reimbursement not to exceed the mileage rate for a privately owned automobile. In addition, you may be reimbursed other allowable expenses as provided in § 301–10.304.

■ 8. Amend § 301–10.450 by revising the section heading and adding paragraphs (c) through (e) to read as follows:

§ 301–10.450 What are the policies when authorized to rent a vehicle for official travel?

* * * * *

(c) Travelers must use the least expensive compact car available, unless an exception for another class of vehicle is approved. Agencies should approve these exceptions on a limited basis and must indicate on the travel authorization the reason for the exception. Your agency may authorize the use of other than a compact car if any of the following apply:

(1) When use of other than a compact car is necessary to accommodate a medical disability or other special need.

(i) A disability must be certified annually in a written statement by a competent medical authority. However, if the disability is a lifelong condition, then a one-time certification statement is required. Certification statements must include at a minimum:

(A) A written statement by a competent medical authority stating that special accommodation is necessary;

(B) An approximate duration of the special accommodation; and

(ii) A special need must be certified annually in writing according to your agency's procedures. However, if the special need is a lifelong condition, then a one-time certification statement is required;

(iii) If you are authorized under § 301–13.3(a) to have an attendant accompany you, your agency may authorize the use of other than a compact car if deemed necessary by your agency.

(2) When required because of agency mission, consistent with your agency's internal procedures pursuant to § 301–70.102(i).

(3) When the cost of other than a compact car is less than or equal to the cost of the least expensive compact car.

(4) When additional room is required to accommodate multiple employees authorized to travel together in the same rental vehicle.

(5) When travelers must carry a large amount of Government material incident to their official business, and a compact rental vehicle does not contain sufficient space.

(6) When necessary for safety reasons, such as during severe weather or having to travel on rough or difficult terrain.

(d) Travelers are not to be reimbursed for purchasing pre-paid refueling options for rental cars. Therefore, travelers should refuel prior to returning the rental vehicle to the drop-off location. However, if it is not possible to refuel completely prior to returning the vehicle because of safety issues or the location of closest fueling station, travelers will be reimbursed for vendor refueling charges.

(e) Travelers will not be reimbursed for fees associated with rental car loyalty points or the transfer of points charged by car companies.

PART 301–70—INTERNAL POLICY AND PROCEDURE REQUIREMENTS

■ 9. The authority citation for 41 CFR part 301–70 continues to read as follows:

Authority: 5 U.S.C. 5707; 40 U.S.C. 121(c); Sec. 2, Pub. L. 105–264, 112 Stat. 2350 (5 U.S.C. 5701, note), OMB Circular No. A–126, revised May 22, 1992, and OMB Circular No. A–123, Appendix B, revised January 15, 2009.

■ 10. Amend § 301–70.101 by adding paragraphs (c) through (e) to read as follows:

§ 301–70.101 What factors must we consider in determining which method of transportation results in the greatest advantage to the Government?

* * * * *

(c) When travel must be performed by automobile, agencies should next consider using a Government-furnished automobile.

(d) If a Government-furnished automobile is not available, agencies should then consider using the least expensive compact rental vehicle.

(e) Agencies should lastly consider authorizing a POV only if the employee agrees to use a POV, because agencies cannot mandate employees to use their POV for official reasons.

■ 11. Amend § 301–70.102 by revising paragraphs (d), (f), and (i) to read as follows:

§ 301–70.102 What governing policies must we establish for authorization and payment of transportation expenses?

* * * * *

(d) When you will consider use of a POV advantageous to the Government, such as travel to and from common carrier terminals or to the TDY location. When determining whether the use of a POV to a TDY location is the most advantageous method of transportation, agencies must consider the total cost of using a POV as compared to the total cost of using a rental vehicle, including rental costs, fuel, taxes, parking (at a common carrier terminal, etc.), and any other associated costs;

* * * * *

(f) Procedures for allowing the use of a special conveyance (*e.g.,* commercially rented vehicles), taking into account the requirements of § 301–10.450;

* * * * *

(i) Develop and issue internal guidance on what specific mission criteria justify approval of the use of other than coach-class transportation under §§ 301–10.123(a)(4), 301–10.123(b)(9), and 301–10.162(e), as well as on the use of other than lowest first-class under § 301–10.183(d) and the use of other than a compact rental car under § 301–10.450(c). The justification criteria shall be entered in the remarks section of the traveler's authorization.

* * * * *

§§ 301–10.5, 301–10.200, 301–10.220, 301–10.310 and 301–70.104 [Amended]

■ 12. Amend §§ 301–10.5, 301–10.200, 301–10.220, 301–10.310 and 301–70.104 by removing the words ''Government automobile'' wherever they appear and adding ''Government-furnished automobile'' in their places.

[FR Doc. 2015–11459 Filed 5–12–15; 8:45 am]

BILLING CODE 6820–14–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 64

[Docket ID FEMA–2015–0001; Internal Agency Docket No. FEMA–8383]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

SUMMARY: This rule identifies communities where the sale of flood insurance has been authorized under

the National Flood Insurance Program (NFIP) that are scheduled for suspension on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If the Federal Emergency Management Agency (FEMA) receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will not occur and a notice of this will be provided by publication in the **Federal Register** on a subsequent date. Also, information identifying the current participation status of a community can be obtained from FEMA's Community Status Book (CSB). The CSB is available at *http://www.fema.gov/fema/csb.shtm.*

DATES: The effective date of each community's scheduled suspension is the third date (''Susp.'') listed in the third column of the following tables.

FOR FURTHER INFORMATION CONTACT: If you want to determine whether a particular community was suspended on the suspension date or for further information, contact Bret Gates, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–4133.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase Federal flood insurance that is not otherwise generally available from private insurers. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits the sale of NFIP flood insurance unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this document no longer meet that statutory requirement for compliance with program regulations, 44 CFR part 59. Accordingly, the communities will be suspended on the effective date in the third column. As of that date, flood insurance will no longer be available in the community. We recognize that some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue to be eligible for the sale of NFIP flood insurance. A notice withdrawing the suspension of such communities will be published in the **Federal Register**.

In addition, FEMA publishes a Flood Insurance Rate Map (FIRM) that identifies the Special Flood Hazard Areas (SFHAs) in these communities. The date of the FIRM, if one has been published, is indicated in the fourth column of the table. No direct Federal financial assistance (except assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act not in connection with a flood) may be provided for construction or acquisition of buildings in identified SFHAs for communities not participating in the NFIP and identified for more than a year on FEMA's initial FIRM for the community as having flood-prone areas (section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4106(a), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column. The Administrator finds that notice and public comment procedures under 5 U.S.C. 553(b), are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

Each community receives 6-month, 90-day, and 30-day notification letters addressed to the Chief Executive Officer stating that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. Since these notifications were made, this final rule may take effect within less than 30 days.

National Environmental Policy Act. This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Considerations. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Administrator has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because the National Flood Insurance Act of 1968, as amended, Section 1315, 42 U.S.C. 4022, prohibits flood insurance coverage unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed no longer comply with the statutory requirements, and after the effective date, flood insurance will no longer be available in the communities unless remedial action takes place.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 13132, Federalism. This rule involves no policies that have federalism implications under Executive Order 13132.

Executive Order 12988, Civil Justice Reform. This rule meets the applicable standards of Executive Order 12988.

Paperwork Reduction Act. This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

■ 1. The authority citation for Part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.;* Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp.; p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp.; p. 376.

§ 64.6 [Amended]

■ 2. The tables published under the authority of § 64.6 are amended as follows:

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in SFHAs
Region VII				
Iowa:				
Buchanan County, Unincorporated Areas.	190848	December 17, 1990, Emerg; September 1, 1991, Reg; June 16, 2015, Susp.	June 16, 2015 ..	June 16, 2015.

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in SFHAs
Defiance, City of, Shelby County	190246	October 27, 1976, Emerg; August 19, 1986, Reg; June 16, 2015, Susp.	......do *	Do.
Earling, City of, Shelby County	190247	July 18, 1975, Emerg; September 1, 1986, Reg; June 16, 2015, Susp.	......do	Do.
Independence, City of, Buchanan County.	190031	September 24, 1971, Emerg; May 16, 1977, Reg; June 16, 2015, Susp.	......do	Do.
Irwin, City of, Shelby County	190249	May 1, 1975, Emerg; July 16, 1981, Reg; June 16, 2015, Susp.	......do	Do.
Keosauqua, City of, Van Buren County	190268	January 14, 1975, Emerg; September 5, 1979, Reg; June 16, 2015, Susp.	......do	Do.
Kirkman, City of, Shelby County	190250	June 9, 1975, Emerg; May 17, 1982, Reg; June 16, 2015, Susp.	......do	Do.
Panama, City of, Shelby County	190251	October 2, 1975, Emerg; August 26, 1980, Reg; June 16, 2015, Susp.	......do	Do.
Portsmouth, City of, Shelby County	190507	October 6, 1975, Emerg; September 1, 1986, Reg; June 16, 2015, Susp.	......do	Do.
Shannon City, City of, Ringgold and Union Counties.	190521	August 15, 2005, Emerg; May 1, 2011, Reg; June 16, 2015, Susp.	......do	Do.
Shelby County, Unincorporated Areas	190905	September 12, 1975, Emerg; February 10, 1981, Reg; June 16, 2015, Susp.	......do	Do.
Missouri: Caldwell County, Unincorporated Areas.	290788	November 14, 2002, Emerg; July 5, 2005, Reg; June 16, 2015, Susp.	......do	Do.

*-do- =Ditto.

Code for reading third column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension.

Dated: April 27, 2015.

Roy E. Wright,

Deputy Associate Administrator, Federal Insurance and Mitigation Administration, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2015–11502 Filed 5–12–15; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

45 CFR Part 1355

Statewide Data Indicators and National Standards for Child and Family Services Reviews

AGENCY: Children's Bureau (CB), Administration for Children and Families (ACF), Administration on Children, Youth and Families (ACYF), Department of Health and Human Services (HHS).

ACTION: Final Notice of Statewide Data Indicators and National Standards for Child and Family Services Reviews; correction.

SUMMARY: On October 10, 2014, the Administration of Children and Families (ACF) published a document in the **Federal Register** (79 FR 61241). The document provided CB's final plan to replace the statewide data indicators used to determine a state's substantial conformity with titles IV–B and IV–E of the Social Security Act through the Child and Family Services Reviews (CFSRs). This document provides corrections to errors and misstatements in that document and some of the calculations of the statewide data indicators.

DATES: *Effective:* May 13, 2015.

FOR FURTHER INFORMATION CONTACT: Miranda Lynch Thomas, Children's Bureau, 1250 Maryland Ave. SW., 8th Floor, Washington, DC 20024, (202) 205–8138.

SUPPLEMENTARY INFORMATION:

Background

CB implemented the CFSRs in 2001 in response to a mandate in the Social Security Amendments of 1994. The reviews are required for CB to determine whether such programs are in substantial conformity with title IV–B and IV–E plan requirements. The review process, as regulated at 45 CFR 1355.31–37, grew out of extensive consultation with interested groups, individuals, and experts in the field of child welfare and related areas.

The CFSRs enable CB to: (1) Ensure conformity with federal child welfare requirements; (2) determine what is actually happening to children and families as they are engaged in child welfare services; and (3) assist states to enhance their capacity to help children and families achieve positive outcomes. CB conducts the reviews in partnership with state child welfare agency staff and other partners and stakeholders involved in the provision of child welfare services. We have structured the reviews to help states identify strengths as well as areas needing improvement within their agencies and programs.

We use the CFSR to assess state performance on seven outcomes and seven systemic factors. The seven outcomes focus on key items measuring safety, permanency, and well-being. The seven systemic factors focus on key state plan requirements of titles IV–B and IV–E that provide a foundation for child outcomes. If we determine that a state has not achieved substantial conformity in one or more of the areas assessed in the review, the state is required to develop and implement a program improvement plan addressing the areas of nonconformity within 2 years. CB supports the states with technical assistance and monitors implementation of their program improvement plans. If the state is unable to complete its program improvement plan successfully, a portion of the state's federal title IV–B and IV–E funds is withheld.

Most relevant to this document are the national standards for state performance on statewide data indicators CB uses to determine whether a state is in substantial conformity with certain child outcomes. We are authorized by the regulations at 45 CFR

1355.34(b)(4) and (5) to add, amend, or suspend any of the statewide data indicators and to adjust the national standards when appropriate. If we determine that a state is not in substantial conformity with a related outcome due to its performance on an indicator, the state will include that indicator in its program improvement plan. The improvement a state must achieve is relative to the state's baseline performance at the beginning of the program improvement plan period.

In an April 23, 2014, **Federal Register** document (79 FR 22604), we provided a detailed review of the consultation with the field and information considered in developing the third round of the CFSRs and proposed a set of statewide data indicators for public comment. We considered all public comments and issued a final plan in the October 10, 2014, **Federal Register** (79 FR 61241). Simultaneously, CB released CFSR Technical Bulletin #8, which provided more details on calculation methods and a workbook that showed individual state performance on the indicators and preliminary findings of whether the state met the national standards at that time based on data submitted as of July 2014. In responding to state and other stakeholder questions since the release of those publications, we have found errors in our descriptions and calculations that we are correcting here. We will release an amended technical bulletin and workbook concurrently with this **Federal Register** document to make applicable corrections to those documents. We will also release the associated syntax in SPSS and STATA format so that states and other interested parties can review the detail related to the indicators. Although we intend to provide tools that allow the state to monitor its performance results on the indicators on a periodic basis, we know the additional detail is helpful to states that want to monitor themselves more frequently or in more depth. Finally, since this document focuses on just the revisions and clarifications necessary to the **Federal Register** document from October 2014, we will also publish a document that incorporates these revisions and clarifications into the original document.

Language Errors and Clarifications

This section discusses the language errors and clarifications we are making to the original **Federal Register** document.

Clarification of the Trial Home Visit Adjustment to Permanency Performance Areas 1, 2, and 3

On page 61244, we provided a description of how we calculated the permanency in 12 months for children entering foster care indicator. In part, we explained that we had applied a trial home visit adjustment to this indicator. We stated that this meant that if a child discharges from foster care during the 12-month period to reunification with parents or other caretakers after a placement setting of a trial home visit, any time in that trial home visit that exceeds 30 days is discounted from the child's length of stay in foster care. We use six 6-month Adopting and Foster Care Analysis and Reporting System (AFCARS) reporting periods of data (3 years) to calculate the numerator in this indicator. We are clarifying that the trial home visit adjustment is applied to all AFCARS reporting periods used for the indicator.

If a child discharges from foster care to reunification with parents or other caretakers after a placement setting of a trial home visit during any of the six report periods used for the indicator, any time in that trial home visit that exceeds 30 days is discounted from the length of stay in foster care. In other words, the actual date of discharge to permanency could occur at any time during the 3 years used to calculate this indicator, and the trial home visit would then be applied to see if it may result in a reduction in the length of time in foster care for the purposes of this data indicator.

On pages 61244–61245, we explained that the trial home visit adjustment was also applied to the following indicators: Permanency in 12 months for children in foster care 12 to 23 months and permanency in 12 months for children in foster care 24 months or more. However, this is not accurate. We do not apply the trial home visit adjustment to these indicators because it has no impact on the outcomes for children in care on the first day and followed for only 12 months. This is because these indicators rely on only two AFCARS report periods (one year of data) and do not look beyond the 12-month period to see whether a child has discharged to permanency.

Revisions to Attachment A—Statewide Data Indicators

Attachment A provided a summary of each final statewide data indicator including the numerators, denominators, risk adjustments, and data periods used to calculate the national standards.

In describing the permanency in 12-months indicator for children entering foster care, we said that we used the AFCARS periods 2011B through 2013A for calculating the national standard for this indicator. This was a typographical error. We used six AFCARS report periods for a total of 3 years of data: 2011B through 2014A.

Also, the applicable exclusions and notes were partly in error for the following indicators: Permanency in 12 months for children in foster care 12 to 23 months and permanency in 12 months for children in foster care 24 months. We carried forward the same error described in the previous section with regard to the trial home visits adjustment. We do not apply the trial home visit adjustment to these indicators.

Revisions to Attachment D—Data Quality Items, Limits, and Applicable Measures

Attachment D provided information on the data quality limits applied in determining whether to include state data for calculating the indicators.

Data quality limits are applied to avoid skewing results. There may be a number of reasons why a state's data exceeds a data quality limit, including outliers that exist in the data. Therefore, not all exclusions are necessarily the result of poor data quality. The data quality limits outlined in Attachment D are intended to be a guide to avoid misrepresenting state performance or national standards.

Two listed data quality items had typographical errors that changed their meaning. The AFCARS Within-file data quality check, ''Percent of children on 1st removal,'' is applied to all indicators with the exception of recurrence of maltreatment. The limit noted was less than 95 percent but it should read more than 95 percent. The NCANDS Cross File Check named ''Child IDs don't match across years'' should read ''Child IDs match across years.'' This means that the state has not met the item limit if less than 1 percent of the Child IDs match across years, as we expect them to be based on patterns of recurrence.

In addition, the term ''Dropped cases'' was used in the section on AFCARS Cross File Checks. This term refers to instances in which a child who is reported during one 6-month period is not reported in the next period, and there is no record that the child exited. However, this term is technically incorrect, as it is the record of the case that drops from the file. For clarity, this cross file check should instead be referred to as ''Dropped records.''

For all NCANDS data quality items outlined in Attachment D, it should be noted that these data quality items were applied to victims only. This includes all NCANDS cross file and within-file checks.

With regard to the data quality items applied to the indicator of maltreatment in foster care, the table indicates that we apply the NCANDS cross file check, ''Child IDs match across years, but dates of birth and sex do not match,'' to this indicator. We do not apply this check to the maltreatment in foster-care indicator because it requires only 1 year of data.

Finally, for clarification, the NCANDS data quality item ''Some victims have AFCARS IDs'' was previously located in the ''NCANDS Data—Cross File Checks'' section. It should be in the ''NCANDS Within file checks'' section, because it requires only the NCANDS child file and does not match with AFCARS.

Changes to National Standards and State Performance

This section discusses the changes or clarifications in the methods of calculating the national standards and state performance that affect the national standards we provided in the original document.

We made one change to the application of data quality items that has an implication for the calculation of national standards and state performance. There was an oversight in the application of the data quality items for the measure of permanency in 12 months for children entering foster care. For this indicator, we originally applied the data quality items only to the first four data periods, but upon further investigation we determined that the data quality items should be applied to all six periods used in the calculation of this measure.

There was a slight modification made to several calculations that require the date of discharge. When calculating the length of stay in foster care, age at exit, or other variables that require the data of discharge, we previously used an imputed version of the date of discharge. An imputed date of discharge was used when the date of discharge was missing for a child in one report period, but in the subsequent 6-month period the child was reported as being in a new removal episode with a value for his or her date of discharge from the prior foster care episode. We are no longer using the date of discharge from the prior foster care episode to impute missing dates of discharge and are using only the date of discharge from foster care submitted to us by the state. If that date is missing, it is treated as a missing value and no attempt is made to impute the value using subsequent files.

In determining the national standards and the state-by-state performance outlined in the workbook, we inadvertently did not use the most recent submission for all periods of data for three states. We have re-run the analysis and national standards to incorporate these resubmissions and all data are now current as of July 10, 2014.

Due to the above noted changes, Table 1 on page 61249 should be replaced as follows:

TABLE 1—NATIONAL STANDARDS FOR CFSR ROUND 3 STATEWIDE DATA INDICATORS

	National standard
Statewide Data Indicators for Safety Outcome 1:	
Maltreatment in Foster Care	8.50 victimizations per 100,000 days in foster care.
Recurrence of Maltreatment	9.1 percent.
Statewide Data Indicators for Permanency Outcome 1:	
Permanency in 12 Months for Children Entering Foster Care	40.5 percent.
Permanency in 12 Months for Children in Foster Care 12 to 23 Months	43.6 percent.
Permanency in 12 Months for Children in Foster Care 24 Months or More	30.3 percent.
Re-Entry to Foster Care in 12 Months	8.3 percent.
Placement Stability	4.12 moves per 1,000 days in foster care.

On page 61254, we provided an overview of the number of states excluded from the national standards for each data indicator. Based on the changes noted here, these should be updated as follows:

- Permanency in 12 months for first day cohorts with 12–23 months and 2 or more years prior time in care: Three states are now excluded instead of one.
- Permanency in 12 months for children entering foster care indicator: Four states are now excluded instead of three.
- Recurrence of maltreatment: Five states are now excluded instead of four.

There was no change to the number of states excluded for the indicators of re-entry to foster care in 12 months, maltreatment in foster care, or placement stability.

Changes to Monitoring Statewide Data Indicators in Program Improvement Plans

The changes noted in relation to the calculation of national standards also have relevance to the calculation of each state's observed and risk-standardized performance, as well as the improvement factors used to set program improvement plan goals. Revised state-level data, including changes to results indicating the need for a program improvement plan, are reflected in the revised workbook.

The changes in the workbook regarding setting program improvement plan targets also reflect a revision to the bootstrapping process outlined in Technical Bulletin #8. We began with three observed values for 3 years of data, aggregated at the state level. From those three values, we averaged them in different combinations to get seven values. From those 7 values, a bootstrapping process was used to get 30 values. These 30 values were then resampled 1,000 times. After careful review, we have determined that we do not have justification for bootstrapping to 30 values. We have eliminated that step and are now bootstrapping the 7 values to get 1,000 resamples. This yields a grand mean and improvement factor that is very similar to the original set, but is more reflective of the true parameters.

Because of these changes, Table 2 has also been revised. In addition, upon further reflection we believe that in order to avoid confusion, it is best to use the terminology of floors and caps versus minimum and maximum amounts of improvement. Using the terms of floors and caps is also consistent with the previously issued Technical Bulletin #8. All other references to minimum and maximum levels of improvement in the original **Federal Register** document should be read as floors and caps. Table 2 should be replaced as follows:

TABLE 2—CAPS AND FLOORS ON PROGRAM IMPROVEMENT PLAN IMPROVEMENT FACTORS RELEVANT TO THE STATEWIDE DATA INDICATORS

	Floor	Cap
Statewide Data Indicators for Safety Outcome 1:		
Maltreatment in Foster Care	0.904	0.812
Recurrence of Maltreatment	0.951	0.902
Statewide Data Indicators for Permanency Outcome 1:		
Permanency in 12 Months for Children Entering Foster care	1.031	1.063
Permanency in 12 Months for Children in Foster Care 12 to 23 months	1.046	1.082
Permanency in 12 Months for Children in Foster Care 24 Months or More	1.042	1.091
Re-Entry to Foster Care in 12 Months	0.891	0.834
Placement Stability	0.959	0.904

Dated: May 5, 2015.

Mark H. Greenberg,

Acting Assistant Secretary for Children and Families.

[FR Doc. 2015–11515 Filed 5–12–15; 8:45 am]

BILLING CODE 4184–25–P

DEPARTMENT OF COMMERCE

48 CFR Parts 1328 and 1352

[Document No.: 150129094–5094–01]

RIN 0605–AA37

Commerce Acquisition Regulation (CAR); Waiver of Bond Requirement for Contracts To Repair, Alter or Construct Certain Research and Survey Vessels for the National Oceanic and Atmospheric Administration

AGENCY: Department of Commerce (Commerce).

ACTION: Interim final rule.

SUMMARY: We, the Department of Commerce (Commerce), issue an interim final rule to provide procedures for waiving performance and payment bonds required under U.S. law, associated with contracts for the repair, alteration and construction of the National Atmospheric and Oceanographic Administration's (NOAA) fleet of research and survey vessels operated by the Office of Marine and Aviation Operations (OMAO). The regulations implement the authority provided to the Secretary of Commerce in Section 111 of the ''Department of Commerce Appropriations Act, 2015,'' and comport with language in the Appropriation Committee's report instructing NOAA to promulgate regulations prior to implementing the waiver authority. This final rule amends the CAR by inserting a section and amending a part to add the contract language for the waivers.

DATES: This action is effective on May 13, 2015. However, Commerce will accept comments on this interim final rule until June 12, 2015.

ADDRESSES: The final rule is available at *www.regulations.gov,* or by contacting the Department of Commerce: Room 1854, 1401 Constitution Avenue NW., Washington, DC 20230.

You may submit comments on this interim final rule on regulations.gov, search for RIN 0605–AA37, click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.

Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, etc.) submitted voluntarily by the sender will be publicly accessible. Do not submit confidential business information, or otherwise sensitive or protected information. The Department of Commerce will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word or Excel, WordPerfect, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Virna Winters, 202–482–3483.

SUPPLEMENTARY INFORMATION:

Background

Section 111 of the ''Department of Commerce Appropriations Act, 2015,'' Division B, Title I of Public Law 113–235 (Dec. 16, 2014) (Appropriations Act) granted the Secretary of Commerce the authority to waive the performance and payment bond requirement under 40 U.S.C. 3131 *et seq.,* for the construction, alteration, or repair of ships in NOAA's fleet of vessels. 40 U.S.C. 3131 *et seq.* requires prime contractors to furnish performance and payment bonds for contracts in excess of $150,000, for the construction, alteration, or repair of any public building or public work of the Federal government including ship construction, alteration, and repairs. NOAA's Office of Marine and Aviation Operations (OMAO) operates a fleet of hydrographic survey, oceanographic research and fisheries survey vessels, consistent with its mission to perform offshore and deep-sea survey operations, coastal mapping, oceanographic research, and other functions that ensures public safety and the preservation of the Nation's property and natural resources. The waiver authority will align the Commerce's authorities with those of other Federal agencies, including the U.S. Department of the Navy and the U.S. Coast Guard, and is expected to address significant difficulties NOAA has experienced in obtaining competitive bids for ship repairs. The authorization for this waiver lasts as long as it is included in appropriations measures, or authorizing legislation, enacted by Congress.

Commerce publishes this action to amend the CAR to provide guidance for implementing the authority granted to the Secretary of Commerce in the Appropriations Act. The following is a summary of the procedures which will be in the amendment to the CAR.

NOAA ships enter into either a dry docking or dockside repair period every fiscal year, typically in the first or second quarter of the fiscal year. Each vessel is equipped with highly advanced survey instruments, state of the art electronics, computers, and navigational and communications systems, which must be kept operational to ensure the safety of the crew and the ship's schedule. It also is often necessary for emergency repairs to be made to NOAA's vessels without delay for safety purposes and to ensure that the ships can carry on their missions involving the collection of mission sensitive data, as well as immediate response capabilities for extreme weather-related events involving hurricanes. As noted above, prime contractors performing those maintenance activities on NOAA's vessels have been required to provide performance and payment bonds for that work. These bonding requirements have placed an undue burden on smaller shipyards that have limited financial resources and have hindered their ability to bid on NOAA's requirements. This has resulted in inadequate competition for repairs to the Atlantic and Pacific fleets, delays to ship schedules, inferior quality and increased costs to the Government.

The Appropriations Act gives the Secretary of Commerce the authority to waive the bonding requirement for the alteration, repair and construction of NOAA's vessels to encourage contractors, especially small shipyards, to bid on NOAA's vessel projects. In order to implement the authority in an efficient manner and consistent with the congressional mandate, this action allows NOAA to waive bond requirements for ship construction, alteration and repairs.

Contracting Officers (CO) may not issue solicitations waiving the requirements for bonds until the waiver request is approved. The CO will retain the discretion to require bonds if the complexity of the work and the level of competition in the region warrant them. All solicitations for ship construction, alteration, or repairs where bonds are not required will include a provision informing potential offerors that the failure to pay subcontractors could adversely affect their past performance and have an impact on their eligibility for award of future contracts. Contractors will provide written confirmation that all subcontractors have been properly paid prior to submission of final invoice.

Classification

Executive Orders 12866 and 13563: This interim final rule has been drafted according to the requirements of Executive Orders 12866 and 13563, and has been determined to be ''not significant'' under those orders.

The Department of Commerce finds good cause under 5 U.S.C. 553(b)(3) and (d) to waive the notice and comment and 30-day delay in effectiveness periods for this action. Congress granted the Secretary of Commerce the authority to waive the bonding requirements involved in this action in the Appropriations Act. That authority lasts the duration of fiscal year 2015 and carries through any years in which Congress reauthorizes the authority. Because the waiver authority may be of limited duration, it is impracticable and contrary to the public's interest to submit this rule to the ordinary notice and comment timeframe. Doing so would restrict the time limit for the authority, contrary to Congressional intent, and thereby reduce or eliminate the benefits to the public and to the Government of waiving the bonding requirements. Use of the waiver will benefit the public by allowing greater competition for shipbuilding and ship repair activities, and helps NOAA's vessels maintain working operation for more days out of the year. Because allowing public comment and delaying the effectiveness of this rule for 30 days is impracticable and contrary to the public's interest, Commerce hereby waives those requirements.

Although this interim rule will become effective upon publication in the **Federal Register**, Commerce is nonetheless seeking public comments on this rule and plans on publishing a final rule in the future that takes into account and responds to public comments.

Regulatory Flexibility Act: Because notice and comment under 5 U.S.C. 553 are not required for this rule, the requirements of the Regulatory Flexibility Act do not apply. 5 U.S.C. 603. Accordingly, no regulatory flexibility analysis is required, and none has been prepared.

Paperwork Reduction Act (PRA): This rule does not impose any new information collections subject to review and approval by the Office of Management and Budget (OMB) under the PRA. Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

List of Subjects

48 CFR Part 1328

Government procurement, Insurance, Reporting and recordkeeping requirements, Surety bonds.

48 CFR Part 1352

Government procurement, Matrix, Reporting and recordkeeping requirements.

Ellen Herbst,

Chief Financial Officer and Assistant Secretary of Administration, U.S. Department of Commerce.

For the reasons set out in the preamble, the Department of Commerce amends 48 CFR parts 1328 and 1352 as follows:

PART 1328—BONDS AND INSURANCE

■ 1. The authority citation for part 1328 continues to read as follows:

Authority: 41 U.S.C. 414; 48 CFR 1.301–1.304.

■ 2. Add sections 1328.102, 1328.102–1, 1328.102–2, and 1328.102–3 to subpart 1328.1 to read as follows:

1328.102 Waiver of performance and payment bonds for contracts involving the construction, alteration, and repair of NOAA's fleet of vessels.

1328.102–1 Waiver policy.

(a) Pursuant to the authority vested in the Secretary of Commerce, the requirements of 40 U.S.C. 3131 through 3133 may be waived by virtue of the authority vested in him or her pursuant to the Consolidated and Further Continuing Appropriations Act, 2015, Public Law 113–235, 128 Stat. 2130, Div. B, Title I, Sec. 111 (2014), with respect to contracts for the repair, alteration, and construction of NOAA's hydrographic survey, oceanographic research, and fisheries survey vessels operated by NOAA Office of Marine and Aviation Operations in the Atlantic and Pacific regions including the Pacific Islands. The Department's policy and procedures for use of the waiver authority is set forth in CAM 1328.102.

(b) Contracting officers are required to consider any unusual circumstances that may arise in which either payment or performance bonds, or both, will be advantageous to the Government in connection with these contracts prior to issuing solicitations.

1328.102–2 Waiver authority.

The designee authorized to approve bond waivers is set forth in CAM 1328.102.

1328.102–3 Contract clause.

The contracting officer shall insert the clause at 1352.228–77, *Contractor Assurance of Subcontractor Payments,* in solicitations and contracts when performance and payment bonds are waived.

PART 1352—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 3. The authority for part 1352 continues to read as follows:

Authority: 41 U.S.C. 414; 48 CFR 1.301–1.304.

■ 4. Add section 1352.228–77 to subpart 1352.2 to read as follows:

1352.228–77 Contractor assurance of subcontractor payments.

As prescribed in 48 CFR 1328.102–3, insert the following clause:

Contractor Assurance of Subcontractor Payments May 2015

(a) To protect the interests of subcontractors participating in the performance of this contract, the Government requires the assurance that all monies due to subcontractors is timely and properly made prior to the submission of the contractor's final invoice.

(b) By accepting this award, in writing or by performance, the offeror/contractor represents that—it will provide full payment to all subcontractors utilized in the performance of the resultant contract prior to the submission of its final invoice.

(c) No later than five (5) days after contract award the contractor shall provide the Contracting Officer with a list of all subcontractors to be utilized in the performance of this contract. The contractor must provide updates to the Contracting Officer throughout the contract, should changes be made.

(d) The following shall be completed and provided accordingly:

SUBCONTRACTOR LIST—CONTRACT NO.____________________

Name of subcontractor business	Subcontractor point of contact with contact information (number/e-mail)	Contract line item(s) to which subcontract work is tied	Applicable trade (electrical, mechanical, etc.)

(e) Reports by subcontractors of delayed or non-payment during the performance of the contract may impact the Government's continued payment of contractor invoices on a percentage of completion basis. (CAR clause, 1352.271–71, *Method of Payment and Invoicing Instructions for Ship Repair*).

(f) The contractor shall include the following statement on its final invoice—''By submission of this invoice, assurance is herein provided that all monies due to any and all subcontractors used in the performance of this contract have been paid in full prior to the submission of this final invoice.''

(g) Failure to pay subcontractors could adversely affect the contractor's past performance evaluation for this contract and have a negative impact on its eligibility for future contract awards.

(h) The Government may seek any available remedies in the event the contractor fails to comply with the provisions of this clause.

[FR Doc. 2015–10620 Filed 5–12–15; 8:45 am]

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Proposed Rules

Federal Register

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Wednesday, May 13, 2015

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Part 309

[Docket No. FSIS–2014–0020]

RIN 0583–AD54

Requirements for the Disposition of Non-Ambulatory Disabled Veal Calves

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is proposing to amend its regulations on ante-mortem inspection to remove a provision that permits establishments to set apart and hold for treatment veal calves that are unable to rise from a recumbent position and walk because they are tired or cold. Under the proposed rule, non-ambulatory disabled veal calves that are offered for slaughter will be condemned and promptly euthanized. Prohibiting the slaughter of all non-ambulatory disabled veal calves will improve compliance with the Humane Methods of Slaughter Act of 1978 (HMSA) and the humane slaughter implementing regulations. It will also improve the Agency's inspection efficiency by eliminating the time that FSIS inspection program personnel (IPP) spend re-inspecting non-ambulatory disabled veal calves. FSIS is also proposing to clarify in the regulations that all non-ambulatory disabled cattle must be *promptly* disposed of after they have been condemned.

DATES: Comments must be received on or before July 13, 2015.

ADDRESSES: FSIS invites interested persons to submit comments on this rule. Comments may be submitted by one of the following methods:

- *Federal eRulemaking Portal:* This Web site provides the ability to type short comments directly into the comment field on this Web page or attach a file for lengthier comments. Go to *http://www.regulations.gov.* Follow the on-line instructions at that site for submitting comments.
- *Mail, including CD–ROMs, etc.:* Send to Docket Clerk, U.S. Department of Agriculture, Food Safety and Inspection Service, Patriots Plaza 3, 1400 Independence Avenue SW., Mailstop 3782, Room 8–163A, Washington, DC 20250–3700.
- *Hand- or courier-delivered submittals:* Deliver to Patriots Plaza 3, 355 E. Street SW., Room 8–163A, Washington, DC 20250–3700.

Instructions: All items submitted by mail or electronic mail must include the Agency name and docket number FSIS–2014–0020. Comments received in response to this docket will be made available for public inspection and posted without change, including any personal information, to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Dr. Daniel Engeljohn, Assistant Administrator, Office of Policy and Program Development; Telephone: (202) 205–0495.

SUPPLEMENTARY INFORMATION:

Background

Regulatory Requirements for Non-Ambulatory Disabled Veal

Under 9 CFR 309.3(e), non-ambulatory disabled cattle that are offered for slaughter, including those that have become non-ambulatory disabled after passing ante-mortem inspection, must be condemned and disposed of properly. However, under 9 CFR 309.13(b), non-ambulatory disabled veal calves that are able to rise from a recumbent position and walk after they have been set aside and warmed or rested, and that are found to be otherwise free from disease, may be slaughtered for human food under appropriate FSIS supervision.

In 2009, FSIS amended 9 CFR 309.3(e) to remove the case-by-case disposition determination of cattle that became non-ambulatory disabled after ante-mortem inspection to ensure that animals that may be unfit for human food do not proceed to slaughter and to improve the effectiveness and efficiency of the inspection system (74 FR 11463). FSIS decided that establishments could continue to set aside veal calves that were tired or cold because these conditions could be treated before presenting the animals for slaughter.

Petition From the Humane Society of the United States

In November 2009, the Humane Society of the United States (HSUS) submitted a petition requesting that FSIS amend its regulations to remove the provision that allows veal calves that are non-ambulatory disabled because they are tired or cold to be set aside to be warmed or rested (9 CFR 309.13(b)). The petition requested that FSIS amend its regulations to require that all non-ambulatory disabled veal calves offered for slaughter be condemned and promptly euthanized. The petition is available on the FSIS Web site at *http://www.fsis.usda.gov/wps/wcm/connect/9ddd8b7c-983f-4cb1-83e8-9e545e9345d0/Petition_HSUS_Humane_Handling.pdf?MOD=AJPERES.*

To support the requested action, the petition referred to video footage from an HSUS undercover investigation at an official veal slaughter establishment in August 2009. The video footage documents incidents in which the establishment owner and his employees repeatedly used electric prods and physical force to attempt to get non-ambulatory disabled veal calves to rise.

After the release of the video footage, FSIS conducted its own investigation which found that the establishment repeatedly failed to handle animals humanely. FSIS immediately shut down the establishment, and Secretary of Agriculture Thomas Vilsack ordered the USDA's Office of Inspector General to conduct a criminal investigation. The establishment was only allowed to reopen under a new name and different ownership after reaching an agreement with FSIS that its facilities would be audited by an outside firm on a regular basis, and that employees would receive special training on humane handling of animals.

HSUS's petition asserted that the provision in 9 CFR 309.13(b) is inconsistent with the language and intent of the HMSA because it fails to ensure that the handling of livestock in connection with slaughter be carried out only by humane methods (see 7 U.S.C. 1902). Similarly, the petition asserted that failing to require immediate euthanasia creates a financial incentive for establishments to engage in abusive conduct because a non-ambulatory disabled calf is worthless unless it is slaughtered. The petition asserted that removing the provision from 9 CFR

309.13(b) would eliminate uncertainty as to what is to be done with veal calves that are non-ambulatory disabled because they are tired or cold, or because they are injured or sick, thereby ensuring the appropriate disposition of these animals. The petition also maintained that removing the provision in 9 CFR 309.13(b) would improve inspection efficiency by eliminating the time that FSIS IPP spend assessing the treatment of non-ambulatory disabled veal calves.

On February 7, 2011, FSIS published a document in the **Federal Register** requesting public comments on the HSUS petition (76 FR 6572). In the document, the Agency explained that it had tentatively decided to grant the HSUS petition but determined that it would be useful to solicit public input on the issues raised in the petition before making a final decision. FSIS stated that the Agency believed that prohibiting slaughter of all non-ambulatory disabled veal calves may remove potential uncertainty in determining the disposition of calves that have been set aside and would be consistent with the requirements for the other classes of non-ambulatory disabled cattle. FSIS also stated that prohibiting the slaughter of non-ambulatory disabled veal calves would better ensure effective implementation of ante-mortem inspection pursuant to 21 U.S.C. 603(a) and of humane handling requirements pursuant to 21 U.S.C. 603(b) of the Federal Meat Inspection Act. FSIS received approximately 75,000 comment letters on the petition. Most of the comments were form letters from a write-in campaign HSUS had organized. A summary of comments and the Agency's responses is below.

After carefully considering the issues raised in the petition and comments submitted in response to the **Federal Register** document (76 FR 6572), FSIS granted the HSUS petition on March 13, 2013, and announced that the Agency would begin rulemaking when resources allowed.

Recent Investigation

On January 23, 2014, FSIS initiated an investigation into allegations of inhumane slaughter and handling of veal calves, covertly captured on video by HSUS, at another official veal slaughter establishment. Among other things, the video footage documents incidents in which veal slaughter establishment employees use physical force to attempt to get non-ambulatory disabled veal calves to rise.

After reviewing the video footage and other evidence, FSIS found that the establishment did have a comprehensive systematic approach to its humane handling program, but that the approach was not consistently applied. As a result, FSIS withdrew its inspectors from the slaughter operations at the establishment, thereby halting slaughter operations, until the establishment provided the Agency with corrective actions and further planned preventive measures that would ensure that livestock at the establishment would be slaughtered humanely. The establishment provided the Agency with corrective and preventive actions on January 24, 2014. After a thorough review and evaluation of these materials, FSIS notified the establishment that its suspension would be held in abeyance on February 3, 2014. FSIS continues to verify that the establishment's corrective and further-planned actions are implemented and effective.

Comments and Responses

Approximately 70,000 comment letters that expressed support for the HSUS petition were submitted as part of the HSUS write-in campaign. FSIS also received over 4,000 comment letters in support of the petition from other write-in campaigns, animal welfare organizations, private citizens, and two veterinary associations. FSIS received approximately 200 comments from trade associations representing meat processors, cattle producers, dairy producers, and farm bureaus, as well as individual dairy farmers, veal processors, cattle producers, and private citizens that opposed granting the petition.

Comments: Most of the commenters that supported the petition stated that the regulation that allows veal calves to be set apart and held for treatment violates the HMSA because it encourages conduct such as dragging, kicking, excessive shocking, and other means of forced movement that are clearly prohibited. The commenters asserted that FSIS cannot reasonably justify imposing a higher protective standard for mature cattle than it does for calves.

The comments in support of the petition also asserted that granting the petition would eliminate incentives for veal calf producers to send extremely weak calves to slaughter, thereby improving on-farm conditions and conditions during transportation for these animals. According to the comments, veal calves are often fed all-liquid diets that are intended to be deficient in iron, making these animals more susceptible to gastrointestinal disorders and diseases. The comments also stated that veal calves are subjected to cruel confinement practices that contribute to their weakened condition. The comments stated that veal calf producers have the means to prevent conditions that can predispose calves to collapse at slaughter, and, therefore, the regulations should encourage improvements in on-farm and transportation practices.

Many commenters in support of granting the petition asserted that rescinding the regulation that allows veal calves to be set apart and held for treatment would improve inspection efficiency and ensure the appropriate disposition of non-ambulatory disabled veal calves on ante-mortem inspection. The commenters argued that the rescission would eliminate the uncertainty inherent in determining whether these animals are non-ambulatory disabled because they are tired or cold, or because they are injured or sick.

Some commenters asserted that the Agency had not articulated the nature of the ''uncertainty'' in determining the disposition of non-ambulatory disabled veal calves that it seeks to avoid by granting the HSUS petition. The commenters stated that such ''uncertainty'' could not be attributed to bovine spongiform encephalopathy (BSE) concerns because veal calves are too young to present a BSE risk. The commenters asserted that conditions that are commonly observed in veal calves can readily be treated before these animals are presented for slaughter.

Response: Although FSIS has determined that cattle younger than 30 months do not present a serious risk of BSE, veal calves are vulnerable to other systemic and metabolic diseases and injury because of inadequate immunoglobulin transfer, nutritional inadequacies of an all-liquid iron-deficient diet, activity restriction, and stress. For example, veal calves are acutely susceptible to enteritis, which is the inflammation of the small intestine caused by infection that may lead to diarrhea, abdominal pain, fever, and dehydration. If adopted, this proposed rule will eliminate the time that FSIS IPP spend determining whether veal calves are non-ambulatory disabled because they are tired or cold or because they have diseases like enteritis. This proposed rule will also eliminate the time that FSIS IPP spend re-inspecting veal calves if they are again offered for slaughter. Therefore, this proposed rule will increase the time FSIS IPP can focus on other inspection activities.

Comments: Several comments, most from trade associations representing meat processors, stated that instead of encouraging inhumane handling, allowing non-ambulatory disabled veal calves to be set apart for treatment gives these animals an opportunity to naturally show that they can gain the strength to rise and become ambulatory through additional nourishment and care. Therefore, the commenters asserted, allowing veal calves time to rest and gain warmth is, in fact, inherently humane. According to the commenters, granting the petition would do little to improve humane handling of veal calves because the slaughter establishments that do exercise their option to allow tired or cold non-ambulatory disabled veal calves to rest do handle these calves humanely.

Response: The 2009 inhumane handling incident referred to in the HSUS petition and the 2014 inhumane handling incident described above demonstrate that these animals are not always given an opportunity to naturally show that they can gain the strength to rise and become ambulatory through additional nourishment and care. FSIS also reviewed non-compliance records (NRs) from 2012 to 2014 and found three instances where FSIS inspectors observed ambulatory veal calves walk over non-ambulatory disabled veal calves and one instance where non-ambulatory disabled veal calves were physically lifted and dropped into holding pens. While these instances of non-compliance were corrected through corrected actions, FSIS has found that allowing reinspection of NAD veal may have created an incentive for some establishments to inhumanely attempt to force these animals to rise. In addition, allowing reinspection may have encouraged establishments or livestock producers to hold ill or injured veal calves from slaughter longer in an attempt to allow them to sufficiently recover to pass the reinspection before collapsing. FSIS is concerned that these veal calves may not have adequate access to water. From 2012 to 2014, FSIS documented over 30 NRs for failure to provide water in accordance with § 313.2(e). Furthermore, veal calves may not be able to drink the water that establishments provide because they are used to drinking from a bottle. Therefore, FSIS has determined that a change in the regulation is needed to ensure more effective and efficient implementation of inspection procedures and compliance with humane handling requirements at official veal slaughter establishments.

Comments: Some commenters suggested that FSIS should only amend the provision in 9 CFR 309.13(b) to prohibit the slaughter of non-ambulatory disabled ''bob veal,'' which are calves generally less than one week old. The commenters argued that bob veal should be treated differently than formula-fed and non-formula-fed calves. The comment recommended limiting the prohibition to bob veal because they are younger and weaker and thus more likely to become non-ambulatory disabled at slaughter than the older calves.

A trade association representing farmers and processors of formula-fed veal noted that the inhumane handling incident referred to in the HSUS petition took place at a bob veal calf slaughter establishment. The commenter noted that bob veal calves are a small segment of young dairy calves that have not received the individualized care that is typical at a formula-fed veal farm. The commenter stated that farmers of formula-fed veal select the highest quality and healthiest bull calves available in sale barns or directly from dairy farmers. The commenter explained that the formula-fed veal calves raised in the U.S. receive individualized and specialized care and husbandry on veal farms until they are 20–22 weeks or approximately 450–500 pounds. The commenter noted that this treatment is in contrast to how bob veal calves, which are typically younger, weaker, and lighter calves, are treated. The commenter stated that a formula-fed veal calf that has been raised to market-weight carries a significant loss of investment compared to a bob veal calf that has not received the same individual care. According to the commenter, based on market value in 2013, a typical farmer of formula-fed veal is likely to lose $800 for each otherwise healthy non-ambulatory disabled veal calf that cannot proceed to slaughter compared with the $10–25 loss for each bob veal calf.

Response: While the 2009 inhumane handling incident referred to in the HSUS petition took place at a bob veal calf slaughter establishment, the 2014 inhumane handling incident described above took place at a formula-fed veal calf slaughter establishment. Based on the evidence found in these investigations, FSIS believes that a change in the regulation is needed to ensure that there is better compliance with humane handling requirements at all official veal slaughter establishments and more effective and efficient implementation of inspection procedures.

Also, as discussed below, the Agency's analysis of the estimated costs of this rule to formula-fed and non-formula-fed veal slaughter establishments would be about $0 to $8,225.00 annually, which is insignificant compared to their annual market value of about $283 million to $366 million.

Proposed Amendments to 9 CFR 309.13(b) and 309.3(e)

The above-mentioned incidents of inhumane handling at official veal calf slaughter establishments in 2009 and 2014 demonstrate that the provision in 9 CFR 309.13(b) may create an incentive for establishments to inhumanely force non-ambulatory disabled veal calves to rise and may provide an incentive for livestock producers and establishments to send weakened veal calves to slaughter in the hope that the veal calves are able to sufficiently recover to pass ante-mortem inspection. Sending such weakened veal calves to slaughter increases the chances that they will go down and then be subjected to conditions that are inhumane. This proposed rule will remove the incentive to send such weakened veal calves to slaughter and decrease the chances of inhumane conditions. In addition, prohibiting the slaughter of all non-ambulatory disabled veal calves will be consistent with the requirements for the other classes of non-ambulatory disabled cattle.

Therefore, after evaluating the comments, NRs, and information from the 2009 and 2014 incidents discussed above, FSIS is proposing to remove the second sentence in 9 CFR 309.13(b) that permits veal calves that are unable to rise from a recumbent position and walk because they are tired or cold to be set apart and held for treatment.

In addition, FSIS is proposing to amend 9 CFR 309.3(e) to clarify in the regulations that non-ambulatory disabled cattle that are offered for slaughter must be condemned and *promptly* disposed of properly. FSIS is proposing to make this change in response to questions from establishments on when non-ambulatory disabled cattle must be condemned and disposed of properly. In the preamble to the 2009 final rule, ''Requirements for the Disposition of Cattle that Become Non-Ambulatory Disabled Following Ante-Mortem Inspection'' (74 FR 11463; March 18, 2009), FSIS explained that the HMSA and regulations require that non-ambulatory disabled cattle be humanely handled and that humane handling requires that such cattle be promptly euthanized (74 FR 11464). ''Promptly'' means within a reasonable time in view of all of the facts and circumstances. Under this proposed rule, non-ambulatory disabled cattle (including veal calves) that are offered for slaughter will have to be condemned and promptly euthanized.

Also under this proposed rule, the carcasses, parts thereof, meat, or meat food products of non-ambulatory disabled veal calves will be considered unfit for human food and thus adulterated. The reinspection of non-ambulatory disabled veal calves by IPP will be discontinued, increasing the time IPP can focus on other inspection activities.

FSIS is proposing this rule under 21 U.S.C. 621, which gives FSIS the authority to adopt regulations for the efficient administration of the FMIA. The amendment in this proposal is intended to facilitate more effective implementation of ante-mortem inspection pursuant to 21 U.S.C. 603(a) and of the humane handling requirements established pursuant to 21 U.S.C. 603(b).

Executive Orders 12866 and 13563, and the Regulatory Flexibility Act

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This proposed rule has been designated a ''significant'' regulatory action under section 3(f) of Executive Order (E.O.) 12866. Accordingly, the rule has been reviewed by the Office of Management and Budget under E.O. 12866.

Baseline

In calendar year (CY) 2013, federally-inspected veal calf establishments slaughtered a total of 725,020 veal calves (Table 1). Market value estimates for slaughtered veal calves based on data reported by the U.S. Department of Agriculture, Agricultural Marketing Service (AMS), were between $283 million and $366 million.[1]

TABLE 1—TOTAL VEAL CALVES SLAUGHTERED AND MARKET VALUE, CY 2013

Veal calf type	Sum of head count (1,000)	Min market value ($1,000,000)	Max market value ($1,000,000)
Bob Veal	405.6	$3.4	$36.5
Formula-fed Veal	310.8	271.3	319.7
Non Formula-fed Veal	8.6	7.9	9.3
Grand Total *	725.0	282.6	365.5

Notes: Head Slaughtered source—FSIS, Public Health Information System (PHIS).
* Sum may not add up due to rounding.

The U.S. veal industry is made up of establishments in the small and very small Hazard Analysis and Critical Control Point (HACCP)-size categories.[2] Table 2 outlines the number of establishments and the total head slaughtered.

TABLE 2—THE NUMBER OF VEAL CALVES SLAUGHTERED IN OFFICIAL ESTABLISHMENTS, BY HACCP PROCESSING SIZE, IN CY 2013

HACCP processing size	Total number of establishments	Bob veal SL (1,000)	Formula-fed veal SL (1,000)	Non formula-fed veal SL (1,000)	Total SL (1,000)
Small	46	275.3	310.7	1.4	587.4
Very Small	146	130.3	.125	7.2	137.6
Total *	192	405.6	310.8	8.6	725.0

Source: FSIS, PHIS.
* Sum may not add up due to rounding.

Expected Cost of the Proposed Rule

The expected costs of the proposed rule for the veal establishments are a result of the lost market value of the non-ambulatory disabled veal calves that the affected establishments will no longer be able to slaughter for human food. The addition of the word ''promptly'' to 9 CFR 309.3(e) would not have any expected costs.

To estimate the total first year cost to the veal industry, FSIS used CY 2013 PHIS data to obtain the expected minimum and maximum percent of non-ambulatory disabled calves out of the current veal calves slaughtered. Since FSIS did not have an exact count of the number of veal calves that were non-ambulatory and were re-inspected (after the calves rested and were able to move) and then sent for slaughter, the agency assumed that the number of deleted records[3] in PHIS was a close approximation that represented the scenario. FSIS is seeking comments on this assumption. FSIS applied those multipliers to the number of calves slaughtered in CY 2013 (see Table 3, below). The lower and upper bounds respectively, based on table 3, were

[1] Bob Veal Market Value: $8.40-$90.00 per head, Data derived from USDA/AMS Lancaster County Weekly Cattle Summary (LS_LN145) Reports—03/03/2013, 06/21/2013, 09/27/2013, 12/20/2013; Formula and Non Formula-fed veal Market Value: $872.35–$1,028.09 per head, Data derived from USDA/AMS Weekly Veal Market Summary Reports—calendar year 2013.

[2] HACCP size: Very Small Establishment = Less than 10 employees or less than $2.5 million in annual sales; Small Establishment = 10–499 employees; Large Establishment = 500 or more employees.

[3] The records are not permanently deleted, but are marked and saved in another field of PHIS.

0.069% and 0.42% for non-ambulatory disabled affected bob veal calves, and 0.000% and 0.002% for the combined group of non-ambulatory disabled formula-fed and non-formula-fed veal calves.

TABLE 3—THE DISTRIBUTION OF FSIS CONDEMNED VEAL CALVES BY CATEGORY, FOR CY 2013

Category	Min percent non-ambulatory disabled veal affected	Max percent non-ambulatory disabled veal affected affected
Bob Veal	0.069	0.420
Formula- and Non Formula-fed Veal	0.000	0.002

Source: FSIS, PHIS.

Using the minimum and maximum values of non-ambulatory disabled affected veal calves, FSIS estimated the expected minimum and maximum total first year cost to the veal establishments, based on CY 2013 data.

TABLE 4—EXPECTED QUANTIFIED TOTAL COSTS TO THE U.S. VEAL INDUSTRY

	Bob veal	Formula- & non formula-fed veal
Minimum Percent Affected	0.069%	0.000%
Maximum Percent Affected	0.420%	0.002%
Min # of Veal Affected	282	0
Max # of Veal Affected	1702	8
Min Price per Head	8.4	872.35
Max Price per Head	90	1028.09
Minimum Cost	2368.8	0
Maximum Cost	153180	8224.72
Minimum U.S. Industry Cost	2368.8	
Maximum U.S. Industry Cost	161404.72	

If the proposed rule is adopted, non-ambulatory disabled veal calves will not be re-inspected during ante-mortem inspection. The veal calves that are condemned during ante-mortem inspection will be euthanized. The cost of disposing of the dead calves varies across the region. We do not have adequate data to cost out the disposal fees for dead calves since we do not know how many establishments engage in this practice. Therefore, FSIS is seeking comments and any available data on this practice.

The estimated annual cost to the veal industry would range between $2369 and $161405. The bob veal category would be the most affected section of the veal industry because, as shown in table 4, both the minimum and maximum numbers of bob veal calves that are non-ambulatory disabled at ante-mortem inspection exceed the numbers of formula-fed and non-formula-fed veal calves that are non-ambulatory disabled at ante-mortem inspection. According to comments to the petition and data provided by AMS, bob veal are also the weakest and the most vulnerable category of veal calves, and have the lowest market value to the industry.

Expected Benefits of the Proposed Rule

FSIS predicts that this rule would provide Agency personnel with savings in terms of inspection time. According to PHIS data, it takes an inspector around 15 minutes to re-inspect a calf. Since FSIS will not have to re-inspect the veal calves that are non-ambulatory disabled during ante-mortem inspection to determine their disposition, the Agency will save anywhere from 70.5 hours (minimum) to 428 hours (maximum) in total. This time will allow the inspector the ability to engage in other inspection activities instead.

TABLE 5—BENEFITS IN TERMS OF TIME SAVING

Time to do ante-mortem inspection	Bob veal (15 min)	F & NF fed
Min # of Veal Affected	282	0
Max # of Veal Affected	1702	8
Min time saved	70.5	0
Max time saved	425.5	2
Total Minimum Time Saved	70.5 hr	
Total Maximum Time Saved	427.5 hr	

The proposed rule will ensure the humane disposition of the non-ambulatory disabled veal calves. It will also increase the efficiency and effective implementation of inspection and humane handling requirements at official establishments. This rule would incentivize growers and transporters of cattle to improve animal welfare, both, before and during transport. A recent study conducted by researchers from the University Of Manitoba Department Of Animal Science's Agriculture and Agri-Food Canada, Lethbridge Research Centre, has shown that transport and transport conditions, such as temperature, length of the trip, and space allowance (density of animals to size), are associated with cattle being dead, lame, and non-ambulatory at the unload. Of all the classes of cattle, calves, and cull cattle were the ''more likely to be dead and non-ambulatory during the journey'', the study points. The authors indicate that animal condition upon loading plays an important risk factor in the outcome of the journey. The study concludes that, even though dead, lame, and non-ambulatory animals had very low incidences, the fact of being one or another indicated extremely poor welfare conditions of cattle. Since veal calves are a vulnerable population, those implied in transporting cattle should be encouraged to do so in a more humane and careful way. In addition, growers should be incentivized to grow healthier and stronger animals that can handle the stress and other issues associated with transportation.[4]

Regulatory Flexibility Act Assessment

FSIS has made a preliminary determination that this proposed rule would not have a significant economic impact on a substantial number of small entities in the United States, as defined by the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). FSIS is seeking comments on this determination.

The Agency estimates that this rule would possibly affect 192 small and very small HACCP size veal slaughter establishments (as seen in table 2). Even though so many small and very small establishments are affected by this rule the volume of veal that will not be eligible for slaughter is very low. Further, the estimated total annual cost per establishment to the industry is between $12 (total minimum cost/number of establishments=2369/192) and $841 (total maximum cost/number of establishments=$161405/192).

Paperwork Reduction Act

There are no paperwork or recordkeeping requirements associated with this proposed rule under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

E-Government Act

FSIS and USDA are committed to achieving the purposes of the E-Government Act (44 U.S.C. 3601, *et seq.*) by, among other things, promoting the use of the Internet and other information technologies and providing increased opportunities for citizen access to Government information and services, and for other purposes.

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under this proposed rule: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted, (2) no retroactive effect will be given to this rule, and (3) no administrative proceedings will be required before parties may file suit in court challenging this rule.

Executive Order 13175

This proposed rule has been reviewed in accordance with the requirements of Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. The review reveals that this regulation will not have substantial and direct effects on Tribal governments and will not have significant Tribal implications.

USDA Non-Discrimination Statement

No agency, officer, or employee of the USDA shall, on the grounds of race, color, national origin, religion, sex, gender identity, sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, or political beliefs, exclude from participation in, deny the benefits of, or subject to discrimination any person in the United States under any program or activity conducted by the USDA.

How To File a Complaint of Discrimination

To file a complaint of discrimination, complete the USDA Program Discrimination Complaint Form, which may be accessed online at *http://www.ocio.usda.gov/sites/default/files/docs/2012/Complain_combined_6_8_12.pdf,* or write a letter signed by you or your authorized representative.

Send your completed complaint form or letter to USDA by mail, fax, or email:

Mail

U.S. Department of Agriculture, Director, Office of Adjudication, 1400 Independence Avenue SW., Washington, DC 20250–9410.

Fax

(202) 690–7442.

Email

program.intake@usda.gov.

Persons with disabilities who require alternative means for communication (Braille, large print, audiotape, etc.), should contact USDA's TARGET Center at (202) 720–2600 (voice and TDD).

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, FSIS will announce this **Federal Register** publication on-line through the FSIS Web page located at: *http://www.fsis.usda.gov/federal-register.*

FSIS also will make copies of this publication available through the FSIS Constituent Update, which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, and other types of information that could affect or would be of interest to our constituents and stakeholders. The Update is available on the FSIS Web page. Through the Web page, FSIS is able to provide information to a much broader, more diverse audience. In addition, FSIS offers an email subscription service which provides automatic and customized access to selected food safety news and information. This service is available at: *http://www.fsis.usda.gov/subscribe.* Options range from recalls to export information, regulations, directives, and notices. Customers can add or delete subscriptions themselves, and have the option to password protect their accounts.

List of Subjects in 9 CFR Part 309

Animal diseases, Meat inspection, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, FSIS proposes to amend 9 CFR part 309 as follows:

PART 309—ANTE–MORTEM INSPECTION

■ 1. The authority citation for part 309 continues to read as follows:

Authority: 21 U.S.C. 601–695; 7 CFR 2.18, 2.53.

■ 2. Section 309.3(e) is revised to read as follows:

§ 309.3 Dead, dying, disabled, or diseased and similar livestock.

* * * * *

[4] González, L.A., Schwartzkopf-Genswein, K.S., Bryan, M., Silasi, R., and Brown F. (2015). ''Relationship between transport conditions and welfare outcomes during commercial long haul transport of cattle in North America''. American Society of Animal Science, 90(10):3640–51 doi: 10.2527/jas2011–4796.

(e) Establishment personnel must notify FSIS inspection personnel when cattle become non-ambulatory disabled after passing ante-mortem inspection. Non-ambulatory disabled cattle that are offered for slaughter must be condemned and promptly disposed of in accordance with § 309.13.

§ 309.13 [AMENDED]

■ 3. Section 309.13(b) is amended by removing the second sentence.

Done in Washington, DC, on May 8, 2015.

Alfred V. Almanza,

Acting Administrator.

[FR Doc. 2015–11559 Filed 5–12–15; 8:45 am]

BILLING CODE 3410–DM–P

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

36 CFR Part 1192

[Docket No. ATBCB–2013–0001]

RIN 3014–AA42

Rail Vehicles Access Advisory Committee

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Notice of advisory committee meeting.

SUMMARY: On May 23, 2013, we, the Architectural and Transportation Barriers Compliance Board (Access Board), established the Rail Vehicles Access Advisory Committee (Committee) to advise us on revising and updating our accessibility guidelines issued pursuant to the Americans with Disabilities Act for transportation vehicles that operate on fixed guideway systems (*e.g.,* rapid rail, light rail, commuter rail, intercity rail, and high speed rail). The Committee will hold its seventh meeting on the following dates and times.

DATES: The Committee will meet on June 4, 2015, from 10:00 a.m. to 6:00 p.m. and on June 5, 2015, from 9:30 a.m. to 3:30 p.m.

ADDRESSES: The meeting will be held at the Access Board conference room, 1331 F Street NW., Suite 800, Washington, DC 20004–1111. Call-in information and a communication access real-time translation (CART) web streaming link will be posted on the Access Board's Rail Vehicles Access Advisory Committee Web site page at *www.access-board.gov/rvaac.*

FOR FURTHER INFORMATION CONTACT: Paul Beatty, Office of Technical and Information Services, Access Board, 1331 F Street NW., Suite 1000, Washington, DC 20004–1111. Telephone number (202) 272–0012 (Voice); (202) 272–0072 (TTY). Electronic mail address: *rvaac@access-board.gov.*

SUPPLEMENTARY INFORMATION: On May 23, 2013, we published a notice announcing that we were establishing a Rail Vehicles Access Advisory Committee (Committee) to make recommendations to us on matters associated with revising and updating our accessibility guidelines issued pursuant to the Americans with Disabilities Act for transportation vehicles that operate on fixed guideway systems (*e.g.,* rapid rail, light rail, commuter rail, intercity rail, and high speed rail). See 78 FR 30828 (May 23, 2013).

The Committee will hold its seventh meeting on June 4, 2015, from 10:00 a.m. to 6:00 p.m. and on June 5, 2015, from 9:30 a.m. to 3:30 p.m. The preliminary agenda for the June meeting includes deliberation of committee member concerns pertaining to its final report on accessibility of rail vehicles and consideration of process-related matters. The preliminary meeting agenda, along with information about the Committee, is available on our Web site at *www.access-board.gov/rvaac.*

The Committee meeting will be open to the public and interested persons can attend the meetings and communicate their views. Members of the public will have opportunities to address the Committee on issues of interest to them during a public comment period scheduled each day. The meetings will be accessible to persons with disabilities. An assistive listening system, communication access real-time translation (CART), and sign language interpreters will be provided. Persons attending the meetings are requested to refrain from using perfume, cologne, and other fragrances for the comfort of other participants (see *www.access-board.gov/the-board/policies/fragrance-free-environment* for more information).

Persons wishing to provide handouts or other written information to the Committee are requested to provide electronic formats to Paul Beatty via email at least five business days prior to the meeting so that alternate formats can be distributed to Committee members.

David M. Capozzi,

Executive Director.

[FR Doc. 2015–11574 Filed 5–12–15; 8:45 am]

BILLING CODE 8150–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2011–0079; FRL–9927–61–Region 6]

Approval and Promulgation of Implementation Plans; Texas; Revision to Control Volatile Organic Compound Emissions From Storage Tanks and Transport Vessels

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a Texas State Implementation (SIP) revision for control of volatile organic compound (VOC) emissions from degassing of storage tanks, transport vessels and marine vessels. The revision reformats the existing requirement to comply with current rule writing standards, adds additional control options for owner/operators to use when complying, clarifies the monitoring and testing requirements of the rule, and makes non-substantive changes to VOC control provisions that apply in the Beaumont-Port Arthur nonattainment area (Hardin, Jefferson and Orange Counties), four counties in the Dallas-Fort Worth nonattainment area (Collin, Dallas, Denton and Tarrant Counties), El Paso County, and the Houston-Galveston-Brazoria nonattainment area (Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery and Waller Counties).

DATES: Written comments should be received on or before June 12, 2015.

ADDRESSES: Comments may be mailed to Mr. Guy Donaldson, Chief, Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733. Comments may also be submitted electronically or through hand delivery/courier by following the detailed instructions in the **ADDRESSES** section of the direct final rule located in the rules section of this **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Robert Todd, (214) 665–2156, *todd.robert@epa.gov.*

SUPPLEMENTARY INFORMATION: In the final rules section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no relevant adverse comments are received in response to this action no further activity is contemplated. If EPA receives relevant adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

For additional information, see the direct final rule which is located in the rules section of this **Federal Register**.

Dated: May 4, 2015.

Ron Curry,

Regional Administrator, Region 6.

[FR Doc. 2015–11449 Filed 5–12–15; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2014–0759; FRL–9927–71–Region 3]

Approval and Promulgation of Air Quality Implementation Plans; District of Columbia, Maryland, and Virginia; 2011 Base Year Emissions Inventories for the Washington, DC-MD-VA Nonattainment Area for the 2008 Ozone National Ambient Air Quality Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) proposes to approve the State Implementation Plan (SIP) revisions submitted by the District of Columbia, the State of Maryland, and the Commonwealth of Virginia (collectively, the States). The submittals are comprised of the 2011 base year emissions inventories for the Washington, DC-MD-VA nonattainment area for the 2008 8-hour ozone national ambient air quality standard (NAAQS). In the Final Rules section of this **Federal Register**, EPA is approving the States' SIP submittals as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule and EPA's Technical Support Document (TSD) prepared in support of this rulemaking action. The TSD is available in the Docket for this rulemaking action. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by June 12, 2015.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R03–OAR–2014–0759 by one of the following methods:

A. *www.regulations.gov.* Follow the on-line instructions for submitting comments.

B. *Email: fernandez.cristina@epa.gov.*

C. *Mail:* EPA–R03–OAR–2014–0759, Cristina Fernandez, Associate Director, Office of Air Program Planning, Mailcode 3AP30, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. *Hand Delivery:* At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R03–OAR–2014–0759. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, *i.e.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the District of Columbia Department of the Environment, Air Quality Division, 1200 1st Street NE., 5th floor, Washington, DC 20002; the Maryland Department of the Environment, 1800 Washington Boulevard, Suite 705, Baltimore, Maryland 21230; and the Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia 23219.

FOR FURTHER INFORMATION CONTACT: Marilyn Powers, (215) 814–2308, or by email at *powers.marilyn@epa.gov.*

SUPPLEMENTARY INFORMATION: For further information, please see the information provided in the direct final action, with the same title, that is located in the ''Rules and Regulations'' section of this **Federal Register** publication. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

Dated: May 4, 2015.

William C. Early,

Acting Regional Administrator, Region III.

[FR Doc. 2015–11563 Filed 5–12–15; 8:45 am]

BILLING CODE 6560–50–P

CHEMICAL SAFETY AND HAZARD INVESTIGATION BOARD

40 CFR Part 1600

Organization and Functions of the Chemical Safety and Hazard Investigation Board

AGENCY: Chemical Safety and Hazard Investigation Board.

ACTION: Proposed rule.

SUMMARY: This proposed rule augments 40 CFR part 1600, which governs the administration of the Chemical Safety and Hazard Investigation Board (CSB). The proposed rule adds a requirement for the chairperson to add notation votes that have been calendared for public discussion to the agenda of a public meeting within 90 days of the calendared notation vote. The proposed rule also adds a requirement for the chairperson to conduct a minimum of four public meetings per year in Washington, DC. Following publication of this proposed rule, the CSB welcomes and will consider public comment, and then proceed to a final rule.

DATES: Written comments must be received on or before June 12, 2015.

ADDRESSES: You may submit written comments concerning this proposed rule via U.S. mail or email. Written comments may be sent by U.S. mail to Kara Wenzel, Assistant General Counsel, Chemical Safety and Hazard Investigation Board, 2175 K Street NW., Suite 400, Washington, DC, 20037. You may submit electronic comments to: *kara.wenzel@csb.gov.*

FOR FURTHER INFORMATION CONTACT: Kara Wenzel, CSB Assistant General Counsel, 202–261–7625.

SUPPLEMENTARY INFORMATION: This proposed rule will promote increased transparency and accountability for Board activities. It aligns with the Open Government principles of transparency, participation, and collaboration, as outlined in the Memorandum on Transparency and Open Government (74 FR 4685, Jan. 26, 2009). The Board conducts some of its business through a process of notation voting. In notation voting, Board Members may vote to approve, disapprove, or calendar a notation item for discussion at a public meeting. The addition of a rule for the consideration of calendared notation votes within 90 days of the calendaring action will ensure that calendaring is used in the way it was intended. The addition will allow Board Members to use calendaring to prompt timely public discussion on a topic before they vote on it, at their discretion. It has the added effect of providing an additional opportunity for stakeholder input on Board activities.

The other portion of the new proposed rule will require the CSB chairperson to schedule at least four public meetings in Washington, DC, each year. It will permit other Board Members to add items for discussion to the agendas of such CSB public meetings. It will also ensure that these meetings consider, at a minimum, calendared notation votes, current investigations and other important mission-related activities, and quarterly agency action plan progress. This portion of the proposed rule is intended to increase the transparency of Board actions, to promote the Board's accountability to the public, and to ensure regular, relevant feedback is received from stakeholders related to the agency's mission work.

Statutory Authority: 5 U.S.C. 301, 552(a)(1); 42 U.S.C. 7412(r)(6)(N).

Regulatory Impact

Administrative Procedure Act: 5 U.S.C. 553(b)(3)(A), provides that when regulations involve matters of agency organization, procedure, or practice, the agency may publish regulations in final form. Because this proposed rule is intended to promote public participation and transparency for Board activities, the Board will accept and consider public comments up to 30 days before issuing a final rule.

Regulatory Flexibility Act: The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires that a rule 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 such small entities. This analysis need not be undertaken if the agency has certified that the regulation will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605(b). The CSB has considered the impact of this rule under the Regulatory Flexibility Act, and certifies that a final rule will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act: The CSB reviewed this proposed rule to determine whether it invokes issues that would subject it to the Paperwork Reduction Act (PRA). While the PRA applies to agencies and collections of information conducted or sponsored by the CSB, the Act, 44 U.S.C. 3518(c), exempts collections of information that occur "during the conduct of . . . an administrative action, investigation, or audit involving an agency against specific individuals or entities," except for investigations or audits "undertaken with reference to a category of individual or entities such as a class of licensees or an entire industry." The rule proposed below fits squarely within this exemption, as it deals entirely with administrative matters internal to the agency. Therefore, we have determined that the PRA does not apply to this rule.

Unfunded Mandates Reform Act of 1995: The proposed rule does not require the preparation of an assessment statement in accordance with the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1531. This proposed rule does not include a federal mandate that may result in the annual expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of more than the annual threshold established by the Act ($128 million in 2006, adjusted annually for inflation).

List of Subjects in 40 CFR Part 1600

Administrative practice and procedure.

Dated: May 6, 2015.

Mark Griffon,

Board Member.

Accordingly, for the reasons set forth in the preamble, the Chemical Safety and Hazard Investigation Board proposes to amend 40 CFR part 1600 as follows:

PART 1600—ORGANIZATION AND FUNCTIONS OF THE CHEMICAL SAFETY AND HAZARD INVESTIGATION BOARD

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

Authority: 5 U.S.C. 301, 552(a)(1); 42 U.S.C. 7412(r)(6)(N).

■ 2. Amend § 1600.5 by revising paragraph (b) and adding paragraph (c) to read as follows:

§ 1600.5 Quorum and voting requirements.

* * * * *

(b) *Voting.* The Board votes on items of business in meetings conducted pursuant to the Government in the Sunshine Act. Alternatively, whenever a Member of the Board is of the opinion that joint deliberation among the members of the Board upon any matter at a meeting is unnecessary in light of the nature of the matter, impracticable, or would impede the orderly disposition of agency business, such matter may be disposed of by employing notation voting procedures. A written notation of the vote of each participating Board member shall be recorded by the General Counsel who shall retain it in the records of the Board. If a Board member votes to calendar a notation item, the Board must consider the calendared notation item at a public meeting of the Board within 90 days of the date on which the item is calendared. A notation vote to schedule a public meeting may not be calendared. The Chairperson shall add any calendared notation item to the agenda for the next CSB public meeting if one is to occur within 90 days or to schedule a special meeting to consider any calendared notation item no later than 90 days from the calendar action.

(c) *Public Meetings and Agendas.* The Chairperson, or in the absence of a chairperson, a member designated by the Board, shall schedule a minimum of four public meetings per year in Washington, DC, to take place during the months of October, January, April, and July.

(1) *Agenda.* The Chairperson, or in the absence of a chairperson, a member designated by the Board, shall be responsible for preparation of a final meeting agenda. The final agenda may not differ in substance from the items published in the Sunshine Act notice for that meeting. Any member may submit agenda items related to CSB business for consideration at any public meeting, and the Chairperson shall include such items on the agenda. At a minimum, each quarterly meeting shall include the following agenda items:

(i) Consideration and vote on any notation items calendared since the date of the last public meeting;

(ii) A review by the Board of the schedule for completion of all open investigations, studies, and other important work of the Board; and

(iii) A review and discussion by the Board of the progress in meeting the CSB's Annual Action Plan.

(2) *Publication of agenda information.* The Chairperson shall be responsible for posting information related to any agenda item that is appropriate for public release on the CSB Web site no less than two days prior to a public meeting.

[FR Doc. 2015–11422 Filed 5–12–15; 8:45 am]

BILLING CODE P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1842 and 1852

RIN 2700–AE14

Denied Access to NASA Facilities

AGENCY: National Aeronautics and Space Administration.

ACTION: Proposed rule.

SUMMARY: The National Aeronautics and Space Administration (NASA) is proposing to amend the NASA FAR Supplement (NFS) to delete the observance of legal holidays clause with its alternates and replace it with a new clause that prescribes conditions and procedures pertaining to the closure of NASA facilities.

DATES: Interested parties should submit comments to NASA at the address below on or before July 13, 2015 to be considered in formulation of the final rule.

ADDRESSES: Interested parties may submit comments, identified by RIN number 2700–AE14 via the Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments. Comments may also be submitted to Andrew O'Rourke (Room 5L32), NASA Headquarters, Office of Procurement, Contract and Grant Policy Division, Washington, DC 20546. Comments may also be submitted to Andrew O'Rourke via email at *andrew.orourke@NASA.gov.*

FOR FURTHER INFORMATION CONTACT: Andrew O'Rourke, NASA Office of Procurement, Contract and Grant Policy Division, 202–358–4560, email: *andrew.orourke@nasa.gov.*

SUPPLEMENTARY INFORMATION:

A. Background

NASA FAR Supplement (NFS) clause 1852.242–72, Observance of Legal Holidays, is included in Agency contracts where contractor performance is to be performed on a NASA facility. It was intended to identify dates that Government employees would not be available and provide notification to contractors of those dates considering that the absence of Government employees might impact contractor performance or contractor access to NASA facilities. Further, the same clause has two alternates, the first addresses contractors who are denied access to NASA workspaces within a NASA facility and the second addresses other instances, such as weather and safety emergencies, which could result in contractors being denied access to the entire NASA facility. Recent events, especially the Government shut-down during October 2013, have revealed a need for NASA to be more specific and to differentiate between these two conditions when contractor employees may be denied access to NASA workspaces or the entire NASA facility. The fact that Government employees may not be at a NASA facility is not an automatic reason for contractor personnel not to be required to be present at their required NASA workspace on a NASA facility. Unless a contractor is denied access to the NASA facility, contractors are expected to perform in accordance with their contractual requirements. This proposed NFS change provides clarity and information beneficial to NASA contractors that are denied access to a NASA facility when a NASA facility is closed to all personnel. Specifically, the change would delete the prescription at NFS 1842.7001, Observance of Legal Holidays, in its entirety, and clause 1852.242–72, Observance of Legal Holidays, with alternates, and replace it with the prescription at NFS 1842.7001 Denied Access to NASA Facilities and clause 1852.242–72, Denied Access to NASA Facilities. The clause would be included in solicitations and contracts where contractor personnel would be required to work onsite at a NASA facility.

B. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866. This rule is not a major rule under 5 U.S.C. 804.

C. Regulatory Flexibility Act

NASA does not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* This proposed rule attempts to provide clarity and information beneficial to NASA contractors that are denied access to a NASA facility when a NASA facility is closed. This proposed rule imposes no new reporting requirements. This proposed rule does not duplicate, overlap, or conflict with any other Federal rules. No alternatives were identified that would meet the objectives of this proposed rule. NASA invites comments from small business concerns and other interested parties on the expected impact of this proposed rule on small entities. NASA will also consider comments from small entities concerning the existing regulations in subparts affected by this proposed rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (RIN number 2700–AE14) in correspondence.

D. Paperwork Reduction Act

The proposed rule contains no information collection requirements that require the approval of the Office of

Management and Budget under the Paperwork Reduction Act (44 U.S.C. Chapter 35).

List of Subjects in 48 CFR 1842 and 1852

Government procurement.

Cynthia D. Boots,

Alternate Federal Register Liaison.

Accordingly, 48 CFR parts 1842 and 1852 are proposed to be amended as follows:

PART 1842—CONTRACT ADMINISTRATION AND AUDIT SERVICES

■ 1. The authority citation for part 1842 continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1).

Subpart 1842.70 [Revised]

■ 2. Subpart 1842.70 is revised to read as follows:

Subpart 1842.70—Additional NASA Contract Clauses

1842.7001 Denied Access to NASA Facilities.

(a) The contracting officer shall insert the clause at 1852.242–72, Denied Access to NASA Facilities, in solicitations and contracts where contractor personnel will be working onsite at a NASA facility such as: NASA Headquarters and NASA Centers, including Component Facilities and Technical and Service Support Centers. For a list of NASA facilities see NPD 1000.3 ''The NASA Organization''. The contracting officer shall not insert the clause where contractor personnel will be working onsite at the Jet Propulsion Laboratory including the Deep Space Network Communication Facilities (Goldstone, CA; Canberra, Australia; and Madrid, Spain).

PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 3. The authority citation for part 1852 continues to read as follows:

Authority: 51 U.S.C. 20113(a) and 48 CFR chapter 1.

1852.242–72 [Revised]

■ 4. Section 1852.242–72 is revised to read as follows:

1852.242–72 Denied Access to NASA Facilities.

As prescribed in 1842.7001(a), insert the following clause:

Denied Access to NASA Facilities (XX/XXXX)

(a)(1) The performance of this contract requires contractor employees of the prime contractor or any subcontractor, affiliate, partner, joint venture, or team member with which the contractor is associated, including consultants engaged by any of these entities, to have access to, physical entry into, and to the extent authorized, mobility within, a NASA facility.

(2) NASA may close and or deny contractor access to a NASA facility for a portion of a business day or longer due to any one of the following events—

(i) Federal public holidays for federal employees in accordance with 5 U.S.C. 6103;

(ii) Fires, floods, earthquakes, unusually severe weather to include snow storms, tornadoes and hurricanes;

(iii) Occupational safety or health hazards;

(iv) Non-appropriation of funds by Congress; or

(v) Any other reason.

(3) In such events, the contractor employees may be denied access to a NASA facility, in part or in whole, to perform work required by the contract. Contractor personnel already present at a NASA facility during such events may be required to leave the facility.

(b) In all instances where contractor employees are denied access or required to vacate a NASA facility, in part or in whole, the contractor shall be responsible to ensure contractor personnel working under the contract comply. If the circumstances permit, the contracting officer will provide direction to the contractor, which could include continuing on-site performance during the NASA facility closure period. In the absence of such direction, the contractor shall exercise sound judgment to minimize unnecessary contract costs and performance impacts by, for example, performing required work off-site if possible or reassigning personnel to other activities if appropriate.

(c) The contractor shall be responsible for monitoring the local radio, television stations, NASA Web sites, other communications channels, for example contracting officer notification, that the NASA facility is accessible. Once accessible the contractor shall resume contract performance as required by the contract.

(d) For the period that NASA facilities were not accessible to contractor employees, the contracting officer may—

(1) Adjust the contract performance or delivery schedule for a period equivalent to the period the NASA facility was not accessible;

(2) Forego the work;

(3) Reschedule the work by mutual agreement of the parties; or

(4) Consider properly documented requests for equitable adjustment, claim, or any other remedy pursuant to the terms and conditions of the contract.

(e) Notification procedures of a NASA facility closure, including contractor denial of access, as follows—

(1) The contractor shall be responsible for monitoring the local radio, television stations, NASA Web sites, and other communications channels (for example, contracting officer notification) for announcement of a NASA facility closure to include denial of access to the NASA facility. The contractor shall be responsible for notification of its employees of the NASA facility closure to include denial of access to the NASA facility. The dismissal of NASA employees in accordance with statute and regulations providing for such dismissals shall not, in itself, equate to a NASA facility closure in which contractor employees are denied access. Moreover, the leave status of NASA employees shall not be conveyed or imputed to contractor personnel. Accordingly, unless a NASA facility is closed and the contractor is denied access to the facility, the contractor shall continue performance in accordance with the contract.

(2) NASA's Emergency Notification System (ENS). ENS is a NASA-wide Emergency Notification and Accountability System that provides NASA the ability to send messages, both Agency-related and/or Center-related, in the event of an emergency or emerging situation at a NASA facility. Notification is provided via multiple communication devices, *e.g.* Email, text, cellular, home/office numbers. The ENS provides the capability to respond to notifications and provide the safety status. Contractor employees may register for these notifications at the ENS Web site: *http://www.hq.nasa.gov/office/ops/nasaonly/ENSinformation.html.*

(End of clause)

[FR Doc. 2015–10944 Filed 5–12–15; 8:45 am]

BILLING CODE 7510–13–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

49 CFR Parts 1300 and 1313

[Docket No. EP 665 (Sub-No. 1)]

Rail Transportation of Grain, Rate Regulation Review

AGENCY: Surface Transportation Board, DOT.

ACTION: Notice of public hearing.

SUMMARY: The Surface Transportation Board (Board) will hold a public hearing on June 10, 2015, at its offices in Washington, DC, to further examine issues related to the accessibility of rate complaint procedures for grain shippers.

DATES: The hearing will be held on June 10, 2015, beginning at 9:30 a.m., in the Hearing Room at the Board's headquarters located at 395 E Street SW., Washington, DC. June 11, 2015, will be reserved should a second day of testimony be necessary to accommodate all parties wishing to testify. The hearing will be open for public observation. Any party wishing to speak at the hearing shall file with the Board a notice of intent to participate (identifying the party, the proposed speaker, the time requested, and a summary of the key points the speaker intends to address) no later than May 29, 2015. Notices of intent to participate are not required to be served on the parties of record; they will be posted to the Board's Web site when they are filed. Parties shall file hearing exhibits, if any, by June 10, 2015.

ADDRESSES: All filings may be submitted either via the Board's e-filing format or in the traditional paper format. Any person using e-filing should attach a document and otherwise comply with the instructions at the ''E–FILING'' link on the Board's Web site at ''*www.stb.dot.gov.''* Any person submitting a filing in the traditional paper format should send an original and 10 copies of the filing to: Surface Transportation Board, Attn: Docket No. EP 665 (Sub-No. 1), 395 E Street SW., Washington, DC 20423–0001.

Copies of written submissions will be posted to the Board's Web site and will be available for viewing and self-copying in the Board's Public Docket Room, Suite 131. Copies of the submissions will also be available (for a fee) by contacting the Board's Chief Records Officer at (202) 245–0238 or 395 E Street SW., Washington, DC 20423–0001.

FOR FURTHER INFORMATION CONTACT: Valerie Quinn at (202) 245–0382. Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at (800) 877–8339.

SUPPLEMENTARY INFORMATION: Where a railroad has market dominance—*i.e.,* a shipper is captive to a single railroad—its transportation rates for common carrier service must be reasonable. 49 U.S.C. 10701(d)(1), 10702. The Board's general standards for judging the reasonableness of rail freight rates are set forth in *Coal Rate Guidelines, Nationwide,* 1 I.C.C. 2d 520 (1985), *aff'd sub nom. Consolidated Rail Corp.* v. *United States,* 812 F.2d 1444 (3d Cir. 1987). The Board has also adopted two simplified methods for determining the reasonableness of challenged rail rates, the Simplified Stand-Alone Cost (SAC) test and the Three-Benchmark test. *See Simplified Standards for Rail Rate Cases* (*Simplified Standards*), EP 646 (Sub-No. 1) (STB served Sept. 5, 2007), *aff'd sub nom. CSX Transp., Inc.* v. *STB,* 568 F.3d 236 (D.C. Cir.), *vacated in part on reh'g,* 584 F.3d 1076 (D.C. Cir. 2009). Under the Three-Benchmark method, the reasonableness of a challenged rate is determined by examining the challenged rate in relation to three benchmark figures, each of which is expressed as a revenue-to-variable cost (R/VC) ratio. *Rate Regulation Reforms,* EP 715, slip op. at 11 (STB served July 25, 2012).[1] If a challenged rate is above a reasonable confidence interval around the estimate of the mean for the adjusted comparison group, it is presumed unreasonable and, absent any ''other relevant factors,'' the maximum lawful rate will be prescribed at that boundary level. *See Simplified Standards,* slip op. at 21–22.

By a decision served in this proceeding on December 12, 2013, the Board invited public comment on how to ensure that the Board's rate complaint procedures are accessible to grain shippers and provide effective protection against unreasonable freight rail transportation rates. The Board sought input from interested parties on grain shippers' ability to effectively seek relief for unreasonable rates, including proposals for modifying existing procedures, or new alternative rate relief methodologies, should they be necessary.

The public comment period was intended to allow parties to consider and propose ways that the Board could make the rate reasonableness process more accessible to grain shippers. In the comments, parties have raised a number of proposals and identified a number of issues that merit further discussion. Accordingly, the Board will hold a public hearing beginning at 9:30 a.m., on June 10, 2015, at its offices in Washington, DC, to further examine issues related to the accessibility of rate complaint procedures for grain shippers and provide interested persons the opportunity to comment on the modifications to the existing procedures and the alternative rate relief methodologies proposed during the public comment period. In addition to their own proposals and responses, the parties should be prepared to discuss the following issues:

Jurisdictional Threshold. In the comments, it was suggested that the Board's Uniform Railroad Costing System (URCS) prevents grain shippers from accessing potential rate relief because URCS over-estimates the cost of shipping grain. Although parties are currently prohibited from making movement-specific adjustments to URCS, parties are invited to discuss whether the Board should revisit this prohibition in determining the quantitative market dominance threshold in rate cases for grain shipments.

Definition of Grain. In the comments, some shippers argued in favor of an expansive definition of ''grain'' that includes both grain and grain products. Because certain grain products, such as ethanol, require different treatment in terms of railroad operations, interested parties should be prepared to discuss whether an expansive definition of ''grain'' is appropriate in this proceeding.

Modifications and Alternatives to the Three-Benchmark Approach in Grain Rates Cases. Several commenters argue that the Three-Benchmark test puts too many limitations on the types of shipments that a shipper can include in its comparison group upon which the Board relies to determine if the railroad's rate is unreasonable.[2] Accordingly, parties should be prepared to discuss the idea of allowing the use of non-defendant traffic and/or traffic with R/VC ratios below 180% in comparison groups for grain shipments.

[1] Under Simplified-SAC, the Board determines whether a captive shipper is being forced to cross-subsidize other parts of the railroad's rail network by comparing the costs and revenues of the actual operations and services provided under the assumption that all existing infrastructure along the predominant route used to haul the complainant's traffic is needed to serve the traffic on that route. *Rate Regulation Reforms,* EP 715, slip op. at n.2 (STB served Mar. 13, 2015).

[2] *See* Alliance for Rail Competition Opening, V.S. Fauth 22–24.

In the comments, various parties have also proposed new methodologies that could be used specifically for rate cases involving grain shipments. These approaches include adopting a ''Two-Benchmark'' approach for grain shipments hauled by revenue adequate carriers [3] and replacing the existing Three-Benchmark approach with an ''Ag Commodity Maximum Rate Methodology,'' which includes a ''Revenue Adequacy Adjustment Factor.'' [4] To the extent that any parties feel that these approaches have merit or are flawed, they should be prepared to discuss.

Revenue Adequacy. Interested parties are invited to address whether the Board should consider the revenues and costs of Canadian carriers' full-system operations, to include the parent company and subsidiaries, when determining revenue adequacy in rate reasonableness challenges of grain shipments.

Aggregation of Claims. Interested parties are asked to address whether the Board should allow multiple agricultural farmers and other agricultural shippers to aggregate their distinct rate claims against the same carrier into a single proceeding.

Other Ideas. Additionally, in further considering the matter of grain rates, parties are invited to discuss whether there are ways in which the Board could create greater transparency for grain shippers regarding how railroads set rates. To that end, parties at the hearing are asked to address the disclosure requirements for agricultural tariff rates under 49 CFR 1300.5 [5] and whether this requirement should be modified to allow for increased transparency. Parties are also asked to address the requirement that rail carriers file agricultural contract summaries under 49 CFR part 1313 [6] and whether this requirement should be modified to allow for increased transparency.

Board Releases and Live Video Streaming Available via the Internet

Decisions and notices of the Board, including this notice, are available on the Board's Web site at ''*www.stb.dot.gov.*'' This hearing will be available on the Board's Web site by live video streaming. To access the hearing, click on the ''Live Video'' link under ''Information Center'' at the left side of the home page beginning at 9:30 a.m. on June 10, 2015.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. A public hearing will be held on June 10, 2015, at 9:30 a.m., in the Board's Hearing Room, at 395 E Street SW., Washington, DC, as described above.

2. Any party wishing to speak at the hearing shall file with the Board a notice of intent to participate (identifying the party, the proposed speaker, the time requested, and a summary of the key points the speaker intends to address) no later than May 29, 2015. The notices of intent to participate need not be served on the parties of record. Parties appearing at the hearing shall file hearing exhibits, if any, by June 10, 2015.

3. This decision is effective on its service date.

Decided: May 8, 2015.

By the Board, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Raina S. Contee,

Clearance Clerk.

[FR Doc. 2015–11558 Filed 5–12–15; 8:45 am]

BILLING CODE 4915–01–P

[3] *See id.* at 25.

[4] *See* National Grain and Feed Association Opening 27–35.

[5] Under § 1300.5(a), a rail carrier must publish, make available, and retain for public inspection its currently effective rates, schedules of rates, charges, and other service terms, and any scheduled changes to the same with respect to transportation of agricultural products (including grain, as defined in 7 U.S.C. 75 and products thereof). The information published must include an accurate description of the services offered to the public; the specific applicable rates (or the basis for calculating the rates), charges, and service terms; and be arranged in a way that allows for the determination of the exact rate, charges, and service terms applicable to any given shipment. 49 CFR 1300.5(b). Additionally, the rail carrier must highlight any increases, reductions, and other changes so that the nature and effective dates of those changes are readily identifiable. *Id.*

[6] Section 1313 requires that rail carriers subject to the Board's jurisdiction promptly file a summary of each contract for the transportation of agricultural products (including grain as defined in 7 U.S.C. 75) and allows complaints to be filed regarding such contracts. 49 CFR 1313.1 and 1313.2. The level of information that must be provided in the summary varies depending on whether contract is for grain and whether the shipment is to a port. At a minimum the summary must include: The carrier name; the specific commodity; the shipper's identity; the rail car data; the rates; and the charges.

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

49 CFR Chapter X

[Docket No. EP 722; Docket No. EP 664 (Sub-No. 2)]

Railroad Revenue Adequacy; Petition of the Western Coal Traffic League To Institute a Rulemaking Proceeding To Abolish the Use of the Multi-Stage Discounted Cash Flow Model in Determining the Railroad Industry's Cost of Equity Capital

AGENCY: Surface Transportation Board, DOT.

ACTION: Notice of public hearing.

SUMMARY: The Surface Transportation Board (Board) will hold a public hearing on July 22–23, 2015, at its headquarters in Washington, DC, to further examine issues raised in Docket No. EP 722 related to railroad revenue adequacy, and issues raised in Docket No. EP 664 (Sub-No. 2) on how the Board calculates the railroad industry's cost of equity capital. These proceedings are not consolidated but are being addressed in the same decision for administrative convenience.

DATES: The hearing will be held on July 22–23, 2015, beginning at 9:30 a.m., in the Hearing Room at the Board's headquarters located at 395 E Street SW., Washington, DC. The hearing will be open for public observation. Any party wishing to speak at the hearing shall file with the Board by July 8, 2015, a notice of intent to participate (identifying the party, the proposed speaker, and the time requested, and summarizing the key points that the speaker intends to address). The notices of intent to participate are not required to be served on the parties of record; they will be posted to the Board's Web site when they are filed. Parties shall file hearing exhibits, if any, by July 22, 2015.

ADDRESSES: All filings may be submitted either via the Board's e-filing format or in the traditional paper format. Any person using e-filing should attach a document and otherwise comply with the instructions at the ''E–FILING'' link on the Board's Web site at ''*www.stb.dot.gov.*'' Any person submitting a filing in the traditional paper format should send an original and 10 copies of the filing to: Surface Transportation Board, Attn: Docket No. [EP 722 or EP 664 (Sub-No. 2), as the case may be], 395 E Street SW., Washington, DC 20423–0001.

Copies of written submissions will be posted to the Board's Web site and will be available for viewing and self-copying in the Board's Public Docket Room, Suite 131. Copies of the submissions will also be available (for a fee) by contacting the Board's Chief Records Officer at (202) 245–0238 or 395 E Street SW., Washington, DC 20423–0001.

FOR FURTHER INFORMATION CONTACT: For Docket No. EP 722: Scott Zimmerman at (202) 245–0386. For Docket No. EP 664 (Sub-No. 2): Amy Ziehm at (202) 245–0391. Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at (800) 877–8339.

SUPPLEMENTARY INFORMATION: On April 2, 2014, the Board served a notice announcing that it would receive comments in Docket No. EP 722 to explore the Board's methodology for determining railroad revenue adequacy and the use of revenue adequacy in rate reasonableness cases, and in Docket No. EP 664 (Sub-No. 2)[1] to explore how the Board calculates the railroad industry's cost of equity capital. The Board coordinated the two proceedings by inviting comments in both cases on the same schedule. Comments and replies were due on September 5, 2014 and November 4, 2014, respectively.

Having reviewed the comments and replies filed in these proceedings, the Board will now hold a public hearing on July 22–23, 2015, beginning at 9:30 a.m., at its headquarters in Washington, DC, to further examine these issues. The parties have raised a number of issues for the Board to consider. In Docket No. EP 722, many of the comments focused on the revenue adequacy component of Constrained Market Pricing, by which the Board judges the reasonableness of rail freight rates. The parties should be prepared to discuss issues related to the revenue adequacy constraint, as set forth in *Coal Rate Guidelines, Nationwide* (*Coal Rate Guidelines*), 1 I.C.C. 2d 520 (1985), and are invited to address the following questions:

○ In *Coal Rate Guidelines,* the Interstate Commerce Commission indicated that revenue adequacy is a long term concept that should be measured ''over time.'' 1 I.C.C.2d at 536. Some comments suggest that revenue adequacy should be measured over a business cycle, while others suggest that a business cycle would not be sufficient. If the revenue adequacy constraint were to be utilized, what would be an appropriate time period? What would be an appropriate definition for a ''business cycle'' if the Board were to use that as a time measure?

○ In *Coal Rate Guidelines,* the Interstate Commerce Commission stated that ''[a] railroad seeking to earn revenues that would provide it, over the long term, a return on investment above the cost of capital would have to demonstrate with particularity: (1) A need for the higher revenues; (2) the harm it would suffer if it could not collect them; and (3) why the captive shippers should provide them.'' *Id.* at 536 n.36. Some comments allude to this language in suggesting that, in the case of a revenue adequate railroad, that railroad should be required to justify rate increases on captive shippers. Should the Board consider requiring a revenue adequate railroad, whose increased rate has been challenged, to justify the increase on a complaining captive shipper? Would such an approach be consistent with the Board's governing statute and/or relevant case law?

○ Constrained market pricing imposes constraints on the extent to which a railroad may charge differentially higher rates on captive traffic, and several comments contend that captive shippers should not be required to differentially provide returns in excess of adequate revenue levels. Should a revenue adequate railroad's ability to differentially price be limited for all captive shippers or for a subset of captive shippers that are most likely to be subject to the railroad's market power? Is there a way to identify those shippers that are most likely to be subject to the railroad's market power, such as through Revenue to Variable Cost ratios, the Revenue Shortfall Allocation Method, or something approximating the Maximum Mark-up Methodology used in the Board's rate proceedings?

Additionally, the parties should be prepared to further explore the following issues raised in the comments and replies:

○ Some comments suggest that revenue adequacy should be tied to the availability of competitive access remedies. What competitive access remedies would be appropriate (and consistent with the Board's governing statute) when a railroad is revenue adequate? Because a proposal regarding competitive access remedies is currently pending before the Board, *see Petition For Rulemaking to Adopt Revised Competitive Switching Rules,* Docket No. EP 711, parties are asked to specifically consider the impact of revenue adequacy on that proposal, particularly in light of the recent service issues faced by the industry.

○ Some comments argue that any proposal that would limit the railroads' return on investment would negatively impact the railroads' ability to invest in their networks and expand capacity. Please discuss the impact of your revenue adequacy proposals on the railroads, again, in light of the recent service issues faced by the industry.

With respect to Docket No. EP 664 (Sub-No. 2), the parties should be prepared to discuss whether the method the Board uses to make its annual industry cost of equity capital determinations needs to be modified and how such modifications, if any, should be implemented. The parties are also invited to discuss the following issues raised in the comments:

○ As part of its annual cost of capital determination, the Board uses a Multi-Stage Discounted Cash Flow (Multi-Stage DCF) model. Some comments suggest that the Board's Multi-Stage DCF model is biased upward. Does such a problem exist and, if so, how is it best corrected?

○ Since 2009, the Board has relied on the Capital Asset Pricing Model (CAPM) as part of its annual cost of capital determination. Under CAPM, ''beta'' is used to measure the amount of non-diversifiable risk of the railroad industry. Some comments note that betas for the railroad industry have ranged above and below 1.0 since 2009. Do those changes in beta reflect actual differences in the riskiness of the railroad industry? Should the Board consider setting beta equal to 1.0 or some other figure?

○ Some comments suggest that the Board's approach for determining the ''market risk premium'' under CAPM is atypical. Is the Board's methodology sufficiently reliable or are there more commonly used approaches that the Board should consider adopting?

○ Certain comments note that the Board's CAPM analysis currently relies on a sample of four observations. Does this sample adequately reflect the railroad industry, or would using a broader sample, such as the S&P 500, lead to a more realistic estimate in determining the cost of equity?

○ Some comments contend that the Board should consider changes to how it determines Return on Investment. Would changes to the Return on Investment methodology require changes to the Cost of Capital methodology? Should the Board consider adjusting how it determines Return on Investment (*e.g.,* using replacement costs) and how could those

[1] The Board instituted a rulemaking in this proceeding in response to a petition by the Western Coal Traffic League. *Pet. of W. Coal Traffic League to Institute a Rulemaking Proceeding to Abolish the Use of Multi-Stage Discounted Cash Flow Model in Determining the R.R. Indus.'s Cost of Equity Capital,* EP 664 (Sub-No. 2) (STB served Dec. 20, 2013).

adjustments be implemented in a practicable manner?

Board Releases and Live Video Streaming Available via the Internet

Decisions and notices of the Board, including this notice, are available on the Board's Web site at *www.stb.dot.gov.* This hearing will be available on the Board's Web site by live video streaming. To access the hearing, click on the ''Live Video'' link under ''Information Center'' at the left side of the home page beginning at 9:30 a.m. on July 22–23, 2015.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. A public hearing will be held on July 22–23, 2015, at 9:30 a.m., at the Board's headquarters at 395 E Street SW., Washington, DC, as described above.

2. By July 8, 2015, any party wishing to speak at the hearing shall file with the Board a notice of intent to participate (identifying the party, the proposed speaker, and the time requested, and summarizing the key points that the speaker intends to address). The notices of intent to participate need not be served on the parties of record. Parties appearing at the hearing shall file hearing exhibits, if any, by July 22, 2015.

3. This decision is effective on its service date.

Decided: May 8, 2015.

By the Board, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2015–11565 Filed 5–12–15; 8:45 am]

BILLING CODE 4915–01–P

Notices

Federal Register
Vol. 80, No. 92
Wednesday, May 13, 2015

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. FSIS–2015–0022]

Notice of Request To Extend a Currently Approved Information Collection (Voluntary Recalls of Meat and Poultry Products)

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 and Office of Management and Budget (OMB) regulations, the Food Safety and Inspection Service (FSIS) is announcing its intention to extend the approved information collection regarding voluntary recalls from commerce of meat and poultry products. FSIS is making no changes to the approved collection. The approval for this information collection will expire on August 31, 2015.

DATES: Submit comments on or before July 13, 2015.

ADDRESSES: FSIS invites interested persons to submit comments on this information collection. Comments may be submitted by one of the following methods:

- *Federal eRulemaking Portal:* This Web site provides the ability to type short comments directly into the comment field on this Web page or attach a file for lengthier comments. Go to *http://www.regulations.gov.* Follow the on-line instructions at that site for submitting comments.
- *Mail, including CD–ROMs, etc.:* Send to Docket Clerk, U.S. Department of Agriculture, Food Safety and Inspection Service, Docket Clerk, Patriots Plaza 3, 1400 Independence Avenue SW., Mailstop 3782, Room 8–163A, Washington, DC 20250–3700.
- *Hand- or courier-delivered submittals:* Deliver to Patriots Plaza 3, 355 E Street SW., Room 8–163A, Washington, DC 20250–3700.

Instructions: All items submitted by mail or electronic mail must include the Agency name and docket number FSIS–2015–0022. Comments received in response to this docket will be made available for public inspection and posted without change, including any personal information, to *http://www.regulations.gov.*

Docket: For access to background documents or comments received, go to the FSIS Docket Room at Patriots Plaza 3, 355 E Street SW., Room 8–164, Washington, DC 20250–3700 between 8:00 a.m. and 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Gina Kouba, Paperwork Reduction Act Coordinator, Food Safety and Inspection Service, USDA, 1400 Independence Avenue SW., Room 6067, South Building, Washington, DC 20250; (202) 690–6510.

SUPPLEMENTARY INFORMATION:

Title: Voluntary Recalls of Meat and Poultry Products.

OMB Control Number: 0583–0135.

Expiration Date: 8/31/2015.

Type of Request: Extension of an approved information collection.

Abstract: FSIS, by delegation (7 CFR 2.18, 2.53), exercises the functions of the Secretary as specified in the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601, *et seq.*) and the Poultry Products Inspection Act (PPIA) (21 U.S.C. 451, *et seq.*). These statutes mandate that FSIS protect the public by verifying that meat and poultry products are safe, wholesome, unadulterated, and properly labeled and packaged.

FSIS is requesting an extension of an approved information collection addressing paperwork requirements regarding the Agency's voluntary recalls from commerce of meat and poultry products. The approval for this information collection will expire August 31, 2015. Although FSIS is responsible for the inspection of egg products under the Egg Products Inspection Act (EPIA) (21 U.S.C. 1031, *et seq.*), the Food and Drug Administration typically handles the recalls of egg products.

A firm that has produced or imported meat or poultry product that is adulterated or misbranded and has distributed it in commerce, may voluntarily recall the product in question. When there is a recall, FSIS asks that the recalling firm (*e.g.,* a manufacturer, distributor, or importer of record) provide the Agency with some basic information, including the identity of the recalled product, the reason for the recall, and information about the distributors and retail consignees to whom the product was actually shipped. Under the FMIA, firms are required to keep such records that fully and correctly disclose all transactions in their business (21 U.S.C. 642). Under the PPIA, firms are required to keep such records as are properly necessary for the effective enforcement of the PPIA (21 U.S.C. 460(b)).

When a firm voluntarily recalls a product, FSIS conducts recall effectiveness checks. In conducting recall effectiveness checks, if the recall is to the retail or consumer level, the Agency contacts the distributors and actual retail consignees to ensure that they were notified of the recall, to verify the amount of product they received, and to confirm that they are removing the product from commerce and returning it to the recalling firm or otherwise disposing of the product.

FSIS has made the following estimates based upon an information collection assessment.

Estimate of Burden: FSIS estimates that it will take respondents an average of approximately 1.1 hours to collect and make this information available to FSIS.

Respondents: Official establishments, importers of record, and retail consignees.

Estimated Number of Respondents: 6,087.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 6,740 hours.

Copies of this information collection assessment can be obtained from Gina Kouba, Paperwork Reduction Act Coordinator, Food Safety and Inspection Service, USDA, 1400 Independence SW., Room 6077, South Building, Washington, DC 20250, (202) 690–6510.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of FSIS's functions, including whether the information will have practical utility; (b) the accuracy of FSIS's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques, or other forms of information technology. Comments may be sent to both FSIS, at the addresses provided above, and the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20253.

Responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, FSIS will announce this **Federal Register** publication on-line through the FSIS Web page located at: *http://www.fsis.usda.gov/federal-register.*

FSIS also will make copies of this publication available through the FSIS Constituent Update, which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, and other types of information that could affect or would be of interest to our constituents and stakeholders. The Update is available on the FSIS Web page. Through the Web page, FSIS is able to provide information to a much broader, more diverse audience. In addition, FSIS offers an email subscription service which provides automatic and customized access to selected food safety news and information. This service is available at: *http://www.fsis.usda.gov/subscribe.* Options range from recalls to export information, regulations, directives, and notices. Customers can add or delete subscriptions themselves, and have the option to password protect their accounts.

USDA Non-Discrimination Statement

No agency, officer, or employee of the USDA shall, on the grounds of race, color, national origin, religion, sex, gender identity, sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, or political beliefs, exclude from participation in, deny the benefits of, or subject to discrimination any person in the United States under any program or activity conducted by the USDA.

How To File a Complaint of Discrimination

To file a complaint of discrimination, complete the USDA Program Discrimination Complaint Form, which may be accessed online at *http://www.ocio.usda.gov/sites/default/files/docs/2012/Complain_combined_6_8_12.pdf,* or write a letter signed by you or your authorized representative.

Send your completed complaint form or letter to USDA by mail, fax, or email:

Mail: U.S. Department of Agriculture, Director, Office of Adjudication, 1400 Independence Avenue SW., Washington, DC 20250–9410, Fax: (202) 690–7442.

Email: program.intake@usda.gov.

Persons with disabilities who require alternative means for communication (Braille, large print, audiotape, *etc.*), should contact USDA's TARGET Center at (202) 720–2600 (voice and TDD).

Done at Washington, DC, on: May 8, 2015.

Alfred V. Almanza,

Acting Administrator.

[FR Doc. 2015–11582 Filed 5–12–15; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Forest Service

Santa Fe National Forest; New Mexico; Geothermal Leasing

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Santa Fe National Forest will prepare an environmental impact statement to analyze the potential effects of geothermal development on 194,910 acres. The decision will be whether to proceed with geothermal leasing and, if so, under what stipulations.

DATES: Comments concerning the scope of the analysis must be received by June 12, 2015. The draft environmental impact statement is expected in January, 2016 and the final environmental impact statement is expected in October, 2016.

ADDRESSES: Send written comments to Geothermal EIS Project, Santa Fe National Forest, 11 Forest Lane, Santa Fe, NM 87508. Comments may also be sent via email to *comments-southwestern-santafe@fs.fed.us*, or via facsimile to 505–438–5390.

FOR FURTHER INFORMATION CONTACT: Larry Gore, Forest Geologist, via email at *ldgore@fs.fed.us.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Purpose and Need for Action

The Bureau of Land Management (BLM) has received expressions of interest in leasing approximately 46,000 acres of Santa Fe National Forest (SFNF) lands for exploration and development for geothermal energy production. The SFNF must decide whether these lands are available for leasing by the BLM and, if so, under what stipulations for protection of surface resources. The U.S. Geological Survey has identified approximately 194,000 acres of SFNF lands with significant geothermal potential. While the current expressed interest is for only a portion of this area, the entire area plus an additional approximately 900 acres for power transmission will be considered in the analysis in the event of future similar interest.

Proposed Action

Approximately 139,329 acres of the SFNF lands within the project area would be allocated as open to geothermal leasing subject to existing laws, regulations, formal orders and stipulations attached to the lease form, and the terms and conditions of the standard lease form. Stipulations proposed include: no surface occupancy; controlled surface use; and timing limitations.

Lead and Cooperating Agencies

The Forest Service, Santa Fe National Forest, is the lead agency and the Bureau of Land Management, New Mexico State Office, is a cooperating agency in this analysis.

Responsible Official

The responsible official is the Forest Supervisor of the Santa Fe National Forest.

Nature of Decision To Be Made

The decision will be whether to implement the action as proposed, implement an alternative which allows leasing under different stipulations or conditions, or not to implement the action. If the decision is to authorize leasing, that decision with associated stipulations and conditions will become an amendment to the Santa Fe National Forest Plan or will become a part of the Revised Forest Plan.

Scoping Process

This notice of intent initiates the scoping process, which guides the development of the environmental impact statement. Two public meetings will be held to discuss the proposed action and solicit public input. One meeting will be held in Santa Fe, NM and one in the Cuba, NM area. Time and location of these meetings will be announced and posted on the forest's Web site at: *http://www.fs.usda.gov/santafe/alerts-notices.* The complete Proposed Action, with accompanying maps and descriptions of proposed stipulations, will also be posted at that Web site at: *http://www.fs.usda.gov/projects/santafe/landmanagement/projects.*

It is important that reviewers provide their comments at such times and in such manner that they are useful to the agency's preparation of the environmental impact statement. Therefore, comments should be provided prior to the close of the comment period and should clearly articulate the reviewer's concerns and contentions.

Comments received in response to this solicitation, including names and addresses of those who comment, will be part of the public record for this proposed action. Comments submitted anonymously will be accepted and considered, however.

Dated: May 4, 2015.

Maria T. Garcia,

Forest Supervisor.

[FR Doc. 2015–11495 Filed 5–12–15; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–32–2015]

Foreign-Trade Zone (FTZ) 83—Huntsville, Alabama; Notification of Proposed Production Activity, Toyota Motor Manufacturing Alabama, Inc., (Motor Vehicle Engines and Transmissions), Huntsville, Alabama

Toyota Motor Manufacturing Alabama, Inc. (TMMAL), an operator of FTZ 83, submitted a notification of proposed production activity to the FTZ Board for its facilities in Huntsville, Alabama. The notification conforming to the requirements of the regulations of the FTZ Board (15 CFR 400.22) was received on April 14, 2015.

A separate request for subzone designation at the TMMAL facilities will be submitted and processed under Section 400.31 of the FTZ Board's regulations. The facilities are used for the production of spark-ignition engines, transmissions and related components for passenger motor vehicles. Pursuant to 15 CFR 400.14(b), FTZ activity would be limited to the specific foreign-status materials and components and specific finished products described in the submitted notification (as described below) and subsequently authorized by the FTZ Board.

Production under FTZ procedures could exempt TMMAL from customs duty payments on the foreign status components used in export production. On its domestic sales, TMMAL would be able to choose the duty rate during customs entry procedures that applies to passenger motor vehicle engines, transmissions and related components (2.5%) for the foreign status inputs noted below. Customs duties also could possibly be deferred or reduced on foreign status production equipment.

The components sourced from abroad include: Plastic labels; plastic oil filler caps/clamps/oil seal rings; steel fittings/plugs/screws/bolts/pins/spring washers/hose clips; drain cock assemblies; valve levers; bearings (tapered roller, thrust, races, crank); flywheel subassemblies; pulleys; sprockets; key guides; washers (crankshaft); oil pressure switches; crank position sensors; and, wiring harnesses (duty rate ranges from 2.6 to 8.5%).

Public comment is invited from interested parties. Submissions shall be addressed to the FTZ Board's Executive Secretary at the address below. The closing period for their receipt is June 22, 2015.

A copy of the notification will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 21013, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230–0002, and in the "Reading Room" section of the FTZ Board's Web site, which is accessible via *www.trade.gov/ftz.*

For further information, contact Pierre Duy at *Pierre.Duy@trade.gov* or (202) 482–1378.

Dated: April 29, 2015.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2015–11571 Filed 5–12–15; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Meeting of the United States Travel and Tourism Advisory Board

AGENCY: International Trade Administration, U.S. Department of Commerce.

ACTION: Notice of an open meeting.

SUMMARY: The United States Travel and Tourism Advisory Board (Board) will hold an open meeting on Monday, June 1, 2015. The Board was re-chartered in August 2013, to advise the Secretary of Commerce on matters relating to the travel and tourism industry.

During this meeting, the Board will deliberate and potentially adopt a letter to the Secretary outlining the Board's priority recommendations. Board members will also hear an update from the working group formed to provide advice on the achievement of the national goal of improving the international arrivals and entry process for travelers to the United States. The agenda may change to accommodate Board business. The final agenda will be posted on the Department of Commerce Web site for the Board at *http://trade.gov/ttab,* at least one week in advance of the meeting.

DATES: Monday, June 1, 2015, tentatively scheduled for 10:00 a.m.–12:00 p.m. and open for public comments. The exact start and end times may change to accommodate participants' schedules; please check the Web site for the final agenda one week in advance of the meeting.

The deadline for members of the public to register, including requests to make comments during the meetings and for auxiliary aids, or to submit written comments for dissemination prior to the meeting, is 5 p.m. EDT on May 25, 2015.

ADDRESSES: Orange County Convention Center, 9899 International Drive, Orlando, Florida 32819. Guests are requested to register one week in advance by sending an email to *Niara.Phillips@trade.gov.*

FOR FURTHER INFORMATION CONTACT: Niara Phillips, the United States Travel and Tourism Advisory Board, Room 4043, 1401 Constitution Avenue NW., Washington, DC 20230, telephone: 202–482–4501, email: *niara.phillips@trade.gov.*

SUPPLEMENTARY INFORMATION:

Background: The Board advises the Secretary of Commerce on matters relating to the U.S. travel and tourism industry.

Public Participation: The meeting will be open to the public. All guests are required to register in advance by the deadline identified under the DATES caption, and will receive a copy of the draft letter to be deliberated upon registering. Seating is limited and will be on a first come, first served basis. Requests for sign language interpretation or other auxiliary aids must be submitted by the registration deadline. Last minute requests will be accepted, but may be impossible to fill.

There will be 15 minutes of time allotted for oral comments from members of the public joining the meeting. To accommodate as many speakers as possible, the time for public comments will be limited to three (3) minutes per person. Individuals wishing to reserve speaking time during the meeting must submit a request at the time of registration along with a brief statement of the general nature of the comments, as well as the name and address of the proposed speaker. If the number of registrants requesting to make statements is greater than can be reasonably accommodated during the meeting, the International Trade Administration may conduct a lottery to determine the speakers. Speakers are requested to bring at least 25 copies of their oral comments for distribution to the members of the Board and to the public at the meeting. In addition, any member of the public may submit pertinent written comments concerning the Board's affairs at any time before or after the meeting. Comments may be submitted to Niara Phillips at the contact information indicated above. To be considered during the meeting, comments must be received no later than 5:00 p.m. EDT on May 25, 2015, to ensure transmission to the Board prior to the meeting. Comments received after that date and time will be distributed to the members but may not be considered on the meeting. Copies of Board meeting minutes will be available within 90 days of the meeting.

Dated: May 7, 2015.

Niara Phillips,

Executive Secretary, United States Travel and Tourism Advisory Board.

[FR Doc. 2015–11501 Filed 5–12–15; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–827]

Certain Cased Pencils From the People's Republic of China: Rescission of Antidumping Duty Administrative Review; 2013–2014

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Department) is rescinding the administrative review of the antidumping duty order on certain cased pencils (pencils) from the People's Republic of China (PRC) for the period December 1, 2013, through November 30, 2014, based on the withdrawal of the review request by the one company.

DATES: Effective date: May 13, 2015.

FOR FURTHER INFORMATION CONTACT: Mary Kolberg or Sergio Balbontin at (202) 482–1785 or (202) 482–6478, respectively; AD/CVD Operations, Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On April 3, 2015, the Department initiated an administrative review of the antidumping duty order on pencils from the PRC for the period December 1, 2013, through November 30, 2014, based on a self-request by Orient International Holding Shanghai Foreign Trade Co., Ltd. (SFTC).[1] On April 23, 2015, SFTC timely withdrew its request for review.[2]

Rescission of Administrative Review

Pursuant to 19 CFR 351.213(d)(l), the Secretary will rescind an administrative review, in whole or in part, if the party that requested a review withdraws the request within 90 days of the publication of the notice of initiation of the requested review. In this case, SFTC withdrew its request within the 90-day deadline. No other party requested an administrative review of SFTC. Therefore, in accordance with 19 CFR 351.213(d)(1), we are rescinding the instant review with respect to SFTC.

Because no other parties requested a review of this order for this period, we are rescinding the administrative review of the pencils order covering the period December 1, 2013, through November 30, 2014, in its entirety.

Assessment

The Department will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on all appropriate entries. Because the Department is rescinding this administrative review in its entirety, the entries to which tis administrative review pertained shall be assessed antidumping duties at rates equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(1)(i). The Department intends to issue appropriate assessment instructions to CBP 15 days after the date of publication of this notice of rescission of administrative review.

Notifications

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order (''APO'') of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

This notice is in accordance with section 751(a)(1) and 777(i)(1) of the Tariff Act of 1930, as amended, and 19 CFR 351.213(d)(4).

Dated: May 6, 2015.

Christian Marsh,

Deputy Assistant Secretary for AD/CVD Operations.

[FR Doc. 2015–11573 Filed 5–12–15; 8:45 am]

BILLING CODE 3510–DS–P

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[1] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 80 FR 18202 (April 3, 2015).

[2] *See* letter from SFTC, re: ''Withdrawal of Review Request: Antidumping Duty Administrative Review of the Antidumping Duty Order on Certain Cased Pencils from the PRC'' dated April 23, 2015.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

New England Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Scallop Committee on to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: This meeting will be held on Thursday, May 28, 2015 at 9 a.m.

ADDRESSES:

Meeting address: The meeting will be held at the Fairfield Inn & Suites, 185 MacArthur Drive, New Bedford, MA 02740; telephone: (774) 634–2000; fax: (774) 634–2001.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Thomas A. Nies, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION: The Committee will review progress and make recommendations related to Amendment 19, which is considering measures to address timing issues that inhibit implementation of fishery specifications at the start of the scallop fishing year (March 1). The Committee will also discuss an issue that has been raised at previous meetings related to scallop fishing space in near shore areas and issues of differential catch rates for general category and limited access vessels. The Council may have a workshop later this year to discuss these issues further as well as review a draft action plan for Framework 27 that will consider fishery specifications for 2016 and default measures for 2017. The Committee will discuss final research priority recommendations for the 2016 Scallop Research Set-Aside announcement. All recommendations will be forwarded to the Council for their June 2015 meeting.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Thomas A. Nies, Executive Director, at (978) 465–0492, at least 5 days prior to the meeting date.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: May 8, 2015.

Tracey L. Thompson,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2015–11569 Filed 5–12–15; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XD796

Schedules for Atlantic Shark Identification Workshops and Protected Species Safe Handling, Release, and Identification Workshops; Correction

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public workshops; correction.

SUMMARY: NMFS cancelled the Protected Species Safe Handling, Release, and Identification workshop originally scheduled for April 28, 2015, in Kenner, LA. The workshop instructors were not able to travel to the location due to intermittent power outages at the New Orleans airport. This workshop was announced in the **Federal Register** on March 6, 2015. NMFS has rescheduled the workshop for June 10, 2015, to be held at the same time and location, 9 a.m. to 5 p.m., Hilton Inn, 901 Airline Drive, Kenner, LA 70062.

DATES: The Protected Species Safe Handling, Release, and Identification workshop originally scheduled for April 28, 2015, in Kenner, LA, has been rescheduled to June 10, 2015. See **SUPPLEMENTARY INFORMATION** for further details.

ADDRESSES: The location of the rescheduled workshop has not changed. It will be held in Kenner, LA. See **SUPPLEMENTARY INFORMATION** for further details.

FOR FURTHER INFORMATION CONTACT: Rick Pearson by phone: (727) 824–5399, or by fax: (727) 824–5398.

SUPPLEMENTARY INFORMATION: The workshop schedules, registration information, and a list of frequently asked questions regarding these workshops are posted on the Internet at: *http://www.nmfs.noaa.gov/sfa/hms/compliance/workshops/index.html.*

Correction

In the **Federal Register** of March 6, 2015, (80 FR 12152) in FR Doc. 2015–05174, on page 12153, in the third column, the date of the second Protected Species Safe Handling, Release, and Identification workshop listed under the heading ''Workshop Dates, Times, and Locations'' is corrected to read as follows:

2. June 10, 2015, 9 a.m.–5 p.m., Hilton Inn, 901 Airline Drive, Kenner, LA 70062.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: May 6, 2015.

Emily H. Menashes,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2015–11467 Filed 5–12–15; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XD931

North Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of a public meeting.

SUMMARY: The North Pacific Fishery Management Council (Council) Observer Advisory Committee (OAC) will meet in Anchorage, AK.

DATES: The meeting will be held on May 29, 2015, from 8 a.m. to 5 p.m.

ADDRESSES: The meeting will be held at the Coast International Inn, 3450 Aviation Avenue, Susitna room, Anchorage, AK.

Council address: North Pacific Fishery Management Council, 605 W. 4th Ave., Suite 306, Anchorage, AK 99501–2252.

FOR FURTHER INFORMATION CONTACT: Diana Evans, Council staff; telephone: (907) 271–2809.

SUPPLEMENTARY INFORMATION: The agenda will be to discuss and provide recommendations on the observer program review documents (supplemental Environmental Assessment, 2014 Observer Annual Report) and observer regulatory amendment analyses. The Agenda is subject to change, and the latest version will be posted at *http://www.npfmc.org/.*

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Gail Bendixen at (907) 271–2809 at least 7 working days prior to the meeting date.

Dated: May 8, 2015.

Tracey L. Thompson,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2015–11570 Filed 5–12–15; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Fishery Products Subject to Trade Restrictions Pursuant to Certification Under the High Seas Driftnet Fishing (HSDF) Moratorium Protection Act

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before July 13, 2015.

ADDRESSES: Direct all written comments to Jennifer Jessup, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue NW, Washington, DC 20230 (or via the Internet at *JJessup@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Kristin Rusello, Office of International Affairs and Seafood Inspection, F/IS5, 1315 East-West Highway, Silver Spring, MD 20910, (301) 427–8376, or *kristin.rusello@noaa.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

This request is for extension of a currently approved information collection.

Pursuant to the High Seas Driftnet Fishing Moratorium Protection Act (Moratorium Protection Act), if certain fish or fish products of a nation are subject to import prohibitions to facilitate enforcement, the National Marine Fisheries Service (NMFS) requires that other fish or fish products from that nation that are not subject to the import prohibitions must be accompanied by documentation of admissibility. A duly authorized official/agent of the applicant's Government must certify that the fish in the shipments being imported into the United States (U.S.) are of a species that are not subject to an import restriction of the U.S. If a nation is identified under the Moratorium Protection Act and fails to receive a certification decision from the Secretary of Commerce, products from that nation that are not subject to the import prohibitions must be accompanied by the documentation of admissibility.

II. Method of Collection

Submissions will be accepted via email or fax.

III. Data

OMB Control Number: 0648–0651.

Form Number(s): None.

Type of Review: Regular submission (extension of a currently approved information collection).

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 60.

Estimated Time Per Response: 10 minutes.

Estimated Total Annual Burden Hours: 100 hours.

Estimated Total Annual Cost to Public: $10 in reporting/recordkeeping costs.

IV. Request for Comments

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: May 7, 2015.

Sarah Brabson,

NOAA PRA Clearance Officer.

[FR Doc. 2015–11490 Filed 5–12–15; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XD888

Magnuson-Stevens Act Provisions; General Provisions for Domestic Fisheries; Application for Exempted Fishing Permit

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; request for comments.

SUMMARY: The Assistant Regional Administrator for Sustainable Fisheries, Greater Atlantic Region, NMFS, has made a preliminary determination that an Exempted Fishing Permit application submitted by the Northeast Fisheries Science Center contains all of the required information and warrants further consideration.

Regulations under the Magnuson-Stevens Fishery Conservation and Management Act require publication of this notification to provide interested parties the opportunity to comment on Exempted Fishing Permit applications.

DATES: Comments must be received on or before May 28, 2015.

ADDRESSES: You may submit written comments by any of the following methods:

- *Email: nmfs.gar.efp@noaa.gov.* Include in the subject line "Comments on NEFSC Study Fleet EFP."
- *Mail:* John K. Bullard, Regional Administrator, NMFS, Greater Atlantic Regional Fisheries Office, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope "Comments on NEFSC Study Fleet EFP."

FOR FURTHER INFORMATION CONTACT: Liz Sullivan, Fishery Management Specialist, 978–282–8493, *Liz.Sullivan@noaa.gov.*

SUPPLEMENTARY INFORMATION: The Northeast Fisheries Science Center (NEFSC) submitted a complete application for an Exempted Fishing Permit (EFP) on March 18, 2015, to enable data collection activities that the regulations on commercial fishing would otherwise restrict. The EFP would exempt 37 federally permitted commercial fishing vessels from the regulations detailed below while participating in the Study Fleet Program and operating under projects managed by the NEFSC. The EFP would exempt participating vessels from minimum fish size restrictions; fish possession limits; prohibited fish species, not including species protected under the Endangered Species Act; and gear-specific fish possession restrictions for the purpose of at-sea sampling and, in limited situations for research purposes only, to retain and land fish.

The NEFSC Study Fleet Program was established in 2002 to more fully characterize commercial fishing operations and to leverage sampling opportunities to augment NMFS data collection programs. Participating vessels are contracted by NEFSC to collect tow-by-tow catch and environmental data, and to fulfill specific biological sampling needs identified by NEFSC. To collect these data, the NEFSC Study Fleet Program has obtained an EFP to secure the necessary waivers needed by the vessels to obtain fish that would otherwise be prohibited by regulations.

Crew trained by the NEFSC Study Fleet Program in methods that are consistent with the current NEFSC observer protocol, while under fishing operations, would sort, weigh, and measure fish that are to be discarded. An exemption from minimum fish size restrictions; fish possession limits; prohibited fish species, not including species protected under the Endangered Species Act; and gear-specific fish possession restrictions for at-sea sampling is required because some discarded species would be on deck slightly longer than under normal sorting procedures.

Participating vessels would also be authorized to retain and land, in limited situations for research purposes only, fish that do not comply with fishing regulations. The vessels would be authorized to retain specific amounts of particular species in whole or round weight condition, in marked totes, which would be delivered to Study Fleet Program technicians. NEFSC would require participating vessels to obtain written approval from the NEFSC Study Fleet Program prior to landing any fish to ensure that the landed fish do not exceed any of the Study Fleet Program's collection needs. None of the landed biological samples from these trips would be sold for commercial use or used for any other purpose other than scientific research.

The table below details the regulations from which the participating vessels would be exempt when retaining and landing fish for research purposes. The participating vessels would be required to comply with all other applicable requirements and restrictions specified at 50 CFR part 648, unless specifically exempted in this EFP. For vessels on a sector trip, all catch of Northeast multispecies stocks allocated to sectors would be deducted from the sector's Annual Catch Entitlement (ACE). Once a sector's ACE for a stock has been reached, vessels would no longer be allowed to fish in that stock area, unless they acquired additional ACE for the limiting stock. For non-sector vessels, all catch of Northeast multispecies stocks would be counted toward the appropriate quotas. Non-sector vessels would still be subject to applicable trimester total allowable catch (TAC) accountability measures, which state that when 90 percent of the trimester TAC for a stock is projected to be caught, the area where that stock is predominantly caught will close to vessels fishing with a specific gear type for the rest of that trimester.

NEFSC STUDY FLEET PROGRAM EFP

No. of Vessels	37
Exempted regulations in 50 CFR part 648	*Size limits:* § 648.83 NE multispecies minimum size. § 648.93 Monkfish minimum fish size. § 648.104 Summer flounder minimum fish size. § 648.147 Black sea bass minimum fish size. *Possession restrictions:* § 648.86(a) Haddock. § 648.86(b) Atlantic cod. § 648.86(g) Yellowtail flounder. § 648.86(j) Georges Bank winter flounder. § 648.86(l) Zero retention of Atlantic wolffish. § 648.86(o) Possession limits implemented by RA. § 648.94 Monkfish possession limit. § 648.106 Summer flounder possession restrictions. § 648.322 Skate possession and landing restrictions. § 648.145 Black sea bass possession limits. § 648.235 Spiny dogfish possession and landing restrictions.

NEFSC Study Fleet Program's Sublegal Biological Sampling Needs

As described above, biological samples would only be landed and collected by the Study Fleet Program after a formal request has been issued in writing by the Study Fleet Program. The following are the Study Fleet Program's sampling needs for retaining sublegal fish.

Windowpane flounder—whole fish would be retained for age and growth work to support 2015 windowpane stock assessment. Otoliths and fish length will be collected to validate ages using marginal increment analysis. Windowpane flounder retained would not exceed 40 fish per month from all stock areas combined (Gulf of Maine and Georges Bank stock) or 480 fish total for all trips. The maximum weight on any trip would not exceed 30 lb (13.6 kg), and total weight would not exceed 360 lb (163.3 kg) for all trips combined.

Atlantic wolffish—whole fish would be retained for maturity, fecundity, and life history research. Atlantic wolffish retained would not exceed 40 fish per month or 480 fish total for all trips. The maximum weight on any trip would not exceed 160 lb (72.6 kg), and total weight would not exceed 3,500 lb (1587.6 kg) for all trips combined.

Cusk—whole fish would be retained or specimen sampled at sea by a Study Fleet scientist for maturity, fecundity, and life history research. Cusk retained would not exceed 40 fish per month or 480 fish total for all trips. The maximum weight on any trip would not exceed 100 lb (45.4 kg), and total weight would not exceed 1,440 lb (653.2 kg) for all trips combined.

Atlantic halibut—specimen would be sampled at sea by a Study Fleet scientist for age, growth, maturity, fecundity, and diet research. Atlantic halibut retained would not exceed 20 fish per month or 240 fish total for all trips. The maximum weight on any trip would not exceed 200 lb (90.7 kg), and total weight would not exceed 5,000 lb (2268.0 kg) for all trips combined.

Monkfish—whole fish would be retained for maturity and fecundity research. Monkfish retained would not exceed 10 fish per trip, or 120 fish total for all trips. The maximum weight on any trip would not exceed 100 lb (45.4 kg), and total weight would not exceed 1,200 lb (544.3 kg) for all trips combined.

Atlantic cod—potential maturity, fecundity, bioelectrical impedance analysis (BIA), food habits, and genetic research. Whole fish retained would not exceed 200 fish per month from each of the three stock areas (GOM, GB, SNE/MA), or 1,200 fish total from each stock area for all trips. The maximum weight on any trip would not exceed 300 lb (136.1 kg), and total weight would not exceed 8,500 lb (3855.5 kg) for all trips combined.

Barndoor Skate—whole and, in some cases, live skates would be retained for age and growth research and species confirmation. The barndoor skates retained would not exceed 20 fish per 3-month period, or 80 skates total for all trips. The maximum weight on any trip would not exceed 75 lb (34.0 kg), and total weight would not exceed 300 lb (136.1 kg) for all trips combined.

Thorny Skate—whole and, in some cases, live skates would be retained for age and growth research and species confirmation. Thorny skates retained would not exceed 20 fish per 3-month period, or 80 skates total for all trips. The maximum weight on any trip would not exceed 75 lb (34.0 kg), and total weight would not exceed 300 lb (136.1 kg) for all trips combined.

Black Sea Bass—whole fish would be retained to support of an ongoing study at the NEFSC to evaluate BIA to measure fish energy density and reproductive potential for stock assessment. Black sea bass retained would not exceed 75 fish per quarter, or 300 black sea bass total for all trips. The maximum weight on any trip would not exceed 250 lb (113.4 kg), and total weight would not exceed 1,000 lb (453.6 kg) for all trips combined.

If approved, the applicant may request minor modifications and extensions to the EFP throughout the year. EFP modifications and extensions may be granted without further notice if they are deemed essential to facilitate completion of the proposed research and have minimal impact that do not change the scope or impact of the initially approved EFP request. Any fishing activity conducted outside the scope of the exempted fishing activity would be prohibited.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: May 6, 2015.

Emily H. Menashes,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2015–11470 Filed 5–12–15; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Environmental Compliance Questionnaire for National Oceanic and Atmospheric Administration Federal Financial Assistance Applicants

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before July 13, 2015.

ADDRESSES: Direct all written comments to Jennifer Jessup, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at *JJessup@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Steve Kokkinakis, (240) 533–9021 or *Steve.Kokkinakis@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

This request is for a revision and extension of a currently approved information collection. The National Environmental Policy Act (''NEPA''; 42 U.S.C. §§ 4321–4370) requires federal agencies to complete an environmental analysis for all major federal actions, including funding non-federal projects through federal financial assistance awards where Federal participation in the funded activity is expected to be significant. This *Environmental Compliance Questionnaire for National Oceanic and Atmospheric Administration Federal Financial Assistance Applicants* (Questionnaire) is used by the National Oceanic and Atmospheric Administration (NOAA) to collect information about proposed activities for NEPA and other environmental compliance requirements associated with proposed projects, such as federal consultations. The Questionnaire is used in conjunction with NOAA Funding Opportunity Announcements (FOA). Applicants are required to provide only the information from this Questionnaire that is specified in the FOA to which they are applying. The FOA may present these questions in one of two ways: (1) The applicable questions can be inserted directly into the FOA with reference to the OMB Control Number (0648–0538) for this form; or (2) The FOA can specify which questions (*e.g.* 1, 2) an applicant must answer, with the entire OMB-approved Questionnaire attached to the FOA. This Questionnaire has been revised to (1) remove repetitive questions; (2) revise specific questions to use plain language instead of NEPA-specific language; and (3) add questions that would be helpful to a wider range of NOAA programs. The revision reduced the overall number of questions by 22.

II. Method of Collection

The information may be submitted electronically or on paper (faxed or mailed).

III. Data

OMB Control Number: 0648–0538.

Form Number(s): None.

Type of Review: Regular submission (revision and extension of a currently approved information collection).

Affected Public: Individuals or households; business or other for-profit organizations; not-for-profit institutions; state, local, or tribal government; and federal government.

Estimated Number of Respondents: 1,000.

Estimated Time per Response: 3 hours.

Estimated Total Annual Burden Hours: 3,000.

Estimated Total Annual Cost to Public: $1,000 in recordkeeping/reporting costs.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: May 8, 2015.

Sarah Brabson,

NOAA PRA Clearance Officer.

[FR Doc. 2015–11568 Filed 5–12–15; 8:45 am]

BILLING CODE 3510–NW–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: International Dolphin Conservation Program.

OMB Control Number: 0648–0387.

Form Number(s): None.

Type of Request: Regular (extension of a currently approved information collection).

Number of Respondents: 144.

Average Hours Per Response: 35 minutes each for a vessel permit application and for written notification to request active status for a small tuna purse seine vessel; 10 minutes for an operator permit application, a notification of vessel arrival or departure, a change in permit operator; a notification of a net modification or a monthly tuna storage removal report; 30 minutes for a request for a waiver to transit the ETP without a permit (and subsequent radio reporting) or for a special report documenting the origin of tuna (if requested by the NOAA Administrator); 10 hours for an experimental fishing operation waiver; 15 minutes for a request for a Dolphin Mortality Limit; 5 minutes for written notification to request inactive status for a small tuna purse seine vessel or for written notification of the intent to transfer a tuna purse seine vessel to foreign registry and flag; 60 minutes for a tuna tracking form or for a monthly tuna receiving report.

Burden Hours: 179.

Needs and Uses: National Oceanic and Atmospheric Administration (NOAA) collects information to implement the International Dolphin Conservation Program Act (Act). The Act allows entry of yellowfin tuna into the United States (U.S.), under specific conditions, from nations in the International Dolphin Conservation Program that would otherwise be under embargo. The Act also allows U.S. fishing vessels to participate in the yellowfin tuna fishery in the eastern tropical Pacific Ocean (ETP) on terms equivalent with the vessels of other nations. NOAA collects information to allow tracking and verification of ''dolphin safe'' and ''non-dolphin safe'' tuna products from catch through the U.S. market.

The regulations implementing the Act are at 50 CFR parts 216 and 300. The recordkeeping and reporting requirements at 50 CFR parts 216 and 300 form the basis for this collection of information. This collection includes permit applications, notifications, tuna tracking forms, reports, and certifications that provide information on vessel characteristics and operations in the ETP, the origin of tuna and tuna products, and certain other information necessary to implement the Act.

Affected Public: Business or other for-profit organizations.

Frequency: Annually, monthly and on occasion.

Respondent's Obligation: Mandatory.

This information collection request may be viewed at reginfo.gov. Follow the instructions to view Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_Submission@omb.eop.gov* or fax to (202) 395–5806.

Dated: May 7, 2015.

Sarah Brabson,

NOAA PRA Clearance Officer.

[FR Doc. 2015–11489 Filed 5–12–15; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

[Docket No. 150312253–5253–01]

RIN 0660–XC018

Stakeholder Engagement on Cybersecurity in the Digital Ecosystem

AGENCY: National Telecommunications and Information Administration, U.S. Department of Commerce.

ACTION: Notice; Extension of comment period.

SUMMARY: The Department of Commerce Internet Policy Task Force (IPTF) announces that the closing deadline for submitting comments responsive to the May 18, 2015 request for public comments to identify substantive cybersecurity issues to be addressed by a multistakeholder process has been extended until 5:00 p.m. Eastern Daylight Time (EDT) on Wednesday, May 27, 2015.

DATES: Comments are due on or before 5 p.m. EDT on Wednesday, May 27, 2015.

ADDRESSES: Written comments may be submitted by email to *securityRFC2015@ntia.doc.gov.* Comments submitted by email should be machine-searchable and should not be copy-protected. Written comments also may be submitted by mail to the National Telecommunications and Information Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW., Room 4725, Attn: Cybersecurity RFC 2015, Washington, DC 20230. Responders should include the name of the person or organization filing the comment, as well as a page number, on each page of their submissions. All comments received are a part of the public record and will generally be posted to *http://www.ntia.doc.gov/category/internet-policy-task-force* without change. All personal identifying information (*e.g.,* name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information. NTIA will also accept anonymous comments.

FOR FURTHER INFORMATION CONTACT: Allan Friedman, National Telecommunications and Information Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW., Room 4725, Washington, DC 20230; Telephone: (202) 482–4281; Email: *afriedman@ntia.doc.gov.* Please direct media inquiries to NTIA's Office of Public Affairs: (202) 482–7002.

SUPPLEMENTARY INFORMATION: In 2011, the Department of Commerce published a Green Paper, *Cybersecurity, Innovation, and the Internet Economy,* identifying the challenges of securing the digital ecosystem, and the importance of a multistakeholder policy model.[1] Building off this approach, in March of 2015, the IPTF announced a new initiative to complement existing cybersecurity programs by focusing on risks that exist between multiple parts of the digital ecosystem.[2] Please see the prior Notice, *Stakeholder Engagement on Cybersecurity in the Digital Ecosystem,* for the original questions posed in the request for public comments to identify substantive cybersecurity issues to be addressed by a multistakeholder process.[3] The request for public comments originally set a deadline for submission of comments on May 18, 2015. With this notice, NTIA announces that the closing deadline for submission of comments has been extended until 5:00 p.m. EDT on May 27, 2015.

Dated: May 8, 2015.

Kathy D. Smith,

Chief Counsel.

[FR Doc. 2015–11540 Filed 5–12–15; 8:45 am]

BILLING CODE 3510–60–P

[1] U.S. Department of Commerce, Internet Policy Task Force, *Cybersecurity, Innovation, and the Internet Economy* (June 2011) (''Green Paper''), *available at: http://www.nist.gov/itl/upload/Cybersecurity_Green-Paper_FinalVersion.pdf.*

[2] *See* 80 FR 14360 (March 19, 2015) *available at: http://www.ntia.doc.gov/files/ntia/publications/cybersecurity_rfc_03192015.pdf.*

[3] *Id.*

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

Multistakeholder Process To Develop Consumer Data Privacy Code of Conduct Concerning Facial Recognition Technology

AGENCY: National Telecommunications and Information Administration, U.S. Department of Commerce.

ACTION: Notice of open meeting.

SUMMARY: The National Telecommunications and Information Administration (NTIA) will convene a meeting of a privacy multistakeholder process concerning the commercial use of facial recognition technology on June 11, 2015.

DATES: The meeting will be held on June 11, 2015 from 1:00 p.m. to 5:00 p.m., Eastern Daylight Time. See Supplementary Information for details.

ADDRESSES: The meeting will be held in the Boardroom at the American Institute of Architects, 1735 New York Avenue NW., Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: John Verdi, National Telecommunications and Information Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW., Room 4725, Washington, DC 20230; telephone (202) 482–8238; email *jverdi@ntia.doc.gov.* Please direct media inquiries to NTIA's Office of Public Affairs, (202) 482–7002; email *press@ntia.doc.gov.*

SUPPLEMENTARY INFORMATION:

Background: On February 23, 2012, the White House released *Consumer Data Privacy in a Networked World: A Framework for Protecting Privacy and Promoting Innovation in the Global Digital Economy* (the ''Privacy Blueprint'').[1] The Privacy Blueprint directs NTIA to convene multistakeholder processes to develop legally enforceable codes of conduct that specify how the Consumer Privacy Bill of Rights applies in specific business contexts.[2] On December 3, 2013, NTIA announced that it would convene a multistakeholder process with the goal of developing a code of conduct to protect consumers' privacy and promote trust regarding facial recognition technology in the commercial context.[3] On February 6, 2014, NTIA convened the first meeting of the facial recognition multistakeholder process, followed by additional meetings through December 2014.

Matters To Be Considered: The June 11, 2015 meeting is a continuation of a series of NTIA-convened multistakeholder discussions concerning facial recognition technology. Stakeholders will engage in an open, transparent, consensus-driven process to develop a code of conduct regarding facial recognition technology. The June 11, 2015 meeting will build on stakeholders' previous work. More information about stakeholders' work is available at: *http://www.ntia.doc.gov/other-publication/2014/privacy-multistakeholder-process-facial-recognition-technology.*

Time and Date: NTIA will convene a meeting of the privacy multistakeholder process regarding facial recognition technology on June 11, 2015, from 1:00 p.m. to 5:00 p.m., Eastern Daylight Time. The meeting date and time are subject to change. The meeting is subject to cancelation if stakeholders complete their work developing a code of conduct. Please refer to NTIA's Web site, *http://www.ntia.doc.gov/other-publication/2014/privacy-multistakeholder-process-facial-recognition-technology,* for the most current information.

Place: The meeting will be held in the Boardroom at the American Institute of Architects, 1735 New York Avenue NW., Washington, DC 20006. The location of the meeting is subject to change. Please refer to NTIA's Web site, *http://www.ntia.doc.gov/other-publication/2014/privacy-multistakeholder-process-facial-recognition-technology,* for the most current information.

Other Information: The meeting is open to the public and the press. The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to John Verdi at (202) 482–8238 or *jverdi@ntia.doc.gov* at least seven (7) business days prior to the meeting. The meeting will also be webcast. Requests for real-time captioning of the webcast or other auxiliary aids should be directed to John Verdi at (202) 482–8238 or *jverdi@ntia.doc.gov* at least seven (7) business days prior to the meeting. There will be an opportunity for stakeholders viewing the webcast to participate remotely in the meeting through a moderated conference bridge, including polling functionality. Access details for the meeting are subject to change. Please refer to NTIA's Web site, *http://www.ntia.doc.gov/other-publication/2013/privacy-multistakeholder-process-facial-recognition-technology,* for the most current information.

Dated: May 8, 2015.

Kathy Smith,

Chief Counsel, National Telecommunications and Information Administration.

[FR Doc. 2015–11548 Filed 5–12–15; 8:45 am]

BILLING CODE 3510–60–P

[1] The Privacy Blueprint is available at *http://www.whitehouse.gov/sites/default/files/privacy-final.pdf.*

[2] *Id.*

[3] NTIA, *Facial Recognition Technology, http://www.ntia.doc.gov/other-publication/2013/privacy-multistakeholder-process-facial-recognition-technology.*

COMMODITY FUTURES TRADING COMMISSION

Agency Information Collection Activities: Notice of Intent to Renew Collection 3038–0033, Notification of Pending Legal Proceedings

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice.

SUMMARY: The Commodity Futures Trading Commission (''CFTC'' or ''Commission'') is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (''PRA''), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the rule requiring notification of pending legal proceedings.

DATES: Comments must be submitted on or before July 13, 2015.

ADDRESSES: You may submit comments, identified by OMB Control No. 3038–0033 by any of the following methods:

• The Agency's Web site, at *http://comments.cftc.gov/*. Follow the instructions for submitting comments through the Web site.

• *Mail:* Christopher Kirkpatrick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581.

• *Hand Delivery/Courier:* Same as Mail above.

Please submit your comments using only one method.

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

Please submit your comments using only one method.

FOR FURTHER INFORMATION CONTACT: Rob Schwartz, Office of General Counsel, Commodity Futures Trading Commission, 1155 21st Street NW., Washington, DC 20581; phone: (202) 418–5958; fax: (202) 418–5567; email: *rschwartz@cftc.gov,* and refer to OMB Control No. 3038–0033.

SUPPLEMENTARY INFORMATION: Under the PRA, Federal agencies must obtain approval from the Office of Management and Budget (''OMB'') for each collection of information that they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA, 44 U.S.C. 3506(c)(2)(A), requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, the CFTC is publishing notice of the proposed collection of information listed below.

With respect to the following collection of information, the CFTC invites comments on:

• Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have a practical use;

• The accuracy of the Commission's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Ways to enhance the quality, usefulness, and clarity of the information to be collected; and

• Ways to minimize the burden of collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology; *e.g.,* permitting electronic submission of responses.

All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to *http://www.cftc.gov*. You should submit only information that you wish to make available publicly. If you wish the Commission to consider information that you believe is exempt from disclosure under the Freedom of Information Act, a petition for confidential treatment of the exempt information may be submitted according to the procedures established in § 145.9 of the Commission's regulations.[1] The Commission reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse or remove any or all of your submission from *http://www.cftc.gov* that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of the Information Collection Request will be retained in the public comment file and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under the Freedom of Information Act.

Title: Notification of Pending Legal Proceedings Pursuant to 17 CFR 1.60, OMB Control Number 3038–0033-Extension.

Abstract: The rule is designed to assist the Commission in monitoring legal proceedings involving the responsibilities imposed on contract markets and their officials and futures commission merchants and their principals by the Commodity Exchange Act, or otherwise.

Burden: The Commission estimates the burden of this collection of information as follows:

ESTIMATED ANNUAL REPORTING BURDEN

17 CFR section	Annual number of respondents	Total annual responses	Hours per response	Total hours
1.60	105	1	.20	.20

There are no capital costs or operating and maintenance costs associated with this collection.

(**Authority:** 44 U.S.C. 3501 *et seq.*)

Dated: May 7, 2015.

Robert N. Sidman,

Deputy Secretary of the Commission.

[FR Doc. 2015–11507 Filed 5–12–15; 8:45 am]

BILLING CODE 6351–01–P

BUREAU OF CONSUMER FINANCIAL PROTECTION

[Docket No. CFPB–2015–0007]

Partial Extension of Comment Deadline on CARD Act Request for Information

AGENCY: Bureau of Consumer Financial Protection.

[1] 17 CFR 145.9.

ACTION: Notice; extension of comment period.

SUMMARY: Section 502(a) of the Credit Card Accountability Responsibility and Disclosure Act of 2009 (CARD Act or Act) requires the Bureau of Consumer Financial Protection (Bureau or CFPB) to conduct a review (Review) of the consumer credit card market, within the limits of its existing resources available for reporting purposes. In connection with conducting that Review, and in accordance with Section 502(b) of the CARD Act, the Bureau published a Request for Information in the **Federal Register** on March 19, 2015, soliciting from the public comment on a number of aspects of the consumer credit card market. The Request for Information provided a 60-day comment period that will end on May 18, 2015. To allow interested persons additional time to consider and submit their responses, the Bureau has determined that an extension of the comment period on four of the specific areas of interest noted in the original Request for Information—online disclosures, grace periods, add-on products, and debt collection—until June 17, 2015, is appropriate.

DATES: The comment period for the Request for Information Regarding Credit Card Market, published March 19, 2015, at 80 FR 14365, is extended with respect to four areas of interest. Responses on those areas of interest specifically extended must now be received on or before June 17, 2015; the deadline for responses on all other areas remains unchanged.

ADDRESSES: You may submit comments, identified by Docket No. CFPB–2015–0007, by any of the following methods:

- *Electronic: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Monica Jackson, Office of the Executive Secretary, Consumer Financial Protection Bureau, 1700 G Street NW., Washington, DC 20552.
- *Hand Delivery/Courier:* Monica Jackson, Office of the Executive Secretary, Consumer Financial Protection Bureau, 1275 First Street NE., Washington, DC 20002.

Instructions: All submissions should include the agency name and docket number for this proposal. Because paper mail in the Washington, DC area and at the Bureau is subject to delay, commenters are encouraged to submit comments electronically. In general, all comments received will be posted without change to *http://www.regulations.gov.* In addition, comments will be available for public inspection and copying at 1275 First Street NE., Washington, DC 20002, on official business days between the hours of 10 a.m. and 5 p.m. eastern standard time. You can make an appointment to inspect the documents by telephoning (202) 435–7275.

All comments, including attachments and other supporting materials, will become part of the public record and subject to public disclosure. Sensitive personal information, such as account numbers or social security numbers, should not be included. Comments generally will not be edited to remove any identifying or contact information.

FOR FURTHER INFORMATION CONTACT: For general inquiries, submission process questions, or any additional information, please contact Monica Jackson, Office of the Executive Secretary, 202–435–7275.

SUPPLEMENTARY INFORMATION: On March 19, 2015, the Bureau published the Request for Information in the **Federal Register**, 80 FR 14365. The Request for Information seeks comment, data, and information from the public on the state of the credit card market, both generally and specifically to 12 issues and areas specifically identified by the Bureau.

Since publication, the Bureau has received multiple requests for extension of the comment deadline. While the Bureau believes the initial deadline should provide sufficient time for the public to comment on these matters, it wants to ensure that all interested parties are able to provide information and insight to the Bureau as it seeks greater understanding of the credit card market.

The Bureau wants to balance interested parties' desire to have additional time to consider the issues raised in the Request for Information, gather data, and prepare their responses, with the need to proceed expeditiously to consider comments. By extending the comment period for certain issues, the Bureau believes that it is effectively striking that balance. The Bureau believes that a 30-day extension on four of the twelve issues raised in the Request for Information—online disclosures, grace periods, add-on products, and debt collection—is appropriate, as these questions focus on particular areas of potential policy concern and may require additional time to respond. The comment period for those four issues will therefore close on June 17, 2015; the deadline for comments on all other areas and issues remains unchanged.

Dated: May 5, 2015.

Christopher A. D'Angelo,

Chief of Staff, Bureau of Consumer Financial Protection.

[FR Doc. 2015–11496 Filed 5–12–15; 8:45 am]

BILLING CODE 4810–AM–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

[Docket Number DARS–2015–0005]

Submission for OMB Review; Comment Request

AGENCY: Defense Acquisition Regulations System, Department of Defense, DoD.

ACTION: Notice.

SUMMARY: The Defense Acquisition Regulations System has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

DATES: Consideration will be given to all comments received by June 12, 2015.

SUPPLEMENTARY INFORMATION:

Title and OMB Number: Defense Federal Acquisition Regulation Supplement (DFARS) Business Systems–Definition and Administration; DFARS 234, Earned Value Management System, OMB Control Number 0704–0479.

Type of Request: Extension.

Number of Respondents: 12.

Responses per Respondent: 1.

Annual Responses: 12.

Average Burden per Response: Approximately 676 hours.

Annual Burden Hours: 8,112.

Needs and Uses: DFARS clause 252.242–7005 requires contractors to respond to written determinations of significant deficiencies in the contractor's business systems as defined in the clause. The information contractors are required to submit in response to findings of significant deficiencies in their accounting system, estimating system, material management and accounting system and purchasing system has previously been approved by the Office of Management and Budget. This request specifically addresses information required by DFARS clause 252.234–7002, Earned Value Management System, for contractors to respond to determinations of significant deficiencies in a contractor's Earned Value Management System (EVMS). The requirements apply to entities that are contractually required to maintain an EVMS. DoD needs this information to document actions to correct significant deficiencies in contractor business systems. DoD contracting officers use the information to mitigate the risk of unallowable and unreasonable costs being charged on government contracts.

Affected Public: Businesses or other for-profit institutions.

Frequency: On occasion.

OMB Desk Officer: Ms. Jasmeet Seehra.

Written comments and recommendations on the proposed information collection should be sent to Ms. Seehra at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

You may also submit comments, identified by docket number and title, by the following method:

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

Instructions: All submissions received must include the agency name, docket number, and title for the **Federal Register** document. The general policy for comments and other public submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information provided. To confirm receipt of your comment(s), please check *http://www.regulations.gov* approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

DoD Public Collections Clearance Officer: Mr. Frederick C. Licari.

Written requests for copies of the information collection proposal should be sent to Mr. Licari at: Publication Collections Program, WHS/ESD Information Management Division, 4800 Mark Center Drive, 2nd Floor, East Tower, Suite 02G09, Alexandria, VA 22350–3100.

Manuel Quinones,

Editor, Defense Acquisition Regulations System.

[FR Doc. 2015–11553 Filed 5–12–15; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Intent To Prepare a Draft Supplemental Environmental Impact Statement (Supplement 2) for the Mississippi River Ship Channel, Gulf to Baton Rouge, Louisiana, General Reevaluation Study

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of Intent.

SUMMARY: The U.S. Army Corps of Engineers (Corps), New Orleans District intends to prepare a Draft Supplemental Environmental Impact Statement (SEIS), to be integrated with a General Reevaluation Report (GRR), for the Mississippi River Ship Channel, Gulf to Baton Rouge, Louisiana Project. The GRR and SEIS will investigate deepening and maintaining the Mississippi River Ship Channel from 45 feet deep to as much as 50 feet deep.

DATES: A public scoping meeting is scheduled for Tuesday, May 26, 2015 in Belle Chasse, LA. An open house will be held at 6:00 p.m. followed by the scoping meeting at 6:30 p.m. A second public scoping meeting will be held Thursday morning, May 28, 2015 in New Orleans, LA. An open house will be held at 9 a.m. followed by the scoping meeting at 9:30 a.m. A third public scoping meeting will be held Thursday evening, May 28, 2015 in Baton Rouge, LA. An open house will be held at 6:00 p.m. followed by the scoping meeting at 6:30 p.m.

ADDRESSES: The scoping meeting and open house on Tuesday, May 26 will be held at the Belle Chasse Branch Library, 8442 Highway 23, Belle Chasse, LA 70037. The scoping meeting and open house in the morning of Thursday, May 28 will be held at Corps of Engineers District Office in the District Assembly Room, 7400 Leake Ave, New Orleans, LA 70118. The scoping meeting and open house in the evening of Thursday, May 28 will be held at Louisiana State Police Training Academy, 7901 Independence Blvd., Baton Rouge, LA 70806.

FOR FURTHER INFORMATION CONTACT: Questions about the public scoping meeting, the GRR and SEIS should be addressed to: Mr. Richard Boe or Mr. Steve Roberts, U.S. Army Corps of Engineers, Environmental Compliance Branch, P.O. Box 60267, New Orleans, LA 70160–0267, by email to *richard.e.boe@usace.army.mil* or *steve.w.roberts@usace.army.mil*, or by telephone at (504) 862–1505 or (504) 862–2517.

SUPPLEMENTARY INFORMATION:

1. Project Background and Authorization.

The 1981 Feasibility Study entitled ''Deep-Draft Access to the Ports of New Orleans and Baton Rouge, Louisiana'' (1981 Feasibility Study) was authorized by Section 2 of the Rivers and Harbors Act of 1945, (Pub. L. 79–14), which combined several existing deep-draft projects on the Mississippi River and modified them to provide new navigation channel dimensions. The 1981 Feasibility Study, which included an Environmental Impact Statement (EIS), recommended deepening the Mississippi River's navigation channel to a 55-foot depth from Baton Rouge to the Gulf of Mexico. A Chief of Engineers Report was completed in April 1983, and a Record of Decision was signed on December 23, 1986. The Mississippi River Ship Channel, Gulf to Baton Rouge, Louisiana project was authorized for construction by Section 101 of the 1985 Supplemental Appropriations Act (Pub. L. 99–88).

The authorized plan provides for a navigation channel with a 55-foot depth over a 750-foot bottom width from the Gulf of Mexico to Baton Rouge, Louisiana, and a turning basin at the head of the deepened channel in Baton Rouge. Authorization also included deepening the existing 35 feet deep by 1,500 feet wide channel at the New Orleans harbor to 40 feet, providing river training works in South Pass and Pass a Loutre, and creating wetlands and upland habitat with dredged material along Southwest Pass.

Phase I of the Mississippi River Ship Channel, Gulf to Baton Rouge, LA Project consisted of a 45-foot channel from the Gulf of Mexico to river mile 181 near Donaldsonville, Louisiana, and was completed in December 1987. Phase II consisted of the remainder of the 45 foot channel from river mile 181 to Baton Rouge, and was completed in December 1994. Phase III of the Project was identified as the deepening of the entire channel to 55 feet from the Gulf of Mexico to Baton Rouge. The Non-Federal Sponsor, the State of Louisiana, Department of Transportation and Development, has requested that an incremental phase of deepening the entire length of the channel to 50 feet be considered. A final phase of deepening the channel to 55 feet may be considered in the future. The Water Resources Reform and Development Act of 2014 amended the Water Resources and Development Act of 1986, to increase the Federal threshold for full

Federal channel maintenance responsibilities from 45 feet to 50 feet deep.

The General Reevaluation Report will identify the depth that creates the greatest net benefits up to a 50 foot channel in order to proceed to implementation and to phase the remaining work accordingly. A report released by the Institute of Water Resources (IWR) in June 2012 evaluated the preparedness of U.S. ports to accommodate Post-Panamax size vessels. The Panama Canal is being enlarged to accommodate vessels that draft 50 feet (Post-Panamax vessels) and the enlarged waterway is expected to be completed in 2016. The IWR report found that these vessels currently call at U.S. ports and will dominate the world fleet in the future. Post-Panamax vessels will call in increasing numbers at U.S. ports that can accommodate them. Currently, Mississippi River ports cannot accommodate these vessels. There may be economic justification in expanding port projects to accommodate post-Panamax vessels. The ports located along the lower Mississippi River, being the dominant ports for the export of grains from the U.S., will likely play a key role in meeting these future needs if they are ready with a post-Panamax sized channel.

2. Proposed Action

The purpose of the GRR and SEIS is to identify the depth that creates the greatest net benefits up to a depth of 50 feet in order to implement the deepening the Mississippi River channel from the current depth of 45 feet. An evaluation of population growth trends, trade forecasts and examination of the current port capacities shows that there is very likely economic justification for deepening the channel. This GRR and SEIS will evaluate existing conditions, alternative designs, and provide environmental analysis of anticipated impacts associated with dredging and disposal alternatives. The handling of dredged material generated during construction, the engineering design of dredged material disposal areas, and several other aspects of the Project, that were evaluated in the 1981 Feasibility Report and EIS, will be updated as appropriate.

3. Alternatives

An evaluation of alternatives, including a ''no action'' alternative will be included. In the SEIS, the ''no action'' alternative will be the continued operation and maintenance of the 45 feet deep Mississippi River deep-draft navigation channel from Baton Rouge, LA to the Gulf of Mexico. Other alternatives will be determined through scoping, but are anticipated to include an alternative of a 48 feet deep channel and an alternative of a 50 feet deep channel. The plan with the highest net benefits (the difference between transportation cost savings and project costs) will be identified as the recommended plan. Previous evaluations of alternative dredging methods, dredged material handling, and disposal alternatives will also be updated and/or re-evaluated as appropriate.

4. Scoping

The Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act (NEPA) relating to ''Scoping'' as set forth in at 40 CFR 1501.7 require an early and open process for determining the scope of the issues to be addressed in an EIS or SEIS and for identifying significant issues related to the proposed action. The public will be involved in the scoping and evaluation process through advertisements, notices, and other means. Federal, state and local agencies, and other interested groups will also be involved. Meetings to address discrete issues or parts or functions of the study may be held. All parties are invited to participate in the scoping process by identifying any additional concerns on issues, studies needed, alternatives, procedures, and other matters related to the scope of the SEIS.

A. The Corps will provide additional notification of the times and locations of the public scoping meetings through newspaper advertisements and other means (see **DATES**). Following short presentations at the scoping meetings, verbal and written comments on the scope of the SEIS will be accepted. A transcript of verbal comments will be generated to ensure accuracy. Comments will also be accepted via email or postal mail.

B. *Issues.* Issues that have been identified include, but are not limited to, the level of existing and forecasted vessel traffic, changes in socio-economic conditions since the 1981 Feasibility Report and EIS, evaluation of direct and indirect social and cultural impacts on affected communities and the appropriate and practicable mitigation measures to address those impacts, a re-evaluation of salt water intrusion on municipal drinking water supply, and re-evaluation of reasonable dredging and disposal alternatives and associated impacts. This non-exhaustive list of issues is intended to facilitate public comment on the scope of the SEIS. Concurrent with the NEPA process, the Corps will ensure compliance with all applicable environmental laws, regulations, and executive orders governing issues such as Federally-listed threatened and endangered species, essential fish habitats, health and safety, general environmental concerns, wetlands and other aquatic resources, historic properties, fish and wildlife values, flood hazards, navigation, recreation, water quality, and environmental justice. In selecting a recommended plan, the Corps will also consider issues identified and comments made throughout scoping, public involvement, and interagency coordination. The Corps expects to better define the issues of concern and the methods that will be used to evaluate those issues through the scoping process.

C. *Environmental Review and Consultation.* The proposed action (recommended plan) will undergo an evaluation for compliance with all applicable guidelines pursuant to Section 404(b) of the Clean Water Act. This review will include a detailed reevaluation of all practicable alternatives as it relates to the handling and disposal of the dredged material. The Corps will develop and provide information on the resources to be impacted and the proposed mitigation measures as it relates to each of the alternatives. Although the Corps does not plan to invite any Federal agencies to be cooperating agencies, input and critical information from the U.S. Environmental Protection Agency, the U.S. Fish and Wildlife Service, and other Federal, state, and local agencies is expected.

5. Public Scoping Meeting Special Accommodations

The public scoping meeting places will be physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Steve Roberts, (504) 862–2517 (voice), or email at *steve.w.roberts@usace.army.mil* at least 5 business days prior to the meeting dates.

6. Estimated Date of Draft SEIS Availability

It is estimated that the draft SEIS will be available to the public for review and comment in December 2016. At least one public hearing will be held at that time, during which the public will be provided the opportunity to comment on the SEIS before it becomes final.

Dated: May 5, 2015.

Austin T. Appleton,

Lieutenant Colonel, U.S. Army, Acting District Commander.

[FR Doc. 2015–11556 Filed 5–12–15; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2015–ICCD–0062]

Agency Information Collection Activities; Comment Request; Federal Perkins Loan Program Master Promissory Note

AGENCY: Federal Student Aid (FSA), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 3501 *et seq.*), ED is proposing a revision of an existing information collection.

DATES: Interested persons are invited to submit comments on or before July 13, 2015.

ADDRESSES: Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting Docket ID number ED–2015–ICCD–0062 or via postal mail, commercial delivery, or hand delivery. If the regulations.gov site is not available to the public for any reason, ED will temporarily accept comments at *ICDocketMgr@ed.gov. Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted; ED will ONLY accept comments during the comment period in this mailbox when the regulations.gov site is not available.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Mailstop L–OM–2–2E319, Room 2E103, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Beth Grebeldinger, 202–377–4018.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Federal Perkins Loan Program Master Promissory Note.

OMB Control Number: 1845–0074.

Type of Review: A revision of an existing information collection.

Respondents/Affected Public: Individuals or Households.

Total Estimated Number of Annual Responses: 276,934.

Total Estimated Number of Annual Burden Hours: 138,467.

Abstract: The Federal Perkins Loan Master Promissory Note (MPN) provides the terms and conditions of the Perkins Loan program and is prepared by the participating eligible institution and signed by the borrower. The borrower may receive loans for a single academic year or multiple academic years. The adoption of the MPN in the Perkins Loan Program has simplified the loan process by eliminating the need for institutions to prepare and students to sign, a promissory note each award year.

Dated: May 7, 2015.

Kate Mullan,

Acting Director, Information Collection Clearance Division, Office of the Chief Privacy Officer, Office of Management.

[FR Doc. 2015–11474 Filed 5–12–15; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2015–ICCD–0063]

Agency Information Collection Activities; Comment Request; Gainful Employment Recent Graduates Employment and Earning Survey Pilot Test

AGENCY: Federal Student Aid (FSA), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 3501 *et seq.*), ED is proposing a new information collection.

DATES: Interested persons are invited to submit comments on or before July 13, 2015.

ADDRESSES: Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting Docket ID number ED–2015–ICCD–0063 or via postal mail, commercial delivery, or hand delivery. If the regulations.gov site is not available to the public for any reason, ED will temporarily accept comments at *ICDocketMgr@ed.gov. Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted; ED will ONLY accept comments during the comment period in this mailbox when the regulations.gov site is not available.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Mailstop L–OM–2–2E319, Room 2E105, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Beth Grebeldinger, 202–377–4018.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Gainful Employment Recent Graduates Employment and Earning Survey Pilot Test.

OMB Control Number: 1845—NEW.

Type of Review: A new information collection.

Respondents/Affected Public: Individuals or Households.

Total Estimated Number of Annual Responses: 2,040.

Total Estimated Number of Annual Burden Hours: 170.

Abstract: The National Center for Education Statistics (NCES) of the U.S. Department of Education (ED) is required by regulation to develop an earnings survey to support gainful employment program evaluations (see 34 CFR 668.406 as specified in final regulations published in the **Federal Register** in October 2014). NCES is responsible for developing the survey and the technical standards to which programs must adhere in its administration. The regulations specify that the Secretary of Education will publish in the **Federal Register** a pilot-tested earnings survey and the standards required for its administration. The draft standards are being published for public comment in a separate announcement. This request is to conduct a pilot test of the Recent Graduates Employment and Earnings Survey (RGEES). The RGEES pilot test will measure unit response rates and enable comparisons to earnings data collected through other surveys and in administrative records. The pilot study results will be used to compare median earnings collected through the survey to median earnings for graduates from comparable programs based on a match to the Social Security Administration as part of the 2012 gainful employment informational rates.

Dated: May 11, 2015.

Stephanie Valentine,

Acting Director, Information Collection Clearance Division, Office of the Chief Privacy Officer, Office of Management.

[FR Doc. 2015–11665 Filed 5–11–15; 4:15 pm]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Energy Information Administration

Proposed Agency Information Collection

AGENCY: U.S. Energy Information Administration (EIA), U.S. Department of Energy (DOE).

ACTION: Notice and request for OMB review and comment.

SUMMARY: EIA has submitted the Forms EIA–457A, C, D, E, F and G, ''2015 Residential Energy Consumption Survey'' to the Office of Management and Budget (OMB) for review and reinstatement under the provisions of the Paperwork Reduction Act of 1995. The proposed collection is a periodic series of surveys of households and their energy suppliers with the purpose of collecting and reporting energy characteristics, consumption, and expenditures data of homes in the United States.

DATES: Comments regarding this proposed information collection must be received on or before June 12, 2015. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, please advise the DOE Desk Officer at OMB of your intention to make a submission as soon as possible. The Desk Officer may be telephoned at 202–395–4718.

ADDRESSES: Written comments should be sent to the:

DOE Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10102, 735 17th Street NW., Washington, DC 20503.

And to

James Berry, Survey Manager, EI–22, Forrestal Building, U.S. Department of Energy, Washington, DC 20585, or by email at *james.berry@eia.gov.* Alternatively, Mr. Berry may be contacted by telephone at (202) 586–5543.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the forms and instructions should be directed to Mr. Berry at the contact information given above. To view the forms online please go to: *http://www.eia.gov/survey/#eia-457.*

SUPPLEMENTARY INFORMATION: This information collection request contains:

(1) OMB No. 1905–0092.

(2) *Information Collection Request Title:* EIA–457A C, D, E, F, G, ''Residential Energy Consumption Survey''.

(3) *Type of Request:* Reinstatement with change of a previously approved collection for which approval has discontinued.

(4) *Purpose:* Need for and proposed use of the information: The RECS is used to collect data on energy characteristics, consumption, and expenditures of U.S. homes. These data collections fulfill planning, analysis and decision-making needs of DOE, other Federal agencies, State governments, and the private sector. Respondents are households of selected housing units and their energy suppliers. Response obligations are Voluntary (households) and Mandatory (energy suppliers). This will be a proposed reinstatement of a previously approved collection and three-year clearance request to OMB. The content of the 2015 RECS will be largely unchanged from the 2009 RECS. Sampling will incorporate key definitions and elements from previous RECS. Housing units will be selected via a multi-stage area probability sample design and will be statistically representative of U.S. occupied housing units, as well as selected sub-national geographies. In addition to the billing data collection for 2015 RECS housing units, EIA will also collect billing data for household records in the RECS National Pilot study. Because the National Pilot sample design is similar to the 2015 RECS, EIA expects most energy suppliers that report in the 2015 RECS will also be in the sample for the National Pilot data collection.

(5) *Annual Estimated Number of Respondents:* 1,351.

(6) *Annual Estimated Number of Total Responses:* 4,455.

(7) *Annual Estimated Number of Burden Hours:* 1,697.

(8) *Annual Estimated Reporting and Recordkeeping Cost Burden:* EIA estimates that there are no capital and start-up costs associated with this data collection. The information is maintained in the normal course of business. For household respondents no additional record keeping or other burden is required outside the interview process. The cost of burden hours to all household, rental agent, and energy supplier respondents is estimated to be $122,133 (1,697 annual burden hours times the current hourly rate of $71.97.)

Therefore, other than the cost of burden hours, EIA estimates that there are no additional costs for generating, maintaining and providing the information.

Please refer to the supporting statement as well as the proposed forms and instructions for more information about the purpose, who must report, when to report, where to submit, the elements to be reported, detailed instructions, provisions for confidentiality, and uses (including possible nonstatistical uses) of the information. For instructions on obtaining materials, see the **FOR FURTHER INFORMATION CONTACT** section.

Statutory Authority: Section 13(b) of the Federal Energy Administration Act of 1974, Public Law 93–275, codified at 15 U.S.C. 772(b).

Issued in Washington, DC, on May 7, 2015.

Nanda Srinivasan,

Director, Office of Survey Development and Statistical Integration U.S. Energy Information Administration.

[FR Doc. 2015–11550 Filed 5–12–15; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER15–1630–000]

U.S. Borax, Inc.; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding, of U.S. Borax, Inc.'s application for market-based rate authority, with an accompanying rate schedule, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability is May 26, 2015.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding(s) are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: May 6, 2015.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2015–11544 Filed 5–12–15; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC15–127–000.
Applicants: Calpine Greenleaf, Inc.
Description: Amendment to April 21, 2015 Application For Approval Under Section 203 of the Federal Power Act and Request for Expedited Action of Calpine Greenleaf, Inc.
Filed Date: 5/6/15.
Accession Number: 20150506–5161.
Comments Due: 5 p.m. ET 5/18/15.

Docket Numbers: EC15–134–000.
Applicants: American Electric Power Service Corporation, Indiana Michigan Power Company.
Description: Application Under Section 203 of the Federal Power Act to Acquire Transmission Facilities and Request for Expedited Consideration and Certain Waivers of American Electric Power Service Corporation.
Filed Date: 5/6/15.
Accession Number: 20150506–5198.
Comments Due: 5 p.m. ET 5/27/15.

Docket Numbers: EC15–135–000.
Applicants: Flat Water Wind Farm, LLC.
Description: Application for Authorization under Section 203 of the Federal Power Act and Request for Waivers, Confidential Treatment, and Expedited Consideration of Flat Water Wind Farm, LLC.
Filed Date: 5/6/15.
Accession Number: 20150506–5234.
Comments Due: 5 p.m. ET 5/27/15.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–2977–005.
Applicants: Mesquite Power, LLC.
Description: Notice of Non-Material Change in Status of Mesquite Power, LLC.
Filed Date: 5/7/15.
Accession Number: 20150507–5055.
Comments Due: 5 p.m. ET 5/28/15.

Docket Numbers: ER15–861–002.
Applicants: California Independent System Operator Corporation.
Description: Compliance filing per 35: 2015–05–06 EIM Transition Compliance to be effective 3/16/2015.
Filed Date: 5/6/15.
Accession Number: 20150506–5191.
Comments Due: 5 p.m. ET 5/27/15.

Docket Numbers: ER15–1052–002.
Applicants: Transource Missouri, LLC.
Description: Compliance filing per 35: TMO Facilities Sharing Agreement Concurrence Compliance to be effective 4/8/2015.
Filed Date: 5/6/15.
Accession Number: 20150506–5197.
Comments Due: 5 p.m. ET 5/27/15.

Docket Numbers: ER15–1679–000.
Applicants: PJM Interconnection, L.L.C.
Description: Section 205(d) rate filing per 35.13(a)(2)(iii): Original Service Agreement No. 4137; Queue Y3–103 (ISA) to be effective 4/6/2015.
Filed Date: 5/6/15.
Accession Number: 20150506–5196.
Comments Due: 5 p.m. ET 5/27/15.

Docket Numbers: ER15–1680–000.
Applicants: Southwest Power Pool, Inc.
Description: Section 205(d) rate filing per 35.13(a)(2)(iii): 3024 KCP&L GMO and Transource Missouri Interconnection Agr to be effective 4/8/2015.
Filed Date: 5/7/15.
Accession Number: 20150507–5068.
Comments Due: 5 p.m. ET 5/28/15.

Docket Numbers: ER15–1681–000.

Applicants: Spokane Energy, LLC.
Description: Tariff Withdrawal per 35.15: Cancellation of MBR Tariff to be effective 5/8/2015.
Filed Date: 5/7/15.
Accession Number: 20150507–5126.
Comments Due: 5 p.m. ET 5/28/15.

Docket Numbers: ER15–1682–000.
Applicants: TransCanyon DCR, LLC.
Description: Baseline eTariff Filing per 35.1: TransCanyon Transmission Owner Tariff to be effective 7/6/2015.
Filed Date: 5/7/15.
Accession Number: 20150507–5150.
Comments Due: 5 p.m. ET 5/28/15.

Docket Numbers: ER15–1683–000.
Applicants: PacifiCorp.
Description: Tariff Withdrawal per 35.15: Termination of Lehi Highland Sub Trans Line Upgrade Construct Agmt to be effective 7/21/2015.
Filed Date: 5/7/15.
Accession Number: 20150507–5157.
Comments Due: 5 p.m. ET 5/28/15.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: May 7, 2015.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2015–11517 Filed 5–12–15; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER15–1657–000]

SEPG Energy Marketing Services, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding, of SEPG Energy Marketing Services, LLC's application for market-based rate authority, with an accompanying rate schedule, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability is May 26, 2015.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding(s) are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: May 6, 2015.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2015–11545 Filed 5–12–15; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP15–966–000.
Applicants: WPX Energy Marketing, LLC,Morgan Stanley Capitol Group Inc.
Description: Joint Petition of WPX Energy Marketing, LLC and Morgan Stanley Capital Group, Inc. for Temporary Waiver of Capacity Release and Certain Other Regulations and Policies and Related Tariff Provisions, and Request for Expedited Treatment.
Filed Date: 5/4/15.
Accession Number: 20150504–5133.
Comments Due: 5 p.m. ET 5/11/15.

Docket Numbers: RP15–967–000.
Applicants: Caledonia Energy Partners, L.L.C.
Description: Compliance filing per 154.203: Caledonia Energy Partners, L.L.C., FERC Order 801 Compliance Filing to be effective 6/4/2015.
Filed Date: 5/4/15.
Accession Number: 20150504–5136.
Comments Due: 5 p.m. ET 5/18/15.

Docket Numbers: RP15–968–000.
Applicants: Freebird Gas Storage, L.L.C.
Description: Compliance filing per 154.203: Freebird Gas Storage, L.L.C., FERC Order 801 Compliance Filing to be effective 6/4/2015.
Filed Date: 5/4/15.
Accession Number: 20150504–5138.
Comments Due: 5 p.m. ET 5/18/15.

Docket Numbers: RP15–969–000.
Applicants: Enable Gas Transmission, LLC.
Description: Section 4(d) rate filing per 154.204: Negotiated Rate Filing—May 2015—LER 0222 Removal to be effective 5/4/2015.
Filed Date: 5/4/15.
Accession Number: 20150504–5203.
Comments Due: 5 p.m. ET 5/18/15.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: May 5, 2015.

Kimberly D. Bose,

Secretary.

[FR Doc. 2015–11462 Filed 5–12–15; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG15–83–000.
Applicants: Goodwell Wind Project, LLC.
Description: Self-Certification of EG or FC of Goodwell Wind Project, LLC.
Filed Date: 5/6/15.
Accession Number: 20150506–5061.
Comments Due: 5 p.m. ET 5/27/15.

Docket Numbers: EG15–84–000.
Applicants: Breckinridge Wind Project, LLC.
Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Breckinridge Wind Project, LLC.
Filed Date: 5/6/15.
Accession Number: 20150506–5156.
Comments Due: 5 p.m. ET 5/27/15.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER13–1488–005.
Applicants: Quantum Pasco Power, LP.
Description: Compliance filing per 35: Quantum Pasco Power Revised Electric Tariff Filing to be effective 5/7/2015.
Filed Date: 5/6/15.
Accession Number: 20150506–5069.
Comments Due: 5 p.m. ET 5/27/15.

Docket Numbers: ER13–1489–007.
Applicants: Quantum Lake Power, LP.
Description: Compliance filing per 35: Quantum Lake Power Revised Electric Tariff Filing to be effective 5/7/2015.
Filed Date: 5/6/15.
Accession Number: 20150506–5064.
Comments Due: 5 p.m. ET 5/27/15.

Docket Numbers: ER15–1046–006.
Applicants: Kansas City Power & Light Company.
Description: Compliance filing per 35: KCP&L FSA Rate Schedule 140 Compliance Filing to be effective 4/8/2015.
Filed Date: 5/5/15.
Accession Number: 20150505–5170.
Comments Due: 5 p.m. ET 5/26/15.

Docket Numbers: ER15–1048–005.
Applicants: KCP&L Greater Missouri Operations Company.
Description: Compliance filing per 35: KCP&L–GMO FSA Rate Schedule 136 Compliance Filing to be effective 4/8/2015.
Filed Date: 5/5/15.
Accession Number: 20150505–5171.
Comments Due: 5 p.m. ET 5/26/15.

Docket Numbers: ER15–1442–001.
Applicants: Municipal Energy of PA, LLC.
Description: Tariff Amendment per 35.17(b): Update to Market-Based Rate Tariff Application to be effective 5/1/2015 under ER15–1442 Filing Type: 120.
Filed Date: 5/6/15.
Accession Number: 20150506–5091.
Comments Due: 5 p.m. ET 5/27/15.

Docket Numbers: ER15–1471–000.
Applicants: Blue Sky West, LLC.
Description: Supplement to April 7, 2015 Blue Sky West, LLC tariff filing.
Filed Date: 4/30/15.
Accession Number: 20150430–5428.
Comments Due: 5 p.m. ET 5/11/15.

Docket Numbers: ER15–1557–001.
Applicants: Entrust Energy East, Inc.
Description: Compliance filing per 35: Update to Notice of Succession and Revised Market-Based Rate Tariff to be effective 4/22/2015.
Filed Date: 5/6/15.
Accession Number: 20150506–5088.
Comments Due: 5 p.m. ET 5/27/15.

Docket Numbers: ER15–1673–000.
Applicants: Southwestern Electric Power Company.
Description: § 205(d) rate filing per 35.13(a)(2)(iii): SWEPCO-Bentonville PSA Amendment to be effective 1/1/2015.
Filed Date: 5/5/15.
Accession Number: 20150505–5188.
Comments Due: 5 p.m. ET 5/26/15.

Docket Numbers: ER15–1674–000.
Applicants: PJM Interconnection, L.L.C., West Penn Power Company.
Description: § 205(d) rate filing per 35.13(a)(2)(iii): West Penn Power submits Service Agreement No. 4119 to be effective 7/5/2015.
Filed Date: 5/5/15.
Accession Number: 20150505–5207.
Comments Due: 5 p.m. ET 5/26/15.

Docket Numbers: ER15–1675–000.
Applicants: Puget Sound Energy, Inc.
Description: § 205(d) rate filing per 35.13(a)(2)(iii): Blaine NITSA, NOA and Interconnection Agreement to be effective 3/1/2015.
Filed Date: 5/6/15.
Accession Number: 20150506–5002.
Comments Due: 5 p.m. ET 5/27/15.

Docket Numbers: ER15–1676–000.
Applicants: Balko Wind Transmission, LLC.
Description: Initial rate filing per 35.12 Initial Filing for Balk Wind Transmission, LLC to be effective 5/6/2015.
Filed Date: 5/6/15.
Accession Number: 20150506–5045.
Comments Due: 5 p.m. ET 5/27/15.

Docket Numbers: ER15–1677–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: § 205(d) rate filing per 35.13(a)(2)(iii): 2015–05–06 Attachment P GFA Update Filing to be effective 7/6/2015.
Filed Date: 5/6/15.
Accession Number: 20150506–5125.
Comments Due: 5 p.m. ET 5/27/15.

Docket Numbers: ER15–1678–000.
Applicants: PJM Interconnection, L.L.C., Duke Energy Ohio, Inc.
Description: § 205(d) rate filing per 35.13(a)(2)(iii): Duke Energy Ohio submits revised Service Agreement No. 3141 to be effective 4/13/2015.
Filed Date: 5/6/15.
Accession Number: 20150506–5158.
Comments Due: 5 p.m. ET 5/27/15.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: May 6, 2015.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2015–11543 Filed 5–12–15; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER15–1668–000]

Phoenix Energy Group, LLC; Supplemental Notice That Initial Market-Based Rate Filing includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding, of Phoenix Energy Group, LLC's application for market-based rate authority, with an accompanying rate schedule, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability is May 26, 2015.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding(s) are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: May 6, 2015.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2015–11546 Filed 5–12–15; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9927–74–OGC]

Proposed Consent Decree, Clean Air Act Citizen Suit

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed consent decree; request for public comment.

SUMMARY: In accordance with section 113(g) of the Clean Air Act, as amended (''CAA'' or the ''Act''), notice is hereby given of a proposed consent decree to address a lawsuit filed by Sierra Club: *Sierra Club* v. *McCarthy,* No. 4:14–cv–02149–CRC (D.D.C.). On December 18, 2014, Plaintiff filed a complaint alleging that Gina McCarthy, in her official capacity as Administrator of the United States Environmental Protection Agency (''EPA''), failed to perform a non-discretionary duty to grant or deny within 60 days a petition submitted by Sierra Club on July 28, 2014, requesting that EPA object to a CAA Title V permit issued by the New Hampshire Department of Environmental Services for Public Service Company of New Hampshire's Schiller Station power plant located in Portsmouth, New Hampshire. The proposed consent decree would establish a deadline for EPA to take such action.

DATES: Written comments on the proposed consent decree must be received by June 12, 2015.

ADDRESSES: Submit your comments, identified by Docket ID number EPA–HQ–OGC–2015–0312, online at *www.regulations.gov* (EPA's preferred method); by email to *oei.docket@epa.gov;* by mail to EPA Docket Center, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; or by hand delivery or courier to EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC, between 8:30 a.m. and 4:30 p.m. Monday through Friday, excluding legal holidays. Comments on a disk or CD–ROM should be formatted in Word or ASCII file, avoiding the use of special characters and any form of encryption, and may be mailed to the mailing address above.

FOR FURTHER INFORMATION CONTACT: Karen Bianco, Air and Radiation Law Office (2344A), Office of General Counsel, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone: (202) 564–3298; fax number (202) 564–5603; email address: *bianco.karen@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Additional Information About the Proposed Consent Decree

The proposed consent decree would resolve a lawsuit filed by the Sierra Club seeking to compel the Administrator to take actions under CAA section 505(b)(2). Under the terms of the proposed consent decree, EPA would agree to sign its response granting or denying the petition filed by the Sierra Club regarding Public Service Company of New Hampshire's Schiller Station power plant located in Portsmouth, New Hampshire, pursuant to section 505(b)(2) of the CAA, on or before July 31, 2015.

Under the terms of the proposed consent decree, EPA would expeditiously deliver notice of EPA's response to the Office of the Federal Register for review and publication following signature of such response. In addition, the proposed consent decree outlines the procedure for the Plaintiffs to request costs of litigation, including attorney fees.

For a period of thirty (30) days following the date of publication of this notice, EPA will accept written comments relating to the proposed consent decree from persons who are not named as parties or intervenors to the litigation in question. EPA or the Department of Justice may withdraw or withhold consent to the proposed consent decree if the comments disclose facts or considerations that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act. Unless EPA or the Department of Justice determines that consent to this consent decree should be withdrawn, the terms of the consent decree will be affirmed.

II. Additional Information About Commenting on the Proposed Consent Decree

A. How can I get a copy of the consent decree?

The official public docket for this action (identified by Docket ID No. EPA–HQ–OGC–2015–0312) contains a copy of the proposed consent decree. The official public docket is available for public viewing at the Office of Environmental Information (OEI) Docket in the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OEI Docket is (202) 566–1752.

An electronic version of the public docket is available through *www.regulations.gov.* You may use *www.regulations.gov* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, key in the appropriate docket identification number then select ''search.''

It is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing online at *www.regulations.gov* without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. Information claimed as CBI and other information whose disclosure is restricted by statute is not included in the official public docket or in the electronic public docket. EPA's policy is that copyrighted material, including copyrighted material contained in a public comment, will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the EPA Docket Center.

B. How and to whom do I submit comments?

You may submit comments as provided in the **ADDRESSES** section. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

If you submit an electronic comment, EPA recommends that you include your name, mailing address, and an email address or other contact information in the body of your comment and with any disk or CD–ROM you submit. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. Any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Use of the *www.regulations.gov* Web site to submit comments to EPA electronically is EPA's preferred method for receiving comments. The electronic public docket system is an ''anonymous access'' system, which means EPA will not know your identity, email address, or other contact information unless you provide it in the body of your comment. In contrast to EPA's electronic public docket, EPA's electronic mail (email) system is not an ''anonymous access'' system. If you send an email comment directly to the Docket without going through *www.regulations.gov,* your email address is automatically captured and included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

Dated: May 6, 2015.

Lorie J. Schmidt,

Associate General Counsel.

[FR Doc. 2015–11564 Filed 5–12–15; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2013–0146; FRL–9927–64–OAR]

Release of Risk and Exposure Assessment Planning Document for the Review of the Primary National Ambient Air Quality Standards for Nitrogen Dioxide

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: The Environmental Protection Agency (EPA) is reviewing the primary National Ambient Air Quality Standards (NAAQS) for Nitrogen Dioxide (NO_2). On or about May 4, 2015, the EPA will make available for public review the document titled *Review of the Primary National Ambient Air Quality Standards for Nitrogen Dioxide: Risk and Exposure Assessment Planning Document* (REA Planning Document). This plan presents considerations and the proposed approach for conducting quantitative analyses of NO_2 exposures or health risks in the current review of the primary NO_2 NAAQS. This planning document is intended to facilitate Clean Air Scientific Advisory Committee (CASAC) advice and public input in advance of reaching decisions on these quantitative analyses.

DATES: Comments should be received on or before July 3, 2015.

ADDRESSES: The *Risk and Exposure Assessment Planning Document* will be available primarily via the Internet at *http://www.epa.gov/ttn/naaqs/standards/nox/s_nox_2012_pd.html.* Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2013–0146, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Email: a-and-r-Docket@epa.gov.* Include Docket ID No. EPA–HQ–OAR–2013–0146 in the subject line of the message.
- *Fax:* (202) 566–9744.
- *Mail:* Docket ID No. EPA–HQ–OAR–2013–0146, Environmental Protection Agency (Mail Code: 28221T), 1200 Pennsylvania Avenue NW., Washington, DC 20460. Please provide a total of two copies.
- *Hand Delivery:* EPA Docket Center, EPA/DC, WJC West Building, Room 3334, 1301 Constitution Avenue NW., Washington, DC. Such deliveries are only accepted during the docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2013–0146. The EPA's policy is that all comments received will be included in the public docket without change and to make the comments available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information through *http://www.regulations.gov* or email that you consider to be CBI or otherwise protected. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to the EPA without going through *http://www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about the EPA's public docket, visit EPA's Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: Documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other materials, such as copyrighted material, will be made publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at Docket ID No. EPA–HQ–OAR–2013–0146, EPA/DC, WJC West Building, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air and Radiation Docket and Information Center is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Dr. Scott Jenkins, Office of Air Quality Planning and Standards (Mail Code C504–06), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711; *telephone number:* 919–541–1167; *fax number:* 919–541–5315; *email: jenkins.scott@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. What should I consider as I prepare my comments for the EPA?

1. *Submitting CBI.* Do not submit this information to the EPA through *http://regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to the EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for Preparing your Comments.* When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- Follow directions. The agency may ask you to respond to specific questions or organize comments by reference a Code of Federal Regulations (CFR) part or section number.
- Explain why you agree or disagree; suggest alternative and substitute language for your requested changes.
- Describe any assumption and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

II. Information About the Document

Two sections of the Clean Air Act (CAA) govern the establishment and revision of the NAAQS. Section 108 (42 U.S.C. 7408) directs the Administrator to identify and list certain air pollutants and then to issue air quality criteria for those pollutants. The Administrator is to list those air pollutants that in her ''judgment, cause or contribute to air pollution which may reasonably be anticipated to endanger public health or welfare;'' ''the presence of which in the ambient air results from numerous or diverse mobile or stationary source;'' and ''for which * * *. [the Administrator] plans to issue air quality criteria * * *. '' Air quality criteria are intended to ''accurately reflect the latest scientific knowledge useful in indicating the kind and extent of all identifiable effects on public health or welfare which may be expected from the presence of [a] pollutant in the ambient air * * *. '' (42 U.S.C. 7408(b)). Under section 109 (42 U.S.C. 7409), the EPA establishes primary (health-based) and secondary (welfare-based) NAAQS for pollutants for which air quality criteria are issued. Section 109(d) requires periodic review and, if appropriate, revision of existing air quality criteria. The revised air quality criteria reflect advances in scientific knowledge on the effects of the pollutant on public health or welfare. The EPA is also required to periodically review and revise the NAAQS, if appropriate, based on the revised criteria. Section 109(d)(2) requires that an independent scientific review committee ''shall complete a review of the criteria * * *. and the national primary and secondary ambient air quality standards * * *. and shall recommend to the Administrator any new * * *. standards and revisions of the existing criteria and standards as may be appropriate * * *. .'' Since the early 1980s, this independent review function has been performed by the CASAC.

Presently, the EPA is reviewing the primary NAAQS for NO_2. The first draft *Integrated Science Assessment for Oxides of Nitrogen (Health Criteria)* (ISA) was released on November 22, 2013 (78 FR 70040), and the draft *Integrated Review Plan for the Primary NAAQS for Nitrogen Dioxide* (IRP) (79 FR 7184) was released on February 10, 2014. Both documents were reviewed by CASAC at a public meeting in March 2014, and announced in a separate notice (79 FR 8701). The final IRP was released in June 2014 (79 FR 36801), and is available at *http://www.epa.gov/ttn/naaqs/standards/nox/s_nox_2012_pd.html.* The second draft ISA was made available to both CASAC and the public on January 29, 2015 (80 FR 5110).

The REA Planning Document considers the degree to which important uncertainties identified in quantitative analyses from previous reviews have been addressed by newly available scientific evidence, tools, or information, including those in the second draft ISA. Based on these considerations, the document reaches preliminary conclusions on the extent to which updated quantitative analyses of exposures or health risks are warranted in the current review. For updated analyses that are supported, this planning document presents anticipated approaches to conducting such analyses and, where appropriate, preliminary results. This document is available on the EPA's Technology Transfer Network Web site at *http://www.epa.gov/ttn/naaqs/standards/nox/s_nox_2012_pd.html.*

The REA Planning Document has been made available for review by CASAC and for public comment. Comments should be submitted to the docket, as described above. The CASAC review of this planning document and the second draft ISA is scheduled for June 2–3, 2015. A separate **Federal Register** notice will provide details about this meeting and the process for participation.

Dated: May 4, 2015.

Stephen D. Page,

Director, Office of Air Quality Planning and Standards.

[FR Doc. 2015–11566 Filed 5–12–15; 8:45 am]

BILLING CODE 6560–50–P

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Sunshine Act Notice

AGENCY HOLDING THE MEETING: Equal Employment Opportunity Commission.

DATE AND TIME: Wednesday, June 17, 2015, 9:30 a.m. Eastern Time.

PLACE: Commission Meeting Room on the First Floor of the EEOC Office Building, 131 ''M'' Street NE., Washington, DC 20507.

STATUS: The meeting will be open to the public.

MATTERS TO BE CONSIDERED:

OPEN SESSION:

1. Announcement of Notation Votes, and

2. Retaliation in the Workplace: Causes, Remedies, and Strategies for Prevention.

Note: In accordance with the Sunshine Act, the meeting will be open to public observation of the Commission's deliberations and voting. Seating is limited and it is suggested that visitors arrive 30 minutes before the meeting in order to be processed through security and escorted to the meeting room. (In addition to publishing notices on EEOC Commission meetings in the **Federal Register**, the Commission also provides information about Commission meetings on its Web site, eeoc.gov., and provides a recorded announcement a week in advance on future Commission sessions.)

Please telephone (202) 663–7100 (voice) and (202) 663–4074 (TTY) at any time for information on these meetings. The EEOC provides sign language interpretation and Communication Access Realtime Translation (CART) services at Commission meetings for the hearing impaired. Requests for other reasonable accommodations may be made by using the voice and TTY numbers listed above. **CONTACT PERSON FOR MORE INFORMATION:** Bernadette B. Wilson, Acting Executive Officer on (202) 663–4077.

Dated: May 11, 2015.

Bernadette B. Wilson,

Acting Executive Officer, Executive Secretariat.

[FR Doc. 2015–11652 Filed 5–11–15; 4:15 pm]

BILLING CODE 6570–01–M

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0031]

Information Collection Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written PRA comments should be submitted on or before July 13, 2015. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Cathy Williams, FCC, via email *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

Control Number: 3060–0031.

Title: Application for Consent to Assignment of Broadcast Station Construction Permit or License, FCC Form 314; Application for Consent to Transfer Control of Entity Holding Broadcast Station Construction Permit or License, FCC Form 315; Section 73.3580, Local Public Notice of Filing of Broadcast Applications.

Form Number: FCC Forms 314 and 315.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities; Not-for-profit institutions; State, local or Tribal government.

Number of Respondents and Responses: 4,840 respondents and 12,880 responses.

Estimated Time per Response: 0.084 to 6 hours.

Frequency of Response: On occasion reporting requirement; Third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this collection of information is contained in Sections 154(i), 303(b) and 308 of the Communications Act of 1934, as amended.

Total Annual Burden: 18,670 hours.

Total Annual Cost: $52,519,656.

Privacy Impact Assessment(s): No impacts.

Nature and Extent of Confidentiality: There is no need for confidentiality and respondents are not being asked to submit confidential information to the Commission.

Needs and Uses: FCC Form 314 and the applicable exhibits/explanations are required to be filed when applying for consent for assignment of an AM, FM, LPFM or TV broadcast station construction permit or license. In addition, the applicant must notify the Commission when an approved assignment of a broadcast station construction permit or license has been consummated.

FCC Form 315 and applicable exhibits/explanations are required to be filed when applying for transfer of control of an entity holding an AM, FM, LPFM or TV broadcast station construction permit or license. In addition, the applicant must notify the Commission when an approved transfer of control of a broadcast station construction permit or license has been consummated. Due to the similarities in the information collected by these two forms, OMB has assigned both forms OMB Control Number 3060–0031.

47 CFR 73.3580 requires local public notice in a newspaper of general circulation published in the community in which a station is located of the filing of all applications for transfer of control or assignment of the license/permit. This notice must be completed within 30 days of the tendering of the application. This notice must be published at least twice a week for two consecutive weeks in a three-week period. A copy of this notice and the application must be placed in the station's public inspection file along with the application, pursuant to Section 73.3527. Additionally, an applicant for transfer of control of a license must broadcast the same notice over the station at least once daily on four days in the second week immediately following the tendering for filing of the application.

Federal Communications Commission.

Gloria J. Miles,

Federal Register Liaison Officer. Office of the Secretary, Office of the Managing Director.

[FR Doc. 2015–11551 Filed 5–12–15; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Notice

AGENCY: Federal Election Commission.

DATE AND TIME: Wednesday, May 6, 2015 at 2:00 p.m.

PLACE: 999 E Street NW., Washington, DC (Ninth Floor).

STATUS: This hearing will be open to the public.

Federal Register Notice of Previous Announcement—80 FR 24923

CHANGE IN THE HEARING: The hearing has been rescheduled for Wednesday, May 13, 2015 at 10:00 a.m.

Individuals who plan to attend and require special assistance, such as sign language interpretation or other reasonable accommodations, should contact Shawn Woodhead Werth, Secretary, at (202) 694–1040, at least 72 hours prior to the hearing date.

PERSON TO CONTACT FOR INFORMATION: Judith Ingram, Press Officer, Telephone: (202) 694–1220.

Shawn Woodhead Werth,

Secretary and Clerk of the Commission.

[FR Doc. 2015–11633 Filed 5–11–15; 4:15 pm]

BILLING CODE 6715–01–P

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Sunshine Act Notice

May 11, 2015.

TIME AND DATE: 10:00 a.m., Tuesday, May 26, 2015.

PLACE: The Richard V. Backley Hearing Room, Room 511N, 1331 Pennsylvania Avenue NW., Washington, DC 20004 (enter from F Street entrance).

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following in open session: *Secretary of Labor* v. *Black Beauty Coal Company,* Docket No. LAKE 2009–570. (Issues include whether the safeguard notice in question as modified is valid.)

Any person attending this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR 2706.150(a)(3) and § 2706.160(d).

CONTACT PERSON FOR MORE INFO: Emogene Johnson (202) 434–9935/(202) 708–9300 for TDD Relay/1–800–877–8339 for toll free.

Sarah L. Stewart,

Deputy General Counsel.

[FR Doc. 2015–11627 Filed 5–11–15; 4:15 pm]

BILLING CODE 6735–01–P

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Sunshine Act Notice

May 11, 2015.

TIME AND DATE: 11:00 a.m., Tuesday, May 26, 2015.

PLACE: The Richard V. Backley Hearing Room, Room 511N, 1331 Pennsylvania Avenue NW., Washington, DC 20004 (enter from F Street entrance).

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following in open session: *Secretary of Labor* v. *Oak Grove Resources, LLC,* Docket Nos. SE 2009–261–R, *et al.* (Issues include whether the Judge erred by ruling that a safeguard notice prohibiting the pushing of cars by locomotives was violated.)

Any person attending this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR 2706.150(a)(3) and § 2706.160(d).

CONTACT PERSON FOR MORE INFO: Emogene Johnson (202) 434–9935/(202) 708–9300 for TDD Relay/1–800–877–8339 for toll free.

Sarah L. Stewart,

Deputy General Counsel.

[FR Doc. 2015–11628 Filed 5–11–15; 4:15 pm]

BILLING CODE 6735–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 8, 2015.

A. Federal Reserve Bank of Dallas (Robert L. Triplett III, Senior Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. *AmeriBancShares, Inc., Wichita Falls, Texas, and AmeriBancShares, of Delaware, Inc.,* Wilmington, Delaware; to merge with Northern Bancshares, Inc., and thereby indirectly acquire First National Bank of Chillicothe, both in Chillicothe, Texas.

Board of Governors of the Federal Reserve System, May 8, 2015.

Michael J. Lewandowski,

Associate Secretary of the Board.

[FR Doc. 2015–11535 Filed 5–12–15; 8:45 am]

BILLING CODE 6210–01–P

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0252; Docket 2015–0001; Sequence 15]

General Services Administration Acquisition Regulation; Information Collection; Preparation, Submission, and Negotiation of Subcontracting Plans

AGENCY: Office of Acquisition Policy, General Services Administration (GSA).

ACTION: Notice of request for comments regarding an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act, the Regulatory Secretariat Division will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a previously approved information collection requirement regarding preparation, submission, and negotiation of subcontracting plans.

This information collection will ensure that small and small, disadvantaged business concerns are afforded the maximum practicable opportunity to participate as subcontractors in negotiated procurements. The Preparation, Submission, and Negotiation of the Subcontracting Plans provision requires for all negotiated solicitations, having an anticipated award value over $650,000 ($1,500,000 for construction), the submission of a subcontracting plan with an offeror's proposal.

DATES: Submit comments on or before: July 13, 2015.

FOR FURTHER INFORMATION CONTACT: Ms. Christina Mullins, Procurement Analyst, General Services Acquisition Policy Division, GSA, (202) 969–4066 or email *christina.mullins@gsa.gov.*

ADDRESSES: Submit comments identified by Information Collection 3090–0252, Preparation, Submission and Negotiation of Subcontracting Plans by any of the following methods:

• *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by searching the OMB control number. Select the link ''Submit a Comment'' that corresponds with ''Information Collection 3090–0252, Preparation, Submission and Negotiation of Subcontracting Plans''. Follow the instructions provided at the ''Submit a Comment'' screen. Please include your name, company name (if any), and ''Information Collection 3090–0252, Preparation, Submission and Negotiation of Subcontracting Plans'' on your attached document.

• Mail: General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW., Washington, DC 20405. ATTN: Ms. Flowers/IC 3090–0252, Preparation, Submission and Negotiation of Subcontracting Plans.

Instructions: Please submit comments only and cite Information Collection 3090–0252, Preparation, Submission and Negotiation of Subcontracting Plans, in all correspondence related to this collection. All comments received will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided.

SUPPLEMENTARY INFORMATION:

A. Purpose

The GSAR provision at 552.219–72 requires all offerors, other than small business concerns, responding to a negotiated solicitation to submit a subcontracting plan with their respective offers so that a plan can be negotiated concurrently with other parts of the proposal, including price and any technical and management proposals. The respondents are potential GSA contractors. The provision may be used when the contracting officer believes that the potential contract provides significant opportunities for small businesses as subcontractors. The contracting officer will use the information to evaluate whether GSA's expectation that subcontracting opportunities exist for small businesses is reasonable under the circumstances; negotiate goals consistent with statutory requirements and acquisition objectives; and expedite the award process. The provision is not applicable if an offeror submits a previously-approved commercial subcontracting plan.

B. Annual Reporting Burden

Respondents: 1,440.
Responses per Respondent: 1.
Total Annual Responses: 1,440.
Hours per Response: 12.
Total Burden Hours: 17,280.

C. Public Comments

Public comments are particularly invited on: Whether this collection of information is necessary and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected.

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW., Washington, DC 20405, telephone 202–501–4755. Please cite OMB Control No. 3090–0252, Preparation, Submission, and Negotiation of Subcontracting Plans, in all correspondence.

Dated: May 8, 2015.

Jeffrey A. Koses,

Director, Office of Acquisition Policy, Senior Procurement Executive.

[FR Doc. 2015–11533 Filed 5–12–15; 8:45 am]

BILLING CODE 6820–61–P

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0044; Docket 2015–0001; Sequence 11]

Public Buildings Service; Information Collection; Application/Permit for Use of Space in Public Buildings and Grounds, GSA Form 3453

AGENCY: Public Buildings Service, General Services Administration (GSA).

ACTION: Notice of request for comments regarding an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act, the Regulatory Secretariat Division will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a previously approved information collection requirement regarding the Application/Permit for Use of Space in Public Buildings and Grounds, GSA Form 3453.

DATES: Submit comments on or before: July 13, 2015.

ADDRESSES: Submit comments identified by Information Collection 3090–0044, Application/Permit for Use of Space in Public Buildings and Grounds, GSA Form 3453, by any of the following methods:

• Regulations.gov: *http://www.regulations.gov*. Submit comments via the Federal eRulemaking portal by searching the OMB control number. Select the link ''Submit a Comment'' that corresponds with ''Information Collection 3090–0044, Application/Permit for Use of Space in Public Buildings and Grounds, GSA Form

3453.'' Follow the instructions provided at the ''Submit a Comment'' screen. Please include your name, company name (if any), and ''Information Collection 3090–0044, Application/Permit for Use of Space in Public Buildings and Grounds, GSA Form 3453,'' on your attached document.

• Mail: General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW., Washington, DC 20405. ATTN: Ms. Flowers/IC 3090–0044, Application/Permit for Use of Space in Public Buildings and Grounds, GSA Form 3453.

Instructions: Please submit comments only and cite Information Collection 3090–0044, Application/Permit for Use of Space in Public Buildings and Grounds, GSA Form 3453, in all correspondence related to this collection. All comments received will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: Ms. Karen Handsfield, Public Buildings Service, at telephone 202–208–2444, or via email to *Karen.handsfield@gsa.gov*.

SUPPLEMENTARY INFORMATION:

A. Purpose

The general public uses Application/Permit for Use of Space in Public Buildings and Grounds, GSA Form 3453, to request the use of public space in Federal buildings and on Federal grounds for cultural, educational, or recreational activities. A copy, sample, or description of any material or item proposed for distribution or display must also accompany this request.

B. Annual Reporting Burden

Respondents: 8,000.
Responses per Respondent: 1.
Hours per Response: 0.05.
Total Burden Hours: 400.

C. Public Comments

Public comments are particularly invited on: Whether this collection of information is necessary and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected.

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW., Washington, DC 20405, telephone 202–501–4755. Please cite OMB Control No. 3090–0044, Application/Permit for Use of Space in Public Buildings and Grounds, GSA Form 3453, in all correspondence.

Dated: May 6, 2015.

David A. Shive,

Acting Chief Information Officer.

[FR Doc. 2015–11530 Filed 5–12–15; 8:45 am]

BILLING CODE 6820–34–P

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0007; Docket 2015–0001; Sequence 4]

General Services Administration Acquisition Regulation; Information Collection; Contractor's Qualifications and Financial Information (GSA Form 527)

AGENCY: Office of Acquisition Policy, General Services Administration (GSA).

ACTION: Notice of request for comments regarding an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act, the Regulatory Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a previously approved information collection requirement regarding Contractor's Qualifications and Financial Information (GSA Form 527).

DATES: Submit comments on or before: July 13, 2015.

FOR FURTHER INFORMATION CONTACT: James Tsujimoto, Program Analyst, Office of Governmentwide Policy, at 202–208–3585, or via email at *james.tsujimoto@gsa.gov.*

ADDRESSES: Submit comments identified by Information Collection 3090–0007, Contractor's Qualifications and Financial Information, by any of the following methods:

• *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal searching Information Collection 3090–0007. Select the link ''Comment Now'' that corresponds with ''Information Collection 3090–0007, Contractor's Qualifications and Financial Information''. Follow the instructions provided on the screen. Please include your name, company name (if any), and ''Information Collection 3090–0007, Contractor's Qualifications and Financial Information'' on your attached document.

• *Mail:* General Services Administration, Regulatory Secretariat (MVCB), 1800 F Street NW., Washington, DC 20405. ATTN: Ms. Flowers/IC 3090–0007, Contractor's Qualifications and Financial Information.

Instructions: Please submit comments only and cite Information Collection 3090–0007, Contractor's Qualifications and Financial Information, in all correspondence related to this collection. All comments received will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided.

SUPPLEMENTARY INFORMATION:

A. Purpose

The General Services Administration will be requesting the Office of Management and Budget to extend information collection 3090–0007, concerning GSA Form 527, Contractor's Qualifications and Financial Information. This form is used to determine the financial capability of prospective contractors as to whether they meet the financial responsibility standards in accordance with the Federal Acquisition Regulation 9.103(a) and 9.104–1 and also the General Services Administration Acquisition Manual 509.105–1.

B. Annual Reporting Burden

Respondents: 2,940.
Responses per Respondent: 1.2.
Total Responses: 3,528.
Hours per Response: 1.5.
Total Burden Hours: 5,292.

The estimated annual burden has decreased since GSA's 2012 submission from 8,820 burden hours to 5,292 burden hours to reflect the widespread use of the option for potential contractors to submit financial statements and balance sheets in lieu of completing the applicable fields on GSA Form 527. The alternate submission of financial statements and balance sheets significantly reduces the burden on prospective contractors, as these documents are generally readily available. As such, the average estimated hours to complete a response has been reduced from 2.5 hours per response to 1.5 hours.

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW., Washington, DC 20405, telephone 202–501–4755. Please cite OMB Control No. 3090–0007, Contractor's Qualifications and Financial Information (GSA Form 527), in all correspondence.

Public Comments: Public comments are particularly invited on: Whether this collection of information is necessary and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected.

Dated: May 7, 2015.

Jeffrey A. Koses,

Director, Office of Acquisition Policy, Office of Government-wide Policy.

[FR Doc. 2015–11532 Filed 5–12–15; 8:45 am]

BILLING CODE 6820–61–P

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0286; Docket 2015–0001; Sequence 14]

General Services Administration Acquisition Regulation; Information Collection; GSA Mentor-Protégé Program

AGENCY: Office of the Chief Acquisition Officer, General Services Administration (GSA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act, the Regulatory Secretariat Division will be submitting to the Office of Management and Budget (OMB) a request to review and approve a previously approved information collection concerning the GSA Mentor-Protégé Program, in the General Services Administration Acquisition Manual (GSAM).

DATES: Submit comments on or before July 13, 2015.

ADDRESSES: Submit comments identified by Information Collection 3090–0286, GSA Mentor-Protégé Program by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by searching the OMB control number. Follow the instructions provided at the ''Submit a Comment'' screen. Please include your name, company name (if any), and ''Information Collection 3090–0286, GSA Mentor-Protégé Program'' on your attached document.
- *Mail:* General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW., Washington, DC 20405. ATTN: Ms. Flowers/IC 3090–0286, GSA Mentor-Protégé Program.

Instructions: Please submit comments only and cite Information Collection 3090–0286, GSA Mentor-Protégé Program, in all correspondence related to this collection. All comments received will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: Ms. Christina Mullins, Procurement Analyst, General Services Acquisition Policy Division, GSA, (202) 969–4066 or email *christina.mullins@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. Purpose

The GSA Mentor-Protégé Program is designed to encourage GSA prime contractors to assist small businesses, small disadvantaged businesses, women-owned small businesses, veteran-owned small businesses, service-disabled veteran-owned small businesses, and HUBZone small businesses in enhancing their capabilities to perform GSA contracts and subcontracts, foster the establishment of long-term business relationships between these small business entities and GSA prime contractors, and increase the overall number of small business entities that receive GSA contract and subcontract awards.

B. Annual Reporting Burden

Respondents: 254.
Responses per Respondent: 4.
Total Annual Responses: 1,016.
Hours per Response: 3.
Total Burden Hours: 3,048.

C. Public Comments

Public comments are particularly invited on: Whether this collection of information is necessary; whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW., Washington, DC 20405, telephone 202–501–4755. Please cite OMB Control No. 3090–0286, GSA Mentor-Protégé Program, in all correspondence.

Dated: May 8, 2015.

Jeffrey A. Koses,

Director, Office of Acquisition Policy & Senior Procurement Executive.

[FR Doc. 2015–11525 Filed 5–12–15; 8:45 am]

BILLING CODE 6820–61–P

GENERAL SERVICES ADMINISTRATION

[Notice–FAS–2015–01; Docket No. 2015–0002; Sequence 11]

Modernizing the Federal Supply Schedule Program: Standardization of Part Number Data

AGENCY: Federal Acquisition Service, General Services Administration

ACTION: Notice.

SUMMARY: The Federal Acquisition Service (FAS) of the General Services Administration (GSA) is publishing this notice in order to clarify the structured data elements required under the Federal Supply Schedule (FSS) program price list clause.

DATES: May 13, 2015.

FOR FURTHER INFORMATION CONTACT: Ms. Denise Alley, Procurement Analyst, FAS Office of Acquisition Management, at *denise.alley@gsa.gov* or 703–605–2756.

SUPPLEMENTARY INFORMATION:

A. Purpose

The purpose of this notice is to clarify for existing FSS contractors that pursuant to the price list clause: (1.) Manufacturer Part Number (MPN) data is required for all awarded products, and (2.) Universal Product Code Type A (UPC–A) data is required for all awarded products for which this information is commercially available. FSS solicitation instructions have already been updated to clarify MPN and UPC–A data requirements for new offerors. This notice is solely intended to provide clarification for existing FSS contractors.

FAS plans to begin efforts to obtain this data from existing FSS contractors 45 days after publication of this notice in the **Federal Register**.

B. Background

The FAS is embarking on several initiatives to improve the quality of its offerings under the FSS program. A major piece of this effort involves the standardization of part number data in order to improve the quality of the descriptive data available to customers in FSS price lists published on *gsaadvantage.gov.* The goal is to provide customer agencies with quality, meaningful, complete data to better search and compare products, thereby enhancing competition and saving taxpayer dollars. This endeavor is a critical piece of a larger effort to modernize the FSS program as a whole, under which FAS aims to increase efficiency and effectiveness, facilitate the purchase of total solutions, maximize competition, and promote small business utilization across Government.

The availability of MPN and UPC–A data improves overall data integrity, encouraging additional business from customers looking for the ability to quickly and accurately compare identical products. The standardization of part number data allows for greater transparency and improved business intelligence that will enable customers to make smarter, data-driven buying decisions. Collectively, these benefits will yield increased customer confidence as GSA works to make the FSS program the Government's premier acquisition vehicle.

Unaltered MPN data is required for all products, except where the manufacturer has not assigned a part number to identify the item. UPC–A data is required for all products for which this information is commercially available. The FAS performed market research to determine the Federal Supply Schedules and Special Item Numbers (SINs) under which UPC–A data is commercially available—a complete listing can be viewed at *http://eoffer.gsa.gov.*

MPN and UPC–A data is widely utilized throughout the commercial marketplace. FSS contractors are simply providing the existing MPN and UPC–A data that is used to classify their awarded FSS products. Many FSS contractors have already provided this data in their price lists. In fact, approximately 8 million MPNs and 1.3 million unique UPC–A codes are currently listed in FSS contractor price lists published on *gsaadvantage.gov.*

Obtaining MPN and UPC–A data from existing FSS contractors will allow GSA to acquire baseline information across the contracts already awarded under the FSS program. A bilateral ''mass modification'' will be distributed by GSA to all contractors with FSS contracts that include products. FSS contractors will be required to sign the modification and provide this data in their price lists within 60 days of distribution.

FSS contractors that do not provide this data will have noncompliant products ''grayed-out'' (*i.e.,* no longer accessible/visible) within GSA's customer-facing eTools (GSA Advantage!, eBuy, etc.). In addition, GSA may consider noncompliance when determining whether to exercise the next contract option period. GSA might choose not to exercise the next option period, thereby allowing the contract to expire.

Dated: May 7, 2015.

Lisa P. Grant,

Deputy Assistant Commissioner, Office of Acquisition Management, Federal Acquisition Service.

[FR Doc. 2015–11534 Filed 5–12–15; 8:45 am]

BILLING CODE 6820–89–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–15–15AEZ; Docket No. CDC–2015–0028]

Proposed Data Collection Submitted for Public Comment and Recommendations

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice with comment period.

SUMMARY: The Centers for Disease Control and Prevention (CDC), as part of its continuing efforts to reduce public burden and maximize the utility of government information, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. This notice invites comment on the proposed information collection entitled *Identification of Behavioral and Clinical Predictors of Early HIV Infection* (Project DETECT).

DATES: Written comments must be received on or before July 13, 2015.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2015–0028 by any of the following methods:

- *Federal eRulemaking Portal: Regulation.gov.* Follow the instructions for submitting comments.
- *Mail:* Leroy A. Richardson, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road, NE., MS–D74, Atlanta, Georgia 30329.

Instructions: All submissions received must include the agency name and Docket Number. All relevant comments received will be posted without change to *Regulations.gov*, including any personal information provided. For access to the docket to read background documents or comments received, go to *Regulations.gov*.

Please note: All public comment should be submitted through the Federal eRulemaking portal (*Regulations.gov*) or by U.S. mail to the address listed above.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact the Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE., MS–D74, Atlanta, Georgia 30329; phone: 404–639–7570; Email: *omb@cdc.gov.*

SUPPLEMENTARY INFORMATION:

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. In addition, the PRA also requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information, to search data sources, to complete and review the collection of information; and to transmit or otherwise disclose the information.

Proposed Project

Identification of Behavioral and Clinical Predictors of Early HIV Infection (Project DETECT)—New—National Center for HIV/AIDS, Viral Hepatitis, STD, and TB Prevention (NCHHSTP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The Centers for Disease Control and Prevention (CDC), National Center for HIV/AIDS, Viral Hepatitis, STD, and TB Prevention (NCHHSTP), Division of HIV/AIDS Prevention (DHAP) requests a 3-year approval for a new data collection called ''Identification of Behavioral and Clinical Predictors of Early HIV Infection (Project DETECT).''

CDC provides guidelines for HIV testing and diagnosis for the United States, as well as technical guidance for its grantees. CDC will use the HIV testing data collected for this project to update these guidance documents to reflect the latest available testing technologies, their performance characteristics, and considerations regarding their use. Specifically, CDC will describe the information on behavioral and clinical characteristics of persons with early infection to help HIV test providers (including CDC grantees) choose which HIV tests to use, and target tests appropriately to persons at different levels of risk. This information will be disseminated primarily through guidance documents and articles in peer-reviewed journals.

The primary study population will be persons at high risk for or diagnosed with HIV infection, many of whom will be men who have sex with men (MSM) because the majority of new HIV infections occur each year among this population. The goals of the project are to: (1) characterize the performance of new HIV tests for detecting established and early HIV infection at the point of care, relative to each other and to currently used gold standard, non-POC tests, and (2) identify behavioral and clinical predictors of early HIV infection.

Project DETECT will enroll 1,667 persons annually at the primary study site clinic in Seattle, and an additional 200 persons will be enrolled from other clinics in the greater Seattle area. The study will be conducted in two phases.

Phase 1: After a clinic client consents to participate, he/she will be assigned a unique participant ID and will then undergo testing with the seven new HIV tests under study. While awaiting test results, participants will undergo additional specimen collections and complete the Phase 1 Enrollment Survey.

Phase 2: All Phase 1 participants whose results on the seven tests under investigation are not in agreement with one another (''discordant'') will be considered to have a potential early HIV infection. Nucleic amplification testing that detects viral nucleic acids will be conducted to confirm an HIV diagnosis and rule out false positives. Study investigators expect that each year, 50 participants with discordant test results will be invited to participate in serial follow-up specimen collections to assess the time point at which all HIV test results resolve and become concordant positive (indicating enrollment during early infection) or concordant negative (indicating one or more false-positive test results in Phase 1).

The follow-up schedule will consist of up to nine visits scheduled at regular intervals over a 70-day period. At each follow-up visit, participants will be tested with the new HIV tests and additional oral fluid and blood specimens will also be collected for storage and use in future HIV test evaluations at CDC. Participants will be followed up only to the point at which all their test results become concordant. At each time point, participants will be asked to complete the Phase 2 HIV Symptom and Care survey that collects information on symptoms associated with early HIV infection as well as access to HIV care and treatment since the last Phase 2 visit. When all tests become concordant (*i.e.,* at the last Phase 2 visit) participants will complete the Phase 2 behavioral survey to identify any behavioral changes during follow-up. Of the 50 Phase 2 participants; it is estimated that no more than 26, annually, will have early HIV infection.

All data for the proposed information collection will be collected via an electronic Computer Assisted Self-Interview (CASI) survey. Participants will complete the surveys on an encrypted computer, with the exception of the Phase 2 Symptom and Care survey, which will be administered by a research assistant and then electronically entered into the CASI system. Data to be collected via CASI include questions on socio-demographics, medical care, HIV testing, pre-exposure prophylaxis, antiretroviral treatment, sexually transmitted diseases (STD) history, symptoms of early HIV infection, substance use and sexual behavior.

Data from the surveys will be merged with HIV test results and relevant clinical data using the unique identification (ID) number. Data will be stored on a secure server managed by the University of Washington Department of Medicine Information Technology (IT) Services.

The participation of respondents is voluntary. There is no cost to the respondents other than their time. The total estimated annual burden hours for the proposed project are 2,111 hours.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Avg. burden per response (in hours)	Total burden hours
Persons eligible for study	Phase 1 Consent	2,334	1	15/60	584
Enrolled participants	Phase 1 Enrollment Survey A	1,667	1	45/60	1,251
Enrolled participants	Phase 1 Enrollment Survey B	200	1	1	200
Enrolled participants	Phase 2 Consent	50	1	15/60	13
Enrolled participants	Phase 2 HIV Symptom and Care Survey.	50	9	5/60	38
Enrolled participants	Phase 2 Behavioral Survey	50	1	30/60	25
Total					2,111

Leroy A. Richardson,

Chief, Information Collection Review Office, Office of Scientific Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2015–11511 Filed 5–12–15; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–15–15JX]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The notice for the proposed information collection is published to obtain comments from the public and affected agencies.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address any of the following: (a) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) Enhance the quality, utility, and clarity of the information to be collected; (d) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses; and (e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639–7570 or send an email to *omb@cdc.gov.* Written comments and/or suggestions regarding the items contained in this notice should be directed to the Attention: CDC Desk Officer, Office of Management and Budget, Washington, DC 20503 or by fax to (202) 395–5806. Written comments should be received within 30 days of this notice.

Proposed Project

HIV Outpatient Study (HOPS)—New—National Center for HIV/AIDS, Viral Hepatitis, STD, and TB Prevention (NCHHSTP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The Centers for Disease Control and Prevention requests a three-year approval for the HIV Outpatient Study data collection activity. The HIV Outpatient Study (HOPS) is a prospective longitudinal cohort of HIV-infected outpatients at nine well-established private HIV care practices and university-based U.S. clinics. Clinical data are abstracted on ongoing basis from the medical records of adult HIV-infected HOPS study participants, who also complete an optional seven minute telephone/web-based behavioral assessment as part of their annual clinic visit.

Before enrolling in this study, all potential study participants will undergo an informed consent process (including signing of a written informed consent) which is estimated to take 15 minutes.

The core areas of HOPS research extending through the present HIV treatment era include (i) monitoring death rates and causes of death (ii) characterizing the optimal patient management strategies to reduce HIV-related morbidity and mortality (*e.g.,* effectiveness of antiretroviral therapies and other clinical interventions (iii) monitoring of sexual and drug use behaviors to inform Prevention with Positives, and (iv) investigating disparities in the HIV care continuum by various demographic factors. In recent years, the HOPS has been instrumental in bringing attention to emerging issues in chronic HIV infection with actionable opportunities for prevention, including: cardiovascular disease, fragility fractures, renal and hepatic disease, and cancers. The HOPS remains an important source for multi-year trend data concerning conditions and behaviors for which data are not readily available elsewhere, including: rates of opportunistic illnesses, rates of comorbid conditions (*e.g.,* hypertension, obesity, diabetes) and antiretroviral drug resistance.

Data will be collected through medical record abstraction by trained abstractors and by telephone or internet-based, computer-assisted interviews at nine funded study sites in six U.S. cities.

Collection of data abstracted from patient medical records provides data in five general categories: Demographics and risk behaviors for HIV infection; symptoms; diagnosed conditions (definitive and presumptive); medications prescribed (including dose, duration, and reasons for stopping); all laboratory values, including CD4+ T-lymphocyte (CD4+) cell counts, plasma HIV–RNA determinations, and genotype, phenotype, and trophile results. Data on visit frequency, AIDS, and death are acquired from the clinic chart.

Data collected using a brief Telephone Audio-Computer Assisted Self-Interview (T–ACASI) survey or an identical web-based Audio-Computer Assisted Self-Interview (ACASI) include: Age, sex at birth, use of alcohol and drugs, cigarette smoking, adherence to antiretroviral medications, types of sexual intercourse, condom use, and disclosure of HIV status to partners.

We estimate consenting 450 new participants per year across all HOPS study sites (50 participants at each of the 9 sites). The consent process takes approximately 15 minutes to complete.

Medical record abstractions will be completed on all eligible participants. All eligible participants will be offered the opportunity to participate in an optional short survey that will take approximately seven minutes.

Participation of respondents is voluntary. There is no cost to the respondents other than their time. The estimated annual burden hours are 405.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Avg. burden per response (in hrs.)
HOPS study Patients	Behavioral survey	2,500	1	7/60
HOPS Study Patients	Consent form	450	1	15/60

Leroy A. Richardson,

Chief, Information Collection Review Office, Office of Scientific Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2015–11510 Filed 5–12–15; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–15–15AHO; Docket No. CDC–2015–0031]

Proposed Data Collection Submitted for Public Comment and Recommendations

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice with comment period.

SUMMARY: The Centers for Disease Control and Prevention (CDC), as part of its continuing efforts to reduce public burden and maximize the utility of government information, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. This notice invites comment on a proposed information collection for a retrospective evaluation of the prevalence of acute flaccid myelitis with MRI grey matter findings among children aged ≤18 years.

DATES: Written comments must be received on or before July 13, 2015.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2015–0031 by any of the following methods:

- *Federal eRulemaking Portal: Regulation.gov.* Follow the instructions for submitting comments.
- *Mail:* Leroy A. Richardson, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE., MS–D74, Atlanta, Georgia 30329.

Instructions: All submissions received must include the agency name and Docket Number. All relevant comments received will be posted without change to *Regulations.gov*, including any personal information provided. For access to the docket to read background documents or comments received, go to *Regulations.gov*.

Please note: All public comment should be submitted through the Federal eRulemaking portal (Regulations.gov) or by U.S. mail to the address listed above.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact the Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road, NE., MS–D74, Atlanta, Georgia 30329; phone: 404–639–7570; Email: *omb@cdc.gov.*

SUPPLEMENTARY INFORMATION:

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. In addition, the PRA also requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information, to search data sources, to complete and review the collection of information; and to transmit or otherwise disclose the information.

Proposed Project

Retrospective evaluation of the prevalence of acute flaccid myelitis with MRI grey matter findings among children aged ≤18 years—NEW—National Center for Immunization and Respiratory Diseases, Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Acute onset limb weakness, commonly referred to as acute flaccid paralysis (AFP), is a relatively uncommon syndrome among children. From August–October 2014, several clusters of AFP among children were reported from several states within the United States (U.S.) and an epidemiologic investigation was initiated to elucidate the possible causes of these cases.

CDC originally collected data under OMB Control Numbers 0920–1011 and 0920–0009. Cases were characterized by distinctive abnormalities on spinal magnetic resonance imaging (MRI), in which pathologic changes were largely restricted to the central grey matter of the spinal cord. Due to these findings and to differentiate this illness from other forms of AFP, CDC used the term 'acute flaccid myelitis' (AFM).

The main goal of this study is to obtain data in order to estimate the baseline rate of AFM that is accompanied by MRI changes confined to spinal grey matter among children ≤18 years of age that were seen at six pediatric medical centers in the United States. Data on spinal MRIs from years 2005–2014 will be collected from six sentinel medical centers. Physicians at these medical centers will examine the MRI reports and extract data on specific variables using a database developed by CDC.

Data will then be sent to CDC, where 2005–2013 data will be compared with 2014 data in order to assess if 2014 rates of AFM were higher than in previous years. Furthermore, this evaluation will provide important information regarding characteristics of patients presenting with AFM and grey matter changes, assist in determining the potential for surveillance focusing on MRI findings because AFM is not routinely conducted in the United States and identify possible risk factors.

The data will be used to estimate a baseline for the rate of AFM that occurs in the United States each year. This information has not been previously collected, since the U.S. does not collect routine surveillance for AFM/AFP.

The participation of respondents is voluntary. There is no cost to the respondents other than their time. The total estimated annual burden hours for the proposed project are 4,250 hours.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Avg. burden per response (in hrs.)	Total burden (in hrs.)
Physicians	Retrospective MRI Assessment for Acute Flaccid Myelitis: Patient Summary Form.	6	8,500	5/60	4,250
Total					4,250

Leroy A. Richardson,

Chief, Information Collection Review Office, Office of Scientific Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2015–11513 Filed 5–12–15; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–15–0728; Docket No. CDC–2015–0033]

Proposed Data Collection Submitted for Public Comment and Recommendations

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice with comment period.

SUMMARY: The Centers for Disease Control and Prevention (CDC), as part of its continuing efforts to reduce public burden and maximize the utility of government information, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. This notice invites comment on a proposed revision of the *National Notifiable Diseases Surveillance System (NNDSS)* information collection. The NNDSS is the nation's public health surveillance system that monitors the occurrence and spread of diseases and conditions that are nationally notifiable or under national surveillance.

DATES: Written comments must be received on or before July 13, 2015.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2015–0033 by any of the following methods:

- Federal eRulemaking Portal: *Regulation.gov.* Follow the instructions for submitting comments.
- Mail: Leroy A. Richardson, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE., MS–D74, Atlanta, Georgia 30329.

Instructions: All submissions received must include the agency name and Docket Number. All relevant comments received will be posted without change to *Regulations.gov*, including any personal information provided. For access to the docket to read background documents or comments received, go to *Regulations.gov*.

Please note: All public comment should be submitted through the Federal eRulemaking portal (Regulations.gov) or by U.S. mail to the address listed above.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact the Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE., MS–D74, Atlanta, Georgia 30329; phone: 404–639–7570; Email: *omb@cdc.gov.*

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. In addition, the PRA also requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information, to search data sources, to complete and review the collection of information; and to transmit or otherwise disclose the information.

Proposed Project

National Notifiable Diseases Surveillance System (OMB Control No. 0920–0728, Expires 01/31/2017)—Revision—Center for Surveillance, Epidemiology and Laboratory Services (CSELS), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The Public Health Services Act (42 U.S.C. 241) authorizes CDC to disseminate nationally notifiable condition information. The Nationally Notifiable Diseases Surveillance System (NNDSS) is based on data collected at the state, territorial and local levels as a result of legislation and regulations in those jurisdictions that require health care providers, medical laboratories, and other entities to submit health-related data on reportable conditions to public health departments. These reportable conditions, which include infectious and non-infectious diseases, vary by jurisdiction depending upon each jurisdiction's health priorities and needs. Infectious disease agents and environmental hazards often cross geographical boundaries. Each year, the Council of State and Territorial Disease Epidemiologists (CSTE), supported by CDC, determines which reportable conditions should be designated nationally notifiable and voluntarily submitted to CDC so that information can be shared across jurisdictional boundaries and both surveillance and prevention and control activities can be coordinated at regional and national levels.

CDC requests a three-year approval for a revision the NNDSS information collection. This Revision includes requests for approval to receive: (1) Case notification data for Chikungunya, Dengue-like illness, Non-HPS Hantavirus, and Acute Flaccid Myelitis; (2) new laboratory and vaccine data elements for all conditions; and (3) new disease-specific data elements for Mumps, Pertussis, and Sexually Transmitted Diseases.

Although this Revision includes case notifications that were not part of the last NNDSS Revision, the estimate of the average burden per response based on the burden tables from all of the consolidated applications has not changed. The burden on the states and cities is estimated to be 10 hours per response and the burden on the territories is estimated to be 5 hours per response. The addition of new vaccine, laboratory, and disease-specific data elements do not add any additional burden because the states, territories, and cities already collect those data elements. There will be no increase in burden for the states, territories, and cities to send those data elements to CDC. The estimated annual burden is 28,340 hours.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Avg. burden per response (in hrs.)	Total burden (in hrs.)
States	Weekly and Annual	50	52	10	26,000
Territories	Weekly and Annual	5	52	5	1,300
Cities	Weekly and Annual	2	52	10	1,040
Total					28,340

Leroy A. Richardson,

Chief, Information Collection Review Office, Office of Scientific Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2015–11514 Filed 5–12–15; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60 Day–15–15AGK; Docket No. CDC–2015–0032]

Proposed Data Collection Submitted for Public Comment and Recommendations

AGENCY: Centers for Disease Control and Prevention, CDC, Department of Health and Human Services, HHS.

ACTION: Notice with comment period.

SUMMARY: The Centers for Disease Control and Prevention (CDC), as part of its continuing efforts to reduce public burden and maximize the utility of government information, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. This notice invites comment on a new information collection request entitled, ''Understanding Barriers and Facilitators to HIV prevention for Men Who Have Sex with Men (MSM)'' to conduct qualitative research with most at risk HIV-negative MSM. The research is intended to understand issues surrounding HIV risk for MSM, identify influences of high risk behaviors and to investigate risk management and resiliency among HIV-negative MSM.

DATES: Written comments must be received on or before July 13, 2015.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2015–0032 by any of the following methods:

- *Federal eRulemaking Portal: Regulation.gov.* Follow the instructions for submitting comments.
- *Mail:* Leroy A. Richardson, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE., MS–D74, Atlanta, Georgia 30329.

Instructions: All submissions received must include the agency name and Docket Number. All relevant comments received will be posted without change to *Regulations.gov*, including any personal information provided. For access to the docket to read background documents or comments received, go to *Regulations.gov*.

Please note: All public comment should be submitted through the Federal eRulemaking portal (*Regulations.gov*) or by U.S. mail to the address listed above.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact the Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE., MS–D74, Atlanta, Georgia 30329; phone: 404–639–7570; Email: *omb@cdc.gov.*

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. In addition, the PRA also requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information, to search data sources, to complete and review the collection of information; and to transmit or otherwise disclose the information.

Proposed Project

Understanding Barriers and Facilitators to HIV prevention for Men Who Have Sex with Men (MSM) (Pulse Study)—New—National Center for HIV/AIDS, Viral Hepatitis, STD, and TB Prevention (NCHHSTP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The National Center for HIV/AIDS, Viral Hepatitis, STD, and TB Prevention (NCHHSTP)/Division of HIV/AIDS Prevention (DHAP) is requesting approval for one year of a data collection entitled, ''Understanding Barriers and Facilitators to HIV prevention for Men Who Have Sex with Men (MSM).'' The purpose of this study is to conduct primarily qualitative research with most at risk HIV-negative MSM. There are four goals to this study: (1) Understand issues surrounding HIV risk for MSM; (2) learn more about how gay community or peer norms, and community identification influence risk behaviors; (3) understand individual HIV risk management, such as having an HIV-positive partner with suppressed viral load, barriers and facilitators for use of biomedical interventions (*i.e.,* pre-exposure prophylaxis (PrEP), non-occupational post-exposure prophylaxis (nPEP); and (4) understand factors that promote resiliency among HIV-negative MSM.

The present research will be conducted in the top five Southern metropolitan areas in the United States with the highest HIV diagnoses for MSM—Atlanta, Georgia; Jackson, Mississippi; Miami, Florida; and New Orleans and Baton Rouge, Louisiana. These cities rank among those in the South with the highest prevalence and incidence of HIV and sexually transmitted infections (STIs) among black/African American and Hispanic/Latino MSM.

The study population will consist of black/African-American and Hispanic/Latino (1) male adolescents who are attracted to men and report they are HIV negative or have not been tested and (2) adult MSM who are recently tested and verified as HIV-negative.

All study participants will be 13 years of age or older. Participants will be recruited in the selected cities through referrals from Health Departments, clinics and other HIV testing centers. In addition, we will recruit via word-of-mouth referrals or flyers given out by community-based, advocacy, faith-based, and service-providing agencies.

Primarily, we will use a qualitative research design and will include a brief quantitative survey to reduce participant burden where possible (for example, when we do not need to know an in-depth answer for socio-demographics, HIV testing history, housing status, health insurance status). The first portion of the interview instrument consists of brief structured questions to characterize the respondents. The second portion of the instrument consists of open-ended in-depth qualitative questions. This research design was chosen based on the exploratory nature of our study purpose.

All data collection tools will be pre-tested and interviews conducted by trained personnel. The data collection will take place at a time and place that is convenient to the respondent. Locations will be private. Data collection may be audio-recorded and transcribed with the consent of the respondent.

We anticipate that consent forms and screener forms to take five minutes to complete each. We anticipate 50 percent of HIV-negative MSM screened will be eligible for the study. The brief structured survey (15 minutes) and in-depth interview (45 minutes) for HIV-negative MSM are expected to take a total of 60 minutes (1 hour) total. We will complete interviews for 105 black/African-American and 45 Hispanic/Latino HIV-negative MSM at greatest risk for HIV in high prevalence cities in the U.S. South. We anticipate screening 300 potential respondents. The total number of burden hours are 192.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden hours
General Public—Adults	HIV-negative MSM Screener—English.	210	1	5/60	18
General Public—Adults	HIV-negative MSM Screener—Spanish.	90	1	5/60	8
General Public—Adults	HIV-negative MSM Contact Information Form—English.	105	1	1/60	2
General Public—Adults	HIV-negative MSM Contact Information Form—Spanish.	45	1	1/60	1
General Public—Adults	HIV-negative MSM Consent Form—English.	95	1	5/60	8
General Public—Adults	HIV-negative MSM Consent Form—Spanish.	35	1	5/60	3
General Public—Adults	HIV-negative MSM Assent for Minors Form—English.	10	1	3/60	1
General Public—Adults	HIV-negative MSM Assent for Minors Form—Spanish.	10	1	3/60	1

ESTIMATED ANNUALIZED BURDEN HOURS—Continued

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden hours
General Public—Adults	HIV-negative MSM In-Depth Interview Guide—English.	105	1	1	105
General Public—Adults	HIV-negative In-Depth Interview Guide—Spanish.	45	1	1	45
Total					192

Leroy A. Richardson,

Chief, Information Collection Review Office, Office of Scientific Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2015–11512 Filed 5–12–15; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2015–D–0404]

Determination of the Period Covered by a No-Tobacco-Sale Order and Compliance With an Order; Draft Guidance for Tobacco Retailers; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for tobacco retailers entitled ''Determination of the Period Covered by a No-Tobacco-Sale Order and Compliance With an Order.'' The draft guidance, when finalized, will represent FDA's current thinking with respect to imposing no-tobacco-sale orders (NTSOs) on retailers who have committed repeated violations of certain restrictions on the sale and distribution of tobacco products. This draft guidance discusses, among other things, the period of time covered by an NTSO and a retailer's compliance with an NTSO.

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance, submit either electronic or written comments on the draft guidance by June 29, 2015.

ADDRESSES: Submit written requests for single copies of this draft guidance to the Center for Tobacco Products, Food and Drug Administration, 10903 New Hampshire Ave., Document Control Center, Bldg. 71, Rm. G335, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your request or include a fax number to which the draft guidance may be sent. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the draft guidance.

Submit electronic comments on the draft guidance to *http://www.regulations.gov.* Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852. Identify comments with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Colleen Maschal, Center for Tobacco Products, Food and Drug Administration, Document Control Center, Bldg. 71, Rm. G335, 10903 New Hampshire Ave., Silver Spring, MD 20993, 1–877–287–1373, *colleen.maschal@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On June 22, 2009, President Obama signed the Family Smoking Prevention and Tobacco Control Act (Tobacco Control Act) (Pub. L. 111–31) into law. The Tobacco Control Act amended the Federal Food, Drug, and Cosmetic Act (the FD&C Act) to give FDA authority to regulate the manufacture, marketing, and distribution of tobacco products to protect public health generally and to reduce tobacco use by minors. Section 906(d) of the FD&C Act (21 U.S.C. 387f(d)) authorizes FDA to issue regulations that restrict the sale and distribution of tobacco products if FDA determines such regulations would be appropriate for the protection of the public health. Section 303(f)(8) of the FD&C Act (21 U.S.C. 333(f)(8)) authorizes FDA to impose an NTSO against a person found to have committed repeated violations, at a particular retail outlet, of restrictions on the sale and distribution of tobacco products issued under section 906(d) of the FD&C Act, such as FDA's ''Regulations Restricting the Sale and Distribution of Cigarettes and Smokeless Tobacco to Protect Children and Adolescents'' (21 CFR part 1140). The term ''no-tobacco-sale order'' refers to an order prohibiting the sale of tobacco products at a retail outlet indefinitely or for a specified period of time under section 303(f)(8) of the FD&C Act. A ''repeated violation'' means ''at least 5 violations of particular requirements over a 36-month period at a particular retail outlet that constitute a repeated violation . . .'' (section 103(q)(1)(A) of the Tobacco Control Act).

FDA conducts inspections of retail outlets to evaluate compliance with the requirements of the FD&C Act and implementing regulations. This draft guidance discusses the period of time to be covered by an NTSO where there is evidence of ''repeated violations'' at a particular retail outlet. It also discusses a retailer's compliance with an NTSO. This draft guidance is meant to supplement FDA's guidances entitled ''Civil Money Penalties and No-Tobacco-Sale Orders for Tobacco Retailers'' and ''Civil Money Penalties for Tobacco Retailers and No-Tobacco-Sale Orders: Responses to Frequently Asked Questions.''

II. Significance of Draft Guidance

FDA is issuing this draft guidance consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the Agency's current thinking with respect to the period of time to be covered by NTSOs and retailers' compliance with NTSOs. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

III. Requests for Comments

A. General Information About Submitting Comments

Interested persons may submit either electronic comments regarding this document to *http://www.regulations.gov* or written comments to the Division of Dockets Management (see **ADDRESSES**). It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document.

B. Public Availability of Comments

Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday, and will be posted to the docket at *http://www.regulations.gov.* As a matter of Agency practice, FDA generally does not post comments submitted by individuals in their individual capacity on *http://www.regulations.gov.* This is determined by information indicating that the submission is written by an individual, for example, the comment is identified with the category ''Individual Consumer'' under the field titled ''Category (Required),'' on the ''Your Information'' page on *http://www.regulations.gov.* For this docket, however, FDA will not be following this general practice. Instead, FDA will post on *http://www.regulations.gov* comments to this docket that have been submitted by individuals in their individual capacity. If you wish to submit any information under a claim of confidentiality, please refer to 21 CFR 10.20.

C. Information Identifying the Person Submitting the Comment

Please note that your name, contact information, and other information identifying you will be posted on *http://www.regulations.gov* if you include that information in the body of your comments. For electronic comments submitted to *http://www.regulations.gov,* FDA will post the body of your comment on *http://www.regulations.gov* along with your state/province and country (if provided), the name of your representative (if any), and the category identifying you (*e.g.,* individual, consumer, academic, industry). For written submissions submitted to the Division of Dockets Management, FDA will post the body of your comments on *http://www.regulations.gov,* but you can put your name and/or contact information on a separate cover sheet and not in the body of your comments.

IV. Electronic Access

Persons with access to the Internet may obtain an electronic version of the draft guidance at either *http://www.regulations.gov* or *http://www.fda.gov/TobaccoProducts/GuidanceComplianceRegulatoryInformation/default.htm.*

Dated: May 8, 2015.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2015–11538 Filed 5–12–15; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2015–D–1246]

Investigational Enzyme Replacement Therapy Products: Nonclinical Assessment; Draft Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a draft guidance for industry entitled ''Investigational Enzyme Replacement Therapy Products: Nonclinical Assessment.'' This draft guidance is intended to advise the sponsors and individuals involved in the design and implementation of nonclinical studies on the substance and scope of nonclinical information needed to support first-in-human clinical trials, ongoing clinical development, and eventual approval of enzyme replacement therapy (ERT) products for the treatment of rare, life-threatening conditions.

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance, submit either electronic or written comments on the draft guidance by July 13, 2015.

ADDRESSES: Submit written requests for single copies of the draft guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

Submit electronic comments on the draft guidance to *http://www.regulations.gov.* Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Sushanta Chakder, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, Rm. 5108, Silver Spring, MD 20993–0002, 301–796–0861.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled ''Investigational Enzyme Replacement Therapy Products: Nonclinical Assessment.''

This draft guidance provides sponsors and individuals involved in the design and implementation of nonclinical studies with recommendations on the nonclinical information needed to support initiation of clinical trials, ongoing clinical development, and eventual licensure or approval for investigational ERT products. The recommendations in this guidance are applicable to ERT products indicated for lysosomal storage diseases or other diseases related to inborn errors of metabolism.

Because of the wide array of clinical indications, natural history of disease, and product types, no single nonclinical program can be designed to address all ERT products, and a case-by-case approach to both toxicological evaluation and clinical development is warranted to optimize and expedite drug development. Common nonclinical issues, such as the number of animal species needed for safety assessment, selection of animal models and duration of the toxicology studies needed to support first-in-human trials, and nonclinical study requirements for ultimate licensure or market approval of the ERT product, are addressed in this guidance.

This guidance is intended as an adjunct to the ICH guidances for industry entitled ''M3(R2) Nonclinical Safety Studies for the Conduct of Human Clinical Trials and Marketing Authorization for Pharmaceuticals,'' ''M3(R2) Nonclinical Safety Studies for the Conduct of Human Clinical Trials and Marketing Authorization for Pharmaceuticals—Questions and Answers,'' and ''S6 Preclinical Safety Evaluation of Biotechnology-Derived Pharmaceuticals.''

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the current thinking of FDA on nonclinical assessment of investigational ERT products. It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

II. The Paperwork Reduction Act of 1995

This guidance refers to previously approved collections of information that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in 21 CFR part 312 have been approved under OMB control number 0910–0014, and the information collection in the regulations on good laboratory practice for nonclinical laboratory studies (21 CFR part 58) is approved under OMB control number 0910–0119.

III. Comments

Interested persons may submit either electronic comments regarding this document to *http://www.regulations.gov* or written comments to the Division of Dockets Management (see **ADDRESSES**). It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday, and will be posted to the docket at *http://www.regulations.gov.*

IV. Electronic Access

Persons with access to the Internet may obtain the document at either *http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm* or *http://www.regulations.gov.*

Dated: May 7, 2015.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2015–11539 Filed 5–12–15; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2015–N–1339]

Determination That SODIUM SULAMYD (sulfacetamide sodium) Ophthalmic Solution and Ophthalmic Ointment Were Not Withdrawn From Sale for Reasons of Safety or Effectiveness

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) has determined that the drug products listed in this document were not withdrawn from sale for reasons of safety or effectiveness. This determination means that FDA will not begin procedures to withdraw approval of abbreviated new drug applications (ANDAs) that refer to these drug products, and it will allow FDA to continue to approve ANDAs that refer to the products as long as they meet relevant legal and regulatory requirements.

FOR FURTHER INFORMATION CONTACT: Amy Hopkins, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6223, Silver Spring, MD 20993–0002, 301–796–5418, *Amy.Hopkins@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In 1984, Congress enacted the Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) (the 1984 amendments), which authorized the approval of duplicate versions of drug products approved under an ANDA procedure. ANDA applicants must, with certain exceptions, show that the drug for which they are seeking approval contains the same active ingredient in the same strength and dosage form as the ''listed drug,'' which is a version of the drug that was previously approved. ANDA applicants do not have to repeat the extensive clinical testing otherwise necessary to gain approval of a new drug application (NDA).

The 1984 amendments include what is now section 505(j)(7) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(j)(7)), which requires FDA to publish a list of all approved drugs. FDA publishes this list as part of the ''Approved Drug Products with Therapeutic Equivalence Evaluations,'' which is generally known as the ''Orange Book.'' Under FDA regulations, a drug is removed from the list if the Agency withdraws or suspends approval of the drug's NDA or ANDA for reasons of safety or effectiveness or if FDA determines that the listed drug was withdrawn from sale for reasons of safety or effectiveness (21 CFR 314.162).

Under § 314.161(a) (21 CFR 314.161(a)), the Agency must determine whether a listed drug was withdrawn from sale for reasons of safety or effectiveness: (1) Before an ANDA that refers to that listed drug may be approved, (2) whenever a listed drug is voluntarily withdrawn from sale and ANDAs that refer to the listed drug have been approved, and (3) when a person petitions for such a determination under 21 CFR 10.25(a) and 10.30. Section 314.161(d) provides that if FDA determines that a listed drug was withdrawn from sale for safety or effectiveness reasons, the Agency will initiate proceedings that could result in the withdrawal of approval of the ANDAs that refer to the listed drug.

FDA has become aware that the drug products listed in the table in this document are no longer being marketed. (As requested by the applicant, FDA withdrew approval of NDA 005963 for SODIUM SULAMYD (sulfacetamide sodium) Ophthalmic Solution and Ophthalmic Ointment in the **Federal Register** of August 16, 2001 (66 FR 43017)).

Application No.	Drug	Applicant
NDA 005963	SODIUM SULAMYD (sulfacetamide sodium) Ophthalmic Solution 10%, Ophthalmic Solution 30%, and Ophthalmic Ointment 10%.	Schering Plough Corp., 2000 Galloping Hill Rd., Kenilworth, NJ 07033.

FDA has reviewed its records and, under § 314.161, has determined that the drug products listed in this document were not withdrawn from sale for reasons of safety or effectiveness. Accordingly, the Agency will continue to list the drug products listed in this document in the ''Discontinued Drug Product List'' section of the Orange Book. The ''Discontinued Drug Product List'' identifies, among other items, drug products that have been discontinued from marketing for reasons other than safety or effectiveness.

Approved ANDAs that refer to the NDA listed in this document are unaffected by the discontinued marketing of the products subject to this NDA. Additional ANDAs that refer to these products may also be approved by the Agency if they comply with relevant legal and regulatory requirements. If FDA determines that labeling for these drug products should be revised to meet current standards, the Agency will advise ANDA applicants to submit such labeling.

Dated: May 7, 2015.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2015–11529 Filed 5–12–15; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2008–N–0312]

Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; Extra Label Drug Use in Animals

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled, ''Extra Label Drug Use in Animals'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: FDA PRA Staff, Office of Operations, Food and Drug Administration, 8455 Colesville Rd., COLE–14526, Silver Spring, MD 20993–0002, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: On February 18, 2015, the Agency submitted a proposed collection of information entitled, ''Extra Label Drug Use in Animals'' to OMB for review and clearance under 44 U.S.C. 3507. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0325. The approval expires on March 31, 2018. A copy of the supporting statement for this information collection is available on the Internet at *http://www.reginfo.gov/public/do/PRAMain.*

Dated: May 6, 2015.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2015–11526 Filed 5–12–15; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–D–0611]

Biosimilars: Additional Questions and Answers Regarding Implementation of the Biologics Price Competition and Innovation Act of 2009; Draft Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a revised draft guidance for industry entitled ''Biosimilars: Additional Questions and Answers Regarding Implementation of the Biologics Price Competition and Innovation Act of 2009.'' This draft guidance is intended to provide answers to common questions from sponsors interested in developing proposed biosimilar products, biologics license application (BLA) holders, and other interested parties regarding FDA's interpretation of the Biologics Price Competition and Innovation Act of 2009 (BPCI Act). This guidance revises the draft guidance entitled ''Biosimilars: Questions and Answers Regarding Implementation of the Biologics Price Competition and Innovation Act of 2009,'' issued February 15, 2012, to provide new and revised questions and answers (Q&As).

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance, submit either electronic or written comments on the draft guidance by July 13, 2015.

ADDRESSES: Submit written requests for single copies of the draft guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993–0002, or Office of Communication, Outreach and Development (HFM–40), Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 3128, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

Submit electronic comments on the draft guidance to *http://www.regulations.gov*. Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Sandra Benton, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6340, Silver Spring, MD 20993–0002, 301–796–1042, or Stephen Ripley, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993–0002, 240–402–7911.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a revised draft guidance for industry entitled ''Biosimilars: Additional Questions and Answers Regarding Implementation of the Biologics Price Competition and Innovation Act of 2009.'' This draft guidance provides answers to common questions from sponsors interested in developing proposed biosimilar products, BLA holders, and other interested parties regarding FDA's interpretation of the BPCI Act. This guidance revises the draft guidance entitled ''Biosimilars: Questions and Answers Regarding Implementation of the Biologics Price Competition and Innovation Act of 2009,'' issued February 15, 2012, to provide new and revised Q&As. It also includes certain original Q&As that have not yet been finalized.

The BPCI Act, enacted as part of the Patient Protection and Affordable Care Act (Pub. L. 111–148) on March 23, 2010, created an abbreviated licensure pathway under section 351(k) of the Public Health Service Act (the PHS Act) (42 U.S.C. 262(k)) for biological products demonstrated to be biosimilar to, or interchangeable with, an FDA-licensed reference product. This draft guidance describes FDA's current interpretation of certain statutory requirements added by the BPCI Act and includes Q&As in the following categories:

- Biosimilarity or Interchangeability
- Provisions Related to Requirement to Submit a BLA for a ''Biological Product''

• Exclusivity

The Q&A format is intended to promote transparency and facilitate development programs for proposed biosimilar products by addressing questions that may arise in the early stages of development. In addition, these Q&As respond to questions the Agency has received from prospective BLA and new drug application (NDA) applicants regarding the appropriate statutory authority under which certain products will be regulated.

In the **Federal Register** of February 15, 2012 (77 FR 8885), FDA published a notice announcing the availability of a draft guidance entitled ''Biosimilars: Questions and Answers Regarding Implementation of the Biologics Price Competition and Innovation Act of 2009.'' Although interested parties can comment on any guidance at any time, to ensure that the Agency considered comments on the draft guidance before beginning work on the final version of the guidance, FDA requested that interested parties submit comments by April 16, 2012. FDA's consideration of these comments, among other things, is reflected in this revised draft guidance (which provides new and revised Q&As) and the final guidance. This revised draft guidance describes the status of the draft guidance Q&As provided in this revised draft guidance and the status of the final guidance Q&As that are included in the guidance entitled ''Biosimilars: Questions and Answers Regarding Implementation of the Biologics Price Competition and Innovation Act of 2009.'' FDA intends to update these guidances to include additional Q&As as appropriate.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the current thinking of FDA on this topic. It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

II. Comments

Interested persons may submit either electronic comments regarding this document to *http://www.regulations.gov* or written comments to the Division of Dockets Management (see **ADDRESSES**). It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday, and will be posted to the docket at *http://www.regulations.gov*.

III. The Paperwork Reduction Act of 1995

This draft guidance refers to information collection provisions that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (the PRA) (44 U.S.C. 3501–3520). The submission of an investigational new drug application is covered under 21 CFR part 312 and approved under OMB Control No. 0910–0014. The submission of an NDA is covered under 21 CFR 314.50 and approved under OMB Control No. 0910–0001. The submission of a BLA under section 351(a) of the PHS Act is covered under part 601 (21 CFR part 601) and approved under OMB Control No. 0910–0338. The submission of a BLA under section 351(k) of the PHS Act is covered under part 601 and approved under OMB control number 0910–0719.

IV. Electronic Access

Persons with access to the Internet may obtain the document at *http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm, http://www.fda.gov/BiologicsBloodVaccines/GuidanceComplianceRegulatoryInformation/default.htm,* or *http://www.regulations.gov*.

Dated: May 7, 2015.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2015–11528 Filed 5–12–15; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2000–D–0598 (Formerly 2000D–1631)]

International Cooperation on Harmonisation of Technical Requirements for Registration of Veterinary Medicinal Products (VICH GL23(R)); Studies To Evaluate the Safety of Residues of Veterinary Drugs in Human Food: Genotoxicity Testing; Revised Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a revised guidance for industry (GFI) #116 entitled ''Studies to Evaluate the Safety of Residues of Veterinary Drugs in Human Food: Genotoxicity Testing'' (VICH GL23(R)). This revised guidance has been developed for veterinary use by the International Cooperation on Harmonisation of Technical Requirements for Registration of Veterinary Medicinal Products (VICH). In this VICH guidance, the recommendation for a second test to evaluate the potential of a chemical to produce chromosomal effects is revised. The revised guidance indicates that the potential of a chemical to produce chromosomal effects can be evaluated using one of the following three tests: (1) An *in vitro* chromosomal aberrations test using metaphase analysis, which detects both clastogenicity and aneugenicity; (2) an *in vitro* mammalian cell micronucleus test, which detects the activity of clastogenicity and aneugenicity; or (3) a mouse lymphoma test, which, with modification, can detect both gene mutation and chromosomal damage. This revised VICH guidance document is intended to facilitate the mutual acceptance of safety data necessary for the establishment of acceptable daily intakes for veterinary drug residues in human food by the relevant regulatory authorities.

DATES: Submit either electronic or written comments on Agency guidance at any time.

ADDRESSES: Submit written requests for single copies of the revised guidance to the Policy and Regulations Staff (HFV–6), Center for Veterinary Medicine, Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855. Send one self-addressed adhesive label to assist that office in processing your request. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the revised guidance document.

Submit electronic comments on the revised guidance to *http://www.regulations.gov*. Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT:
Tong Zhou, Center for Veterinary Medicine (HFV–153), Food and Drug Administration, 7500 Standish Place, Rockville, MD 20855, 240–402–0826, *Tong.Zhou@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

In recent years, many important initiatives have been undertaken by regulatory authorities and industry associations to promote the international harmonization of regulatory requirements. FDA has participated in efforts to enhance harmonization and has expressed its commitment to seek scientifically based, harmonized technical procedures for the development of pharmaceutical products. One of the goals of harmonization is to identify, and then reduce, differences in technical requirements for drug development among regulatory agencies in different countries.

FDA has actively participated in the International Conference on Harmonisation of Technical Requirements for Registration of Pharmaceuticals for Human Use (ICH) for several years to develop harmonized technical requirements for the approval of human pharmaceutical and biological products among the European Union, Japan, and the United States. The VICH is a parallel initiative for veterinary medicinal products. The VICH is concerned with developing harmonized technical requirements for the approval of veterinary medicinal products in the European Union, Japan, and the United States, and includes input from both regulatory and industry representatives.

The VICH Steering Committee is composed of member representatives from the European Commission, European Medicines Evaluation Agency, European Federation of Animal Health, Committee on Veterinary Medicinal Products, FDA, the U.S. Department of Agriculture, the Animal Health Institute, the Japanese Veterinary Pharmaceutical Association, the Japanese Association of Veterinary Biologics, and the Japanese Ministry of Agriculture, Forestry, and Fisheries.

Six observers are eligible to participate in the VICH Steering Committee: One representative from the government of Australia/New Zealand, one representative from the industry in Australia/New Zealand, one representative from the government of Canada, one representative from the industry of Canada, one representative from the government of South Africa, and one representative from the industry of South Africa. The VICH Secretariat, which coordinates the preparation of documentation, is provided by the International Federation for Animal Health (IFAH). An IFAH representative also participates in the VICH Steering Committee meetings.

In the **Federal Register** of March 5, 2013 (78 FR 14306), FDA published a notice of availability for a draft revised guidance document entitled ‘‘Studies to Evaluate the Safety of Residues of Veterinary Drugs in Human Food: Genotoxicity Testing’’ (VICH GL23(R)) giving interested persons until May 6, 2013, to comment on the draft revised guidance. FDA received one comment on the draft revised guidance, and that comment, as well as those received by other VICH member regulatory agencies, were considered as the guidance was finalized. The guidance announced in this document finalizes the draft revised guidance dated March 5, 2013. The revised guidance is a product of the Safety Expert Working Group of the VICH.

This revised VICH guidance document recommends a second test to evaluate the potential of a chemical to produce chromosomal effects. The revised VICH guidance indicates that the potential of a chemical to produce chromosomal effects can be evaluated using one of the following three tests: (1) An *in vitro* chromosomal aberrations test using metaphase analysis, which detects both clastogenicity and aneugenicity; (2) an *in vitro* mammalian cell micronucleus test, which detects the activity of clastogenicity and aneugenicity; or (3) a mouse lymphoma test, which, with modification, can detect both gene mutation and chromosomal damage. This revised VICH guidance is intended to facilitate the mutual acceptance of safety data necessary for the establishment of acceptable daily intakes for veterinary drug residues in human food by the relevant regulatory authorities. The objective of this revised VICH guidance is to ensure international harmonization of genotoxicity testing.

II. Significance of Guidance

This guidance, developed under the VICH process, is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). This guidance represents the current thinking of FDA on this topic. It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

III. Paperwork Reduction Act of 1995

This guidance refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in 21 CFR part 514 have been approved under OMB control number 0910–0032.

IV. Comments

Interested persons may submit either electronic comments regarding this document to *http://www.regulations.gov* or written comments to the Division of Dockets Management (see **ADDRESSES**). It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday, and will be posted to the docket at *http://www.regulations.gov.*

VI. Electronic Access

Persons with access to the Internet may obtain the revised guidance at either *http://www.fda.gov/AnimalVeterinary/GuidanceComplianceEnforcement/GuidanceforIndustry/default.htm* or *http://www.regulations.gov.*

Dated: May 7, 2015.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2015–11527 Filed 5–12–15; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0128]

Prescription Drug User Fee Act; Public Meeting; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public meeting; request for comments

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing a public meeting on the reauthorization of the Prescription Drug User Fee Act (PDUFA) for fiscal years (FYs) 2018 through 2022. PDUFA authorizes FDA to collect user fees for the process for the review of human drugs. The current legislative authority for PDUFA expires in September 2017. At that time, new legislation will be required for FDA to continue collecting user fees in future fiscal years. The Federal Food, Drug, and Cosmetic Act (FD&C Act) requires that FDA begin the PDUFA reauthorization process by publishing a notice in the **Federal Register** requesting public input and holding a public meeting where the public may present its views on the reauthorization. FDA invites public comment as the Agency begins the

process to reauthorize the program in FYs 2018–2022.

DATES: The public meeting will be held on July 15, 2015, from 9 a.m. to 2 p.m. Registration to attend the meeting must be received by June 30, 2015. See section III.B for information on how to register for the meeting. Submit either electronic or written comments by August 15, 2015.

ADDRESSES: The meeting will be held at the FDA White Oak Campus, 10903 New Hampshire Ave., Bldg. 31 Conference Center, Sections B and C of the Great Room (Rm. 1503), Silver Spring, MD 20993. Entrance for the public meeting participants (non-FDA employees) is through Building 1 where routine security check procedures will be performed. For parking and security information, please refer to *http://www.fda.gov/AboutFDA/WorkingatFDA/BuildingsandFacilities/WhiteOakCampusInformation/ucm241740.htm.*

Submit electronic comments to *http://www.regulations.gov.* Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

Transcripts of the meeting will be available on the FDA Web site (*http://www.fda.gov/ForIndustry/UserFees/PrescriptionDrugUserFee/UCM2005475.htm)* approximately 30 days after the meeting.

FOR FURTHER INFORMATION CONTACT:
Graham Thompson, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 1146, Silver Spring, MD 20993, 301–796–5003, FAX: 301–847–8443.

SUPPLEMENTARY INFORMATION:

I. Introduction

FDA is announcing a public meeting to begin the reauthorization process of PDUFA, the legislation that authorizes FDA to collect user fees for the process for the review of human drugs by various components in FDA including the Center for Drug Evaluation and Research, the Center for Biologics Evaluation and Research, the Office of the Commissioner, and the Office of Regulatory Affairs. The current authorization of the program (PDUFA V) expires in September 2017. Without new legislation, FDA will no longer be able to collect user fees for future fiscal years to fund the human drug review process. Section 736B(d)(2) (21 U.S.C. 379h–2(d)(2)) of the FD&C Act requires that before FDA begins negotiations with the regulated industry on PDUFA reauthorization, we do the following: (1) Publish a notice in the **Federal Register** requesting public input on the reauthorization, (2) hold a public meeting where the public may present its views on the reauthorization, (3) provide a period of 30 days after the public meeting to obtain written comments from the public, and (4) publish the comments on the FDA Web site at *http://www.regulations.gov.* This notice, the public meeting, the 30-day comment period after the meeting, and the posting of the comments on the FDA Web site will satisfy these requirements. The purpose of the meeting is to hear stakeholder views on PDUFA as we consider the features to propose, update, and discontinue in the next PDUFA. FDA is interested in responses to the following three questions and welcomes any other pertinent information stakeholders would like to share:

- What is your assessment of the overall performance of PDUFA V thus far?
- What current features of PDUFA should be reduced or discontinued to ensure the continued efficiency and effectiveness of the human drug review process?
- What new features should FDA consider adding to the program to enhance the efficiency and effectiveness of the human drug review process?

The following information is provided to help potential meeting participants better understand the history and evolution of PDUFA and its current status.

II. What is PDUFA? What does it do?

PDUFA is a law that authorizes FDA to collect fees from drug companies that submit marketing applications for certain human drug and biological products. PDUFA was originally enacted in 1992 as the Prescription Drug User Fee Act (Pub. L. 102–571) for a period of 5 years. In 1997, Congress passed the FDA Modernization Act of 1997 (FDAMA, Pub. L. 105–115) which reauthorized the program (PDUFA II) for an additional 5 years. In 2002, Congress extended PDUFA again through FY 2007 (PDUFA III) in the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (Pub. L. 107–188). In 2007, Title I of the Food and Drug Administration Amendments Act of 2007 (FDAAA, Pub. L. 110–85) reauthorized PDUFA through FY 2012 (PDUFA IV). Most recently, PDUFA was reauthorized through FY 2017 (PDUFA V) as Title I of the Food and Drug Administration Safety and Innovation Act (FDASIA, Pub. L. 112–144).

PDUFA's intent is to provide additional revenues so that FDA can hire more staff, improve systems, and establish a better managed human drug review process to make important therapies available to patients sooner without compromising review quality or FDA's high standards for safety, efficacy, and quality. As part of FDA's agreement with industry during each reauthorization, the Agency agrees to certain performance goals. These goals apply to the process for the review of original new human drug and biological product applications, resubmissions of original applications, and supplements to approved applications. During the first few years of PDUFA I, the additional funding enabled FDA to eliminate backlogs of original applications and supplements. Phased in over the 5 years of PDUFA I, the goals were to review and act on 90 percent of priority new drug applications (NDAs), biologics license applications (BLAs), and efficacy supplements within 6 months of submission of a complete application; to review and act on 90 percent of standard original NDAs, BLAs, and efficacy supplements within 12 months, and to review and act on resubmissions and manufacturing supplements within 6 months. Over the course of PDUFA I, FDA exceeded all of these performance goals and significantly reduced median review times of both priority and standard NDAs and BLAs.

Under PDUFA II, the review performance goals were shortened and new procedural goals were added to improve FDA's interactions with industry sponsors and to help facilitate the drug development process. The procedural goals, for example, articulated timeframes for scheduling sponsor-requested meetings intended to address issues or questions regarding specific drug development programs, as well as timeframes for the timely response to industry-submitted questions on special study protocols. FDA met or exceeded nearly all of the review and procedural goals under PDUFA II. However, concerns grew that overworked review teams often had to return applications as ''approvable'' because they did not have the resources and sufficient staff time to work with the sponsors to resolve issues so that applications could be approved in the first review cycle.

A sound financial footing and support for limited postmarket risk management were key themes of PDUFA III. Base user fee resources were significantly increased and a mechanism to account for changes in human drug review workload was adopted. PDUFA III also expanded the scope of user fee activities to include postmarket surveillance of new therapies for up to 3 years after marketing approval. FDA committed to the development of guidance for industry on risk assessment, risk management, and pharmacovigilance as well as guidance to review staff and industry on Good Review Management Principles and Practices (GRMPs). Initiatives to improve application submission and Agency-sponsor interactions during the drug development and application review processes were also adopted.

With PDUFA's reauthorization under FDAAA Title I (PDUFA IV), FDA obtained a significant increase in base fee funding and committed to full implementation of GRMPs, which includes providing a planned review timeline for premarket review, development of new guidance for industry on innovative clinical trials, modernization of postmarket safety, and elimination of the 3-year limitation on fee support for postmarket surveillance. Additional provisions in FDAAA (Titles IV, V, and IX) gave FDA additional statutory authority that increased the pre- and postmarket review process requirements, added new deadlines, and effectively increased review workload. Specifically, the new provisions expanded FDA's drug safety authorities such as the authority to require risk evaluation mitigation strategies (REMS), order safety labeling changes, and require postmarket studies.

With the current authorization of PDUFA under Title I of FDASIA, FDA implemented a new review program (''the Program'') to promote greater transparency and increase communication between the FDA review team and the applicant on the most innovative products reviewed by the Agency. The Program applies to all new molecular entity (NME) NDAs and original BLAs received by the Agency from October 1, 2012 through September 30, 2017. The Program adds new opportunities for communication between the FDA review team and the applicant during review of a marketing application, including mid-cycle communications and late-cycle meetings, while adding 60 days to the review clock to provide for this increased interaction and to address review issues for these complex applications. PDUFA V also required two assessments of the impact of the Program. The first of these, the interim assessment, is available on FDA's Web site at *http://www.fda.gov/downloads/ForIndustry/UserFees/PrescriptionDrugUserFee/UCM436448.pdf.*

In addition to continued commitment to a significant set of review, processing, and procedural goals, PDUFA V also included commitments related to enhancing regulatory science and expediting drug development, enhancing benefit-risk assessment in regulatory decisionmaking, modernizing the FDA drug safety system, and improving the efficiency of human drug review by requiring electronic submissions and standardization of electronic drug application data. The PDUFA V Commitment Letter (available at *http://www.fda.gov/downloads/ForIndustry/UserFees/PrescriptionDrugUserFee/UCM270412.pdf)* requires that FDA report on the progress in satisfying these commitments in the annual PDUFA performance report. The FY 2014 report can be found at *http://www.fda.gov/AboutFDA/ReportsManualsForms/Reports/UserFeeReports/PerformanceReports/ucm440180.htm.* More information about FDA's implementation of PDUFA V can also be found at *http://www.fda.gov/ForIndustry/UserFees/PrescriptionDrugUserFee/ucm272170.htm.* Key **Federal Register** documents, PDUFA-related guidances, performance reports, and financial reports can also be found at *http://www.fda.gov/ForIndustry/UserFees/PrescriptionDrugUserFee/default.htm.*

III. Public Meeting Information

A. Purpose and Scope of the Meeting

Through this notice, FDA is announcing a public meeting to hear stakeholder views on what features the Agency should propose in the reauthorization of PDUFA for FYs 2018–2022. In general, the meeting format most likely will include presentations by FDA and a series of panels representing different stakeholder groups. We will also provide an opportunity for other stakeholders to provide public comment at the meeting. FDA policy issues are beyond the scope of these reauthorization discussions. Accordingly, the presentations should focus on process enhancements and funding issues, and not focus on policy issues.

Please consider the following questions for this meeting:

- What is your assessment of the overall performance of PDUFA V thus far?
- What new features should FDA consider adding to the program to enhance the efficiency and effectiveness of the human drug review process?
- What current features of PDUFA should be reduced or discontinued to ensure the continued efficiency and effectiveness of the human drug review process?

B. Meeting Attendance and Participation

We will conduct the meeting on July 15, 2015, at Building 31 of the FDA White Oak Campus (see **ADDRESSES**). If you wish to attend this meeting, visit *http://pdufapublicmeeting.eventbrite.com.* Please register by June 30, 2015. If you are unable to attend the meeting in person, you can register to view a live Web cast of the meeting. You will be asked to indicate in your registration if you plan to attend in person or via the Web cast. Your registration must also contain your complete contact information, including name, title, affiliation, address, email address, and phone number. Seating will be limited, so early registration is recommended. Registration is free and will be on a first-come, first-served basis. However, FDA may limit the number of participants from each organization based on space limitations. Registrants will receive confirmation once their registrations have been accepted. Onsite registration on the day of the meeting will be based on space availability. If you need special accommodations because of a disability, please contact Graham Thompson (see **FOR FURTHER INFORMATION CONTACT**) at least 7 days before the meeting.

In addition, any person may submit either electronic comments regarding this document to *http://www.regulations.gov* or written comments to the Division of Dockets Management (see **ADDRESSES**). It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday, and will be posted to the docket at *http://www.regulations.gov.* To ensure consideration, all comments must be received by August 15, 2015.

Please be advised that as soon as a transcript is available, it will be accessible at *http://www.fda.gov/ForIndustry/UserFees/PrescriptionDrugUserFee/UCM2005475.htm.*

Dated: May 8, 2015.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2015–11537 Filed 5–12–15; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2015–N–1306]

Dose Finding of Small Molecule Oncology Drugs; Public Workshop

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public workshop.

The Food and Drug Administration (FDA), in cosponsorship with the American Association for Cancer Research (AACR), is announcing a public workshop entitled ''Dose Finding of Small Molecule Oncology Drugs.'' The purpose of this 2-day workshop is to provide an interdisciplinary forum to discuss the best practices of dose finding and dose selection for small molecule kinase inhibitors developed for oncology indications. The goal is to foster robust scientific discussion to promote a movement away from the conventional 3+3 dose escalation trial design and move toward innovative designs that can potentially incorporate key clinical, pharmacologic, and pharmacometric data and, when appropriate, nonclinical information to guide dose selection. Ideally, this workshop will propel a movement toward integrating dose finding into the entire life cycle of product development as opposed to confining it to the Phase 1, first-in-human trial based on short-term safety measures.

Date and Time: The public workshop will be held on May 18 and 19, 2015, from 8 a.m. to 5 p.m.

Location: The public workshop will be held at the Washington Court Hotel, 525 New Jersey Ave. NW., Washington, DC 20001, 202–628–2100.

Contact Persons: Rasika Kalamegham, American Association for Cancer Research, 1425 K St. NW., Washington, DC 20005, 267–765–1029, *Rasika.Kalamegham@aacr.org;* and Christine Lincoln, Office of Hematology and Oncology Products, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Silver Spring, MD, 20993–0002, *Christine.Lincoln@fda.hhs.gov.*

Registration: Registration is free and available on a first-come, first-served basis. You must register online by May 14, 2015, 5 p.m. Registration will be handled through AACR. Early registration is recommended because facilities are limited and, therefore, FDA may limit the number of participants from each organization. If time and space permits, onsite registration on the day of the public workshop will be provided beginning at 7 a.m.

If you need special accommodations due to a disability, please contact the Washington Court Hotel no later than May 14, 2015.

To register for the public workshop, visit *https://www.surveymonkey.com/s/WTM2Z57.* Please provide complete contact information for each attendee, including name, title, affiliation, email, and telephone number. Registrants will receive confirmation after they have been accepted. Registrants will be notified if they are on a waiting list.

Streaming Audiocast of the Public Workshop: This public workshop will also be available via audiocast. Persons interested in accessing the audiocast must register online at *https://www.surveymonkey.com/s/WTM2Z57.* FDA has verified the Web site addresses in this document, but FDA is not responsible for any subsequent changes to the Web sites after this document publishes in the **Federal Register**. Early registration is recommended because audiocast connections are limited. Organizations are requested to register all participants but to listen using one connection per location. After registration, participants will be sent technical system requirements and connection access information after May 14, 2015.

Comments: FDA is holding this public workshop to provide an interdisciplinary forum to discuss the best practices of dose finding and dose selection for small molecule kinase inhibitors developed for oncology indications. To permit the widest possible opportunity to obtain public comment, FDA is soliciting either electronic or written comments on all aspects of the public workshop topics. The deadline for submitting comments related to this public workshop is June 18, 2015.

Regardless of attendance at the public workshop, you may submit either electronic comments regarding this document to *http://www.regulations.gov* or written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852. It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday, and will be posted to the docket at *http://www.regulations.gov.*

Transcript: As soon as a transcript is available, it will be accessible at *http://www.regulations.gov.* It may be viewed at the Division of Dockets Management (see *Comments*). A transcript will also be available in either hardcopy or on CD–ROM, after submission of a Freedom of Information request. Written requests are to be sent to the Division of Freedom of Information (ELEM–1029), Food and Drug Administration, 12420 Parklawn Dr., Element Bldg., Rockville, MD 20857. A link to the transcript will also be available approximately 45 days after the public workshop at *http://www.fda.gov/MedicalDevices/NewsEvents/WorkshopsConferences/default.htm.* Select this public workshop from the posted events list.

SUPPLEMENTARY INFORMATION:

I. Background

Since the approval of imatinib in 2001, FDA has approved 26 small molecule kinase inhibitors for the treatment of oncology indications. For the first several small molecule kinase inhibitors in development, it was common to see multiple dose-finding trials that evaluated multiple dose levels and dosing schedules. As additional small molecule kinase inhibitors entered clinical trials and the familiarity with this class of drugs increased, the number of dose-finding trials for each compound reduced in number. Although this may appear to be a product of increased efficiency in trial design and dose finding, proper doses or dose ranges appear to not have been identified for approved products, as evident by the high prevalence of dose reductions observed in registration trials and the high frequency of postmarketing requirements to study alternative doses. In some cases, critical cross-disciplinary information does not appear to be integrated into the dose-finding process. Given the recent history of approvals based on the results of early phase trials driven by extraordinary efficacy data, the incentive for conducting rigorous dose-finding trials may not be overtly apparent. However, the increasing need for the development of combination therapy due to resistance to monotherapy and poor tolerance of approved dosing regimens underscores the need for a more efficient process of dose selection in the early stages of study design.

II. Summary

FDA's Center for Drug Evaluation and Research and the AACR agree to cosponsor a workshop focusing on providing a forum for discussion of best practices on dose finding of small molecule oncology drugs. The workshop will be held May 18 and 19, 2015, and is expected to include between 10 to 13 panelists and speakers (including a moderator) per each of the 4 sessions and will be open to the public.

III. Purpose

The purpose of this 2-day workshop is to provide an interdisciplinary forum to discuss the best practices of dose finding and dose selection for small molecule kinase inhibitors developed for oncology indications. The goal is to foster robust scientific discussion to promote a movement away from the conventional 3+3 dose escalation trial design and move toward adaptive designs that can potentially incorporate key clinical, pharmacologic, and pharmacometric data and, when appropriate, nonclinical information to guide dose selection. Ideally, this workshop will propel a movement toward integrating dose finding into the entire life cycle of product development as opposed to confining it to the Phase 1, first-in-human trial based on short-term safety measures.

IV. Goals and Scope

1. To identify key best practices in the nonclinical evaluation of a compound, including, but not limited to, selectivity, pharmacology, secondary pharmacology, and toxicology.

2. To assess whether nonclinical information can be incorporated into the statistical assumptions of an adaptive dose-finding trial.

3. To discuss the best practices of integrating human pharmacokinetic and pharmacometric data, including drug interaction, when appropriate, into dose-finding studies.

4. To assess how drug exposure can be integrated into the statistical assumptions of an adaptive dose-finding trial and to assess whether evolving exposure data can be adapted into an ongoing trial.

5. To discuss barriers in moving away from 3+3 designs toward adaptive designs and to encourage creative dose-finding trial designs that can replace the conventional 3+3 dose-finding study, where appropriate.

6. To shift from conducting a large single-arm drug trial with the maximum tolerated dose based on a 28-day window to identify tolerable, biologically effective doses for confirmatory trials through prudent search of doses based on safety, efficacy, and patient tolerability.

7. To discuss potential regulatory implications of dose-finding studies, including, but not limited to, product labeling of dose ranges, dose titration, and postmarketing studies.

Dated: May 6, 2015.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2015–11536 Filed 5–12–15; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Administration for Children and Families

Agency Information Collection Activities: Proposed Collection: Public Comment Request

AGENCY: Health Resources and Services Administration, Administration for Children and Families, HHS.

ACTION: Notice.

SUMMARY: In compliance with the requirement for opportunity for public comment on proposed data collection projects (Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995), the Health Resources and Services Administration (HRSA) and the Administration for Children and Families (ACF) announce plans to submit an Information Collection Request (ICR), described below, to the Office of Management and Budget (OMB). Prior to submitting the ICR to OMB, HRSA and ACF seek comments from the public regarding the burden estimate, below, or any other aspect of the ICR.

DATES: Comments on this Information Collection Request must be received no later than July 13, 2015.

ADDRESSES: Submit your comments to *paperwork@hrsa.gov* or mail the HRSA Information Collection Clearance Officer, Room 10C–03, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, email *paperwork@hrsa.gov* or call the HRSA Information Collection Clearance Officer at (301) 443–1984.

SUPPLEMENTARY INFORMATION: When submitting comments or requesting information, please include the information request collection title for reference.

Information Collection Request Title: The Maternal, Infant, and Early Childhood Home Visiting Program Quarterly Data Request.

OMB No.: 0906-xxxx—New.

Abstract: The Maternal, Infant, and Early Childhood Home Visiting Program (MIECHV), administered by HRSA in close partnership with the Administration for Children and Families (ACF), supports voluntary, evidence-based home visiting services during pregnancy and to parents with young children up to kindergarten entry. States and tribal entities are eligible to receive funding from the MIECHV Program and have the flexibility to tailor the program to serve the specific needs of their communities.

Need and Proposed Use of the Information: In order to continuously monitor and provide oversight and quality improvement guidance and technical assistance to Home Visiting Program grantees, HHS is seeking to collect two categories of information: Service Utilization Data and Corrective Action Benchmark Data.

Service Utilization Data is made up of four data categories:

(1) *Program Capacity:* HHS is seeking to collect information related to the overall home visiting service capacity in number of families that grantees are able to provide to the communities they work in, the actual capacity being utilized at certain points in time, as well as updates of home visiting enrollment in number of families.

(2) *Place-Based Services:* HHS is seeking to collect information about the geographic areas where home visiting services are being provided. Specifically, data on zip code and locally defined communities are being requested from Home Visiting Program grantees in order to allow grantees an opportunity to provide data about geographic areas that are most salient to their respective programs. Currently, HHS has the authority to collect information related to service area zip code on an annual basis (OMB–0915–0357, expiration 7/31/2017). HHS plans to allow the grantee to describe the service community at the neighborhood, town, or city level where services are provided based on their judgment of local salience, rather than solely at the county level, which is how geographic services are currently reported.

(3) *Family Engagement:* Currently HHS has the authority to collect information related to family engagement (attrition) on an annual basis (OMB–0915–0357, expiration 7/31/2017). However, HHS has learned through grants monitoring and technical assistance efforts that family engagement is an ongoing and complex issue for home visiting service providers. In order to monitor grantee performance and target technical assistance efforts most effectively, HHS

is seeking to collect information on family engagement on a more frequent basis. HHS proposes that in addition to annual reporting, Home Visiting Program grantees will report quarterly on the existing family engagement metrics they are required to submit. These metrics are currently defined as the number of participants currently receiving services who have completed the program, who stopped services before completion, and other participants.

(4) *Staff Recruitment and Retention:* HHS is seeking to collect information related to the number of home visitors and other support staff who are currently employed directly or through sub-contracted grant funds. Staff recruitment and retention is a key component to the successful delivery of home visiting services and to maximizing the number of cases each local implementing agency can reach. Home Visiting Program grantees will report quarterly the actual number of staff and current vacancies in three categories: Home visitors, program administration, and support staff.

Corrective Action Benchmark Data is made up of one category of data: *Corrective Action Constructs.* Home Visiting Program grantees who have not shown improvement in four of six Benchmark areas after 3 years of grant funding are statutorily required to complete corrective action plans, subject to approval by the Secretary, in order to show how they plan to achieve improvement in deficient areas. Currently HHS collects information related to selected Benchmark areas from all Home Visiting Program grantees on an annual basis (OMB–0915–0357, expiration 7/31/2017). In order to monitor grantee improvement toward meeting these Benchmarks, HHS is seeking to collect information from grantees on implementation of their corrective action plans on a more frequent basis. HHS proposes that grantees with corrective action plans report on a quarterly basis for the Benchmark measures for which they were deemed as not showing improvement. It is estimated that approximately 15 grantees per year will require this more frequent reporting.

This information will be used to monitor and provide continued oversight for grantee performance and to target technical assistance resources to grantees.

Likely Respondents: Home Visiting Program grantees.

Burden Statement: Burden in this context means the time expended by persons to generate, maintain, retain, disclose or provide the information requested. This includes the time needed to review instructions; to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information; to search data sources; to complete and review the collection of information; and to transmit or otherwise disclose the information. The total annual burden hours estimated for this Information Collection Request are summarized in the table below.

TOTAL ESTIMATED ANNUALIZED BURDEN HOURS

Form name	Number of respondents	Number of responses per respondent	Total responses	Average burden per response (in hours)	Total burden hours
Service Utilization Data:					
Service Utilization Data—Formula Grants	56	4	224	24	5,376
Service Utilization Data—Competitive Grants	44	4	176	24	4,224
Service Utilization Data—Tribal Grants	25	4	100	24	2,400
Corrective Action Benchmark Data:					
Corrective Action Constructs—MIECHV Grants	10	4	40	40	1,600
Corrective Action Constructs—Tribal Grants	5	4	20	40	800
Total	140		560		14,400

HHS specifically requests comments on (1) the necessity and utility of the proposed information collection for the proper performance of the agency's functions, (2) the accuracy of the estimated burden, (3) ways to enhance the quality, utility, and clarity of the information to be collected, and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Dated: May 1, 2015.

Jackie Painter,

Director, Division of the Executive Secretariat.

Linda K. Smith,

Deputy Assistant Secretary and Inter-Departmental Liaison for Early Childhood Development, Administration for Children and Families.

[FR Doc. 2015–11547 Filed 5–12–15; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Decision To Evaluate a Petition To Designate a Class of Employees From the Blockson Chemical Company in Joliet, Illinois, To Be Included in the Special Exposure Cohort

AGENCY: National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention, Department of Health and Human Services.

ACTION: Notice.

SUMMARY: NIOSH gives notice of a decision to evaluate a petition to designate a class of employees from the Blockson Chemical Company in Joliet, Illinois, to be included in the Special Exposure Cohort under the Energy Employees Occupational Illness Compensation Program Act of 2000.

FOR FURTHER INFORMATION CONTACT: Stuart L. Hinnefeld, Director, Division of Compensation Analysis and Support, National Institute for Occupational Safety and Health, 1090 Tusculum Avenue, MS C–46, Cincinnati, OH 45226–1938, Telephone 877–222–7570. Information requests can also be submitted by email to *DCAS@CDC.GOV*.

SUPPLEMENTARY INFORMATION:

Authority: 42 CFR 83.9–83.12.

Pursuant to 42 CFR 83.12, the initial proposed definition for the class being evaluated, subject to revision as warranted by the evaluation, is as follows:

Facility: Blockson Chemical Company.

Location: Joliet, Illinois.

Job Titles and/or Job Duties: All workers who worked in any area.

Period of Employment: July 1, 1960 through December 31, 1991.

John Howard,

Director, National Institute for Occupational Safety and Health.

[FR Doc. 2015–11471 Filed 5–12–15; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Meeting of the National Vaccine Advisory Committee

AGENCY: National Vaccine Program Office, Office of the Assistant Secretary for Health, Office of the Secretary, Department of Health and Human Services.

ACTION: Notice.

SUMMARY: As stipulated by the Federal Advisory Committee Act, the Department of Health and Human Services (HHS) is hereby giving notice that the National Vaccine Advisory Committee (NVAC) will hold a meeting on June 9–10, 2015. The meeting is open to the public. However, pre-registration is required for both public attendance and public comment. Individuals who wish to attend the meeting and/or participate in the public comment session should register at *http://www.hhs.gov/nvpo/nvac*. Participants may also register by emailing *nvpo@hhs.gov* or by calling 202–690–5566 and providing their name, organization, and email address.

DATES: The meeting will be held on June 9–10, 2015. The meeting times and agenda will be posted on the NVAC Web site at *http://www.hhs.gov/nvpo/nvac* as soon as they become available.

ADDRESSES: U.S. Department of Health and Human Services, Hubert H. Humphrey Building, Room 800, 200 Independence Avenue SW., Washington, DC 20201.

The meeting can also be accessed through a live webcast the day of the meeting. For more information, visit *http://www.hhs.gov/nvpo/nvac/meetings/upcomingmeetings/index.html*.

FOR FURTHER INFORMATION CONTACT: National Vaccine Program Office, U.S. Department of Health and Human Services, Room 715–H, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201. Phone: (202) 690–5566; email: *nvpo@hhs.gov*.

SUPPLEMENTARY INFORMATION: Pursuant to Section 2101 of the Public Health Service Act (42 U.S.C. 300aa–1), the Secretary of Health and Human Services was mandated to establish the National Vaccine Program to achieve optimal prevention of human infectious diseases through immunization and to achieve optimal prevention against adverse reactions to vaccines. The NVAC was established to provide advice and make recommendations to the Director of the National Vaccine Program on matters related to the Program's responsibilities. The Assistant Secretary for Health serves as Director of the National Vaccine Program.

The June NVAC meeting will include the presentation of recommendations from several of the NVAC working groups for deliberation and vote. The Vaccine Confidence Working Group will present their report and recommendations for measuring and evaluating how confidence in vaccines impacts the optimal use of recommended childhood vaccines in the United States. Following an update on current efforts by national stakeholders to improve Human Papilloma Virus (HPV) vaccine uptake among adolescents, the HPV working group will also present their report and recommendations identifying existing best practices to increase the use of the HPV vaccine in young adolescents. NVAC will review analyses and proposed recommendations on how vaccines could play more prominently in efforts described in the President's National Strategy and Action Plan to Combat Antibiotic Resistant Bacteria.

An overview of the Vaccine Safety Research Agenda that was released on the NVPO Web site in February 2015 will also be provided. The Vaccine Safety Research Agenda outlines the efforts of federal agencies on vaccine safety and the ongoing and planned associated scientific activities and interagency coordination that contribute to the safety system. Informational presentations will also be provided to inform NVAC members of recent developments impacting the vaccine landscape including Congressional efforts to support the research and development of new vaccine products through the 21st Century Cures Initiative. More information on the meeting agenda will be posted prior to the meeting on the NVAC Web site: *http://www.hhs.gov/nvpo/nvac*.

Public attendance at the meeting is limited to the available space. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the National Vaccine Program Office at the address/phone listed above at least one week prior to the meeting. For those unable to attend in person, a live webcast will be available. More information on registration and accessing the webcast can be found at *http://www.hhs.gov/nvpo/nvac/meetings/upcomingmeetings/index.html*.

Members of the public will have the opportunity to provide comments at the NVAC meeting during the public comment periods designated on the agenda. Public comments made during the meeting will be limited to three minutes per person to ensure time is allotted for all those wishing to speak. Individuals are also welcome to submit their written comments. Written comments should not exceed three pages in length. Individuals submitting written comments should email their comments to the National Vaccine Program Office (*nvpo@hhs.gov*) at least five business days prior to the meeting.

Dated: May 4, 2015.

Bruce Gellin,

Executive Secretary, National Vaccine Advisory Committee, Deputy Assistant Secretary for Health, Director, National Vaccine Program Office.

[FR Doc. 2015–11476 Filed 5–12–15; 8:45 am]

BILLING CODE 4150–44–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Determination Concerning a Petition To Add a Class of Employees To the Special Exposure Cohort

AGENCY: National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention, Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: HHS gives notice of a determination concerning a petition to add a class of employees from the St. Louis Airport Storage Site (SLAPS) in St. Louis, Missouri, to the Special Exposure Cohort (SEC) under the Energy Employees Occupational Illness Compensation Program Act of 2000 (EEOICPA).

FOR FURTHER INFORMATION CONTACT: Stuart L. Hinnefeld, Director, Division of Compensation Analysis and Support, National Institute for Occupational Safety and Health (NIOSH), 1090 Tusculum Avenue, MS C–47, Cincinnati, OH 45226–1938, Telephone 1–877–222–7570. Information requests can also be submitted by email to *DCAS@CDC.GOV*.

SUPPLEMENTARY INFORMATION:

Authority: [42U.S.C.7384q].

On April 9, 2015, the Secretary of HHS determined that the following class of employees does not meet the statutory criteria for addition to the SEC as authorized under EEOICPA:

All employees of the U.S. Department of Energy (DOE), its predecessor agencies, and their contractors and subcontractors who worked at the St. Louis Airport Storage Site in St. Louis, Missouri, from November 3, 1971, through December 31, 1973, and from January 1, 1984,through December 31, 1998.

John Howard,

Director, National Institute for Occupational Safety and Health.

[FR Doc. 2015–11475 Filed 5–12–15; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; NIDDK DEM Fellowship Grant Review.

Date: May 31–June 2, 2015.

Time: 6:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Melrose Georgetown Hotel, 2430 Pennsylvania Avenue NW., Washington, DC 20037.

Contact Person: Carol J. Goter-Robinson, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 748, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7791, *goterrobinsonc@extra.niddk.nih.gov*.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Member Conflict SEP.

Date: June 5, 2015.

Time: 7:30 a.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites Chevy Chase Pavilion, 4300 Military Road NW., Washington, DC 20015.

Contact Person: Xiaodu Guo, MD, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 761, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–4719, *guox@extra.niddk.nih.gov*.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; PAR–12–265: NIDDK Ancillary Studies (R01).

Date: June 11, 2015.

Time: 11:00 a.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Jian Yang, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 755, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7799, *yangj@extra.niddk.nih.gov*.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; GPCR Signaling in Bone Program Project (PO1).

Date: June 16, 2015.

Time: 11:00 a.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Dianne Camp, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 756, 6707 Democracy Boulevard, Bethesda, MD 20892–2542, 301–594–7682, *campd@extra.niddk.nih.gov*.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Limited Competition for the Continuation of the Diabetes Prevention Program Outcomes Study (Collaborative U01).

Date: June 22, 2015.

Time: 11:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Dianne Camp, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 756, 6707 Democracy Boulevard, Bethesda, MD 20892–2542, 301–594–7682, *campd@extra.niddk.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: May 8, 2015.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2015–11560 Filed 5–12–15; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of the Director, National Institutes of Health; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the Recombinant DNA Advisory Committee.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: Recombinant DNA Advisory Committee.

Date: June 9–10, 2015.

Time: June 9, 2015, 12:00 p.m. to 5:10 p.m.

Agenda: The NIH Recombinant DNA Advisory Committee (RAC) will review and discuss selected human gene transfer protocols and related data management activities. For more information, please check the meeting agenda at OBA Meetings Page (available at the following URL: *http://osp.od.nih.gov/office-biotechnology-activities/event/2015-06-09-160000-2015-06-10-210000/rac-meeting*).

Place: National Institutes of Health, Natcher Building, Conference Room E1/E2, 45 Center Drive, Bethesda, MD 20892.

Time: June 10, 2015, 8:30 a.m. to 5:00 p.m.

Agenda: The NIH Recombinant DNA Advisory Committee (RAC) will be holding a workshop to discuss Cytokine Release Syndrome after T Cell Immunotherapy. The focus of this workshop will be to review CRS experiences and establish a uniform definition, develop grading criteria, and optimize management strategies for CRS. For more information, please check the meeting agenda at OBA Meetings Page (available at the following URL: *http://osp.od.nih.gov/office-biotechnology-activities/event/2015-06-09-160000-2015-06-10-210000/rac-meeting*).

Place: National Institutes of Health, Natcher Building, Conference Room E1/E2, 45 Center Drive, Bethesda, MD 20892.

Contact Person: Chris Nice, Program Assistant, Office of Biotechnology Activities, National Institutes of Health, 6705 Rockledge Drive, Suite 750, Bethesda, MD 20892, 301–496–9838, *nicelc@mail.nih.gov.*

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *http://oba.od.nih.gov/rdna/rdna.html,* where an agenda and any additional information for the meeting will be posted when available.

OMB's ''Mandatory Information Requirements for Federal Assistance Program Announcements'' (45 FR 39592, June 11, 1980) requires a statement concerning the official government programs contained in the Catalog of Federal Domestic Assistance. Normally NIH lists in its announcements the number and title of affected individual programs for the guidance of the public. Because the guidance in this notice covers virtually every NIH and Federal research program in which DNA recombinant molecule techniques could be used, it has been determined not to be cost effective or in the public interest to attempt to list these programs. Such a list would likely require several additional pages. In addition, NIH could not be certain that every Federal program would be included as many Federal agencies, as well as private organizations, both national and international, have elected to follow the NIH Guidelines. In lieu of the individual program listing, NIH invites readers to direct questions to the information address above about whether individual programs listed in the Catalog of Federal Domestic Assistance are affected.

(Catalogue of Federal Domestic Assistance Program Nos. 93.14, Intramural Research Training Award; 93.22, Clinical Research Loan Repayment Program for Individuals from Disadvantaged Backgrounds; 93.232, Loan Repayment Program for Research Generally; 93.39, Academic Research Enhancement Award; 93.936, NIH Acquired Immunodeficiency Syndrome Research Loan Repayment Program; 93.187, Undergraduate Scholarship Program for Individuals from Disadvantaged Backgrounds, National Institutes of Health, HHS)

Dated: May 7, 2015.

Carolyn Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2015–11473 Filed 5–12–15; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Infectious Diseases and Microbiology Integrated Review Group; Virology—B Study Section.

Date: June 1–2, 2015.

Time: 8:30 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: The Fairmont Washington, DC, 2401 M Street NW., Washington, DC 20037.

Contact Person: John C. Pugh, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1206, MSC 7808, Bethesda, MD 20892, (301) 435–2398, *pughjohn@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Bioinformatics in Surgical Sciences,;Imaging and Independent Living.

Date: June 8, 2015.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Crowne Plaza Chicago Metro, 733 West Madison, Chicago, IL 60661.

Contact Person: Guo Feng Xu, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5122, MSC 7854, Bethesda, MD 20892, 301–237–9870, *xuguofen@csr.nih.gov.*

Name of Committee: Integrative, Functional and Cognitive Neuroscience Integrated Review Group; Neurotoxicology and Alcohol Study Section.

Date: June 8, 2015

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Maggiano's Little Italy, 5333 Wisconsin Avenue NW., Washington, DC 20015.

Contact Person: Christine Melchior, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5176, MSC 7844, Bethesda, MD 20892, (301) 435–1713, *melchioc@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Dissemination and Implementation Research in Health.

Date: June 8, 2015.

Time: 8:00 a.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Ping Wu, Ph.D., Scientific Review Officer, HDM IRG, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3166, Bethesda, MD 20892, 301–451–8428, *wup4@csr.nih.gov.*

Name of Committee: Risk, Prevention and Health Behavior Integrated Review Group; Psychosocial Risk and Disease Prevention Study Section.

Date: June 8–9, 2015.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road NW., Washington, DC 20015.

Contact Person: Stacey FitzSimmons, Ph.D., MPH, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3114, MSC 7808, Bethesda, MD 20892, (301) 451–9956, *fitzsimmonss@csr.nih.gov.*

Name of Committee: Musculoskeletal, Oral and Skin Sciences Integrated Review Group; Arthritis, Connective Tissue and Skin Study Section.

Date: June 8–9, 2015.

Time: 8:30 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Westin Dallas Park Central, 12720 Merit Drive, Dallas, TX 75251.

Contact Person: Aftab A. Ansari, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4108, MSC 7814, Bethesda, MD 20892, 301–237–9931, *ansaria@csr.nih.gov.*

Name of Committee: Vascular and Hematology Integrated Review Group; Vascular Cell and Molecular Biology Study Section.

Date: June 8–9, 2015.

Time: 8:30 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Fairmont Washington, DC, Georgetown, 2401 M Street NW., Washington, DC 20037.

Contact Person: Larry Pinkus, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4132, MSC 7802, Bethesda, MD 20892, (301) 435–1214, *pinkusl@csr.nih.gov.*

Name of Committee: Biological Chemistry and Macromolecular Biophysics Integrated Review Group; Macromolecular Structure and Function A Study Section.

Date: June 9–10, 2015.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Renaissance Washington, DC, Dupont Circle, 1143 New Hampshire Avenue NW., Washington, DC 20037.

Contact Person: Nitsa Rosenzweig, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4152, MSC 7760, Bethesda, MD 20892, (301) 404–7419, *rosenzweign@csr.nih.gov*.

Name of Committee: Digestive, Kidney and Urological Systems Integrated Review Group; Kidney Molecular Biology and Genitourinary Organ Development.

Date: June 9, 2015.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Kinzie Hotel, 20 West Kinzie Street, Chicago, IL 60654.

Contact Person: Ryan G. Morris, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4205, MSC 7814, Bethesda, MD 20892, 301–435–1501, *morrisr@csr.nih.gov*.

Name of Committee: Integrative, Functional and Cognitive Neuroscience Integrated Review Group; Somatosensory and Chemosensory Systems Study Section.

Date: June 9–10, 2015.

Time: 8:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Washington Plaza Hotel, 10 Thomas Circle NW., Washington, DC 20005.

Contact Person: M. Catherine Bennett, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5182, MSC 7846, Bethesda, MD 20892, 301–435–1766, *bennettc3@csr.nih.gov*.

Name of Committee: Biological Chemistry and Macromolecular Biophysics Integrated Review Group; Macromolecular Structure and Function D Study Section.

Date: June 9, 2015.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: St. Gregory Hotel, 2033 M Street NW., Washington, DC 20036.

Contact Person: James W. Mack, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4154, MSC 7806, Bethesda, MD 20892, (301) 435–2037, *mackj2@csr.nih.gov*.

Name of Committee: Emerging Technologies and Training Neurosciences Integrated Review Group; Neuroscience and Ophthalmic Imaging Technologies Study Section.

Date: June 9–10, 2015.

Time: 9:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Mayflower Park Hotel, 405 Olive Way, Seattle, WA 98101.

Contact Person: Yvonne Bennett, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5199, MSC 7846, Bethesda, MD 20892, 301–379–3793, *bennetty@csr.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: May 8, 2015.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2015–11561 Filed 5–12–15; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Neurological Sciences Training Initial Review Group NST–1 Subcommittee.

Date: May 11–12, 2015.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: The Westin St. Francis, 335 Powell Street, San Francisco, CA 94102.

Contact Person: Raul A. Saavedra, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Research, NINDS/NIH/DHHS/Neuroscience Center, 6001 Executive Boulevard, Suite 3208, MSC 9529, Bethesda, MD 20892–9529, 301–496–9223, *saavedrr@ninds.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel, BRAIN: Technologies for Large-Scale Recording.

Date: July 9–10, 2015.

Time: 8:00 a.m. to 2:00 p.m.

Agenda: To review and evaluate cooperative agreement applications.

Place: The Fairmont Washington, DC, 2401 M Street NW., Washington, DC 20037.

Contact Person: Shanta Rajaram, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Research, NINDS/NIH/DHHS/Neuroscience Center, 6001 Executive Boulevard, Suite 3208, MSC 9529, Bethesda, MD 20892–9529, 301–435–6033, *rajarams@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: May 7, 2015.

Carolyn Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2015–11464 Filed 5–12–15; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable materials, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel NIH Pathway to Independence Award (K99/R00).

Date: June 4, 2015.

Time: 1:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Hiromi Ono, Ph.D., Scientific Review Officer, Office of Extramural Affairs, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6001 Executive Boulevard, Room 4238, MSC 9550, Bethesda, MD 20892, 301–402–6020, *hiromi.ono@nih.gov.*

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel NIH Summer Research Experience Programs (R25).

Date: June 4, 2015.

Time: 12:00 p.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Hiromi Ono, Ph.D., Scientific Review Officer, Office of Extramural Affairs, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6001 Executive Boulevard, Room 4238, MSC 9550, Bethesda, MD 20892, 301–402–6020, *hiromi.ono@nih.gov.*

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel Exploratory Studies of Smoking Cessation Interventions for People with Schizophrenia (R21/R33).

Date: June 18, 2015.

Time: 12:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Jagadeesh S. Rao, Ph.D., Scientific Review Officer, Office of Extramural Affairs, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6001 Executive Boulevard, Room 4234, MSC 9550, Bethesda, MD 02892, 301–443–9511, *jrao@nida.nih.gov.*

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel Integration of Infectious Diseases and Substance Abuse Intervention Services for Individuals Living with HIV (R01).

Date: July 7, 2015.

Time: 12:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Hiromi Ono, Ph.D., Scientific Review Officer, Office of Extramural Affairs, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6001 Executive Boulevard, Room 4238, MSC 9550, Bethesda, MD 20892, 301–402–6020, *hiromi.ono@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos.: 93.279, Drug Abuse and Addiction Research Programs, National Institutes of Health, HHS)

Dated: May 7, 2015.

Carolyn Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2015–11477 Filed 5–12–15; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review, Special Emphasis Panel, MD15–005, NIH, Big Data to Knowledge (BD2K) Enhancing Diversity in Biomedical Data Science.

Date: May 29, 2015.

Time: 12:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Center for Scientific Review, 6701 Rockledge Drive, Bethesda, MD 20814, (Virtual Meeting).

Contact Person: Delia Olufokunbi Sam, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3158, MSC 7770, Bethesda, MD 20892, 301–435–0684, *olufokunbisamd@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the intramural research review cycle.

Name of Committee: Musculoskeletal, Oral and Skin Sciences, Integrated Review Group Musculoskeletal Tissue Engineering Study Section.

Date: June 1–2, 2015.

Time: 8:00 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Baljit S Moonga, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4214, MSC 7806, Bethesda, MD 20892, 301–435–1777, *moongabs@mail.nih.gov.*

Name of Committee: Center for Scientific Review, Special Emphasis Panel, Member Conflict: Alcohol.

Date: June 2, 2015.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Michael Selmanoff, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5164, MSC 7844, Bethesda, MD 20892, 301–435–1119, *selmanom@csr.nih.gov.*

Name of Committee: Population Sciences and Epidemiology Integrated Review Group, Infectious Diseases, Reproductive Health, Asthma and Pulmonary Conditions, Study Section.

Date: June 4–5, 2015.

Time: 8:00 a.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Pier 2620 Hotel Fisherman's Wharf, 2620 Jones Street, San Francisco, CA 94133.

Contact Person: Lisa Steele, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3139, MSC 7770, Bethesda, MD 20892, (301) 257–2638, *steeleln@csr.nih.gov.*

Name of Committee: Oncology 2—Translational Clinical Integrated Review Group, Basic Mechanisms of Cancer Therapeutics Study Section.

Date: June 8–9, 2015.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Ritz-Carlton Hotel at Pentagon City, 1250 South Hayes Street, Arlington, VA 22202.

Contact Person: Lambratu Rahman Sesay, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6214, MSC 7804, Bethesda, MD 20892, 301–451–3493, *rahman-sesayl@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Cancer Drug Development and Therapeutics.

Date: June 9–10, 2015.

Time: 10:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Lilia Topol, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6192, MSC 7804, Bethesda, MD 20892, 301–451–0131, *ltopol@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, AREA: Oncological Sciences Grant Applications.

Date: June 9, 2015.

Time: 11:00 a.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Sally A Mulhern, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6214, MSC 7804, Bethesda, MD 20892, (301) 435–5877, *mulherns@csr.nih.gov.*

Name of Committee: Cardiovascular and Respiratory Sciences Integrated Review Group, Cardiovascular Differentiation and Development Study Section.

Date: June 10, 2015.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hotel Monaco Alexandria, 480 King Street, Alexandria, VA 22314.

Contact Person: Sara Ahlgren, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, RM 4136, Bethesda, MD 20817–7814, 301–435–0904, *sara.ahlgren@nih.gov.*

Name of Committee: Endocrinology, Metabolism, Nutrition and Reproductive

Sciences Integrated Review Group, Integrative Nutrition and Metabolic Processes Study Section.

Date: June 10–11, 2015.

Time: 8:00 a.m. to 12:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Gregory S Shelness, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, RKL2 BG RM 6156, 6701 Rockledge Dr., Bethesda, MD 20892–7892, (301) 435–0492, *shelnessgs@csr.nih.gov.*

Name of Committee: Surgical Sciences, Biomedical Imaging and Bioengineering Integrated Review Group, Surgery, Anesthesiology and Trauma Study Section.

Date: June 10–11, 2015.

Time: 8:00 a.m. to 5:00 p.m.

*Agenda:*To review and evaluate grant applications.

Place: Renaissance Denver Hotel, 3801 Quebec St., Denver, CO 80207.

Contact Person: Weihua Luo, MD, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5114, MSC 7854, Bethesda, MD 20892, (301) 435–1170, *luow@csr.nih.gov.*

Name of Committee: Genes, Genomes, and Genetics Integrated Review Group, Genomics, Computational Biology and Technology Study Section.

Date: June 10–11, 2015.

Time: 8:30 a.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Row Hotel, 2015 Massachusetts Ave. NW., Washington, DC 20036.

Contact Person: Barbara J Thomas, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2218, MSC 7890, Bethesda, MD 20892, 301–435–0603, *bthomas@csr.nih.gov.*

Name of Committee: Brain Disorders and Clinical Neuroscience Integrated Review Group Aging Systems and Geriatrics Study Section.

Date: June 10–11, 2015.

Time: 9:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Inn of Chicago, 162 East Ohio Street, Chicago, IL 60611.

Contact Person: Inese Z. Beitins, MD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6152, MSC 7892, Bethesda, MD 20892, 301–435–1034, *beitinsi@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel PAR13–137: Bioengineering Research.

Date: June 10, 2015.

Time: 5:00 p.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Mayflower Park Hotel, 405 Olive Way, Seattle, WA 98101.

Contact Person: Yvonne Bennett, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5199, MSC 7846, Bethesda, MD 20892, 301–379–3793, *bennetty@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel Integrative Nutrition and Metabolic Processes.

Date: June 10, 2015.

Time: 12:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Gary Hunnicutt, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6164, MSC 7892, Bethesda, MD 20892, 301–435–0229, *hunnicuttgr@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: May 7, 2015.

Carolyn Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2015–11472 Filed 5–12–15; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the National Cancer Institute Council of Research Advocates.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: National Cancer Institute Council of Research Advocates.

Date: June 10, 2015.

Time: 9:00 a.m. to 12:00 p.m.

Agenda: NCI Update, Introduction to NCI and Discussion of Major NCI Initiatives, Working Group Updates.

Place: National Institutes of Health, 31 Center Drive, Building 31, C-Wing, Room 6, Bethesda, MD 20892.

Contact Person: Kelley Landy, NCI Office of Advocacy Relations, National Cancer Institute, NIH, 31 Center Drive, Building 31, Room 10A28, Bethesda, MD 20892, 301–594–3194, *Kelley.landy@nih.gov*.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *deainfo.nci.nih.gov/advisory/ncra/ncra.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: May 7, 2015.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2015–11466 Filed 5–12–15; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel, Presbycusis and Neural Bases.

Date: July 8, 2015.

Time: 12:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, Suite 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Ramesh Vemuri, Ph.D., Chief, Scientific Review Branch, National Institute On Aging, National Institutes Of Health, 7201 Wisconsin Avenue, Suite 2C–212, Bethesda, MD 20892, 301–402–7700, *rv23r@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: May 7, 2015.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2015–11465 Filed 5–12–15; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[1651–0092]

Agency Information Collection Activities: Application for Withdrawal of Bonded Stores for Fishing Vessels and Certificate of Use

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: 60-day notice and request for comments; extension of an existing collection of information.

SUMMARY: U.S. Customs and Border Protection (CBP) of the Department of Homeland Security will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act: Application for Withdrawal of Bonded Stores for Fishing Vessels and Certificate of Use (CBP Form 5125). CBP is proposing that this information collection be extended with no change to the burden hours. This document is published to obtain comments from the public and affected agencies.

DATES: Written comments should be received on or before July 13, 2015 to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs and Border Protection, Attn: Tracey Denning, Regulations and Rulings, Office of International Trade, 90 K Street NE., 10th Floor, Washington, DC 20229–1177.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Tracey Denning, U.S. Customs and Border Protection, Regulations and Rulings, Office of International Trade, 90 K Street NE., 10th Floor, Washington, DC 20229–1177, at 202–325–0265.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13). The comments should address: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) the annual cost burden to respondents or record keepers from the collection of information (total capital/startup costs and operations and maintenance costs). The comments that are submitted will be summarized and included in the CBP request for OMB approval. All comments will become a matter of public record. In this document, CBP is soliciting comments concerning the following information collection:

Title: Application for Withdrawal of Bonded Stores for Fishing Vessels and Certificate of Use.

OMB Number: 1651–0092.

Form Number: CBP Form 5125.

Abstract: CBP Form 5125, *Application for Withdrawal of Bonded Stores for Fishing Vessel and Certificate of Use*, is used to request the permission of the CBP port director for the withdrawal and lading of bonded merchandise (especially alcoholic beverages) for use on board fishing vessels involved in international trade. The applicant must certify on CBP Form 5125 that supplies on board were either consumed, or that all unused quantities remain on board and are adequately secured for use on the next voyage. CBP uses this form to collect information such as the name and identification number of the vessel, ports of departure and destination, and information about the crew members. The information collected on this form is authorized by Section 1309 and 1317 of the Tariff Act of 1930, and is provided for by 19 CFR 10.59(e) and 10.65, and 27 CFR 290. CBP Form 5125 is accessible at: *http://www.cbp.gov/sites/default/files/documents/CBP%20Form%205125.pdf.*

Current Actions: CBP proposes to extend the expiration date of this information collection with no change to the burden hours or to the information collected.

Type of Review: Extension (without change).

Affected Public: Carriers.

Estimated Number of Respondents: 500.

Estimated Number of Total Annual Responses: 500.

Estimated Time per Response: 20 minutes.

Estimated Total Annual Burden Hours: 165.

Dated: May 6, 2015.

Tracey Denning,

Agency Clearance Officer, U.S. Customs and Border Protection.

[FR Doc. 2015–11542 Filed 5–12–15; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4210–DR; Docket ID FEMA–2015–0002]

West Virginia; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of West Virginia (FEMA–4210–DR), dated March 31, 2015, and related determinations.

DATES: *Effective Date:* April 17, 2015.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of West Virginia is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of March 31, 2015.

Fayette, Mercer, and Tucker Counties for Public Assistance.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially

Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2015–11499 Filed 5–12–15; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4215–DR; Docket ID FEMA–2015–0002]

Georgia; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Georgia (FEMA–4215–DR), dated April 20, 2015, and related determinations.

DATES: *Effective Date:* April 20, 2015.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated April 20, 2015, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), as follows:

I have determined that the damage in certain areas of the State of Georgia resulting from a severe winter storm during the period of February 15–17, 2015, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''). Therefore, I declare that such a major disaster exists in the State of Georgia.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Hazard Mitigation will be limited to 75 percent of the total eligible costs. Federal funds provided under the Stafford Act for Public Assistance also will be limited to 75 percent of the total eligible costs, with the exception of projects that meet the eligibility criteria for a higher Federal cost-sharing percentage under the Public Assistance Alternative Procedures Pilot Program for Debris Removal implemented pursuant to section 428 of the Stafford Act.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Benigno Bern Ruiz, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Georgia have been designated as adversely affected by this major disaster:

Banks, Barrow, Dawson, Elbert, Forsyth, Franklin, Habersham, Hall, Jackson, Lumpkin, Madison, Oglethorpe, Pickens, Stephens, and White Counties for Public Assistance.

All areas within the State of Georgia are eligible for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2015–11497 Filed 5–12–15; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2015–0001; Internal Agency Docket No. FEMA–B–1506]

Changes in Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice lists communities where the addition or modification of Base Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, or the regulatory floodway (hereinafter referred to as flood hazard determinations), as shown on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports, prepared by the Federal Emergency Management Agency (FEMA) for each community, is appropriate because of new scientific or technical data. The FIRM, and where applicable, portions of the FIS report, have been revised to reflect these flood hazard determinations through issuance of a Letter of Map Revision (LOMR), in accordance with Title 44, Part 65 of the Code of Federal Regulations (44 CFR part 65). The LOMR will be used by insurance agents and others to calculate appropriate flood insurance premium rates for new buildings and the contents of those buildings. For rating purposes, the currently effective community number is shown in the table below and must be used for all new policies and renewals.

DATES: These flood hazard determinations will become effective on the dates listed in the table below and revise the FIRM panels and FIS report in effect prior to this determination for the listed communities.

From the date of the second publication of notification of these changes in a newspaper of local circulation, any person has 90 days in which to request through the community that the Deputy Associate Administrator for Mitigation reconsider the changes. The flood hazard determination information may be changed during the 90-day period.

ADDRESSES: The affected communities are listed in the table below. Revised flood hazard information for each community is available for inspection at both the online location and the respective community map repository address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *www.msc.fema.gov* for comparison.

Submit comments and/or appeals to the Chief Executive Officer of the community as listed in the table below.

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov;* or visit the FEMA Map Information eXchange (FMIX) online at *www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: The specific flood hazard determinations are not described for each community in this notice. However, the online location and local community map repository address where the flood hazard determination information is available for inspection is provided.

Any request for reconsideration of flood hazard determinations must be submitted to the Chief Executive Officer of the community as listed in the table below.

The modifications are made pursuant to section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.,* and with 44 CFR part 65.

The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

These flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. The flood hazard determinations are in accordance with 44 CFR 65.4.

The affected communities are listed in the following table. Flood hazard determination information for each community is available for inspection at both the online location and the respective community map repository address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *www.msc.fema.gov* for comparison.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Dated: April 22, 2015.

Roy E. Wright,

Deputy Associate Administrator for Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

State and county	Location and Case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Effective date of modification	Community No.
California:						
Alameda	City of Alameda, (14–09–4034P).	The Honorable Trish Herrera Spencer, Mayor, City of Alameda, City Hall, 2236 Santa Clara Avenue, Alameda, CA 94501.	Public Works Deparment, 950 West Mall Square, Alameda, CA 94501.	*http://www.msc.fema.gov/lomc.*	June 24, 2015	060002
San Diego	City of San Marcos (14–09–3620P).	The Honorable Jim Desmond, Mayor, City of San Marcos, 1 Civic Center Drive, San Marcos, CA 92069.	1 Civic Center Drive, San Marcos, CA 920691 Civic Center Drive, San Marcos, CA 92069.	*http://www.msc.fema.gov/lomc.*	July 13, 2015	060296
Idaho:						
Valley	(Unincorporated Areas) (15–10–0326P).	The Honorable Gordon Cruickshank, Chairman, Valley County Board of Commissioners, 219 North Main Street, Cascade, ID 83611.	County Building Officials Office, Courthouse Annex, 108 West Spring Street, Cascade, ID 84611.	*http://www.msc.fema.gov/lomc.*	July 10, 2015	160220
Illinois:						
Adams	City of Quincy (14–05–9237P).	The Honorable Kyle Moore, Mayor, City of Quincy, 730 Maine Street, Quincy, IL 62301.	Quincy City Hall, 730 Maine Street, Quincy, IL 62301.	*http://www.msc.fema.gov/lomc.*	July 7, 2015	170003
Adams	(Unincorporated Areas) (14–05–9237P).	The Honorable Les Post, Adams County Chairman, 101 North 54th Street, Quincy, IL 62305.	Adams County Highway Department, 101 North 54th Street, Quincy, IL 62305.	*http://www.msc.fema.gov/lomc.*	July 7, 2015	170001
McHenry	Village of Johnsburg (14–05–5961P).	The Honorable Edwin P. Hettermann, President, Village of Johnsburg, 1515 Channel Beach Avenue, Johnsburg, IL 60051.	1515 West Channel Beach Avenue, Johnsburg, IL 60050.	*http://www.msc.fema.gov/lomc.*	July 14, 2015	170486
Iowa:						
Black Hawk	City of Cedar Falls (14–07–2387P).	The Honorable Jon Crews, Mayor, City of Cedar Falls, 220 Clay Street, Cedar Falls, IA 50613.	220 Clay Street, 220 Clay Street, IA 50613.	*http://www.msc.fema.gov/lomc.*	July 15, 2015	190017

State and county	Location and Case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Effective date of modification	Community No.
Poweshiek	(Unincorporated Areas) (15–07–0505P).	The Honorable Lamoyne Gaard, Chairman, Poweshiek County Board of Supervisors, 931 Summer Street, Grinnell, IA 50112.	PO Box 297, 4802 Barnes City Road, Montezuma, IA 50112.	*http://www.msc.fema.gov/lomc.*	July 16, 2015	190902
Ohio:						
Hocking	City of Logan (14–05–9281P).	The Honorable J. Martin Irvine, Mayor, City of Logan, 10 South Mulberry Street, Logan, OH 43138.	10 S. Mulberry Street, Logan, OH 43138.	*http://www.msc.fema.gov/lomc.*	July 13, 2015	390274
Hocking	(Unincorporated Areas) (14–05–9281P).	Mr. Larry Dicken, County Commissioner, Hocking County, 1 East Main Street, Logan, OH 43138.	88 South Market Street, Logan, OH 43138.	*http://www.msc.fema.gov/lomc.*	July 13, 2015	390272
Warren	City of Mason (14–05–9134P).	The Honorable David Nichols, Mayor, City of Mason, 6000 Mason-Montgomery Road, Mason, OH 45040.	6000 Mason-Montgomery Road, Mason, OH 45040..	*http://www.msc.fema.gov/lomc*	July 6, 2015	390559
Massachusetts:						
Barnstable	Town of Barnstable (15–01–0831P).	The Honorable Jessica Rapp Grassetti, Council President, Barnstable Town Council, Barnstable Town Hall, 367 Main Street, Hyannis, MA 02601.	1019 Main Street, Branford, CT 06405.	*http://www.msc.fema.gov/lomc*	July 17, 2015	250001
Norfolk	City of Quincy (15–01–0275P).	The Honorable Thomas P. Koch, Mayor, City of Quincy, Quincy City Hall, 1305 Hancock Street, Quincy, MA 02169..	1305 Hancock Street, Quincy, MA 02169..	*http://www.msc.fema.gov/lomc*	July 17, 2015	255219
Wisconsin:						
Washington	(Unincorporated Areas) (15–05–0254P).	The Honorable Herbert J. Tennies, Chairperson, Washington County, Courthouse Government Center, 432 East Washington Street, Suite 3029, West Bend, WI 53095.	432 East Washington Street, West Bend, WI 53095.	*http://www.msc.fema.gov/lomc.*	July 1, 2015	550471
Washington	Village of Newburg (15–05–0254P).	The Honorable William R. Sackett, President, Village of Newburg, Post Office Box 50, 614 Main Street, Newburg, WI 53060.	614 Main Street, Newburg, WI 53060.	*http://www.msc.fema.gov/lomc.*	July 1, 2015	550056

[FR Doc. 2015–11500 Filed 5–12–15; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4211–DR; Docket ID FEMA–2015–0002]

Tennessee; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Tennessee (FEMA–4211–DR), dated April 2, 2015, and related determinations.

DATES: *Effective Date:* April 17, 2015.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Tennessee is hereby amended to include the following area among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of April 2, 2015.

Hardin County for Public Assistance.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2015–11498 Filed 5–12–15; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. DHS–2015–0020]

Homeland Security Advisory Council—Task Force Name Change

AGENCY: The Office of Intergovernmental Affairs, DHS.

ACTION: Notice of Homeland Security Advisory Council Employee Morale Task Force name change.

SUMMARY: The Secretary of the Department of Homeland Security (DHS), Jeh Johnson tasked his Homeland Security Advisory Council (HSAC) to establish a DHS Employee Morale Task Force on Thursday, October 9, 2014. This notice informs the public of a change in name from DHS Employee Morale Task Force to DHS Employee Task Force. The underlying tasking to the Task Force from Secretary Johnson, as published in the **Federal Register,** [Docket No. DHS–2014–0045], shall remain unchanged.

FOR FURTHER INFORMATION CONTACT: Erin Walls, Director, Homeland Security Advisory Council at 202–447–3135 or *HSAC@DHS.gov*.

SUPPLEMENTARY INFORMATION: The Homeland Security Advisory Council provides organizationally independent, strategic, timely, specific, and actionable advice and recommendations for the consideration of the Secretary of the Department of Homeland Security on matters related to homeland security. The Homeland Security Advisory Council is comprised of leaders of local law enforcement, first responders, state and local government, the private sector, and academia.

Tasking

The underlying tasking from Secretary Johnson, as published in the **Federal Register,** [Docket No. DHS–2014–0045], shall remain unchanged. As such, the DHS Employee Task Force (formally referred to as the DHS Employee Morale Task Force) should develop findings and recommendations in the following topic areas. The DHS Employee Task Force should address, among other closely related topics, the following questions: (1) What are the core or root causes of continued low morale in the Department of Homeland Security? (2) How can DHS strengthen its leadership cadre, in order to both enhance mission effectiveness and also increase employee morale? (3) How can DHS work as a whole, across the agency components, to recognize their distinct cultures and build a greater sense of belonging and improve employee morale? (4) Referencing the 2007 HSAC DHS Morale Assessment: which of those recommendations were successfully implemented? For those items that were not but still remain relevant, what changes should be made to increase the likelihood of successful implementation and organizational adoption?

Schedule

The DHS Employee Task Force's findings and recommendations will be submitted to the Homeland Security Advisory Council for their deliberation and vote during a public meeting. Once the report is approved it will be sent to the Secretary for his review and acceptance.

Dated: April 30, 2015.

Sarah E. Morgenthau,

Executive Director, Homeland Security Advisory Council, DHS.

[FR Doc. 2015–11505 Filed 5–12–15; 8:45 am]

BILLING CODE 9110–9M–P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. DHS–2015–0005]

RIN 1601–ZA15

Chemical Facility Anti-Terrorism Standards; Guidance for the Expedited Approval Program

AGENCY: National Protection and Programs Directorate, DHS.

ACTION: Notice of Availability.

SUMMARY: The Department of Homeland Security (DHS or Department), National Protection and Programs Directorate (NPPD), is issuing guidance to comply with the Protecting and Securing Chemical Facilities from Terrorist Attacks Act of 2014 (the Act). The Act amended the Homeland Security Act of 2002 to require DHS to issue guidance for an Expedited Approval Program that identifies specific security measures sufficient to meet risk-based performance standards established as part of the Chemical Facility Anti-Terrorism Standards (CFATS) regulations.

DATES: The Guidance for the Expedited Approval Program is effective on June 16, 2015.

FOR FURTHER INFORMATION CONTACT: If you have questions about this notice, the Expedited Approval Program, or the guidance document for the Expedited Approval Program, call or email David Wulf, Director, DHS/NPPD/IP/ISCD at *CFATS@hq.dhs.gov or via phone at* 703–235–5263. Questions may also be directed to Director Wulf by mail at 245 Murray Lane SW., Mail Stop 0610, Arlington, VA 20528–0610. Questions that include trade secrets, confidential commercial or financial information, Chemical-terrorism Vulnerability Information (CVI),[1] Sensitive Security Information (SSI),[2] or Protected Critical Infrastructure Information (PCII) [3] should be properly safeguarded.

SUPPLEMENTARY INFORMATION: Viewing Material. The Expedited Approval Program guidance may be found as part of docket DHS–2015–0005 by going to *http://www.regulations.gov,* inserting DHS–2015–0005 in the ''Keyword'' box, and then clicking ''Search.'' The Expedited Approval Program guidance may also be found on *www.dhs.gov/chemicalsecurity.*

Authority and Background

On December 18, 2014, the President signed into law the Protecting and Securing Chemical Facilities from Terrorist Attacks Act of 2014 (the Act) (Pub. L. 113–254). The Act amended the Homeland Security Act of 2002 (Pub. L. 107–296) to re-codify and reauthorize the CFATS program and add new provisions to the program while preserving most of the existing CFATS regulations.[4] DHS is issuing guidance to comply with section 2102(c)(4)(B) of the Homeland Security Act of 2002, which specifically requires the Secretary to issue guidance for an Expedited Approval Program that identifies specific security measures that are sufficient to meet the risk based performance standards established as part of CFATS. Section 2102(c)(4)(B)(i) of the Homeland Security Act of 2002 requires the Secretary to issue this guidance within 180 days of the date of enactment of the Act (June 16, 2015).

Overview of the Guidance for the CFATS Expedited Approval Program

Section 2102 of the Homeland Security Act of 2002, among other actions, modifies CFATS by adding a new process by which a high-risk chemical facility, currently assigned to

[1] For more information about CVI see 6 CFR 27.400 and the CVI Procedural Manual at *http://www.dhs.gov/xlibrary/assets/chemsec_cvi_proceduresmanual.pdf.*

[2] For more information about SSI see 49 CFR part 1520 and the SSI Program Web page at *http://www.tsa.gov/stakeholders/sensitive-security-information-ssi.*

[3] For more information about PCII see 6 CFR part 29 and the PCII Program Web page at *http://www.dhs.gov/protected-critical-infrastructure-information-pcii-program.*

[4] Section 2 of the Act added a new Title XXI to the Homeland Security Act of 2002. Title XXI contains new sections numbered 2101 through 2109. Citations to the Homeland Security Act of 2002 throughout this document reference those sections of Title XXI.

(risk-based) Tier 3 or Tier 4 by DHS, can meet its regulatory requirement to draft and implement a Site Security Plan. Section 2102(c)(4) of the Homeland Security Act of 2002 labels this new process the ''Expedited Approval Program.''

Participation in the Expedited Approval Program is optional for Tier 3 and Tier 4 chemical facilities. If a Tier 3 or Tier 4 chemical facility opts not to participate in the Expedited Approval Program, it must comply with the other CFATS requirements for submission of a Site Security Plan (or an Alternative Security Program) to DHS for review, and for implementation of the submitted plan. *See generally* 6 CFR part 27, subpart B (describing requirements for submission and implementation of Site Security Plans and Alternative Security Programs outside of the Expedited Approval Program). Under the Expedited Approval Program, a Tier 3 or Tier 4 chemical facility may submit a Site Security Plan to DHS, which must either follow the prescriptive measures described in the guidance document announced by this Notice of Availability, or the Tier 3 or Tier 4 chemical facility must certify that any material deviations from the guidance meet the risk-based performance standards contained in CFATS.[5] If a Tier 3 or Tier 4 chemical facility chooses to submit a Site Security Plan in accordance with the guidance, DHS can review the Site Security Plan for facial deficiency within 100 days after the date on which the Plan is received by DHS, as outlined in section 2102(c)(4)(G)(i) of the Homeland Security Act of 2002. DHS will subsequently monitor facilities' compliance with their Site Security Plans in accordance with this guidance through inspections and audits conducted under CFATS.

Exemption From Administrative Procedure Act Requirements

Section 2102(c)(4)(B)(iii)(I) of the Homeland Security Act of 2002 provides that the Secretary is exempt from the requirements of section 553 of the Administrative Procedure Act, 5 U.S.C. 553, if the Secretary issues the guidance on or before June 16, 2015. Accordingly, DHS is issuing this guidance without regard to section 553 of the Administrative Procedure Act.

Exemption From the Paperwork Reduction Act

Section 2102(c)(4)(B)(iii)(II) of the Homeland Security Act of 2002 provides that the Secretary is exempt from the requirements of the Paperwork Reduction Act, 44 U.S.C. Chapter 35, Subchapter I, if the Secretary issues the guidance on or before June 16, 2015. Accordingly, DHS is issuing guidance without regard to the requirements of the Paperwork Reduction Act.

Issuance of Agency Guidance for the Expedited Approval Program

Section 2102(c)(4)(B)(i) of the Homeland Security Act of 2002 directs the Department to issue prescriptive guidance for chemical facilities that choose to submit Site Security Plans as part of an Expedited Approval Program that ''identifies specific security measures that are sufficient to meet the risk-based performance standards.'' The Expedited Approval Program guidance may be found on *www.dhs.gov/chemicalsecurity* and is also available in the docket.

This notice is issued under authority of 5 U.S.C. 552(a) and section 2102(c)(4) of the Homeland Security Act of 2002 (6 U.S.C. 622(c)(4)).

Suzanne Spaulding,

Under Secretary, National Protection and Programs Directorate, Department of Homeland Security.

[FR Doc. 2015–11503 Filed 5–12–15; 8:45 am]

BILLING CODE P

[5] The CFATS risk-based performance standards are described at 6 CFR 27.230.

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

Extension of Agency Information Collection Activity Under OMB Review: Baseline Assessment for Security Enhancement (BASE) Program

AGENCY: Transportation Security Administration, DHS.

ACTION: 30-day notice.

SUMMARY: This notice announces that the Transportation Security Administration (TSA) has forwarded the Information Collection Request (ICR), Office of Management and Budget (OMB) control number 1652–0062, abstracted below to OMB for review and approval of a revision to the currently approved collection under the Paperwork Reduction Act (PRA). TSA has combined two previously-approved ICRs (1652–0061 and 1652–0062) into this single request to simplify the collection, increase transparency, and reduce duplication. The ICR describes the nature of the information collection and its expected burden. TSA published a **Federal Register** notice, with a 60-day comment period soliciting comments, of the following collection of information on February 11, 2015 at 80 FR 7623. The collection allows TSA to conduct transportation security-related assessments during site visits with surface transportation security and operating officials.

DATES: Send your comments by June 12, 2015. A comment to OMB is most effective if OMB receives it within 30 days of publication.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, OMB. Comments should be addressed to Desk Officer, Department of Homeland Security/TSA, and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: Christina A. Walsh, TSA PRA Officer, Office of Information Technology (OIT), TSA–11, Transportation Security Administration, 601 South 12th Street, Arlington, VA 20598–6011; telephone (571) 227–2062; email *TSAPRA@tsa.dhs.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. The ICR documentation is available at *http://www.reginfo.gov.* Therefore, in preparation for OMB review and approval of the following information collection, TSA is soliciting comments to—

(1) Evaluate whether the proposed information requirement is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Information Collection Requirement

Title: Baseline Assessment for Security Enhancement (BASE) Program.

Type of Request: Revision of a currently approved collection.

OMB Control Number: 1652–0062 (Combining 1652–0061 and 1652–0062).

Forms(s): Baseline Assessment for Security Enhancement (BASE) electronic checklist.

Affected Public: Highway transportation asset owners and operators, and public transportation agencies, including mass transit bus, rail transit, long-distance rail, and other, less common types of service (cable cars, inclined planes, funiculars, and automated guide way systems).

Abstract: TSA's BASE program works with existing and new transportation operators to identify their current security posture, to identify security gaps, and to implement countermeasures throughout the surface modes of transportation by asking established questions with major transportation asset owners and operators. Data and results collected through the BASE program will inform TSA's policy and program initiatives and allow TSA to provide focused resources and tools to enhance the overall security posture within the surface transportation community.

Number of Respondents: 890.

Estimated Annual Burden Hours: An estimated 9,440 hours annually (Public Transportation—6,440 hours; Highway—3,000 hours).

Christina A. Walsh,

TSA Paperwork Reduction Act Officer, Office of Information Technology.

[FR Doc. 2015–11506 Filed 5–12–15; 8:45 am]

BILLING CODE 9110–05–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5867–FA–01]

Announcement of Funding Awards for Fiscal Year (FY) 2014 for the Housing Choice Voucher (HCV) Program

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with Section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this announcement notifies the public of funding awards made by the Department to public housing agencies (PHA) in FY 2014 under the Section 8 Housing Choice Voucher (HCV) program. This announcement lists the names, addresses, and amount of the awards to PHAs for non-competitive funding awards for housing conversion actions, public housing relocations and replacements, moderate rehabilitation replacements, and HOPE VI voucher awards.

FOR FURTHER INFORMATION CONTACT: Milan Ozdinec, Deputy Assistant Secretary, Office of Housing Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street SW., Room 4204, Washington, DC 20410–5000, telephone number 202–402–1380. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at 800–927–7589.

SUPPLEMENTARY INFORMATION: The regulations governing the HCV program are located at 24 CFR 982. The regulations for allocating housing assistance budget authority under Section 213(d) of the Housing and Community Development Act of 1974 are located at 24 CFR part 791, subpart D.

The purpose of the rental assistance program is to assist eligible families pay their rent for decent, safe, and sanitary housing. The FY 2014 awardees announced in this announcement were provided HCV program tenant protection vouchers (TPVs) funds on an as-needed, non-competitive basis, *i.e.*, not consistent with the provisions of a Notice of Funding Availability. TPV awards made to PHAs for program actions that displace families living in public housing were made on a first-come, first-served basis in accordance with PIH Notice 2007–10, Voucher Funding in Connection with the Demolition or Disposition of Occupied Public Housing Units,[1] and PIH Notice 2014–05, Implementation of the Federal Fiscal Year 2014 Funding Provision for the Housing Choice Voucher Program.[2] Awards for the Rental Assistance Demonstration (RAD) were provided for Rental Supplement and Rental Assistance Payment Projects (RAD component #2) consistent with PIH Notice 2012–32.[3] Announcements of funding awards provided under the NOFA process for Mainstream, Designated Housing, Family Unification (FUP), and Veterans Assistance Supportive Housing (VASH) programs will be published in a separate **Federal Register** notice.

Awards published under this notice were provided (1) to assist families living in HUD-owned properties that are being sold; (2) to assist families affected by the expiration or termination of their Project-based Section 8 and Moderate Rehabilitation contracts; (3) to assist families in properties where the owner has prepaid the HUD mortgage; (4) to assist families in projects where the Rental Supplement and Rental Assistance Payments contracts are expiring (Rental Assistance Demonstration (RAD—Second Component); (5) to provide relocation housing assistance in connection with the demolition of public housing; (6) to provide replacement housing assistance for single room occupancy (SRO) units that fail housing quality standards (HQS); (7) to assist families in public housing developments that are scheduled for demolition in connection with a HUD-approved HOPE VI revitalization or demolition grant, and (8) to assist families consistent with PIH Notice 2013–08[4] and 2014–04, Funding for Tenant Protection Voucher for Certain At-Risk Households in Low Vacancy Areas.[5]

A special administrative fee of $200 per occupied unit was provided to PHAs to compensate for any extraordinary HCV program administrative costs associated with the Multifamily Housing conversion action(s).

The Department awarded total new budget authority of $115,915,271 for 14,503 housing choice vouchers to recipients under all of the above-mentioned categories. This budget authority includes $620,266 of unobligated commitments made in FY 2013. These funds were reserved by September 30, 2013, but not contracted until FY 2014, and thus have been included with obligated commitments for FY 2014.

In accordance with Section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (103 Stat. 1987, 42 U.S.C. 3545), the Department is publishing the names, addresses, and amounts of those awards as shown in Appendix A alphabetically by State then by PHA name.

Dated: April 21, 2015.

Lourdes Castro Ramirez,

Principal Deputy Assistant Secretary for Public Indian Housing.

[1] *http://portal.hud.gov/hudportal/documents/huddoc?id=DOC_11380.pdf.*

[2] *http://portal.hud.gov/hudportal/documents/huddoc?id=PIHHCVFundImplNotice031814.pdf.*

[3] *http://portal.hud.gov/hudportal/documents/huddoc?id=pih2012-32rev1.pdf.*

[4] *http://portal.hud.gov/hudportal/documents/huddoc?id=pih2013-08.pdf.*

[5] *http://portal.hud.gov/hudportal/documents/huddoc?id=14-04pihn.pdf.*

APPENDIX A—SECTION 8 RENTAL ASSISTANCE PROGRAMS ANNOUNCEMENT OF AWARDS FOR FISCAL YEAR 2014

Housing agency	Address	Units	Award
Special Fees			
Special Fees for At-Risk Households			
CA: CITY OF BERKELEY HA	1901 FAIRVIEW ST, BERKELEY, CA 94703	0	$6,800
CA: COUNTY OF SANTA CLARA HA	505 WEST JULIAN ST, SAN JOSE, CA 95110	0	1,400
CA: SAN DIEGO HSG COMM	1122 BROADWAY, STE 300, SAN DIEGO, CA 92101	0	1,000
CA: HA OF THE CITY OF LIVERMORE	3203 LEAHY WAY, LIVERMORE, CA 94550	0	800
CA: CITY OF BALDWIN PARK HA	14403 PACIFIC AVE, BALDWIN PARK, CA 91706	0	3,200
CT: CONNECTICUT DEPT OF HOUSING	505 HUDSON ST, HARTFORD, CT 06106	0	25,200
FL: MIAMI DADE HA	701 NW 1ST COURT, 16TH FL, MIAMI, FL 33136	0	34,200
IL: CHICAGO HA	60 EAST VAN BUREN ST, 11TH FL, CHICAGO, IL 60605.	0	12,400
NH: NASHUA HA	40 EAST PEARL ST, 1ST FL, NASHUA, NH 03060	0	400
NH: CONCORD HA	10 FERRY ST, STE 302, CONCORD, NH 03301	0	4,200
NY: NYS HSG TRUST FUND CORP	38–40 STATE ST, ALBANY, NY 12207	0	36,800
Total for Special Fees—At-Risk Households		0	126,400
Special Fees for Opt-Outs/Terminations			
AK: AK HSG FINANCE CORP	PO BOX 101020, ANCHORAGE, AK 99510	0	14,800
AR: SPRINGDALE HA	PO BOX 2085, SPRINGDALE, AR 72765	0	2,400
AR: HA OF THE CITY OF SILOAM	P2802 HWY 412 EAST, SILOAM SPRINGS, AR 72761	0	2,000
CA: CITY OF LOS ANGELES HA	2600 WILSHIRE BLVD, 3RD FL, LOS ANGELES, CA 90057.	0	200
CA: SAN DIEGO HSG COMM	1122 BROADWAY, STE 300, SAN DIEGO, CA 92101	0	6,400
CA: COUNTY OF SAN DIEGO HCD	3989 RUFFIN RD, SAN DIEGO, CA 92123	0	4,800
CA: CITY OF POMONA HA	505 S. GAREY AVE, POMONA, CA 91769	0	600
CA: CITY OF OCEANSIDE COMM DEV	300 N. COAST HWY NEVADA ST ANNEX, OCEANSIDE, CA 92054.	0	2,400
CO: LOVELAND HA	375 W. 37TH ST, #200, LOVELAND, CO 80538	0	2,400
CO: FORT COLLINS HA	1715 W. MOUNTAIN AVE, FORT COLLINS, CO 80521	0	10,000
CT: BRIDGEPORT HA	150 HIGHLAND AVE, BRIDGEPORT, CT 06604	0	1,800
CT: CONNECTICUT DEPT OF HOUSING	505 HUDSON ST, HARTFORD, CT 06106	0	3,800
GA: HA OF CITY OF JONESBORO	203 HIGHTOWER ST, JONESBORO, GA 30237	0	7,400
IA: FORT DODGE HOUSING AGENCY	700 SOUTH 17TH ST, FORT DODGE, IA 50501	0	2,200
IA: MASON CITY HA	22 N. GEORGIA, STE 214, MASON CITY, IA 50401	0	2,200
IA: SOUTHERN IOWA REG HA	219 N PINE, CRESTON, IA 50801	0	3,200
IA: MARSHALLTOWN LRHA	24 NORTH CENTER ST, MARSHALLTOWN, IA 50158	0	3,000
IA: MID IOWA REGIONAL HOUSING	1605 1ST AVE NORTH, STE 1, FORT DODGE, IA 50501.	0	5,400
IL: HA OF HENRY	125 N. CHESTNUT ST, KEWANEE, IL 61443	0	1,800
IN: INDIANAPOLIS HA	1919 N. MERIDIAN ST, INDIANAPOLIS, IN 46202	0	8,600
KS: FORD COUNTY HA	PO BOX 1636, DODGE CITY, KS 67801	0	800
MA: WORCESTER HA	40 BELMONT ST, WORCESTER, MA 01605	0	5,200
MA: PLYMOUTH HA	POB 3537, PLYMOUTH, MA 02361	0	2,200
MA: MASSACHUSETTS DHCD	100 CAMBRIDGE ST, BOSTON, MA 02114	0	11,200
MD: COUNTY COMMISSIONERS CHARLES	8190 PORT TOBACCO RD, PORT TOBACCO, MD 20677.	0	3,600
MD: BALTIMORE CO. HOUSING OFFICE	6401 YORK RD, 1 ST FL, BALTIMORE, MD 21212	0	7,200
ME: MAINE STATE HA	353 WATER ST, AUGUSTA, ME 04330	0	1,200
MI: MICHIGAN STATE HSG DEV AUTH	PO BOX 30044, LANSING, MI 48909	0	76,000
MN: ST. CLOUD HRA	1225 WEST ST. GERMAIN, ST. CLOUD, MN 56301	0	1,400
MN: NW MN MULTI–COUNTY HRA	PO BOX 128, MENTOR, MN 56736	0	1,800
MO: ST. LOUIS HA	3520 PAGE BLVD, ST. LOUIS, MO 63106	0	9,200
MS: HA OF TENNESSEE VALLEY	PO BOX 132, CORINTH, MS 38834	0	4,600
MT: BUTTE HA	220 CURTIS ST, BUTTE, MT 59701	0	6,600
MT: MT DEPT OF COMMERCE	301 S. PARK, HELENA, MT 59620	0	3,600
NC: GREENSBORO HA	PO BOX 21287, GREENSBORO, NC 27420	0	4,000
ND: STUTSMAN COUNTY HA	217 1ST AVE NORTH, JAMESTOWN, ND 58401	0	5,000
ND: BARNES COUNTY HA	120 12TH STREET NW., VALLEY CITY, ND 58072	0	9,800
NE: FREMONT HA	2510 NORTH CLARKSON, STE #100, FREMONT, NE 68025.	0	1,400
NY: TOWN OF ISLIP HA	963 MONTAUK HWY, OAKDALE, NY 11769	0	1,600
NY: TOWN OF BROOKHAVEN DOH	ONE INDEPENDENCE HILL, FARMINGVILLE, NY 11738.	0	17,200
NY: NYS HSG TRUST FUND CORP	38–40 STATE ST, ALBANY, NY 12207	0	1,600
OH: COLUMBUS METRO HA	880 EAST 11TH AVE, COLUMBUS, OH 43211	0	4,600
OH: CINCINNATI METRO HA	16 WEST CENTRAL PKWK, CINCINNATI, OH 45210	0	2,000
OR: HSG & COMM SERV AGENCY OF LANE	177 DAY ISLAND RD, EUGENE, OR 97401	0	5,400
RQ: MUNICIPALITY OF SAN JUAN	PO BOX 36–2138, SAN JUAN, PR 00936	0	1,600
RQ: MUNICIPALITY OF BAYAMON	PO 1588, BAYAMON, PR 00960	0	9,200

APPENDIX A—SECTION 8 RENTAL ASSISTANCE PROGRAMS ANNOUNCEMENT OF AWARDS FOR FISCAL YEAR 2014—Continued

Housing agency	Address	Units	Award
SC: HA OF GREENWOOD	PO BOX 973, GREENWOOD, SC 29648	0	1,600
SD: PIERRE HSG & REDEV COMM	301 W. PLEASANT AVE, PIERRE, SD 57501	0	2,400
SD: YANKTON HSG & REDEV COMM	PO BOX 176, YANKTON, SD 57078	0	800
TX: TARRANT COUNTY HOUSING	2100 CIRCLE DR, STE 200, FORT WORTH, TX 76119	0	6,000
TX: HA OF ODESSA	124 E. SECOND ST, ODESSA, TX 79761	0	10,200
TX: TYLER HA	213 N. BONNER, TYLER, TX 75710	0	7,800
VA: RICHMOND REDEV & HA	901 CHAMBERLAYNE PKWY, RICHMOND, VA 23220	0	4,000
VA: DANVILLE REDEV & HA	651 CARDINAL PLACE, DANVILLE, VA 24541	0	11,200
VA: LYNCHBURG REDEV & HA	918 COMMERCE ST, LYNCHBURG, VA 24505	0	17,200
VA: VIRGINIA HSG DEV AUTH	601 SOUTH BELVIDERE ST, RICHMOND, VA 23220	0	20,000
WA: SEATTLE HA	120 SIXTH AVE NORTH, SEATTLE, WA 98109	0	3,800
WA: KING COUNTY HA	600 ANDOVER PARK WEST, SEATTLE, WA 98188	0	21,000
WA: HA OF SNOHOMISH	12625 4TH AVE W, STE 200, EVERETT, WA 98204	0	7,200
WA: SPOKANE HA	WEST 55 MISSION ST, STE 104, SPOKANE, WA 99201.	0	17,000
WI: MILWAUKEE COUNTY HA	2711 W WELLS ST, RM 102, MILWAUKEE, WI 53208	0	5,600
WI: WISCONSIN HSG & ECON DEV AUTH	PO BOX 1728, MADISON, WI 53701	0	12,600
WV: PARKERSBURG HA	1901 CAMERON AVE, PARKERSBURG, WV 26101	0	1,000
Total for Special Fees—Opt-Outs/Terminations		0	432,800
Special Fees for Property Disposition Relocation			
IA: CITY OF DES MOINES MUNICIPAL	100 EAST EUCLID, STE 101, DES MOINES, IA 50313	0	1,000
Total for Special Fees—Property Disposition Relocation.		0	1,000
Special Fees for Prepayment			
AL: HA OF SELMA	PO BOX 950, SELMA, AL 36702	0	3,600
CA: CITY OF FRESNO HA	1331 FULTON MALL, FRESNO, CA 93776	0	1,200
CA: COUNTY OF SACRAMENTO HA	801 12TH ST, SACRAMENTO, CA 95814	0	13,800
CA: COUNTY OF FRESNO HA	1331 FULTON MALL, FRESNO, CA 93776	0	9,600
CA: COUNTY OF MONTEREY HA	123 RICO ST, SALINAS, CA 93907	0	19,200
CA: CITY OF FAIRFIELD HA	823–B JEFFERSON ST, FAIRFIELD, CA 94533	0	6,200
CO: HA OF CITY & COUNTY OF DENVER	777 GRANT ST, DENVER, CO 80203	0	5,600
DC: DISTRICT OF COLUMBIA HA	1133 NORTH CAPITOL ST, NE., WASHINGTON, DC 20002.	0	2,000
ID: HA OF THE CITY OF POCATELLO	PO BOX 4161, POCATELLO, ID 83205	0	8,600
ID: IDAHO HFA	565 W MYRTLE ST, BOISE, ID 83707	0	4,600
IL: CHICAGO HA	60 EAST VAN BUREN ST, 11TH FL, CHICAGO, IL 60605.	0	80,000
IL: MCLEAN COUNTY HA	104 EAST WOOD ST, BLOOMINGTON, IL 61701	0	19,200
IN: HA OF CITY OF EVANSVILLE	500 COURT ST, EVANSVILLE, IN 47708	0	8,000
KY: SOMERSET HA	PO BOX 449, SOMERSET, KY 42501	0	12,200
KY: HOPKINSVILLE HA	400 NORTH ELM ST, HOPKINSVILLE, KY 42240	0	16,000
KY: CUMBERLAND VALLEY HA	PO BOX 806, BARBOURVILLE, KY 40906	0	1,200
MA: CAMBRIDGE HA	675 MASSACHUSETTS AVE, CAMBRIDGE, MA 02139	0	93,800
MA: HOLYOKE HA	475 MAPLE ST, HOLYOKE, MA 01040	0	24,200
MA: NORTH ADAMS HA	150 ASHLAND ST, NORTH ADAMS, MA 01247	0	11,600
MA: GREENFIELD HA	ONE ELM TERRACE, GREENFIELD TOWN, MA 01301	0	15,200
MA: COMM DEV PROG COMM OF	100 CAMBRIDGE ST, BOSTON, MA 02114	0	23,600
MD: HA OF BALTIMORE	417 EAST FAYETTE ST, BALTIMORE, MD 21201	0	34,000
MD: MONTGOMERY COUNTY HOC	10400 DETRICK AVE, KENSINGTON, MD 20895	0	28,800
MI: MICHIGAN STATE HSG DEV AUTH	PO BOX 30044, LANSING, MI 48909	0	82,600
MN: MINNEAPOLIS PHA	1001 WASHINGTON AVE NORTH, MINNEAPOLIS, MN 55401.	0	3,800
MN: CROOKSTON HSG AND ECONOMIC	110 SARGENT ST, CROOKSTON, MN 56716	0	5,400
MN: METROPOLITAN COUNCIL HRA	390 ROBERT ST NORTH, ST. PAUL, MN 55101	0	17,000
MO: HA OF KANSAS	920 MAIN ST, STE 701, KANSAS CITY, MO 64106	0	17,400
NJ: ATLANTIC CITY HA	227 VERMONT AVE, ATLANTIC CITY, NJ 08401	0	20,800
NY: HA OF UTICA CITY	509 SECOND ST, UTICA, NY 13501	0	28,200
NY: ALBANY HA	200 SOUTH PEARL, ALBANY, NY 12202	0	21,000
NY: HA OF ROCHESTER	675 WEST MAIN ST, ROCHESTER, NY 14611	0	37,600
NY: WHITE PLAINS HA	223 DR MARTIN L KING JR BLVD, WHITE PLAINS, NY 10601.	0	11,600
NY: HA OF ITHACA	800 S PLAIN ST, ITHACA, NY 14850	0	13,800
NY: HA OF AUBURN	20 THORNTON AVE, AUBURN, NY 13021	0	27,400
NY: NEW YORK DHPD	100 GOLD ST, RM 501, NEW YORK, NY 10038	0	198,000
NY: CITY OF NIAGARA FALLS COMM DEV	1022 MAIN ST, NIAGARA FALLS, NY 14301	0	20,200

APPENDIX A—SECTION 8 RENTAL ASSISTANCE PROGRAMS ANNOUNCEMENT OF AWARDS FOR FISCAL YEAR 2014—Continued

Housing agency	Address	Units	Award
NY: NYS HSG TRUST FUND CORP	38–40 STATE ST, ALBANY, NY 12207	0	11,800
OH: CUYAHOGA MHA	8120 KINSMAN RD, CLEVELAND, OH 44104	0	27,000
OH: WAYNE MHA	345 NORTH MARKET ST, WOOSTER, OH 44691	0	6,200
OR: HA OF HILLSBORO	111 NE LINCOLN ST, STE 200–L, HILLSBORO, OR 97124.	0	14,400
PA: HA OF THE CITY OF PITTSBURGH	200 ROSS ST, PITTSBURGH, PA 15219	0	8,200
PA: ALLEGHENY COUNTY HA	625 STANWIX ST, 12TH FL, PITTSBURGH, PA 15222	0	13,400
PA: HARRISBURG HA	351 CHESTNUT ST, 12TH FL, HARRISBURG, PA 17101.	0	39,000
PA: JOHNSTOWN HA	501 CHESTNUT ST, JOHNSTOWN, PA 15907	0	32,000
VA: ROANOKE REDEV & HA	2624 SALEM TRNPK, NW., ROANOKE, VA 24017	0	12,000
WV: WHEELING HA	11 COMMUNITY ST, WHEELING, WV 26003	0	4,400
WV: PARKERSBURG HA	1901 CAMERON AVE, PARKERSBURG, WV 26101	0	17,200
WV: HA OF THE CITY OF BECKLEY	100 BECKWOODS DR, BECKLEY, WV 25802	0	27,800
Total for Special Fees—Prepayment		0	1,160,400
Special Fees for RAD Conversions			
IL: ELGIN HA	120 SOUTH STATE ST, ELGIN, IL 60123	0	29,800
IL: DUPAGE COUNTY HA	711 EAST ROOSEVELT RD, WHEATON, IL 60187	0	13,200
MA: BOSTON HA	52 CHAUNCY ST, BOSTON, MA 02111	0	3,400
MA: HOLYOKE HA	475 MAPLE ST, HOLYOKE, MA 01040	0	11,600
MA: TAUNTON HA	30 OLNEY ST, STE B, TAUNTON, MA 02780	0	14,400
MA: SPRINGFIELD HA	25 SAAB COURT, SPRINGFIELD, MA 01101	0	30,200
MA: HAVERHILL HA	25–C WASHINGTON ST, HAVERHILL, MA 01831	0	22,600
MA: MASSACHUSETTS DHCD	100 CAMBRIDGE ST, BOSTON, MA 02114	0	35,200
MI: MICHIGAN STATE HSG DEV AUTH	PO BOX 30044, LANSING, MI 48909	0	145,000
NJ: JERSEY CITY HA	400 US HWY #1, JERSEY CITY, NJ 07306	0	61,600
NJ: EAST ORANGE HA	160 HALSTED ST, EAST ORANGE, NJ 07018	0	33,200
NJ: VINELAND HA	191 CHESTNUT AVE, VINELAND, NJ 08360	0	400
NY: ALBANY HA	200 SOUTH PEARL, ALBANY, NY 12202	0	28,600
NY: VILLAGE OF MANLIUS	990 JAMES ST, SYRACUSE, NY 13203	0	119,000
NY: NYS HSG TRUST FUND CORP	38–40 STATE ST, ALBANY, NY 12207	0	47,200
Total for Special Fees—RAD Conversions		0	595,400
Special Fees for Rent Supplement			
GA: HA MACON	2015 FELTON AVE, MACON, GA 31208	0	33,400
MA: FITCHBURG HA	50 DAY ST, FITCHBURG, MA 01420	0	4,000
MI: MICHIGAN STATE HSG DEV AUTH	PO BOX 30044, LANSING, MI 48909	0	13,000
ND: RICHLAND COUNTY HA	230 8TH AVE WEST, WEST FARGO, ND 58078	0	3,200
Total for Special Fees—Rent Supplement		0	53,600
Total for Special Fees		0	2,369,600
Public Housing Tenant Protection Family Unification Program			
WA: KING COUNTY HA	600 ANDOVER PARK WEST, SEATTLE, WA 98188	69	842,581
Total for Family Unification Program		69	842,581
Moderate Rehabilitation Replacement			
CA: OAKLAND HA	1619 HARRISON ST, OAKLAND, CA 94612	9	32,382
DC: DISTRICT OF COLUMBIA HA	1133 NORTH CAPITOL ST, NE., WASHINGTON, DC 20002.	6	83,994
FL: MIAMI DADE HA	701 NW 1ST COURT, 16TH FL, MIAMI, FL 33136	4	37,252
ND: STUTSMAN COUNTY HA	217 1ST AVE NORTH, JAMESTOWN, ND 58401	38	127,984
NJ: NEW JERSEY DCA	101 SOUTH BROAD ST, TRENTON, NJ 08608	22	217,437
OH: CUYAHOGA MHA	8120 KINSMAN RD, CLEVELAND, OH 44104	16	61,248
OK: OKLAHOMA HSG FIN AGENCY	100 NW 63RD ST, STE 200, OKLAHOMA CITY, OK 73116.	2	9,809
SD: BROOKINGS HA	1310 MAIN AVE SOUTH, BROOKINGS, SD 57006	7	33,369
TX: HOUSTON HA	2640 FOUNTAIN VIEW, HOUSTON, TX 77057	3	23,197
VA: RICHMOND REDEV & HA	901 CHAMBERLAYNE PKWY, RICHMOND, VA 23220	5	41,557
VA: WISE COUNTY REDEV & HA	PO BOX 630, COEBURN, VA 24230	2	8,585

APPENDIX A—SECTION 8 RENTAL ASSISTANCE PROGRAMS ANNOUNCEMENT OF AWARDS FOR FISCAL YEAR 2014—Continued

Housing agency	Address	Units	Award
Total for Moderate Rehabilitation Replacement		114	676,814
Moderate Rehabilitation Replacement (RAD)			
NY: NEW YORK DHPD	100 GOLD ST, RM 501, NEW YORK, NY 10038	236	2,841,276
Total for Moderate Rehabilitation Replacement (RAD).		236	2,841,276
Public Housing Relocation			
AK: AK HSG FINANCE CORP	PO BOX 101020, ANCHORAGE, AK 99510	16	124,546
AL: H/A CITY OF MONTGOMERY	525 SOUTH LAWRENCE ST, MONTGOMERY, AL 36104.	6	38,346
CA: SAN FRANCISCO HA	1815 EGBERT AVE, SAN FRANCISCO, CA 94124	70	1,052,572
CA: CITY OF OXNARD HA	435 SOUTH D ST, OXNARD, CA 93030	114	1,107,807
CO: BOULDER CITY HA	4800 BROADWAY, BOULDER, CO 80304	53	447,745
CO: HA OF CITY & COUNTY OF DENVER	777 GRANT ST, DENVER, CO 80203	50	453,360
DC: DISTRICT OF COLUMBIA HA	1133 NORTH CAPITOL ST, NE., WASHINGTON, DC 20002.	9	126,084
GA: HA AUGUSTA	1435 WALTON WAY, AUGUSTA, GA 30914	279	1,869,939
IL: HA OF COUNTY OF LAKE	33928 N. US HWY 45, GRAYSLAKE, IL 60030	115	973,521
IL: MORGAN COUNTY HA	301 WEST BEECHER AVE, JACKSONVILLE, IL 62650	10	38,497
IN: HAMMOND HA	1402 173RD ST, HAMMOND, IN 46324	82	560,683
MA: BOSTON HA	52 CHAUNCY ST, BOSTON, MA 02111	25	326,631
MN: ST PAUL PHA	555 NORTH WABASHA, STE 400, ST. PAUL, MN 55102.	2	15,826
NJ: GLASSBORO HA	737 LINCOLN BLVD, GLASSBORO, NJ 08028	6	48,607
RI: NEWPORT HA	120B HILLSIDE AVE, NEWPORT, RI 02840	18	196,044
RQ: PUERTO RICO DEPT OF HSG	PO BOX 21365, SAN JUAN, PR 00928	102	669,896
TX: SAN ANTONIO HA	818 S. FLORES ST, SAN ANTONIO, TX 78295	246	1,602,611
TX: HA OF ORANGE	PO BOX 3107, ORANGE, TX 77630	27	159,285
VA: BRISTOL REDEV & HA	809 EDMOND ST, BRISTOL, VA 24201	10	38,281
VA: NORFOLK REDEV & HA	201 GRANBY ST, NORFOLK, VA 23501	8	68,094
VA: HAMPTON REDEV & HA	PO BOX 280, HAMPTON, VA 23669	271	2,291,282
WA: HA OF CITY OF RENTON	970 HARRINGTON AVE, NE., RENTON, WA 98056	84	764,235
WA: SEATTLE HA	120 SIXTH AVE NORTH, SEATTLE, WA 98109	172	1,824,908
WA: HA OF CITY OF VANCOUVER	2500 MAIN ST, STE #200, VANCOUVER, WA 98660	90	99,672
Total for Public Housing Relocation		1,865	14,898,472
Witness Relocation			
CA: COUNTY OF ORANGE HA	1770 NORTH BROADWAY, SANTA ANA, CA 92706	1	26,580
CT: CONNECTICUT DEPT OF HOUSING	505 HUDSON ST, HARTFORD, CT 06106	1	18,912
FL: HA WEST PALM BEACH GENERAL	1715 DIVISION AVE, WEST PALM BEACH, FL 33407	1	21,096
FL: BROWARD COUNTY HA	4780 NORTH STATE RD 7, LAUDERDALE LAKES, FL 33319.	1	12,816
MA: BOSTON HA	52 CHAUNCY ST, BOSTON, MA 02111	5	77,644
MA: ATTLEBORO HA	37 CARLON ST, ATTLEBORO, MA 02703	1	22,812
MA: MALDEN HA	630 SALEM ST, MALDEN, MA 02148	1	19,077
MD: MONTGOMERY COUNTY HOC	10400 DETRICK AVE, KENSINGTON, MD 20895	2	40,992
MO: HA OF KANSAS	920 MAIN ST, STE 701, KANSAS CITY, MO 64106	1	13,512
NJ: TOWNSHIP OF PENNSAUKEN	5605 N CRESCENT BLVD, PENNSAUKEN, NJ 08110	1	15,060
Total for Witness Relocation		15	268,501
Total for Public Housing Tenant Protection		2,299	19,527,644
Housing Tenant Protection Certain At-Risk Households in Low Vacancy Areas			
CA: CITY OF BERKELEY HA	1901 FAIRVIEW ST, BERKELEY, CA 94703	34	385,199
CA: COUNTY OF SANTA CLARA HA	505 WEST JULIAN ST, SAN JOSE, CA 95110	7	67,888
CA: SAN DIEGO HSG COMM	1122 BROADWAY, STE 300, SAN DIEGO, CA 92101	2	14,142
CA: HA OF CITY OF LIVERMORE	3203 LEAHY WAY, LIVERMORE, CA 94550	4	39,490
CA: CITY OF BALDWIN PARK HA	14403 PACIFIC AVE, BALDWIN PARK, CA 91706	15	126,587
CT: CONNECTICUT DEPT OF HOUSING	505 HUDSON ST, HARTFORD, CT 06106	126	1,041,957
FL: MIAMI DADE HA	701 NW 1ST COURT, 16TH FL, MIAMI, FL 33136	171	1,423,062
IL: CHICAGO HA	60 EAST VAN BUREN ST, 11TH FL, CHICAGO, IL 60605.	55	384,420
NH: NASHUA HA	40 EAST PEARL ST, 1ST FL, NASHUA, NH 03060	3	26,747

APPENDIX A—SECTION 8 RENTAL ASSISTANCE PROGRAMS ANNOUNCEMENT OF AWARDS FOR FISCAL YEAR 2014—Continued

Housing agency	Address	Units	Award
NH: CONCORD HA	10 FERRY ST, STE 302, CONCORD, NH 03301	21	135,860
NY: NYS HSG TRUST FUND CORP	38–40 STATE ST, ALBANY, NY 12207	184	915,056
Total for Certain At-Risk Households in Low Vacancy Areas.		622	4,560,408
Rent Supplement			
GA: HA OF MACON	2015 FELTON AVE, MACON, GA 31208	167	995,107
MA: FITCHBURG HA	50 DAY ST, FITCHBURG, MA 01420	20	151,216
MI: MICHIGAN STATE HSG DEV AUTH	PO BOX 30044, LANSING, MI 48909	65	387,577
ND: RICHLAND COUNTY HA	230 8TH AVE WEST, WEST FARGO, ND 58078	16	56,148
Total for Rent Supplement		268	1,590,048
Property Disposition			
IA: CITY OF DES MOINES MUNICIPAL	100 EAST EUCLID, STE 101, DES MOINES, IA 50313	5	25,852
Total for Property Disposition Relocation		5	25,852
Prepayment—RAD			
MA: BOSTON HA	52 CHAUNCY ST, BOSTON, MA 02111	17	169,784
MA: HOLYOKE HA	475 MAPLE ST, HOLYOKE, MA 01040	51	306,403
MA: TAUNTON HA	30 OLNEY ST, STE B, TAUNTON, MA 02780	72	682,110
MA: SPRINGFIELD HA	25 SAAB COURT, SPRINGFIELD, MA 01101	151	1,062,394
MA: HAVERHILL HA	25–C WASHINGTON ST, HAVERHILL, MA 01831	113	874,177
MA: MASSACHUSETTS DHCD	100 CAMBRIDGE ST, BOSTON, MA 02114	176	1,942,449
MI: MICHIGAN STATE HSG DEV AUTH	PO BOX 30044, LANSING, MI 48909	630	3,922,841
NJ: JERSEY CITY HA	400 US HWY #1, JERSEY CITY, NJ 07306	308	2,971,177
NJ: EAST ORANGE HA	160 HALSTED ST, EAST ORANGE, NJ 07018	166	1,674,934
NY: ALBANY HA	200 SOUTH PEARL, ALBANY, NY 12202	143	877,717
NY: VILLAGE OF MANLIUS	990 JAMES ST, SYRACUSE, NY 13203	595	2,949,628
Total for Prepayment—RAD		2,422	17,433,614
Prepayments			
AL: HA OF SELMA	PO BOX 950, SELMA, AL 36702	18	75,752
CA: CITY OF FRESNO HA	1331 FULTON MALL, FRESNO, CA 93776	6	38,286
CA: COUNTY OF SACRAMENTO HA	801 12TH ST, SACRAMENTO, CA 95814	69	609,350
CA: COUNTY OF FRESNO HA	1331 FULTON MALL, FRESNO, CA 93776	48	295,932
CA: COUNTY OF MONTEREY HA	123 RICO ST, SALINAS, CA 93907	96	813,415
CA: CITY OF FAIRFIELD	823–B JEFFERSON ST, FAIRFIELD, CA 94533	31	290,148
CO: HA OF CITY & COUNTY OF DENVER	777 GRANT ST, DENVER, CO 80203	28	256,537
DC: DISTRICT OF COLUMBIA HA	1133 NORTH CAPITOL ST NE., WASHINGTON, DC 20002.	10	62,924
HI: CITY AND COUNTY OF HONOLULU	715 SOUTH KING ST, STE 311, HONOLULU, HI 96813.	0	118,714
ID: HA OF THE CITY OF POCATELLO	PO BOX 4161, POCATELLO, ID 83205	43	225,136
ID: IDAHO HSG FIN AGENCY	565 W MYRTLE ST, BOISE, ID 83707	23	110,160
IL: CHICAGO HA	60 EAST VAN BUREN ST, 11TH FL, CHICAGO, IL 60605.	400	4,109,844
IL: MCLEAN COUNTY HA	104 EAST WOOD ST, BLOOMINGTON, IL 61701	96	511,857
KY: SOMERSET HA	PO BOX 449, SOMERSET, KY 42501	61	212,126
KY: HOPKINSVILLE HA	400 NORTH ELM ST, HOPKINSVILLE, KY 42240	80	273,163
KY: CUMBERLAND VALLEY HA	PO BOX 806, BARBOURVILLE, KY 40906	6	25,517
MA: CAMBRIDGE HA	675 MASSACHUSETTS AVE, CAMBRIDGE, MA 02139	469	7,475,054
MA: HOLYOKE HA	475 MAPLE ST, HOLYOKE, MA 01040	121	726,958
MA: WORCESTER HA	40 BELMONT ST, WORCESTER, MA 01605	102	189,307
MA: NORTH ADAMS HA	150 ASHLAND ST, NORTH ADAMS, MA 01247	58	360,924
MA: GREENFIELD HA	ONE ELM TERRACE, GREENFIELD TOWN, MA 01301	76	463,731
MA: MASSACHUSETTS DHCD	100 CAMBRIDGE ST, BOSTON, MA 02114	118	1,302,361
MD: HA OF BALTIMORE	417 EAST FAYETTE ST, BALTIMORE, MD 21201	170	2,914,268
MD: MONTGOMERY COUNTY HOC	10400 DETRICK AVE, KENSINGTON, MD 20895	144	1,947,681
MI: MICHIGAN STATE HSG DEV AUTH	PO BOX 30044, LANSING, MI 48909	413	2,570,107
MN: MINNEAPOLIS PHA	1001 WASHINGTON AVE, NORTH, MINNEAPOLIS, MN 55401.	19	167,475
MN: CROOKSTON HSG & ECON DEV	110 SARGENT ST, CROOKSTON, MN 56716	27	112,165
MN: METROPOLITAN COUNCIL HRA	390 ROBERT ST, NORTH, ST. PAUL, MN 55101	85	113,577
MO: HA OF KANSAS	920 MAIN ST, STE 701, KANSAS CITY, MO 64106	87	482,440

APPENDIX A—SECTION 8 RENTAL ASSISTANCE PROGRAMS ANNOUNCEMENT OF AWARDS FOR FISCAL YEAR 2014—Continued

Housing agency	Address	Units	Award
NJ: ATLANTIC CITY HA	227 VERMONT AVE, ATLANTIC CITY, NJ 08401	104	1,001,283
NY: HA OF UTICA CITY	509 SECOND ST, UTICA, NY 13501	141	724,261
NY: ALBANY HA	200 SOUTH PEARL, ALBANY, NY 12202	105	649,891
NY: HA OF ROCHESTER	675 WEST MAIN ST, ROCHESTER, NY 14611	188	1,031,692
NY: WHITE PLAINS HA	223 DR MARTIN L KING JR BLVD, WHITE PLAINS, NY 10601.	58	708,932
NY: HA OF ITHACA	800 S PLAIN ST, ITHACA, NY 14850	69	459,482
NY: HA OF AUBURN	20 THORNTON AVE, AUBURN, NY 13021	137	547,781
NY: NEW YORK DHPD	100 GOLD ST, RM 501, NEW YORK, NY 10038	990	12,043,468
NY: CITY OF NIAGARA FALLS HA	1022 MAIN ST, NIAGARA FALLS, NY 14301	101	422,673
NY: NYS HSG TRUST FUND CORPORATION	38–40 STATE ST, ALBANY, NY 12207	59	556,580
OH: CUYAHOGA MHA	8120 KINSMAN RD, CLEVELAND, OH 44104	135	863,630
OH: WAYNE MHA	345 NORTH MARKET ST, WOOSTER, OH 44691	31	139,452
OR: HA OF HILLSBORO	111 NE LINCOLN ST, STE 200–L, HILLSBORO, OR 97124.	72	506,105
PA: HA OF CITY OF PITTSBURGH	200 ROSS ST, PITTSBURGH, PA 15219	41	275,737
PA: ALLEGHENY COUNTY HA	625 STANWIX ST, 12TH FL, PITTSBURGH, PA 15222	67	58,328
PA: HARRISBURG HA	351 CHESTNUT ST, 12TH FL, HARRISBURG, PA 17101.	195	1,409,897
PA: JOHNSTOWN HA	501 CHESTNUT ST, JOHNSTOWN, PA 15907	160	641,280
VA: ROANOKE REDEV & HA	2624 SALEM TRNPK, NW., ROANOKE, VA 24017	60	199,622
WA: SPOKANE HA	WEST 55 MISSION ST, STE 104, SPOKANE, WA 99201.	66	333,021
WV: WHEELING HA	11 COMMUNITY ST, WHEELING, WV 26003	22	105,972
WV: PARKERSBURG HA	1901 CAMERON AVE, PARKERSBURG, WV 26101	86	370,581
WV: HA OF THE CITY OF BECKLEY	100 BECKWOODS DR, BECKLEY, WV 25802	139	544,686
Total for Prepayment		5,930	50,449,263
RAD—Conversion Assistance			
Rent Supplement—RAD			
IL: ELGIN HA	120 SOUTH STATE ST, ELGIN, IL 60123	149	1,480,268
IL: DUPAGE COUNTY HA	711 EAST ROOSEVELT RD, WHEATON, IL 60187	66	625,380
MI: MICHIGAN STATE HSG. DEV. AUTH	PO BOX 30044, LANSING, MI 48909	95	588,957
NJ: ENGLEWOOD HA	111 WEST ST, ENGLEWOOD, NJ 07631	108	1,282,232
NJ: VINELAND HA	191 CHESTNUT AVE, VINELAND, NJ 08360	0	104,147
NY: NYS HSG TRUST FUND CORP	38–40 STATE ST, ALBANY, NY 12207	236	1,399,135
Total for Rent Supplement—RAD		654	5,480,119
Termination/Opt-out Vouchers			
AK: AK HSG FINANCE CORP	PO BOX 101020, ANCHORAGE, AK 99510	74	576,028
AR: SPRINGDALE HA	PO BOX 2085, SPRINGDALE, AR 72765	12	48,174
AR: HA OF THE CITY OF SILOAM	2802 HWY 412 EAST, SILOAM SPRINGS, AR 72761	10	39,650
CA: CITY OF LOS ANGELES HA	2600 WILSHIRE BLVD, 3RD FL, LOS ANGELES, CA 90057.	1	10,377
CA: SAN DIEGO HSG COMM	1122 BROADWAY, STE, 300, SAN DIEGO, CA 92101	32	339,417
CA: COUNTY OF SAN DIEGO	3989 RUFFIN RD, SAN DIEGO, CA 92123	24	38,461
CA: CITY OF POMONA	505 S GAREY AVE, POMONA, CA 91769	3	34,483
CA: CITY OF OCEANSIDE COMM DEV	300 N COAST HWY NEVADA ST ANNEX, OCEANSIDE, CA 92054.	12	123,900
CO: HA OF CITY & COUNTY OF DENVER	777 GRANT ST, DENVER, CO 80203	118	624,126
CO: LOVELAND HA	375 W 37TH ST, STE #200, LOVELAND, CO 80538	12	83,640
CO: FORT COLLINS HA	1715 W MOUNTAIN AVE, FORT COLLINS, CO 80521	50	394,512
CT: BRIDGEPORT HA	150 HIGHLAND AVE, BRIDGEPORT, CT 06604	9	92,471
CT: CONNECTICUT DEPT OF HOUSING	505 HUDSON ST, HARTFORD, CT 06106	19	187,905
GA: HA CITY OF JONESBORO	203 HIGHTOWER ST, JONESBORO, GA 30237	37	255,804
IA: FORT DODGE HOUSING AGENCY	700 SOUTH 17TH ST, FORT DODGE, IA 50501	38	107,538
IA: CITY OF MASON CITY	22 N GEORGIA, STE 214, MASON CITY, IA 50401	11	62,756
IA: SOUTHERN IOWA REG HA	219 N PINE, CRESTON, IA 50801	16	63,735
IA: MARSHALLTOWN LRHA	24 NORTH CENTER ST, MARSHALLTOWN, IA 50158	15	46,111
ID: IDAHO HSG FIN AGENCY	565 W MYRTLE ST, BOISE, ID 83707	7	19,623
IL: HA OF HENRY	125 N CHESTNUT ST, KEWANEE, IL 61443	9	38,887
IN: INDIANAPOLIS HOUSING AGENCY	1919 N MERIDIAN ST, INDIANAPOLIS, IN 46202	43	266,400
KS: FORD COUNTY HA	PO BOX 1636, DODGE CITY, KS 67801	4	15,023
MA: WORCESTER HA	40 BELMONT ST, WORCESTER, MA 01605	26	184,579
MA: PLYMOUTH HA	POB 3537, PLYMOUTH, MA 02361	11	111,586
MA: MASSACHUSETTS DHCD	100 CAMBRIDGE ST, BOSTON, MA 02114	56	618,164

APPENDIX A—SECTION 8 RENTAL ASSISTANCE PROGRAMS ANNOUNCEMENT OF AWARDS FOR FISCAL YEAR 2014—Continued

Housing agency	Address	Units	Award
MD: COUNTY COMMISSIONERS CHARLES	8190 PORT TOBACCO RD, PORT TOBACCO, MD 20677.	18	18,032
MD: BALTIMORE CO HOUSING OFFICE	6401 YORK ROAD, 1 ST FL, BALTIMORE, MD 21212	36	341,310
ME: MAINE STATE HA	353 WATER ST, AUGUSTA, ME 04330	6	38,512
MI: MICHIGAN STATE HSG DEV AUTH	PO BOX 30044, LANSING, MI 48909	380	2,274,461
MN: ST. CLOUD HRA	1225 WEST ST. GERMAIN, ST. CLOUD, MN 56301	7	35,919
MN: NW MN MULTI–COUNTY HRA	PO BOX 128, MENTOR, MN 56736	9	30,311
MO: ST. LOUIS HA	3520 PAGE BLVD, ST. LOUIS, MO 63106	46	315,242
MS: HA OF TENNESSEE VALLEY	PO BOX 1329, CORINTH, MS 38834	23	95,839
MT: BUTTE HA	220 CURTIS ST, BUTTE, MT 59701	33	122,444
MT: MT DEPT OF COMMERCE	301 S. PARK, HELENA, MT 59620	18	88,595
NC: GREENSBORO HA	PO BOX 21287, GREENSBORO, NC 27420	20	17,352
ND: STUTSMAN COUNTY HOUSING	217 1ST AVE N, JAMESTOWN, ND 58401	25	75,954
ND: BARNES COUNTY HA	120 12TH ST NW., VALLEY CITY, ND 58072	49	184,479
NE: FREMONT HA	2510 NORTH CLARKSON, #100, FREMONT, NE 68025.	7	22,101
NY: TOWN OF ISLIP HA	963 MONTAUK HWY, OAKDALE, NY 11769	8	27,126
NY: TOWN OF BROOKHAVEN DOH	ONE INDEPENDENCE HILL, FARMINGVILLE, NY 11738.	86	1,253,044
NY: NYS HSG TRUST FUND CORP	38–40 STATE ST, ALBANY, NY 12207	8	75,468
OH: COLUMBUS METRO HA	880 EAST 11TH AVE, COLUMBUS, OH 43211	23	145,574
OH: CINCINNATI METRO HA	16 WEST CENTRAL PKWY, CINCINNATI, OH 45210	10	63,673
OR: HA & COMM SERV AGENCY OF LAKE	177 DAY ISLAND RD, EUGENE, OR 97401	27	145,269
RQ: MUNICIPALITY OF SAN JUAN	PO BOX 36–2138, SAN JUAN, PR 00936	8	52,137
RQ: MUNICIPALITY OF BAYAMON	PO 1588, BAYAMON, PR 00960.	46	299,929
SC: HA OF GREENWOOD	PO BOX 973, GREENWOOD, SC 29648	8	37,412
SD: PIERRE HSG & REDEV	301 W. PLEASANT AVE, PIERRE, SD 57501	12	41,931
SD: YANKTON HSG & REDEV COMM	PO BOX 176, YANKTON, SD 57078	4	12,631
TX: TARRANT COUNTY HA	2100 CIRCLE DR, STE, 200, FORT WORTH, TX 76119	30	208,613
TX: HA OF ODESSA	124 E. SECOND ST., ODESSA, TX 79761	51	339,636
TX: TYLER HA	2039 213 N. BONNER, TYLER, TX 75710	39	271,487
VA: RICHMOND REDEV & HA	901 CHAMBERLAYNE PKWY, RICHMOND, VA 23220	20	166,992
VA: DANVILLE REDEV & HA	651 CARDINAL PLACE, DANVILLE, VA 24541	56	72,796
VA: LYNCHBURG REDEV & HA	918 COMMERCE ST, LYNCHBURG, VA 24505	86	377,217
VA: VIRGINIA HSG & REDEV AUTH	601 SOUTH BELVIDERE ST, RICHMOND, VA 23220	100	63,727
WA: SEATTLE HA	120 SIXTH AVE NORTH, SEATTLE, WA 98109	19	192,747
WA: KING COUNTY HA	600 ANDOVER PARK WEST, SEATTLE, WA 98188	105	1,286,850
WA: HA OF SNOHOMISH	12625 4TH AVE W, STE, 200, EVERETT, WA 98204	36	317,758
WA: SPOKANE HA	WEST 55 MISSION ST, STE, 104, SPOKANE, WA 99201.	85	428,096
WI: MILWAUKEE CO HA	2711 W WELLS ST, RM 102, MILWAUKEE, WI	28	186,437
WI: WISCONSIN HSG & ECON DEV	PO BOX 1728, MADISON, WI 53701	63	302,514
WV: PARKERSBURG HA	1901 CAMERON AVE, PARKERSBURG, WV 26101	5	21,546
Total for Termination/Opt-out Vouchers		2,289	14,434,511
Total for Housing Tenant Protection		12,190	93,973,815
CPD Tenant Protection SRO Replacement			
CO: COLORADO DIV OF HOUSING	1313 SHERMAN ST, RM 518, DENVER, CO 80203	14	44,212
Total for CPD Tenant Protection		14	44,212
Grand Total Including Special Fees		14,503	115,915,271

[FR Doc. 2015–11579 Filed 5–12–15; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R2–ES–2015–N065; FXES11120200000–156–FF02ENEH00]

Draft Environmental Assessment and Draft Habitat Conservation Plan; CEMEX Balcones Quarry Northeast Area in Comal County, Texas

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for public comments.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), make available the draft Environmental Assessment (dEA) for the draft CEMEX Balcones Quarry Northeast Area Habitat Conservation Plan (CEMEX dHCP) and the CEMEX dHCP. CEMEX Construction Materials South, LLC (Applicant), has applied to the Service for an incidental take permit (ITP) under section 10(a)(1)(B) of the Endangered Species Act (Act) of 1973, as amended. The requested permit, which would be in effect for a period of 15 years, if granted, would authorize incidental take of the federally listed golden-cheeked warbler (*Setophaga chrysoparia,* GCWA). The proposed take would occur on 199.4 acres (Permit Area) within the CEMEX Balcones Quarry Northeast Area tract in Comal County, Texas, as a result of activities associated with the Applicant's proposed clearing and implementation of quarrying activities (Covered Activities).

DATES: To ensure consideration, written comments must be received or postmarked on or before July 13, 2015.

ADDRESSES:

Availability of Documents:

Internet: You may obtain copies of all of the documents on the Internet at the Service's Web site at *http://www.fws.gov/southwest/es/AustinTexas/.*

U.S. Mail: A limited number of CD–ROM and printed copies of the draft EA and draft HCP are available, by request, from Mr. Adam Zerrenner, Austin Ecological Services Field Office, 10711 Burnet Road, Suite 200, Austin, TX 78758–4460; telephone 512–490–0057; fax 512–490–0974. Please note that your request is in reference to the CEMEX dHCP.

The ITP application is available by mail from the Regional Director, U.S. Fish and Wildlife Service, P.O. Box 1306, Room 6034, Albuquerque, NM 87103.

- *In-Person:* Copies of the dEA and dHCP are also available for public inspection and review at the following locations, by appointment and written request only, 8 a.m. to 4:30 p.m.:
  - U.S. Fish and Wildlife Service, 500 Gold Avenue SW., Room 6034, Albuquerque, NM 87102.
  - U.S. Fish and Wildlife Service, 10711 Burnet Road, Suite 200, Austin, TX 78758.

Comment submission: You may submit written comments by one of the following methods:

- *Electronically:* Submit electronic comments to *FW2_AUES_Consult@fws.gov.* Please note that your request is in reference to the CEMEX dHCP.
- *By hard copy:* Mr. Adam Zerrenner, Austin Ecological Services Field Office, 10711 Burnet Road, Suite 200, Austin, TX 78758–4460; telephone 512–490–0057; fax 512–490–0974. Please note that your request is in reference to the CEMEX dHCP.

Please refer to permit number TE58612B when submitting comments. We request that you send comments by only the methods described above.

FOR FURTHER INFORMATION CONTACT: Adam Zerrenner, Field Supervisor, U.S. Fish and Wildlife Service, 10711 Burnet Road, Suite 200, Austin, TX 78758 or (512) 490–0057.

SUPPLEMENTARY INFORMATION: We, the U.S. Fish and Wildlife Service, make available the draft Environmental Assessment (dEA) for the CEMEX Balcones Quarry Northeast Area Habitat Conservation Plan (CEMEX dHCP) and the dHCP. In accordance with the requirements of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*), we advise the public that:

1. We have gathered the information necessary to determine impacts and formulate alternatives for the dEA related to potential issuance of an ITP to the Applicant; and
2. The Applicant has developed a dHCP as part of the application for an ITP, which describes the measures the Applicant has agreed to take to minimize and mitigate the effects of incidental take of GCWAs to the maximum extent practicable pursuant to section 10(a)(1)(B) of the Act.

The applicant has applied for an ITP that would be in effect for 15 years, if granted, and would authorize incidental take of the federally endangered GCWA. As described in the dHCP, the proposed incidental take would occur on 199.4 acres in Comal County, Texas, and would result from activities associated with otherwise lawful activities, including the clearing and implementation of quarrying activities (Covered Activities). The dEA considers the direct, indirect, and cumulative effects of implementation of the dHCP, including the measures that will be implemented to minimize and mitigate, to the maximum extent practicable, the impacts of the incidental take of the GCWA.

Proposed Action

The proposed action involves the issuance of an ITP by the Service for the Covered Activities in the Permit Area, pursuant to section 10(a)(1)(B) of the Act. The ITP would cover ''take'' of the GCWA associated with the clearing and implementation of quarrying activities within the Permit Area.

The requested term of the permit is 15 years. To meet the requirements of a section 10(a)(1)(B) ITP, the Applicant has developed and proposes to implement its dHCP, which describes the conservation measures the Applicant has agreed to undertake to minimize and mitigate for the impacts of the proposed incidental take of the GCWA to the maximum extent practicable, and ensures that incidental take will not appreciably reduce the likelihood of the survival and recovery of the species in the wild.

The Applicant proposes to mitigate with the purchase of 147.44 acres of high-quality habitat, likely from a Service-approved conservation bank with Comal County in its service area.

Alternatives

The only alternative to the proposed action we are considering as part of this process is the No Action alternative, in which no ITP would be issued. Under a No Action alternative, the Service would not issue the requested ITP for the CEMEX Balcones Northeast Area Tract, and, therefore, the Applicant would not implement the conservation measures described in the dHCP.

Public Availability of Comments

Written comments we receive become part of the public record associated with this action. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can request in your comment that we withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. We will not consider anonymous comments. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public disclosure in their entirety.

Authority

We provide this notice under section 10(c) of the Act and its implementing regulations (50 CFR 17.22 and 17.32) and NEPA and its implementing regulations (40 CFR 1506.6).

Dated: April 16, 2015.

Joy E. Nicholopoulos,

Acting Regional Director, Southwest Region, Albuquerque, New Mexico.

[FR Doc. 2015–11521 Filed 5–12–15; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF LABOR

Employment and Training Administration

Comment Request for Information Collection for OMB 1205–0009, Characteristics of the Insured Unemployed (ETA 203), Extension Without Revisions

AGENCY: Employment and Training Administration (ETA), Labor.

ACTION: Notice.

SUMMARY: The Department of Labor (Department), as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 [44 U.S.C. 3506(c)(2)(A)]. This program helps ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

Currently, ETA is soliciting comments concerning the collection of data on characteristics of the insured unemployed, the current expiration date of December 31, 2015.

DATES: Submit written comments to the office listed in the addresses section below on or before July 13, 2015.

ADDRESSES: Send written comments to Thomas Stengle, Office of Unemployment Insurance, Room S–4524, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210. Telephone number: 202–693–2991 (this is not a toll-free number). Individuals with hearing or speech impairments may access the telephone number above via TTY by calling the toll-free Federal Information Relay Service at 1–877–889–5627 (TTY/TDD). Email: *Stengle.Thomas@dol.gov.* To obtain a copy of the proposed information collection request (ICR), please contact the person listed above.

SUPPLEMENTARY INFORMATION:

I. Background

The ETA 203, Characteristics of the Insured Unemployed, is a monthly snapshot of the demographic composition of the claimant population in the Unemployment Insurance system. It is based on those who file a claim in the week containing the 19th day of the month, which reflects unemployment during the week containing the 12th day of the month. This corresponds with the sample frame used by the Bureau of Labor Statistics for the production of labor force statistics they produce. This report serves a variety of socio-economic needs because it provides aggregate data reflecting unemployment insurance claimants' sex, race/ethnic group, age, industry, and occupation.

II. Review Focus

The Department is particularly interested in comments which:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

• evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• enhance the quality, utility, and clarity of the information to be collected; and

• minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

III. Current Actions

Type of Review: Extension without revision.

Title: Characteristics of the Insured Unemployed, ETA 203.

OMB Number: 1205–0009.

Affected Public: State Workforce Agencies.

Total Annual Respondents: 53.

Annual Frequency: Monthly.

Total Annual Responses: 636.

Average Time per Response: 20 minutes (0.33 hours).

Estimated Total Annual Burden Hours: 210 Hours.

Total Annual Burden Cost for Respondents: There is no burden cost.

We will summarize and/or included in the request for OMB approval of the ICR, the comments received in response to this comments request; they will also become a matter of public record.

Portia Wu,

Assistant Secretary for Employment and Training, Labor.

[FR Doc. 2015–11647 Filed 5–13–15; 8:45 am]

BILLING CODE 4510–FW–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts

Arts Advisory Panel Meetings

AGENCY: National Endowment for the Arts, National Foundation on the Arts and Humanities.

ACTION: Notice of meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that 18 meetings of the Arts Advisory Panel to the National Council on the Arts will be held by teleconference from the National Endowment for the Arts, Constitution Center, 400 7th St. SW., Washington, DC, 20506 as follows (all meetings are Eastern time and ending times are approximate):

Dance (review of applications): This meeting will be closed.

DATES: June 3, 2015; 12:00 p.m. to 2:00 p.m.

Dance (review of applications): This meeting will be closed.

DATES: June 4, 2015; 12:00 p.m. to 2:00 p.m.

Dance (review of applications): This meeting will be closed.

DATES: June 4, 2015; 3:00 p.m. to 5:00 p.m.

Local Arts Agencies (review of applications): This meeting will be closed.

DATES: June 4, 2015; 3:00 p.m. to 5:00 p.m.

Leadership (review of applications): This meeting will be closed.

DATES: June 5, 2015; 2:00 p.m. to 4:00 p.m.

Opera (review of applications): This meeting will be closed.

DATES: June 5, 2015; 12:00 p.m. to 2:00 p.m.

Opera (review of applications): This meeting will be closed.

DATES: June 5, 2015; 3:00 p.m. to 5:00 p.m.

Theater and Musical Theater (review of applications): This meeting will be closed.

DATES: June 11, 2015; 12:00 p.m. to 2:00 p.m.

Theater and Musical Theater (review of applications): This meeting will be closed.

DATES: June 11, 2015; 3:00 p.m. to 5:00 p.m.

Artist Communities (review of applications): This meeting will be closed.

DATES: June 12, 2015; 2:00 p.m. to 4:00 p.m.

Presenting and Multidisciplinary Works (review of applications): This meeting will be closed.

DATES: June 15, 2015; 2:00 p.m. to 4:00 p.m.

Folk and Traditional Arts (review of applications): This meeting will be closed.

DATES: June 16, 2015; 2:00 p.m. to 4:00 p.m.

Presenting and Multidisciplinary Works (review of applications): This meeting will be closed.

DATES: June 17, 2015; 2:00 p.m. to 4:00 p.m.

Presenting and Multidisciplinary Works (review of applications): This meeting will be closed.

DATES: June 18, 2015; 2:00 p.m. to 4:00 p.m.

Folk and Traditional Arts (review of applications): This meeting will be closed.

DATES: June 19, 2015; 2:00 p.m. to 4:00 p.m.

Arts Education (review of applications): This meeting will be closed.

DATES: June 23, 2015; 1:30 p.m. to 3:30 p.m.

Visual Arts (review of applications): This meeting will be closed.

DATES: June 30, 2015; 11:30 a.m. to 1:30 p.m.

Visual Arts (review of applications): This meeting will be closed.

DATES: June 30, 2015; 2:30 p.m. to 4:30 p.m.

FOR FURTHER INFORMATION CONTACT: Further information with reference to these meetings can be obtained from Ms. Kathy Plowitz-Worden, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, DC, 20506; *plowitzk@arts.gov,* or call 202/682–5691.

SUPPLEMENTARY INFORMATION: The closed portions of meetings are for the purpose of Panel review, discussion, evaluation, and recommendations on financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency. In accordance with the determination of the Chairman of February 15, 2012, these sessions will be closed to the public pursuant to subsection (c)(6) of section 552b of title 5, United States Code.

Dated: May 8, 2015.

Kathy Plowitz-Worden,

Panel Coordinator, National Endowment for the Arts.

[FR Doc. 2015–11518 Filed 5–12–15; 8:45 am]

BILLING CODE 7537–01–P

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Computer and Information Science and Engineering; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces the following meeting:

Name: Advisory Committee for Computer and Information Science and Engineering (CISE) (1115).

Date/Time:

June 11, 2015: 12:20 p.m. to 5:30 p.m.

June 12, 2015: 8:25 a.m. to 12:15 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Suite 1235, Arlington, Virginia 22203.

Type of Meeting: Open.

Contact Person: Carmen Whitson, National Science Foundation, 4201 Wilson Boulevard, Suite 1105, Arlington, Virginia 22203 703/292–8900.

Purpose of Meeting: To advise NSF on the impact of its policies, programs and activities on the CISE community. To provide advice to the Assistant Director for CISE on issues related to long-range planning, and to form ad hoc subcommittees and working groups to carry out needed studies and tasks.

Agenda:

- Overview and CISE Update
- Review of NSF Advanced Cyberinfrastructure major activities and Data Hubs
- Working group breakout sessions and report out: New partnership models for CISE research, Data Science
- Presentation and discussion on The Rising and Broadening Tide in CS Education
- Update on Envisioning CISE 2025
- Discussion with NSF Director, Dr. France Córdova
- Closing remarks and wrap-up

Dated: May 6, 2015.

Suzanne Plimpton,

Acting, Committee Management Officer.

[FR Doc. 2015–11479 Filed 5–12–15; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards (ACRS); Meeting of the ACRS Subcommittee on Plant Operations and Fire Protection; Notice of Meeting

The ACRS Subcommittee on Plant Operations and Fire Protection will hold a meeting on May 21, 2015, at the U.S. NRC Region IV Office, 1600 East Lamar Boulevard, Arlington, Texas 76011–4511.

The meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Thursday, May 21, 2015–9:45 a.m. Until 3:00 p.m.

The Subcommittee will meet with Region IV staff to discuss items of mutual interest. The Subcommittee will hear presentations by and hold discussions with representatives of the NRC staff and other interested persons regarding this matter. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the Full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official (DFO), Michael Snodderly (Telephone 301–415–2241 or Email: *Michael.Snodderly@nrc.gov*) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Thirty-five hard copies of each presentation or handout should be provided to the DFO thirty minutes before the meeting. In addition, one electronic copy of each presentation should be emailed to the DFO one day before the meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the DFO with a CD containing each presentation at least thirty minutes before the meeting. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 13, 2014 (79 FR59307–59308).

Detailed meeting agendas and meeting transcripts are available on the NRC Web site at *http://www.nrc.gov/reading-rm/doc-collections/acrs.* Information regarding topics to be discussed, changes to the agenda, whether the meeting has been canceled or rescheduled, and the time allotted to present oral statements can be obtained from the Web site cited above or by contacting the identified DFO. Moreover, in view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with these references if such rescheduling would result in a major inconvenience.

Dated: May 5, 2015.

Mark L. Banks,

Chief, Technical Support Branch, Advisory Committee on Reactor Safeguards.

[FR Doc. 2015–11580 Filed 5–12–15; 8:45 am]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket No. CP2015–64; Order No. 2474]

New Postal Product

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing concerning an addition to Global Expedited Package Services 3 negotiated service agreement. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* May 14, 2015.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov*. Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction

On May 6, 2015, the Postal Service filed notice that it has entered into an additional Global Expedited Package Services 3 (GEPS 3) negotiated service agreement (Agreement).[1]

To support its Notice, the Postal Service filed a copy of the Agreement, a copy of the Governors' Decision authorizing the product, a certification of compliance with 39 U.S.C. 3633(a), and an application for non-public treatment of certain materials. It also filed supporting financial workpapers.

II. Notice of Commission Action

The Commission establishes Docket No. CP2015–64 for consideration of matters raised by the Notice.

The Commission invites comments on whether the Postal Service's filing is consistent with 39 U.S.C. 3632, 3633, or 3642, 39 CFR part 3015, and 39 CFR part 3020, subpart B. Comments are due no later than May 14, 2015. The public portions of the filing can be accessed via the Commission's Web site (*http://www.prc.gov*).

The Commission appoints Lyudmila Y. Bzhilyanskaya to serve as Public Representative in this docket.

III. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket No. CP2015–64 for consideration of the matters raised by the Postal Service's Notice.

2. Pursuant to 39 U.S.C. 505, Lyudmila Y. Bzhilyanskaya is appointed to serve as an officer of the Commission to represent the interests of the general public in this proceeding (Public Representative).

3. Comments are due no later than May 14, 2015.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Shoshana M. Grove,

Secretary.

[FR Doc. 2015–11478 Filed 5–12–15; 8:45 am]

BILLING CODE 7710–FW–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–74895; File No. SR–NASDAQ–2015–050]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Billing Policies

May 7, 2015.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 1, 2015, The NASDAQ Stock Market LLC (''Nasdaq'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to amend Exchange Rule 7007, and re-title it ''Collection of Exchange Fees and Other Claims and Billing Policy,'' and to require NASDAQ members to submit billing disputes within a certain time period.

While changes to the Pricing Schedule [sic] pursuant to this proposal are effective upon filing, the Exchange has designated the proposed amendment to be operative on July 1, 2015.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaq.cchwallstreet.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend Rule 7007, which was recently filed,[3] to require all pricing disputes to be submitted to the Exchange in writing[4] and accompanied by supporting documentation within sixty days of receipt of an invoice. The Exchange believes that this practice will

[1] Notice of United States Postal Service of Filing a Functionally Equivalent Global Expedited Package Services 3 Negotiated Service Agreement and Application for Non-Public Treatment of Materials Filed Under Seal, May 6, 2015 (Notice).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 74823 (April 28, 2015) (SR–NASDAQ–2015–046) (amending Rule 7007).

[4] The Exchange invoice specifies the Exchange contact persons with whom to dispute the invoice.

conserve Exchange resources, which are expended when untimely billing disputes require staff to research applicable fees and order information beyond two months after the invoice was issued.

The sixty days limitation would apply to invoices for transactional activity occurring in July 2015 and thereafter.[5] The Exchange proposes to apply the billing policy in Rule 7007 to the following 7000 series Rules: 7001 (Membership Fees), 7014 (Market Quality Incentive Programs: Investor Support Program), 7015 (Access Services), 7016 (Nasdaq Risk Management), 7018 (Nasdaq Market Center Order Execution and Routing), 7021 (NasdaqTrader.com Trading and Compliance Data Package Fee), 7024 (Clearly Erroneous Module), 7027 (Aggregation of Activity of Affiliated Members), 7029 (Installation, Removal or Relocation), 7030 (Other Services), 7034 (Co-Location Services), 7038 (Step-Outs and Sales Fees Transfers), 7041 (Nasdaq Regulation Reconnaissance Service), 7042 (Non-Tape Riskless Submissions), 7043 (Inclusion of Transaction Fees in Clearing Reports Submitted to ACT), 7049 (Nasdaq InterACT), 7051 (Direct Connectivity to Nasdaq), 7055 (Short Sale Monitor), 7058 (QView), 7060 (Equity Trade Journal for Clearing Firms) and 7061 (Limit Locator).

Further, this proposal would provide a cost savings to the Exchange in that it would alleviate administrative burdens related to belated billing disputes, which divert staff resources away from the Exchange's regulatory and business purposes. A similar requirement with respect to initiating billing disputes is in place today for Options Participants on NASDAQ Options Market LLC (''NOM'').[6]

In addition, the Exchange proposes to amend the title of Exchange Rule 7007 from ''Collection of Exchange Fees and Other Claims'' to ''Collection of Exchange Fees and Other Claims and Billing Policy.'' The Exchange believes that the proposed title provides a more specific description of Rule 7007.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act [7] in general, and furthers the objectives of Section 6(b)(5) of the Act [8] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest, by providing a uniform practice for disputing fees.

The Exchange believes the requirement that billing disputes for certain specified fees and rebates must be submitted to the Exchange within sixty days from receipt of the invoice will set objective standards and will be fair to members. The proposal equally applies to all NASDAQ equity members. Also, the Exchange's administrative costs would be lowered as a result of this policy.

The Exchange believes that sixty days is ample time to review an invoice and dispute any pricing related to the transactions for that time period. An identical policy applies today with respect to NOM billing.[9] The Exchange is seeking to apply this policy to all NASDAQ members alike in the same manner.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The billing policy would apply uniformly to all NASDAQ equity members as it does today with all NOM Participants. All NASDAQ members would be subject to this policy.

The Exchange believes that this practice will conserve Exchange resources, which are expended when untimely billing disputes require staff to research applicable fees and order information beyond two months after the invoice is issued.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act [10] and subparagraph (f)(6) of Rule 19b–4 thereunder.[11]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NASDAQ–2015–050 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR–NASDAQ–2015–050. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be

[5] This proposal would not apply to invoices related to June 2015 billing.

[6] *See* NOM Rules at Chapter XV, Section 7, entitled ''NASDAQ Options Fee Disputes.''

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] *See* Chapter XV, Section 7 in the NOM Rules.

[10] 15 U.S.C. 78s(b)(3)(a)(iii).

[11] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2015–050, and should be submitted on or before June 3, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Robert W. Errett,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–74898; File No. SR–CBOE–2015–039]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to the Nullification and Adjustment of Options Transactions Including Obvious Errors

May 7, 2015.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on May 6, 2015, Chicago Board Options Exchange, Incorporated (the ''Exchange'' or ''CBOE'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange seeks to amend Exchange rules related to the nullification and adjustment of options transactions including obvious errors. The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Background

For several months the Exchange has been working with other options exchanges to identify ways to improve the process related to the adjustment and nullification of erroneous options transactions. The goal of the process that the options exchanges have undertaken is to adopt harmonized rules related to the adjustment and nullification of erroneous options transactions as well as a specific provision related to coordination in connection with large-scale events involving erroneous options transactions. As described below, the Exchange believes that the changes the options exchanges and the Exchange have agreed to propose will provide transparency and finality with respect to the adjustment and nullification of erroneous options transactions. Particularly, the proposed changes seek to achieve consistent results for participants across U.S. options exchanges while maintaining a fair and orderly market, protecting investors and protecting the public interest.

The Proposed Rule is the culmination of this coordinated effort and reflects discussions by the options exchanges to universally adopt: (1) certain provisions already in place on one or more options exchanges; and (2) new provisions that the options exchanges collectively believe will improve the handling of erroneous options transactions. Thus, although the Proposed Rule is in many ways similar to and based on the Exchange's Current Rule, the Exchange is adopting various provisions to conform with existing rules of one or more options exchanges and also to adopt rules that are not currently in place on any options exchange. As noted above, in order to adopt a rule that is similar in most material respects to the rules adopted by other options exchanges, the Exchange proposes to delete the Current Rule in its entirety and to replace it with the Proposed Rule.

The Exchange notes that it has proposed additional objective standards in the Proposed Rule as compared to the Current Rule. The Exchange also notes that the Proposed Rule will ensure that the Exchange will have the same standards as all other options exchanges. However, there are still areas under the Proposed Rule where subjective determinations need to be made by Exchange personnel with respect to the calculation of Theoretical Price. The Exchange notes that the Exchange and all other options exchanges have been working to further improve the review of potentially erroneous transactions as well as their subsequent adjustment by creating an objective and universal way to determine Theoretical Price in the event a reliable NBBO is not available. For instance, the Exchange and all other options exchanges may utilize an independent third party to calculate and disseminate or make available Theoretical Price. However, this initiative requires additional exchange and industry discussion as well as additional time for development and implementation. The Exchange will continue to work with other options exchanges and the options industry towards the goal of additional objectivity and uniformity with respect to the calculation of Theoretical Price.

As additional background, the Exchange believes that the Proposed Rule supports an approach consistent with long-standing principles in the options industry under which the general policy is to adjust rather than nullify transactions. The Exchange acknowledges that adjustment of transactions is contrary to the operation of analogous rules applicable to the equities markets, where erroneous transactions are typically nullified rather than adjusted and where there is

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[12] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b-4(f)(6).

no distinction between the types of market participants involved in a transaction. For the reasons set forth below, the Exchange believes that the distinctions in market structure between equities and options markets continue to support these distinctions between the rules for handling obvious errors in the equities and options markets. The Exchange also believes that the Proposed Rule properly balances several competing concerns based on the structure of the options markets.

Various general structural differences between the options and equities markets point toward the need for a different balancing of risks for options market participants and are reflected in the Proposed Rule. Option pricing is formulaic and is tied to the price of the underlying stock, the volatility of the underlying security and other factors. Because options market participants can generally create new open interest in response to trading demand, as new open interest is created, correlated trades in the underlying or related series are generally also executed to hedge a market participant's risk. This pairing of open interest with hedging interest differentiates the options market specifically (and the derivatives markets broadly) from the cash equities markets. In turn, the Exchange believes that the hedging transactions engaged in by market participants necessitates protection of transactions through adjustments rather than nullifications when possible and otherwise appropriate.

The options markets are also quote driven markets dependent on liquidity providers to an even greater extent than equities markets. In contrast to the approximately 7,000 different securities traded in the U.S. equities markets each day, there are more than 500,000 unique, regularly quoted option series. Given this breadth in options series the options markets are more dependent on liquidity providers than equities markets; such liquidity is provided most commonly by registered market makers but also by other professional traders. With the number of instruments in which registered market makers must quote and the risk attendant with quoting so many products simultaneously, the Exchange believes that those liquidity providers should be afforded a greater level of protection. In particular, the Exchange believes that liquidity providers should be allowed protection of their trades given the fact that they typically engage in hedging activity to protect them from significant financial risk to encourage continued liquidity provision and maintenance of the quote-driven options markets.

In addition to the factors described above, there are other fundamental differences between options and equities markets which lend themselves to different treatment of different classes of participants that are reflected in the Proposed Rule. For example, there is no trade reporting facility in the options markets. Thus, all transactions must occur on an options exchange. This leads to significantly greater retail customer participation directly on exchanges than in the equities markets, where a significant amount of retail customer participation never reaches the Exchange but is instead executed in off-exchange venues such as alternative trading systems, broker-dealer market making desks and internalizers. In turn, because of such direct retail customer participation, the exchanges have taken steps to afford those retail customers—generally Priority Customers—more favorable treatment in some circumstances.

Definitions

The Exchange proposes to adopt various definitions that will be used in the Proposed Rule, as described below.

First, the Exchange proposes to adopt a definition of ''Customer,'' to make clear that this term would not include any broker-dealer, Professional Customer, or Voluntary Professional Customer.[5] Although other portions of the Exchange's rules address the capacity of market participants, including customers, the proposed definition is consistent with such rules and the Exchange believes it is important for all options exchanges to have the same definition of Customer in the context of nullifying and adjusting trades in order to have harmonized rules. As set forth in detail below, orders on behalf of a Customer are in many cases treated differently than non-Customer orders in light of the fact that Customers are not necessarily immersed in the day-to-day trading of the markets, are less likely to be watching trading activity in a particular option throughout the day, and may have limited funds in their trading accounts.

Second, the Exchange proposes to adopt definitions for both an ''erroneous sell transaction'' and an ''erroneous buy transaction.'' As proposed, an erroneous sell transaction is one in which the price received by the person selling the option is erroneously low, and an erroneous buy transaction is one in which the price paid by the person purchasing the option is erroneously high. This provision helps to reduce the possibility that a party can intentionally submit an order hoping for the market to move in their favor while knowing that the transaction will be nullified or adjusted if the market does not. For instance, when a market participant who is buying options in a particular series sees an aggressively priced sell order posted on the Exchange, and the buyer believes that the price of the options is such that it might qualify for obvious error, the option buyer can trade with the aggressively priced order, then wait to see which direction the market moves. If the market moves in their direction, the buyer keeps the trade and if it moves against them, the buyer calls the Exchange hoping to get the trade adjusted or busted.

Third, the Exchange proposes to adopt a definition of ''Official,'' which would mean an Officer of the Exchange or such other employee designee of the Exchange that is trained in the application of the Proposed Rule.

Fourth, the Exchange proposes to adopt a new term, a ''Size Adjustment Modifier,'' which would apply to individual transactions and would modify the applicable adjustment for orders under certain circumstances, as discussed in further detail below. As proposed, the Size Adjustment Modifier will be applied to individual transactions as follows:

Number of contracts per execution	Adjustment—TP Plus/Minus
1–50	N/A.
51–250	2 times adjustment amount.
251–1000	2.5 times adjustment amount.
1001 or more	3 times adjustment amount.

The Size Adjustment Modifier attempts to account for the additional risk that the parties to the trade undertake for transactions that are larger in scope. The Exchange believes that the Size Adjustment Modifier creates additional incentives to prevent more impactful Obvious Errors and it lessens the impact on the contra-party to an adjusted trade. The Exchange notes that these contra-parties may have preferred to only trade the size involved in the transaction at the price at which such trade occurred, and in trading larger size has committed a greater level of capital and bears a larger hedge risk.

[5] A ''Professional'' is any person or entity that (i) is not a broker or dealer in securities; and (ii) places more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s). *See* Rule 1.1 (ggg). A ''Voluntary Professional'' is any person or entity that is not a broker or dealer in securities that elects, in writing, to be treated in the same manner as a broker or dealer in securities for purposes of various CBOE rules. *See* Rule 1.1(fff).

When setting the proposed size adjustment modifier thresholds the Exchange has tried to correlate the size breakpoints with typical small and larger ''block'' execution sizes of underlying stock. For instance, SEC Rule 10b–18(a)(5)(ii) defines a ''block'' as a quantity of stock that is at least 5,000 shares and a purchase price of at least $50,000, among others.[6] Similarly, NYSE Rule 72 defines a ''block'' as an order to buy or sell ''at least 10,000 shares or a quantity of stock having a market value of $200,000 or more, whichever is less.'' Thus, executions of 51 to 100 option contracts, which are generally equivalent to executions of 5,100 and 10,000 shares of underlying stock, respectively, are proposed to be subject to the lowest size adjustment modifier. An execution of over 1,000 contracts is roughly equivalent to a block transaction of more than 100,000 shares of underlying stock, and is proposed to be subject to the highest size adjustment modifier. The Exchange has correlated the proposed size adjustment modifier thresholds to smaller and larger scale blocks because the Exchange believes that the execution cost associated with transacting in block sizes scales according to the size of the block. In other words, in the same way that executing a 100,000 share stock order will have a proportionately larger market impact and will have a higher overall execution cost than executing a 500, 1,000 or 5,000 share order in the same stock, all other market factors being equal, executing a 1,000 option contract order will have a larger market impact and higher overall execution cost than executing a 5, 10 or 50 contract option order.

Calculation of Theoretical Price

Theoretical Price in Normal Circumstances

Under both the Current Rule and the Proposed Rule, when reviewing a transaction as potentially erroneous, the Exchange needs to first determine the ''Theoretical Price'' of the option, *i.e.,* the Exchange's estimate of the correct market price for the option. Pursuant to the Proposed Rule, if the applicable option series is traded on at least one other options exchange, then the Theoretical Price of an option series is the last national best bid (''NBB'') just prior to the trade in question with respect to an erroneous sell transaction or the last national best offer (''NBO'') just prior to the trade in question with respect to an erroneous buy transaction unless one of the exceptions described below exists. Thus, the Exchange proposes that whenever the Exchange has a reliable NBB or NBO, as applicable, just prior to the transaction, then the Exchange will use this NBB or NBO as the Theoretical Price.

The Exchange also proposes to specify in the Proposed Rule that when a single order received by the Exchange is executed at multiple price levels, the last NBB and last NBO just prior to the trade in question would be the last NBB and last NBO just prior to the Exchange's receipt of the order.

The Exchange also proposes to set forth in the Proposed Rule various provisions governing specific situations where the NBB or NBO is not available or may not be reliable. Specifically, the Exchange is proposing additional detail specifying situations in which there are no quotes or no valid quotes (as defined below), when the national best bid or offer (''NBBO'') is determined to be too wide to be reliable, and at the open of trading on each trading day.

No Valid Quotes

As is true under the Current Rule, pursuant to the Proposed Rule the Exchange will determine the Theoretical Price if there are no quotes or no valid quotes for comparison purposes. As proposed, quotes that are not valid are all quotes in the applicable option series published at a time where the last NBB is higher than the last NBO in such series (a ''crossed market''), quotes published by the Exchange that were submitted by either party to the transaction in question, and quotes published by another options exchange against which the Exchange has declared self-help. Thus, in addition to scenarios where there are literally no quotes to be used as Theoretical Price, the Exchange will exclude quotes in certain circumstances if such quotes are not deemed valid. The Proposed Rule is consistent with the Exchange's application of the Current Rule but the descriptions of the various scenarios where the Exchange considers quotes to be invalid represent additional detail that is not included in the Current Rule.

The Exchange notes that Exchange personnel currently are required to determine Theoretical Price in certain circumstances. While the Exchange continues to pursue alternative solutions that might further enhance the objectivity and consistency of determining Theoretical Price, the Exchange believes that the discretion currently afforded to Exchange Officials is appropriate in the absence of a reliable NBBO that can be used to set the Theoretical Price. Under the Current Rule, Exchange personnel will generally consult and refer to data such as the prices of related series, especially the closest strikes in the option in question. Exchange personnel may also take into account the price of the underlying security and the volatility characteristics of the option as well as historical pricing of the option and/or similar options.

Wide Quotes

Similarly, pursuant to the Proposed Rule the Exchange will determine the Theoretical Price if the bid/ask differential of the NBB and NBO for the affected series just prior to the erroneous transaction was equal to or greater than the Minimum Amount set forth below and there was a bid/ask differential less than the Minimum Amount during the 10 seconds prior to the transaction. If there was no bid/ask differential less than the Minimum Amount during the 10 seconds prior to the transaction then the Theoretical Price of an option series is the last NBB or NBO just prior to the transaction in question. The Exchange proposes to use the following chart to determine whether a quote is too wide to be reliable:

Bid price at time of trade	Minimum amount
Below $2.00	$0.75
$2.00 to $5.00	1.25
Above $5.00 to $10.00	1.50
Above $10.00 to $20.00	2.50
Above $20.00 to $50.00	3.00
Above $50.00 to $100.00	4.50
Above $100.00	6.00

The Exchange notes that the values set forth above generally represent a multiple of 3 times the bid/ask differential requirements of other options exchanges, with certain rounding applied (*e.g.,* $1.25 as proposed rather than $1.20).[7] The Exchange believes that basing the Wide Quote table on a multiple of the permissible bid/ask differential rule provides a reasonable baseline for quotations that are indeed so wide that they cannot be considered reliable for purposes of determining Theoretical Price unless they have been consistently wide. As described above, while the Exchange will determine Theoretical Price when the bid/ask differential equals or exceeds the amount set forth in the chart above and within the previous 10 seconds there was a bid/ask differential smaller than such amount, if a quote has been persistently wide for at least 10 seconds the Exchange will use such quote for purposes of

[6] *See* 17 CFR 240.10b–18(a)(5)(ii).

[7] *See, e.g.,* NYSE Arca Options Rule 6.37(b)(1).

Theoretical Price. The Exchange believes that there should be a greater level of protection afforded to market participants that enter the market when there are liquidity gaps and price fluctuations. The Exchange does not believe that a similar level of protection is warranted when market participants choose to enter a market that is wide and has been consistently wide for some time. Given the largely electronic nature of today's markets, the Exchange believes the designated time frame is appropriate and is long enough for market participants to receive, process, and account for and respond to new market information. The table above bases the wide quote provision off of bid price in order to provide a relatively straightforward beginning point for the analysis.

As an example, assume an option is quoted $3.00 by $6.00 with 50 contracts posted on each side of the market for an extended period of time. If a market participant were to enter a market order to buy 20 contracts the Exchange believes that the buyer should have a reasonable expectation of paying $6.00 for the contracts which they are buying. This should be the case even if immediately after the purchase of those options, the market conditions change and the same option is then quoted at $3.75 by $4.25. Although the quote was wide according to the table above at the time immediately prior to and the time of the execution of the market order, it was also well established and well known. The Exchange believes that an execution at the then prevailing market price should not in and of itself constitute an erroneous trade.

Transactions at the Open

The Exchange proposes to adopt a new definition of Theoretical Price for transactions at the open while maintaining a portion of the Current Rule for opening transactions unique to the Exchange. Except as provided in (b)(1)(A) of the Proposed Rule, for a transaction occurring as part of the Opening Process [8] the Exchange will determine the Theoretical Price where there is no NBB or NBO for the affected series just prior to the erroneous transaction or if the bid/ask differential of the NBBO just prior to the erroneous transaction is equal to or greater than the Minimum Amount set forth in the chart proposed for the wide quote provision described above. The Exchange believes that this discretion is necessary because it is consistent with other scenarios in which the Exchange will determine the Theoretical Price if there are no quotes or no valid quotes for comparison purposes, including the wide quote provision proposed by the Exchange as described above. If, however, there are valid quotes and the bid/ask differential of the NBBO is less than the Minimum Amount set forth in the chart proposed for the wide quote provision described above, then the Exchange will use the NBB or NBO just prior to the transaction as it would in any other normal review scenario.

As an example of an erroneous transaction for which the NBBO is wide at the open, assume the NBBO at the time of the opening transaction is $1.00 x $5.00 and the opening transaction takes place at $1.25. The Exchange would be responsible for determining the Theoretical Price because the NBBO was wider than the applicable minimum amount set forth in the wide quote provision as described above. The Exchange believes that it is necessary to determine Theoretical Price at the open in the event of a wide quote at the open for the same reason that the Exchange has proposed to determine Theoretical Price during the remainder of the trading day pursuant to the proposed wide quote provision, namely that a wide quote cannot be reliably used to determine Theoretical Price because the Exchange does not know which of the two quotes, the NBB or the NBO, is closer to the real value of the option.

Subparagraph (b)(1)(A) is a carryover from the Current Rule,[9] and as noted above, if the elements of (b)(1)(A) are met, it supersedes paragraph (b)(1). With respect to HOSS rotations in index options series being used to calculate the final settlement price of a volatility index,[10] the Exchange is proposing to carryover the conditions from the Current Rule that the first quote after the transaction(s) in question that does not reflect the erroneous transaction(s) will be the Theoretical Price as long as the quote is for at least the size of the HOSS opening transaction(s). If the size of the quote is less than the size of the opening transaction(s), then the Obvious Error and Catastrophic Error provisions shall not apply.[11]

Obvious Errors

The Exchange proposes to adopt numerical thresholds that would qualify transactions as ''Obvious Errors.'' These thresholds are similar to those in place under the Current Rule.[12] As proposed, a transaction will qualify as an Obvious Error if the Exchange receives a properly submitted filing and the execution price of a transaction is higher or lower than the Theoretical Price for the series by an amount equal to at least the amount shown below:

Theoretical price	Minimum amount
Below $2.00	$0.25
$2.00 to $5.00	0.40
Above $5.00 to $10.00	0.50
Above $10.00 to $20.00	0.80
Above $20.00 to $50.00	1.00
Above $50.00 to $100.00	1.50
Above $100.00	2.00

Applying the Theoretical Price, as described above, to determine the applicable threshold and comparing the Theoretical Price to the actual execution price provides the Exchange with an objective methodology to determine whether an Obvious Error occurred. The Exchange believes that the proposed amounts are reasonable as they are generally consistent with the standards of the Current Rule and reflect a significant disparity from Theoretical Price. The Exchange notes that the Minimum Amounts in the Proposed Rule and as set forth above are identical to the Current Rule except for the last two categories, for options where the Theoretical Price is above $50.00 to $100.00 and above $100.00. The Exchange believes that this additional granularity is reasonable because given

[8] *See* Exchange Rules 6.2—Trading Rotations, 6.2A—Rapid Opening System (''ROS''), and 6.2B—Hybrid Opening System (''HOSS'') for a description of the Exchange's Opening Process.

[9] *See* Current Rule 6.25(a)(1)(iii) and Securities Exchange Act Release No. 34–59981 (May 27, 2009), 74 FR 26447 (June 2, 2009) (SR–CBOE–2009–024).

[10] CBOE's and the CBOE Futures Exchange, LLC's (a designated contract market approved by the Commodity Futures Trading Commission and a wholly-owned subsidiary of CBOE) rules provide for the listing and trading of options and futures, as applicable, on various volatility indexes. The Obvious Pricing Error provision would be utilized only for those index options series used to calculate the final settlement price of a volatility index and only on the final settlement date of the options and futures contracts on the applicable volatility index in each expiration month. Thus, for example, the proposed obvious price error provision would be used for the relevant Standard & Poor's 500 Stock Index (''SPX'') options series on settlement days for CBOE Volatility Index (''VIX'') options and futures contracts.

[11] For example, if the opening trade in Series XYZ is for a total of 200 contracts and the bid or offer, as applicable, of the first quote after the transaction(s) in question that does not reflect the erroneous transaction(s) is for 500 contracts, then the quote would be used to determine Theoretical Price and whether an Obvious Pricing Error occurred. If the bid or offer, as applicable, of the quote is for only 100 contracts, then the trade would not be subject to nullification or adjustment under the Obvious Pricing Error provision.

[12] The Exchange notes that similar to the Current Rule certain provisions of the Proposed Rule are not applicable to trades executed in open outcry. The preamble of the Proposed Rule states that that ''[u]nless otherwise stated, the provisions contained within this Rule are applicable to electronic transactions only.'' *See* Current Rule 6.25 Preamble and Proposed Rule 6.25 Preamble.

the proliferation of additional strikes that have been created in the past several years there are many more high-priced options that are trading with open interest for extended periods. The Exchange believes that it is appropriate to account for these high-priced options with additional Minimum Amount levels for options with Theoretical Prices above $50.00.

Under the Proposed Rule, a party that believes that it participated in a transaction that was the result of an Obvious Error must notify the Exchange's Help Desk in the manner specified from time to time by the Exchange in a circular distributed to TPHs.

The Exchange also proposes to adopt notification timeframes that must be met in order for a transaction to qualify as an Obvious Error. Specifically, as proposed a filing must be received by the Exchange within thirty (30) minutes of the execution with respect to an execution of a Customer order and within fifteen (15) minutes of the execution for any other participant. The Exchange also proposes to provide additional time for trades that are routed through other options exchanges to the Exchange. Under the Proposed Rule, any other options exchange will have a total of forty-five (45) minutes for Customer orders and thirty (30) minutes for non-Customer orders, measured from the time of execution on the Exchange, to file with the Exchange for review of transactions routed to the Exchange from that options exchange and executed on the Exchange (''linkage trades''). This includes filings on behalf of another options exchange filed by a third-party routing broker if such third-party broker identifies the affected transactions as linkage trades. In order to facilitate timely reviews of linkage trades the Exchange will accept filings from either the other options exchange or, if applicable, the third-party routing broker that routed the applicable order(s). The additional fifteen (15) minutes provided with respect to linkage trades shall only apply to the extent the options exchange that originally received and routed the order to the Exchange itself received a timely filing from the entering participant (*i.e.,* within 30 minutes if a Customer order or 15 minutes if a non-Customer order). The Exchange believes that additional time for filings related to Customer orders is appropriate in light of the fact that Customers are not necessarily immersed in the day-to-day trading of the markets and are less likely to be watching trading activity in a particular option throughout the day. The Exchange believes that the additional time afforded to linkage trades is appropriate given the interconnected nature of the markets today and the practical difficulty that an end user may face in getting requests for review filed in a timely fashion when the transaction originated at a different exchange than where the error took place. Without this additional time the Exchange believes it would be common for a market participant to satisfy the filing deadline at the original exchange to which an order was routed but that requests for review of executions from orders routed to other options exchanges would not qualify for review as potential Obvious Errors by the time filings were received by such other options exchanges, in turn leading to potentially disparate results under the applicable rules of options exchanges to which the orders were routed.

Pursuant to the Proposed Rule, an Official may review a transaction believed to be erroneous on his/her own motion in the interest of maintaining a fair and orderly market and for the protection of investors. This proposed provision is designed to give an Official the ability to provide parties relief in those situations where they have failed to report an apparent error within the established notification period. A transaction reviewed pursuant to the proposed provision may be nullified or adjusted only if it is determined by the Official that the transaction is erroneous in accordance with the provisions of the Proposed Rule, provided that the time deadlines for filing a request for review described above shall not apply. The Proposed Rule would require the Official to act as soon as possible after becoming aware of the transaction; action by the Official would ordinarily be expected on the same day that the transaction occurred. However, because a transaction under review may have occurred near the close of trading or due to unusual circumstances, the Proposed Rule provides that the Official shall act no later than 7:30 a.m. Central Time on the next trading day following the date of the transaction in question.

The Exchange also proposes to state that a party affected by a determination to nullify or adjust a transaction after an Official's review on his or her own motion may appeal such determination in accordance with paragraph (m), which is described below, but may not seek a review by an Obvious Error Panel under paragraph (k). The Proposed Rule would make clear that a determination by an Official not to review a transaction or determination not to nullify or adjust a transaction for which a review was conducted on an Official's own motion is not appealable and further that if a transaction is reviewed and a determination is rendered pursuant to another provision of the Proposed Rule, no additional relief may be granted by an Official.

If it is determined that an Obvious Error has occurred based on the objective numeric criteria and time deadlines described above, the Exchange will adjust or nullify the transaction as described below and promptly notify both parties to the trade electronically or via telephone. The Exchange proposes different adjustment and nullification criteria for Customers and non-Customers.

As proposed, where neither party to the transaction is a Customer, the execution price of the transaction will be adjusted by the Official pursuant to the table below.

Theoretical price (TP)	Buy transaction adjustment—TP plus	Sell transaction adjustment—TP minus
Below $3.00	$0.15	$0.15
At or above $3.00	0.30	0.30

The Exchange believes that it is appropriate to adjust to prices a specified amount away from Theoretical Price rather than to adjust to Theoretical Price because even though the Exchange has determined a given trade to be erroneous in nature, the parties in question should have had some expectation of execution at the price or prices submitted. Also, it is common that by the time it is determined that an obvious error has occurred additional hedging and trading activity has already occurred based on the executions that previously happened. The Exchange is concerned that an adjustment to Theoretical Price in all cases would not appropriately incentivize market participants to maintain appropriate controls to avoid potential errors.

Further, as proposed any non-Customer Obvious Error exceeding 50 contracts will be subject to the Size Adjustment Modifier described above. The Exchange believes that it is appropriate to apply the Size Adjustment Modifier to non-Customer orders because the hedging cost associated with trading larger sized options orders and the market impact of larger blocks of underlying can be significant.

As an example of the application of the Size Adjustment Modifier, assume Exchange A has a quoted bid to buy 50 contracts at $2.50, Exchange B has a quoted bid to buy 100 contracts at $2.05 and there is no other options exchange quoting a bid priced higher than $2.00. Assume that the NBBO is $2.50 by $3.00. Finally, assume that all orders quoted and submitted to Exchange B in connection with this example are non-Customer orders.

- Assume Exchange A's quoted bid at $2.50 is either executed or cancelled.
- Assume Exchange B immediately thereafter receives an incoming market order to sell 100 contracts.
- The incoming order would be executed against Exchange B's resting bid at $2.05 for 100 contracts.
- Because the 100 contract execution of the incoming sell order was priced at $2.05, which is $0.45 below the Theoretical Price of $2.50, the 100 contract execution would qualify for adjustment as an Obvious Error.
- The normal adjustment process would adjust the execution of the 100 contracts to $2.35 per contract, which is the Theoretical Price minus $0.15.
- However, because the execution would qualify for the Size Adjustment Modifier of 2 times the adjustment price, the adjusted transaction would instead be to $2.20 per contract, which is the Theoretical Price minus $0.30.

By reference to the example above, the Exchange reiterates that it believes that a Size Adjustment Modifier is appropriate, as the buyer in this example was originally willing to buy 100 contracts at $2.05 and ended up paying $2.20 per contract for such execution. Without the Size Adjustment Modifier the buyer would have paid $2.35 per contract. Such buyer may be advantaged by the trade if the Theoretical Price is indeed closer to $2.50 per contract, however the buyer may not have wanted to buy so many contracts at a higher price and does incur increasing cost and risk due to the additional size of their quote. Thus, the proposed rule is attempting to strike a balance between various competing objectives, including recognition of cost and risk incurred in quoting larger size and incentivizing market participants to maintain appropriate controls to avoid errors.

In contrast to non-Customer orders, where trades will be adjusted if they qualify as Obvious Errors, pursuant the Proposed Rule a trade that qualifies as an Obvious Error will be nullified where at least one party to the Obvious Error is a Customer. The Exchange also proposes, however, that if any TPH submits requests to the Exchange for review of transactions pursuant to the Proposed Rule, and in aggregate that TPH has 200 or more Customer transactions under review concurrently and the orders resulting in such transactions were submitted during the course of 2 minutes or less, where at least one party to the Obvious Error is a non-Customer, the Exchange will apply the non-Customer adjustment criteria described above to such transactions. The Exchange based its proposal of 200 transactions on the fact that the proposed level is reasonable as it is representative of an extremely large number of orders submitted to the Exchange that are, in turn, possibly erroneous. Similarly, the Exchange based its proposal of orders received in 2 minutes or less on the fact that this is a very short amount of time under which one TPH could generate multiple erroneous transactions. In order for a participant to have more than 200 transactions under review concurrently when the orders triggering such transactions were received in 2 minutes or less, the market participant will have far exceeded the normal behavior of customers deserving protected status.[13] While the Exchange continues to believe that it is appropriate to nullify transactions in such a circumstance if both participants to a transaction are Customers, the Exchange does not believe it is appropriate to place the overall risk of a significant number of trade breaks on non-Customers that in the normal course of business may have engaged in additional hedging activity or trading activity based on such transactions. Thus, the Exchange believes it is necessary and appropriate to protect non-Customers in such a circumstance by applying the non-Customer adjustment criteria, and thus adjusting transactions as set forth above, in the event a TPH has more than 200 transactions under review concurrently.

Catastrophic Errors

Consistent with the Current Rule, the Exchange proposes to adopt separate numerical thresholds for review of transactions for which the Exchange does not receive a filing requesting review within the Obvious Error timeframes set forth above. Based on this review these transactions may qualify as ''Catastrophic Errors.'' As proposed, a Catastrophic Error will be deemed to have occurred when the execution price of a transaction is higher or lower than the Theoretical Price for the series by an amount equal to at least the amount shown below:

Theoretical price	Minimum amount
Below $2.00	$0.50
$2.00 to $5.00	1.00
Above $5.00 to $10.00	1.50
Above $10.00 to $20.00	2.00
Above $20.00 to $50.00	2.50
Above $50.00 to $100.00	3.00
Above $100.00	4.00

Based on industry feedback on the Catastrophic Error thresholds set forth under the Current Rule, the thresholds proposed as set forth above are more granular and lower (*i.e.*, more likely to qualify) than the thresholds under the Current Rule. As noted above, under the Proposed Rule as well as the Current Rule, parties have additional time to submit transactions for review as Catastrophic Errors. As proposed, for transactions occurring during regular trading hours, notification requesting review must be received by the Exchange's Help Desk by 7:30 a.m. Central Time on the first trading day following the execution. For transactions occurring during extended trading hours, notification must be received within 2 hours of the close of the extended trading hours session. For transactions in an expiring options series that take place on an expiration day, a party must notify the Exchange's Help Desk within 45 minutes after the close of trading that same day. As is true for requests for review under the Obvious Error provision of the Proposed Rule, a party requesting review of a transaction as a Catastrophic Error must notify the Exchange's Help Desk in the manner specified from time to time by the Exchange in a circular distributed to TPHs. By definition, any execution that qualifies as a Catastrophic Error is also an Obvious Error. However, the Exchange believes it is appropriate to maintain these two types of errors because the Catastrophic Error

[13] The Exchange notes that in the third quarter of this year across all options exchanges the average number of valid Customer orders received and executed was less than 38 valid orders every two minutes. The number of obvious errors resulting from valid orders is, of course, a very small fraction of such orders.

provisions provide market participants with a longer notification period under which they may file a request for review with the Exchange of a potential Catastrophic Error than a potential Obvious Error. This provides an additional level of protection for transactions that are severely erroneous even in the event a participant does not submit a request for review in a timely fashion.

The Proposed Rule would specify that relief under the catastrophic error provision would not be granted under paragraph (d) if an Obvious Error Panel has previously rendered a decision with respect to the transaction(s) in question. In addition, if it is determined by an Official that a Catastrophic Error has not occurred, the Trading Permit Holder will be subject to a charge of $5,000. The Proposed Rule also specifies the action to be taken by the Exchange if it is determined that a Catastrophic Error has occurred, as described below, and would require the Exchange to promptly notify both parties to the trade electronically or via telephone. In the event of a Catastrophic Error, the execution price of the transaction will be adjusted by the Official pursuant to the table below.

Theoretical price (TP)	Buy transaction adjustment—TP plus	Sell transaction adjustment—TP minus
Below $2.00	$0.50	$0.50
$2.00 to $5.00	1.00	1.00
Above $5.00 to $10.00	1.50	1.50
Above $10.00 to $20.00	2.00	2.00
Above $20.00 to $50.00	2.50	2.50
Above $50.00 to $100.00	3.00	3.00
Above $100.00	4.00	4.00

Although Customer orders would be adjusted in the same manner as non-Customer orders, any Customer order that qualifies as a Catastrophic Error will be nullified if the adjustment would result in an execution price higher (for buy transactions) or lower (for sell transactions) than the Customer's limit price. Based on industry feedback, the levels proposed above with respect to adjustment amounts are the same levels as the thresholds at which a transaction may be deemed a Catastrophic Error pursuant to the chart set forth above.

As is true for Obvious Errors as described above, the Exchange believes that it is appropriate to adjust to prices a specified amount away from Theoretical Price rather than to adjust to Theoretical Price because even though the Exchange has determined a given trade to be erroneous in nature, the parties in question should have had some expectation of execution at the price or prices submitted. Also, it is common that by the time it is determined that a Catastrophic Error has occurred additional hedging and trading activity has already occurred based on the executions that previously happened. The Exchange is concerned that an adjustment to Theoretical Price in all cases would not appropriately incentivize market participants to maintain appropriate controls to avoid potential errors. Further, the Exchange believes it is appropriate to maintain a higher adjustment level for Catastrophic Errors than Obvious Errors given the significant additional time that can potentially pass before an adjustment is requested and applied and the amount of hedging and trading activity that can occur based on the executions at issue during such time. For the same reasons, other than honoring the limit prices established for Customer orders, the Exchange has proposed to treat all market participants the same in the context of the Catastrophic Error provision. Specifically, the Exchange believes that treating market participants the same in this context will provide additional certainty to market participants with respect to their potential exposure and hedging activities, including comfort that even if a transaction is later adjusted (*i.e.*, past the standard time limit for filing under the Obvious Error provision), such transaction will not be fully nullified. However, as noted above, under the Proposed Rule where at least one party to the transaction is a Customer, the trade will be nullified if the adjustment would result in an execution price higher (for buy transactions) or lower (for sell transactions) than the Customer's limit price. The Exchange has retained the protection of a Customer's limit price in order to avoid a situation where the adjustment could be to a price that the Customer could not afford, which is less likely to be an issue for a market professional.

Significant Market Events

In order to improve consistency for market participants in the case of a widespread market event and in light of the interconnected nature of the options exchanges, the Exchange proposes to adopt a new provision that calls for coordination between the options exchanges in certain circumstances and provides limited flexibility in the application of other provisions of the Proposed Rule in order to promptly respond to a widespread market event.[14] The Exchange proposes to describe such an event as a Significant Market Event, and to set forth certain objective criteria that will determine whether such an event has occurred. The Exchange developed these objective criteria in consultation with the other options exchanges by reference to historical patterns and events with a goal of setting thresholds that very rarely will be triggered so as to limit the application of the provision to truly significant market events. As proposed, a Significant Market Event will be deemed to have occurred when proposed criterion (A) below is met or exceeded or the sum of all applicable event statistics, where each is expressed as a percentage of the relevant threshold in criteria (A) through (D) below, is greater than or equal to 150% and 75% or more of at least one category is reached, provided that no single category can contribute more than 100% to the sum. All criteria set forth below will be measured in aggregate across all exchanges.

The proposed criteria for determining a Significant Market Event are as follows:

[14] Although the Exchange has proposed a specific provision related to coordination amongst options exchanges in the context of a widespread event, the Exchange does not believe that the Significant Market Event provision or any other provision of the proposed rule alters the Exchange's ability to coordinate with other options exchanges in the normal course of business with respect to market events or activity. The Exchange does already coordinate with other options exchanges to the extent possible if such coordination is necessary to maintain a fair and orderly market and/or to fulfill the Exchange's duties as a self-regulatory organization.

(A) Transactions that are potentially erroneous would result in a total Worst-Case Adjustment Penalty of $30,000,000, where the Worst-Case Adjustment Penalty is computed as the sum, across all potentially erroneous trades, of: (i) $0.30 (*i.e.*, the largest Transaction Adjustment value listed in sub-paragraph (e)(3)(A) below); times; (ii) the contract multiplier for each traded contract; times (iii) the number of contracts for each trade; times (iv) the appropriate Size Adjustment Modifier for each trade, if any, as defined in sub-paragraph (e)(3)(A) below;

(B) Transactions involving 500,000 options contracts are potentially erroneous;

(C) Transactions with a notional value (*i.e.*, number of contracts traded multiplied by the option premium multiplied by the contract multiplier) of $100,000,000 are potentially erroneous;

(D) 10,000 transactions are potentially erroneous.

As described above, the Exchange proposes to adopt a the Worst Case Adjustment Penalty, proposed as criterion (A), which is the only criterion that can on its own result in an event being designated as a significant market event. The Worst Case Adjustment Penalty is intended to develop an objective criterion that can be quickly determined by the Exchange in consultation with other options exchanges that approximates the total overall exposure to market participants on the negatively impacted side of each transaction that occurs during an event. If the Worst Case Adjustment criterion is equal to or exceeds $30,000,000, then an event is a Significant Market Event. As an example of the Worst Case Adjustment Penalty, assume that a single potentially erroneous transaction in an event is as follows: sale of 100 contracts of a standard option (*i.e.*, an option with a 100 share multiplier). The highest potential adjustment penalty for this single transaction would be $6,000, which would be calculated as $0.30 times 100 (contract multiplier) times 100 (number of contracts) times 2 (applicable Size Adjustment Modifier). The Exchange would calculate the highest potential adjustment penalty for each of the potentially erroneous transactions in the event and the Worst Case Adjustment Penalty would be the sum of such penalties on the Exchange and all other options exchanges with affected transactions.

As described above, under the Proposed Rule if the Worst Case Adjustment Penalty does not equal or exceed $30,000,000, then a Significant Market Event has occurred if the sum of all applicable event statistics (expressed as a percentage of the relevant thresholds), is greater than or equal to 150% and 75% or more of at least one category is reached. The Proposed Rule further provides that no single category can contribute more than 100% to the sum. As an example of the application of this provision, assume that in a given event across all options exchanges that: (A) The Worst Case Adjustment Penalty is $12,000,000 (40% of $30,000,000), (B) 300,000 options contracts are potentially erroneous (60% of 500,000), (C) the notional value of potentially erroneous transactions is $30,000,000 (30% of $100,000,000), and (D) 12,000 transactions are potentially erroneous (120% of 10,000). This event would qualify as a Significant Market Event because the sum of all applicable event statistics would be 230%, far exceeding the 150% threshold. The 230% sum is reached by adding 40%, 60%, 30% and last, 100% (*i.e.*, rounded down from 120%) for the number of transactions. The Exchange notes that no single category can contribute more than 100% to the sum and any category contributing more than 100% will be rounded down to 100%.

As an alternative example, assume a large-scale event occurs involving low-priced options with a small number of contracts in each execution. Assume in this event across all options exchanges that: (A) The Worst Case Adjustment Penalty is $600,000 (2% of $30,000,000), (B) 20,000 options contracts are potentially erroneous (4% of 500,000), (C) the notional value of potentially erroneous transactions is $20,000,000 (20% of $100,000,000), and (D) 20,000 transactions are potentially erroneous (200% of 10,000, but rounded down to 100%). This event would not qualify as a Significant Market Event because the sum of all applicable event statistics would be 126%, below the 150% threshold. The Exchange reiterates that as proposed, even when a single category other than criterion (A) is fully met, that does not necessarily qualify an event as a Significant Market Event.

The Exchange believes that the breadth and scope of the obvious error rules are appropriate and sufficient for handling of typical and common obvious errors. Coordination between and among the exchanges should generally not be necessary even when a TPH has an error that results in executions on more than one exchange. In setting the thresholds above the Exchange believes that the requirements will be met only when truly widespread and significant errors happen and the benefits of coordination and information sharing far outweigh the costs of the logistics of additional intra-exchange coordination. The Exchange notes that in addition to its belief that the proposed thresholds are sufficiently high, the Exchange has proposed the requirement that either criterion (A) is met or the sum of applicable event statistics for proposed (A) through (D) equals or exceeds 150% in order to ensure that an event is sufficiently large but also to avoid situations where an event is extremely large but just misses potential qualifying thresholds. For instance, the proposal is designed to help avoid a situation where the Worst Case Adjustment Penalty is $15,000,000, so the event does not qualify based on criterion (A) alone, but there are transactions in 490,000 options contracts that are potentially erroneous (missing criterion (B) by 10,000 contracts), there transactions with a notional value of $99,000,000 (missing criterion (C) by $1,000,000), and there are 9,000 potentially erroneous transactions overall (missing criterion (D) by 1,000 transactions). The Exchange believes that the proposed formula, while slightly more complicated than simply requiring a certain threshold to be met in each category, may help to avoid inapplicability of the proposed provisions in the context of an event that would be deemed significant by most subjective measures but that barely misses each of the objective criteria proposed by the Exchange.

To ensure consistent application across options exchanges, in the event of a suspected Significant Market Event, the Exchange shall initiate a coordinated review of potentially erroneous transactions with all other affected options exchanges to determine the full scope of the event. Under the Proposed Rule, the Exchange will promptly coordinate with the other options exchanges to determine the appropriate review period as well as select one or more specific points in time prior to the transactions in question and use one or more specific points in time to determine Theoretical Price. Other than the selected points in time, if applicable, the Exchange will determine Theoretical Price as described above. For example, around the start of a SME that is triggered by a large and aggressively priced buy order, three exchanges have multiple orders on the offer side of the market: Exchange A has offers priced at $2.20, $2.25, $2.30 and several other price levels to $3.00, Exchange B has offers at $2.45, $2.30 and several other price levels to $3.00, Exchange C has offers at price levels between $2.50 and $3.00. Assume an event occurs starting at 9:05:25 a.m. CT and in this particular series the executions begin on Exchange A and subsequently begin to occur on Exchanges B and C. Without coordination and information sharing between the exchanges, Exchange B and Exchange C cannot know with certainty that whether or not the execution at Exchange A that happened at $2.20 immediately prior to their executions at $2.45 and $2.50 is part of the same erroneous event or not. With proper coordination, the exchanges can determine that in this series, the proper point in time from which the event should be analyzed is 9:05:25 a.m. CT, and thus, the NBO of $2.20 should be used as the Theoretical Price for purposes of all buy transactions in such options series that occurred during the event.

If it is determined that a Significant Market Event has occurred then, using the parameters agreed with respect to the times from which Theoretical Price will be calculated, if applicable, an Official will determine whether any or all transactions under review qualify as Obvious Errors. The Proposed Rule would require the Exchange to use the criteria in Proposed Rule 6.25(c), as described above, to determine whether an Obvious Error has occurred for each transaction that was part of the Significant Market Event. Upon taking any final action, the Exchange would be required to promptly notify both parties to the trade electronically or via telephone.

The execution price of each affected transaction will be adjusted by an Official to the price provided below, unless both parties agree to adjust the transaction to a different price or agree to bust the trade.

Theoretical price (TP)	Buy transaction adjustment—TP plus	Sell transaction adjustment—TP minus
Below $3.00	$0.15	$0.15
At or above $3.00	0.30	0.30

Thus, the proposed adjustment criteria for Significant Market Events are identical to the proposed adjustment levels for Obvious Errors generally. In addition, in the context of a Significant Market Event, any error exceeding 50 contracts will be subject to the Size Adjustment Modifier described above. Also, the adjustment criteria would apply equally to all market participants (*i.e.*, Customers and non-Customers) in a Significant Market Event. However, as is true for the proposal with respect to Catastrophic Errors, under the Proposed Rule where at least one party to the transaction is a Customer, the trade will be nullified if the adjustment would result in an execution price higher (for buy transactions) or lower (for sell transactions) than the Customer's limit price. The Exchange has retained the protection of a Customer's limit price in order to avoid a situation where the adjustment could be to a price that the Customer could not afford, which is less likely to be an issue for a market professional. The Exchange has otherwise proposed to treat all market participants the same in the context of a Significant Market Event to provide additional certainty to market participants with respect to their potential exposure as soon as an event has occurred.

Another significant distinction between the proposed Obvious Error provision and the proposed Significant Market Event provision is that if the Exchange, in consultation with other options exchanges, determines that timely adjustment is not feasible due to the extraordinary nature of the situation, then the Exchange will nullify some or all transactions arising out of the Significant Market Event during the review period selected by the Exchange and other options exchanges. To the extent the Exchange, in consultation with other options exchanges, determines to nullify less than all transactions arising out of the Significant Market Event, those transactions subject to nullification will be selected based upon objective criteria with a view toward maintaining a fair and orderly market and the protection of investors and the public interest. For example, assume a Significant Market Event causes 25,000 potentially erroneous transactions and impacts 51 options classes. Of the 25,000 transactions, 24,000 of them are concentrated in a single options class. The exchanges may decide the most appropriate solution because it will provide the most certainty to participants and allow for the prompt resumption of regular trading is to bust all trades in the most heavily affected class between two specific points in time, while the other 1,000 trades across the other 50 classes are reviewed and adjusted as appropriate. A similar situation might arise directionally where a Customer submits both erroneous buy and sell orders and the number of errors that happened that were erroneously low priced (*i.e.*, erroneous sell orders) were 50,000 in number but the number of errors that were erroneously high (*i.e.*, erroneous buy orders) were only 500 in number. The most effective and efficient approach that provides the most certainty to the marketplace in a reasonable amount of time while most closely following the generally prescribed obvious error rules could be to bust all of the erroneous sell transactions but to adjust the erroneous buy transactions.

With respect to rulings made pursuant to the proposed Significant Market Event provision the Exchange believes that the number of affected transactions is such that immediate finality is necessary to maintain a fair and orderly market and to protect investors and the public interest. Accordingly, rulings by the Exchange pursuant to the Significant Market Event provision would be non-appealable pursuant to the Proposed Rule.

Additional Provisions

Mutual Agreement

In addition to the objective criteria described above, the Proposed Rule also proposes to make clear that the determination as to whether a trade was executed at an erroneous price may be made by mutual agreement of the affected parties to a particular transaction. The Proposed Rule would state that an electronic or open outcry trade may be nullified or adjusted on the terms that all parties to a particular transaction agree, provided, however, that such agreement to nullify or adjust must be conveyed to the Exchange in a manner prescribed by the Exchange prior to 7:30 a.m. Central Time on the first trading day following the execution.

The Exchange also proposes to explicitly state that it is considered conduct inconsistent with just and equitable principles of trade for any TPH to use the mutual adjustment process to circumvent any applicable Exchange rule, the Act or any of the rules and regulations thereunder. Thus, for instance, a TPH is precluded from seeking to avoid applicable trade-through rules by executing a transaction and then adjusting such transaction to a price at which the Exchange would not have allowed it to execute at the time of the execution because it traded through the quotation of another options exchange. The Exchange notes that in connection with its obligations as a self-regulatory organization, the Exchange's Regulatory Department reviews adjustments to transactions to detect potential violations of Exchange rules or the Act and the rules and regulations thereunder.

Trading Halts

Exchange Rule 6.3 describes the Exchange's authority to declare trading halts in one or more options traded on the Exchange. The Exchange proposes to make clear in the Proposed Rule that it will nullify any transaction that occurs during a trading halt in the affected option on the Exchange pursuant to Rule 6.3. If any trades occur notwithstanding a trading halt then the Exchange believes it appropriate to nullify such transactions. While the Exchange may halt options trading for various reasons, such a scenario almost certainly is due to extraordinary circumstances and is potentially the result of market-wide coordination to halt options trading or trading generally. Accordingly, the Exchange does not believe it is appropriate to allow trades to stand if such trades should not have occurred in the first place.

The Exchange proposes to add Interpretation and Policy .07 to Rule 6.3. The interpretation and Policy will state that the Exchange shall nullify any transaction that occurs: (a) during a trading halt in the affected option on the Exchange; or (b) with respect to equity options (including options overlying ETFs), during a regulatory halt as declared by the primary listing market for the underlying security.

Erroneous Print and Quotes in Underlying Security

Market participants on the Exchange likely base the pricing of their orders submitted to the Exchange on the price of the underlying security for the option. Thus, the Exchange believes it is appropriate to adopt provisions that allow adjustment or nullification of transactions based on erroneous prints or erroneous quotes in the underlying security.

The Exchange proposes to adopt language in the Proposed Rule stating that a trade resulting from an erroneous print(s) disseminated by the underlying market that is later nullified by that underlying market shall be adjusted or busted as set forth in the Obvious Error provisions of the Proposed Rule, provided a party notifies the Exchange's Help Desk in a timely manner, as further described below. The Exchange proposes to define a trade resulting from an erroneous print(s) as any options trade executed during a period of time for which one or more executions in the underlying security are nullified and for one second thereafter. The Exchange believes that one second is an appropriate amount of time in which an options trade would be directly based on executions in the underlying equity security. The Exchange also proposes to require that if a party believes that it participated in an erroneous transaction resulting from an erroneous print(s) pursuant to the proposed erroneous print provision it must notify the Exchange's Help Desk within the timeframes set forth in the Obvious Error provision described above. The Exchange has also proposed to state that the allowed notification timeframe commences at the time of notification by the underlying market(s) of nullification of transactions in the underlying security. Further, the Exchange proposes that if multiple underlying markets nullify trades in the underlying security, the allowed notification timeframe will commence at the time of the first market's notification.

As an example of a situation in which a trade results from an erroneous print disseminated by the underlying market that is later nullified by the underlying market, assume that a given underlying is trading in the $49.00–$50.00 price range then has an erroneous print at $5.00. Given that there is the potential perception that the underlying has gone through a dramatic price revaluation, numerous options trades could promptly trigger based off of this new price. However, because the price that triggered them was not a valid price it would be appropriate to review said option trades when the underlying print that triggered them is removed.

The Exchange also proposes to add a provision stating that a trade resulting from an erroneous quote(s) in the underlying security shall be adjusted or busted as set forth in the Obvious Error provisions of the Proposed Rule, provided a party notifies the Exchange's Help Desk in a timely manner, as further described below. Pursuant to the Proposed Rule, an erroneous quote occurs when the underlying security has a width of at least $1.00 and has a width at least five times greater than the average quote width for such underlying security during the time period encompassing two minutes before and after the dissemination of such quote. For purposes of the Proposed Rule, the average quote width will be determined by adding the quote widths of sample quotations at regular 15-second intervals during the four-minute time period referenced above (excluding the quote(s) in question) and dividing by the number of quotes during such time period (excluding the quote(s) in question).[15] Similar to the proposal with respect to erroneous prints described above, if a party believes that it participated in an erroneous transaction resulting from an erroneous quote(s) it must notify the Exchange's Help Desk in accordance with the notification provisions of the Obvious Error provision described above. The Proposed Rule, therefore, puts the onus on each TPH to notify the Exchange if such TPH believes that a trade should be reviewed pursuant to either of the proposed provisions, as the Exchange is not in position to determine the impact of erroneous prints or quotes on individual TPHs. The Exchange notes that it does not believe that additional time is necessary with respect to a trade based on an erroneous quote because a TPH has all information necessary to detect the error at the time of an option transaction that was triggered by an erroneous quote, which is in contrast to the proposed erroneous print provision that includes a dependency on an action by the market where the underlying security traded.

As an example of a situation in which a trade results from an erroneous quote in the underlying security, assume again that a given underlying is quoting and trading in the $49.00–$50.00 price range then a liquidity gap occurs, with bidders not representing quotes in the market place and an offer quoted at $5.00. Quoting may quickly return to normal, again in the $49.00–$50.00 price range, but due to the potential perception that the underlying has gone through a dramatic price revaluation, numerous options trades could trigger based off of this new quoted price in the interim. Because the price that triggered such trades was not a valid price it would be appropriate to review said option trades.

Additionally, consistent with the Current Rule, the Exchange proposes to designate and announce the

[15] The Exchange has proposed the price and time parameters for quote width and average quote width used to determine whether an erroneous quote has occurred based on established rules of options exchanges that currently apply such parameters. *See, e.g.*, CBOE Rule 6.25(a)(5); NYSE Arca Rule 6.87(a)(5). Based on discussions with these exchanges, the Exchange believes that the parameters are a reasonable approach to determine whether an erroneous quote has occurred for purposes of the proposed rule.

''underlying'' and underlying markets for the purposes of paragraphs 6.25(g) and (h) via Regulatory Circular.[16]

Stop (and Stop-Limit) Order Trades Triggered by Erroneous Trades

The Exchange notes that certain market participants and their customers enter stop or stop limit orders that are triggered based on executions in the marketplace. As proposed, transactions resulting from the triggering of a stop or stop-limit order by an erroneous trade in an option contract shall be nullified by the Exchange, provided a party notifies the Exchange's Help Desk in a timely manner as set forth below. The Exchange believes it is appropriate to nullify executions of stop or stop-limit orders that were wrongly triggered because such transactions should not have occurred. If a party believes that it participated in an erroneous transaction pursuant to the Proposed Rule it must notify the Exchange's Help Desk within the timeframes set forth in the Obvious Error Rule above, with the allowed notification timeframe commencing at the time of notification of the nullification of transaction(s) that triggered the stop or stop-limit order.

Linkage Trades

The Exchange also proposes to adopt language that clearly provides the Exchange with authority to take necessary actions when another options exchange nullifies or adjusts a transaction pursuant to its respective rules and the transaction resulted from an order that has passed through the Exchange and been routed on to another options exchange on behalf of the Exchange. Specifically, if the Exchange routes an order pursuant to the Intermarket Options Linkage Plan[17] that results in a transaction on another options exchange (a ''Linkage Trade'') and such options exchange subsequently nullifies or adjusts the Linkage Trade pursuant to its rules, the Exchange will perform all actions necessary to complete the nullification or adjustment of the Linkage Trade. Although the Exchange is not utilizing its own authority to nullify or adjust a transaction related to an action taken on a Linkage Trade by another options exchange, the Exchange does have to assist in the processing of the adjustment or nullification of the order, such as notification to the TPH and the OCC of the adjustment or nullification. Thus, the Exchange believes that the proposed provision adds additional transparency to the Proposed Rule.

Obvious Error Panel

The Exchange proposes to maintain its current appeals process in connection with obvious errors. Specifically, if a party affected by a determination made under paragraph (c) so requests within the time permitted in paragraph (k)(3) below, an Obvious Error Panel will review decisions made under this Rule, including whether an obvious error occurred, whether the correct Theoretical Price was used, and whether the correct adjustment was made at the correct price. A party may also request that the Obvious Error Panel provide relief as required in this Rule in cases where the party failed to provide the notification required in paragraph (c)(2) and an extension was not granted, but unusual circumstances must merit special consideration. A party cannot request review by an Obvious Error Panel of determinations by a CBOE Official made pursuant to paragraph (c)(3) of this Rule.

The Obvious Error Panel will be comprised of at least one (1) member of the Exchange's staff designated to perform Obvious Error Panel functions and four (4) Trading Permit Holders. Fifty percent of the number of Trading Permit Holders on the Obvious Error Panel must be directly engaged in market making activity and fifty percent of the number of Trading Permit Holders on the Obvious Error Panel must act in the capacity of a non-DPM floor broker.

Under Proposed Rule (k)(3) a request for review must be made in writing within thirty (30) minutes after a party receives notification of the determination being appealed, except that if notification is made after 2:30 p.m. Central Time (''CT''), either party has until 8:30 a.m. CT the next trading day to request review. The Obvious Error Panel shall review the facts and render a decision on the day of the transaction, or the next trade day in the case where a request is properly made the next trade day.

The Obvious Error Panel may overturn or modify an action taken under this Rule upon agreement by a majority of the Panel representatives. All determinations by the Obvious Error Panel may be appealed in accordance with paragraph (m) of this Rule.

Catastrophic Error Panel

The Exchange proposes to modify the procedure and function of the Catastrophic Error Panel in the Current Rule to conform the appeals process for catastrophic errors to the appeals process for obvious errors. Under the Current Rule, the Catastrophic Error Panel does not review initial determinations regarding catastrophic errors; rather, the Catastrophic Error Panel makes initial determinations with regards to whether a catastrophic error has occurred. In order to conform to the Proposed Rule, which provides that initial determinations regarding potential catastrophic errors are made by CBOE Officials, the Exchange is proposing to adopt procedures similar to the Obvious Error Panel for the proposed Catastrophic Error Panel. Specifically, if a party affected by a determination made under paragraph (d) so requests within the time permitted in paragraph (l)(3), a Catastrophic Error Panel will review decisions made under this Rule, including whether a catastrophic error occurred, whether the correct Theoretical Price was used, and whether the correct adjustment was made at the correct price. The composition of the Catastrophic Error Panel will be the same as the Obvious Error Panel.

Additionally, under paragraph (l)(3), a request for review must be made in writing within thirty (30) minutes after a party receives notification of a determination under paragraph (d), except that if notification is made after 2:30 p.m. Central Time (''CT''), either party has until 8:30 a.m. CT the next trading day to request review. The Catastrophic Error Panel shall review the facts and render a decision on the day of the transaction, or the next trade day in the case where a request is properly made the next trade day.

Finally, as with the Obvious Error Panel, the Catastrophic Error Panel may overturn or modify an action taken under this Rule upon agreement by a majority of the Panel representatives. All determinations by the Catastrophic Error Panel may be appealed in accordance with paragraph (m) of this Rule.

Review

Determinations made by an Obvious Error Panel or Catastrophic Error Panel can be appealed in accordance with paragraph (m) of the Proposed Rule. Paragraph (m) provides that, subject to the limitations contained in (c)(3),[18] a

[16] The Exchange notes that the Proposed Rule eliminates ''related instruments'' from the Current Rule. The Exchange believes the change is necessary to conform with the text of the Proposed Rule; however, the Exchange believes 'related instruments' are included within the concept of an 'underlying' in the Proposed Rule. *See* Current Rule 6.25(a)(4) and (5).

[17] *See* Securities Exchange Act Release No. 34–54551 (September 29, 2006), 71 FR 59148 (October 6, 2006).

[18] Consistent with the Current Rule, transactions adjusted or nullified under (c)(3) cannot be reviewed by an Obvious Error Panel under

Trading Permit Holder affected by a determination made under this Rule may appeal such determination, in accordance with Chapter XIX of the Exchange's rules. For purposes of this Rule, a Trading Permit Holder must be aggrieved as described in Rule 19.1. Notwithstanding any provision in Rule 19.2 to the contrary, a request for review must be made in writing (in a form and manner prescribed by the Exchange) no later than the close of trading on the next trade date after the Trading Permit Holder receives notification of such determination from the Exchange.

Limit Up-Limit Down Plan

The Exchange is proposing to adopt Interpretation and Policy .01 to the Proposed Rule to provide for how the Exchange will treat Obvious and Catastrophic Errors in response to the Regulation NMS Plan to Address Extraordinary Market Volatility Pursuant to Rule 608 of Regulation NMS under the Act (the ''Limit Up-Limit Down Plan'' or the ''Plan),[19] which is applicable to all NMS stocks, as defined in Regulation NMS Rule 600(b)(47).[20] Under the Proposed Rule, during a pilot period to coincide with the pilot period for the Plan, including any extensions to the pilot period for the Plan, an execution will not be subject to review as an Obvious Error or Catastrophic Error pursuant to paragraph (c) or (d) of the Proposed Rule if it occurred while the underlying security was in a ''Limit State'' or ''Straddle State,'' as defined in the Plan. The Exchange, however, proposes to retain authority to review transactions on an Official's own motion pursuant to sub-paragraph (c)(3) of the Proposed Rule and to bust or adjust transactions pursuant to the proposed Significant Market Event provision, the proposed trading halts provision, the proposed provisions with respect to erroneous prints and quotes in the underlying security, the proposed provision related to stop and stop limit orders that have been triggered by an erroneous execution, or the proposed provision related to verifiable disruptions or malfunctions of Exchange systems. The Exchange believes that these safeguards will provide the Exchange with the flexibility to act when necessary and appropriate to nullify or adjust a transaction, while also providing market participants with certainty that, under normal circumstances, the trades they affect with quotes and/or orders having limit prices will stand irrespective of subsequent moves in the underlying security.

During a Limit or Straddle State, options prices may deviate substantially from those available immediately prior to or following such States. Thus, determining a Theoretical Price in such situations would often be very subjective, creating unnecessary uncertainty and confusion for investors. Because of this uncertainty, and consistent with the Current Rule, the Exchange proposes to provide that the Exchange will not review transactions as Obvious Errors or Catastrophic Errors when the underlying security is in a Limit or Straddle State.

The Exchange represents that it will conduct its own analysis concerning the elimination of the Obvious Error and Catastrophic Error provisions during Limit and Straddle States and agrees to provide the Commission with relevant data to assess the impact of this proposed rule change. As part of its analysis, the Exchange will evaluate (1) the options market quality during Limit and Straddle States, (2) assess the character of incoming order flow and transactions during Limit and Straddle States, and (3) review any complaints from TPHs and their customers concerning executions during Limit and Straddle States. The Exchange also agrees to provide to the Commission data requested to evaluate the impact of the inapplicability of the Obvious Error and Catastrophic Error provisions, including data relevant to assessing the various analyses noted above.

In connection with this proposal, the Exchange will provide to the Commission and the public a dataset containing the data for each Straddle State and Limit State in NMS Stocks underlying options traded on the Exchange beginning in the month during which the proposal is approved, limited to those option classes that have at least one (1) trade on the Exchange during a Straddle State or Limit State. For each of those option classes affected, each data record will contain the following information:

- Stock symbol, option symbol, time at the start of the Straddle or Limit State, an indicator for whether it is a Straddle or Limit State.
- For activity on the Exchange:
  - Executed volume, time-weighted quoted bid-ask spread, time- weighted average quoted depth at the bid, time-weighted average quoted depth at the offer;
  - high execution price, low execution price;
  - number of trades for which a request for review for error was received during Straddle and Limit States;
  - an indicator variable for whether those options outlined above have a price change exceeding 30% during the underlying stock's Limit or Straddle State compared to the last available option price as reported by OPRA before the start of the Limit or Straddle State (1 if observe 30% and 0 otherwise). Another indicator variable for whether the option price within five minutes of the underlying stock leaving the Limit or Straddle state (or halt if applicable) is 30% away from the price before the start of the Limit or Straddle State.

In addition, by May 29, 2015, the Exchange shall provide to the Commission and the public assessments relating to the impact of the operation of the Obvious Error rules during Limit and Straddle States as follows: (1) Evaluate the statistical and economic impact of Limit and Straddle States on liquidity and market quality in the options markets; and (2) Assess whether the lack of Obvious Error rules in effect during the Straddle and Limit States are problematic. The timing of this submission would coordinate with Participants' proposed time frame to submit to the Commission assessments as required under Appendix B of the Plan. The Exchange notes that the pilot program is intended to run concurrent with the pilot period of the Plan, which has been extended to October 23, 2015. The Exchange proposes to reflect this date in the Proposed Rule.

No Adjustments to a Worse Price

The Exchange also proposes to include Interpretation and Policy .02 to the Proposed Rule, which would make clear that to the extent the provisions of the proposed Rule would result in the Exchange applying an adjustment of an erroneous sell transaction to a price lower than the execution price or an erroneous buy transaction to a price higher than the execution price, the Exchange will not adjust or nullify the transaction, but rather, the execution price will stand.

Opening Trades in Restricted Series

The Exchange also proposes to adopt Interpretation and Policy .03 to the Proposed Rule, which will permit the nullification of opening transactions in ''restricted series'' that do not satisfy the requirements of Rule 5.4.[21] Consistent

paragraph (k) but can be appealed in accordance with paragraph (m).

[19] Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012) (order approving the Plan on a pilot basis).

[20] 17 CFR 242.600(b)(47).

[21] In relevant part, Rule 5.4 provides that, whenever the Exchange determines that an underlying security previously approved for Exchange option transactions does not meet the then current requirements for continuance of such

Continued

with the Current Rule,[22] when the Exchange makes a determination that trading in a series is restricted pursuant to Rule 5.4, the Exchange notifies the membership of that determination through issuance of a regulatory circular. In addition, the Exchange's systems are programmed to automatically restrict the entry of electronic opening transactions. However, opening market-maker activity is still permitted under certain scenarios. As a result, it is possible that an opening transaction that does not satisfy the requirements of Rule 5.4 may occur inadvertently. In order to address these scenarios, the Exchange is proposing to permit the nullification of opening transactions that do not satisfy Rule 5.4.

Binary Options

Additionally, consistent with the Current Rule,[23] the Exchange also proposes to adopt Interpretation and Policy .04 to the Proposed Rule, which provides that for purposes of the obvious error provisions in paragraph (c) of this Rule, the adjusted price (including any applicable adjustment under (c)(4)(A) for non-customer transactions) shall not exceed the applicable exercise settlement amount for the binary option. As defined in CBOE Rule 22.1(e), the term ''exercise settlement amount'' as when used in reference to a binary option means the amount of cash that a holder will receive upon exercise of the contract.[24]

Verifiable Disruption or Malfunction of Exchange Systems

Additionally, consistent with the Current Rule,[25] the Exchange proposes to adopt Interpretation and Policy .05, which provides that electronic or open outcry transactions arising out of a ''verifiable disruption or malfunction'' in the use or operation of any Exchange automated quotation, dissemination, execution, or communication system will either be nullified or adjusted by an Official. Transactions that qualify for price adjustment will be adjusted to Theoretical Price, as defined in paragraph (b).

Arbitration

Additionally, the Exchange proposes to adopt Interpretation and Policy .06, which provides that any determination made by an Official, an Obvious Error Panel, or a Catastrophic Error Panel under Proposed Rule shall be rendered without prejudice as to the rights of the parties to the transaction to submit a dispute to arbitration.

Credit Options

Finally, the Exchange proposes to make conforming changes to Current Rule 29.15, which governs the nullification and adjustment of credit options transactions.[26] Current Rule 29.15 states that 6.25(a) has no applicability to Credit Options. Current Rule 6.25(a) has provisions related to an obvious error table, a catastrophic error table, a definition of theoretical price, whether a transaction is adjusted or nullified, no-bid series, verifiable disruption or malfunction of Exchange system, erroneous print or quote in an underlying, opening trades in restricted series. Current Rule 6.25(d), by implication, is also inapplicable to Current Rule 29.15 because (d)(1) applies to catastrophic errors pursuant to paragraph (a)(1), which is excluded from Rule 29.15.[27] Therefore, paragraphs 6.25(b), (c), and (e) are the provisions of Current Rule 6.25 that apply to Current Rule 29.15. In addition, where Current Rule 29.15 only excludes paragraph (a) of Rule 6.25, the format of the harmonized rule requires a list of paragraphs from Proposed Rule 6.25 to be excluded from Proposed Rule 29.15 in order to make the conforming changes (*i.e.,* paragraphs (b), (c)(1), (c)(4), (d), (e) (g), (h), (l), and Interpretation and Policy .05 are to be excluded and inapplicable to Proposed Rule 29.15).

Implementation Date

In order to ensure that other options exchanges are able to adopt rules consistent with this proposal and to coordinate the effectiveness of such harmonized rules, the Exchange proposes to delay the operative date of this proposal to May 8, 2015.

2. Statutory Basis

The Exchange believes that its proposal is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.[28] Specifically, the proposal is consistent with Section 6(b)(5) of the Act[29] because it would promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of, a free and open market and a national market system, and, in general, protect investors and the public interest.

As described above, the Exchange and other options exchanges are seeking to adopt harmonized rules related to the adjustment and nullification of erroneous options transactions. The Exchange believes that the Proposed Rule will provide greater transparency and clarity with respect to the adjustment and nullification of erroneous options transactions. Particularly, the proposed changes seek to achieve consistent results for participants across U.S. options exchanges while maintaining a fair and orderly market, protecting investors and protecting the public interest. Based on the foregoing, the Exchange believes that the proposal is consistent with Section 6(b)(5) of the Act[30] in that the Proposed Rule will foster cooperation and coordination with persons engaged in regulating and facilitating transactions.

The Exchange believes the various provisions allowing or dictating

approval or for any other reason should no longer be approved, the Exchange will not open for trading any additional series of options of the class covering that underlying security and therefore two floor officials, in consultation with a designated senior executive officer of the Exchange, may prohibit any opening purchase transactions in series of options of that class previously opened (except that (i) opening transactions by Market-Makers executed to accommodate closing transactions of other market participants and (ii) opening transactions by CBOE member organizations to facilitate the closing transactions of public customers executed as crosses pursuant to and in accordance with paragraph (b) or (d) of Rule 6.74, *Crossing Orders,* may be permitted), to the extent it deems such action necessary or appropriate (such series are referred as ''restricted series''); provided, however, that where exceptional circumstances have caused an underlying security not to comply with the Exchange's current approval maintenance requirements, regarding number of publicly held shares or publicly held principal amount, number of shareholders, trading volume or market price the Exchange, in the interest of maintaining a fair and orderly market or for the protection of investors, may determine to continue to open additional series of option contracts of the class covering that underlying security.

[22] *See* Current Rule 6.25(a)(6).

[23] *See* Current Rule 6.25.04.

[24] This proposed limitation on obvious pricing error adjustments for binary options is similar to an existing limitation on obvious pricing error adjustments for Credit Options. *See* Rule 29.15, *Nullification and Adjustments for Credit Option Transactions.*

[25] *See* Current Rule 6.25(a)(3) and Securities Exchange Act Release No. 34–48827 (November 24, 2003), 68 FR 67498 (December 2, 2003) (SR–CBOE–2001–04).

[26] Although CBOE does not currently offer credit options, they are excluded from current Rule 6.25(a) because the value of a credit option is either $0 or $100. Therefore, provisions in the Current Rule 6.25 related to the obvious error table, catastrophic error tables, definition of theoretical price, etc., are not applicable to credit options. Rule 24.19 sets forth the theoretical price for a credit option as well as when there is an obvious error. The only provisions of Current Rule 6.25 that are applicable to credit options are the procedural requirements found in Rule 6.25(b). The conforming changes to Proposed Rule 29.15 will act in the same manner.

[27] *See* Rule 6.25(d)(1).

[28] 15 U.S.C. 78f(b).

[29] 15 U.S.C. 78f(b)(5).

[30] 15 U.S.C. 78f(b)(5).

adjustment rather than nullification of a trade are necessary given the benefits of adjusting a trade price rather than nullifying the trade completely. Because options trades are used to hedge, or are hedged by, transactions in other markets, including securities and futures, many TPHs, and their customers, would rather adjust prices of executions rather than nullify the transactions and, thus, lose a hedge altogether. As such, the Exchange believes it is in the best interest of investors to allow for price adjustments as well as nullifications. The Exchange further discusses specific aspects of the Proposed Rule below.

The Exchange does not believe that the proposal is unfairly discriminatory, even though it differentiates in many places between Customers and non-Customers. The rules of the options exchanges, including the Exchange's existing Obvious Error provision, often treat Customers differently, often affording them preferential treatment. This treatment is appropriate in light of the fact that Customers are not necessarily immersed in the day-to-day trading of the markets, are less likely to be watching trading activity in a particular option throughout the day, and may have limited funds in their trading accounts. At the same time, the Exchange reiterates that in the U.S. options markets generally there is significant retail customer participation that occurs directly on (and only on) options exchanges such as the Exchange. Accordingly, differentiating among market participants with respect to the adjustment and nullification of erroneous options transactions is not unfairly discriminatory because it is reasonable and fair to provide Customers with additional protections as compared to non-Customers.

The Exchange believes that its proposal with respect to the allowance of mutual agreed upon adjustments or nullifications is appropriate and consistent with the Act, as such proposal removes impediments to and perfects the mechanism of a free and open market and a national market system, allowing participants to mutually agree to correct an erroneous transactions without the Exchange mandating the outcome. The Exchange also believes that its proposal with respect to mutual adjustments is consistent with the Act because it is designed to prevent fraudulent and manipulative acts and practices by explicitly stating that it is considered conduct inconsistent with just and equitable principles of trade for any TPH to use the mutual adjustment process to circumvent any applicable Exchange rule, the Act or any of the rules and regulations thereunder.

The Exchange believes its proposal to provide within the Proposed Rule definitions of Customer, erroneous sell transaction and erroneous buy transaction, and Official is consistent with Section 6(b)(5) of the Act because such terms will provide more certainty to market participants as to the meaning of the Proposed Rule and reduce the possibility that a party can intentionally submit an order hoping for the market to move in their favor in reliance on the Rule as a safety mechanism, thereby promoting just and fair principles of trade. Similarly, the Exchange believes that proposed Interpretation and Policy .02 is consistent with the Act as it would make clear that the Exchange will not adjust or nullify a transaction, but rather, the execution price will stand when the applicable adjustment criteria would actually adjust the price of the transaction to a worse price (*i.e.,* higher for an erroneous buy or lower for an erroneous sell order).

As set forth below, the Exchange believes it is consistent with Section 6(b)(5) of the Act for the Exchange to determine Theoretical Price when the NBBO cannot reasonably be relied upon because the alternative could result in transactions that cannot be adjusted or nullified even when they are otherwise clearly at a price that is significantly away from the appropriate market for the option. Similarly, reliance on an NBBO that is not reliable could result in adjustment to prices that are still significantly away from the appropriate market for the option.

The Exchange believes that its proposal with respect to determining Theoretical Price is consistent with the Act in that it has retained the standard of the current rule, which is to rely on the NBBO to determine Theoretical Price if such NBBO can reasonably be relied upon. Because, however, there is not always an NBBO that can or should be used in order to administer the rule, the Exchange has proposed various provisions that provide the Exchange with the authority to determine a Theoretical Price. The Exchange believes that the Proposed Rule is transparent with respect to the circumstances under which the Exchange will determine Theoretical Price, and has sought to limit such circumstances as much as possible. The Exchange notes that Exchange personnel currently are required to determine Theoretical Price in certain circumstances. While the Exchange continues to pursue alternative solutions that might further enhance the objectivity and consistency of determining Theoretical Price, the Exchange believes that the discretion currently afforded to Exchange Officials is appropriate in the absence of a reliable NBBO that can be used to set the Theoretical Price.

With respect to the specific proposed provisions for determining Theoretical Price for transactions that occur as part of the Exchange's Opening Process and in situations where there is a wide quote, the Exchange believes both provisions are consistent with the Act because they provide objective criteria that will determine Theoretical Price with limited exceptions for situations where the Exchange does not believe the NBBO is a reasonable benchmark or there is no NBBO. The Exchange notes in particular with respect to the wide quote provision that the Proposed Rule will result in the Exchange determining Theoretical Price less frequently than it would pursuant to wide quote provisions that have previously been approved. The Exchange believes that it is appropriate and consistent with the Act to afford protections to market participants by not relying on the NBBO to determine Theoretical Price when the quote is extremely wide but had been, in the prior 10 seconds, at much more reasonable width. The Exchange also believes it is appropriate and consistent with the Act to use the NBBO to determine Theoretical Price when the quote has been wider than the applicable amount for more than 10 seconds, as the Exchange does not believe it is necessary to apply any other criteria in such a circumstance. The Exchange believes that market participants can easily use or adopt safeguards to prevent errors when such market conditions exist. When entering an order into a market with a persistently wide quote, the Exchange does not believe that the entering party should reasonably expect anything other than the quoted price of an option.

The Exchange believes that its proposal to adopt clear but disparate standards with respect to the deadline for submitting a request for review of Customer and non-Customer transactions is consistent with the Act, particularly in that it creates a greater level of protection for Customers. As noted above, the Exchange believes that this is appropriate and not unfairly discriminatory in light of the fact that Customers are not necessarily immersed in the day-to-day trading of the markets and are less likely to be watching trading activity in a particular option throughout the day. Thus, TPHs representing Customer orders reasonably may need additional time to submit a request for review. The

Exchange also believes that its proposal to provide additional time for submission of requests for review of linkage trades is reasonable and consistent with the protection of investors and the public interest due to the time that it might take an options exchange or third-party routing broker to file a request for review with the Exchange if the initial notification of an error is received by the originating options exchange near the end of such options exchange's filing deadline. Without this additional time, there could be disparate results based purely on the existence of intermediaries and an interconnected market structure.

In relation to the aspect of the proposal giving Officials the ability to review transactions for obvious errors on their own motion, the Exchange notes that an Official can adjust or nullify a transaction under the authority granted by this provision only if the transaction meets the specific and objective criteria for an Obvious Error under the Proposed Rule. As noted above, this is designed to give an Official the ability to provide parties relief in those situations where they have failed to report an apparent error within the established notification period. However, the Exchange will only grant relief if the transaction meets the requirements for an Obvious Error as described in the Proposed Rule.

The Exchange believes that its proposal to adjust non-Customer transactions and to nullify Customer transactions that qualify as Obvious Errors is appropriate for reasons consistent with those described above. In particular, Customers are not necessarily immersed in the day-to-day trading of the markets, are less likely to be watching trading activity in a particular option throughout the day, and may have limited funds in their trading accounts.

The Exchange acknowledges that the proposal contains some uncertainty regarding whether a trade will be adjusted or nullified, depending on whether one of the parties is a Customer, because a party may not know whether the other party to a transaction was a Customer at the time of entering into the transaction. However, the Exchange believes that the proposal nevertheless promotes just and equitable principles of trade and protects investors as well as the public interest because it eliminates the possibility that a Customer's order will be adjusted to a significantly different price. As noted above, the Exchange believes it is consistent with the Act to afford Customers greater protections under the Proposed Rule than are afforded to non-Customers. Thus, the Exchange believes that its proposal is consistent with the Act in that it protects investors and the public interest by providing additional protections to those that are less informed and potentially less able to afford an adjustment of a transaction that was executed in error. Customers are also less likely to have engaged in significant hedging or other trading activity based on earlier transactions, and thus, are less in need of maintaining a position at an adjusted price than non-Customers.

If any TPH submits requests to the Exchange for review of transactions pursuant to the Proposed Rule, and in aggregate that TPH has 200 or more Customer transactions under review concurrently and the orders resulting in such transactions were submitted during the course of 2 minutes or less, the Exchange believes it is appropriate for the Exchange apply the non-Customer adjustment criteria described above to such transactions. The Exchange believes that the proposed aggregation is reasonable as it is representative of an extremely large number of orders submitted to the Exchange over a relatively short period of time that are, in turn, possibly erroneous (and within a time frame significantly less than an entire day), and thus is most likely to occur because of a systems issue experienced by a TPH representing Customer orders or a systems issue coupled with the erroneous marking of orders. The Exchange does not believe it is possible at a level of 200 Customer orders over a 2 minute period that are under review at one time that multiple, separate Customers were responsible for the errors in the ordinary course of trading. In the event of a large-scale issue caused by a TPH that has submitted orders over a 2 minute period marked as Customer that resulted in more than 200 transactions under review, the Exchange does not believe it is appropriate to nullify all such transactions because of the negative impact that nullification could have on the market participants on the contra-side of such transactions, who might have engaged in hedging and trading activity following such transactions. In order for a participant to have more than 200 transactions under review concurrently when the orders triggering such transactions were received in 2 minutes or less, the Exchange believes that a market participant will have far exceeded the normal behavior of customers deserving protected status. While the Exchange continues to believe that it is appropriate to nullify transactions in such a circumstance if both participants to a transaction are Customers, the Exchange does not believe it is appropriate to place the overall risk of a significant number of trade breaks on non-Customers that in the normal course of business may have engaged in additional hedging activity or trading activity based on such transactions. Thus, the Exchange believes it is necessary and appropriate to protect non-Customers in such a circumstance by applying the non-Customer adjustment criteria, and thus adjusting transactions as set forth above, in the event a TPH has more than 200 transactions under review concurrently. In summary, due to the extreme level at which the proposal is set, the Exchange believes that the proposal is consistent with Section 6(b)(5) of the Act in that it promotes just and equitable principles of trade by encouraging market participants to retain appropriate controls over their systems to avoid submitting a large number of erroneous orders in a short period of time.

Similarly, the Exchange believes that the proposed Size Adjustment Modifier, which would increase the adjustment amount for non-Customer transactions, is appropriate because it attempts to account for the additional risk that the parties to the trade undertake for transactions that are larger in scope. The Exchange believes that the Size Adjustment Modifier creates additional incentives to prevent more impactful Obvious Errors and it lessens the impact on the contra-party to an adjusted trade. The Exchange notes that these contra-parties may have preferred to only trade the size involved in the transaction at the price at which such trade occurred, and in trading larger size has committed a greater level of capital and bears a larger hedge risk.

The Exchange similarly believes that its Proposed Rule with respect to Catastrophic Errors is consistent with the Act as it affords additional time for market participants to file for review of erroneous transactions that were further away from the Theoretical Price. At the same time, the Exchange believes that the Proposed Rule is consistent with the Act in that it generally would adjust transactions, including Customer transactions, because this will protect against hedge risk, particularly for transactions that may have occurred several hours earlier and thus, which all parties to the transaction might presume are protected from further modification. Similarly, by providing larger adjustment amounts away from Theoretical Price than are set forth under the Obvious Error provision, the

Catastrophic Error provision also takes into account the possibility that the party that was advantaged by the erroneous transaction has already taken actions based on the assumption that the transaction would stand. The Exchange believes it is reasonable to specifically protect Customers from adjustments through their limit prices for the reasons stated above, including that Customers are less likely to be watching trading throughout the day and that they may have less capital to afford an adjustment price. The Exchange believes that the proposal provides a fair process that will ensure that Customers are not forced to accept a trade that was executed in violation of their limit order price. In contrast, market professionals are more likely to have engaged in hedging or other trading activity based on earlier trading activity, and thus, are more likely to be willing to accept an adjustment rather than a nullification to preserve their positions even if such adjustment is to a price through their limit price.

The Exchange believes that proposed rule change to adopt the Significant Market Event provision is consistent with Section 6(b)(5) of the Act in that it will foster cooperation and coordination with persons engaged in regulating the options markets. In particular, the Exchange believes it is important for options exchanges to coordinate when there is a widespread and significant event, as commonly, multiple options exchanges are impacted in such an event. Further, while the Exchange recognizes that the Proposed Rule will not guarantee a consistent result for all market participants on every market, the Exchange does believe that it will assist in that outcome. For instance, if options exchanges are able to agree as to the time from which Theoretical Price should be determined and the period of time that should be reviewed, the likely disparity between the Theoretical Prices used by such exchanges should be very slight and, in turn, with otherwise consistent rules, the results should be similar. The Exchange also believes that the Proposed Rule is consistent with the Act in that it generally would adjust transactions, including Customer transactions, because this will protect against hedge risk, particularly for liquidity providers that might have been quoting in thousands or tens of thousands of different series and might have affected executions throughout such quoted series. The Exchange believes that when weighing the competing interests between preferring a nullification for a Customer transaction and an adjustment for a transaction of a market professional, while nullification is appropriate in a typical one-off situation that it is necessary to protect liquidity providers in a widespread market event because, presumably, they will be the most affected by such an event (in contrast to a Customer who, by virtue of their status as such, likely would not have more than a small number of affected transactions). The Exchange believes that the protection of liquidity providers by favoring adjustments in the context of Significant Market Events can also benefit Customers indirectly by better enabling liquidity providers, which provides a cumulative benefit to the market. Also, as stated above with respect to Catastrophic Errors, the Exchange believes it is reasonable to specifically protect Customers from adjustments through their limit prices for the reasons stated above, including that Customers are less likely to be watching trading throughout the day and that they may have less capital to afford an adjustment price. The Exchange believes that the proposal provides a fair process that will ensure that Customers are not forced to accept a trade that was executed in violation of their limit order price. In contrast, market professionals are more likely to have engaged in hedging or other trading activity based on earlier trading activity, and thus, are more likely to be willing to accept an adjustment rather than a nullification to preserve their positions even if such adjustment is to a price through their limit price. In addition, the Exchange believes it is important to have the ability to nullify some or all transactions arising out of a Significant Market Event in the event timely adjustment is not feasible due to the extraordinary nature of the situation. In particular, although the Exchange has worked to limit the circumstances in which it has to determine Theoretical Price, in a widespread event it is possible that hundreds if not thousands of series would require an Exchange determination of Theoretical Price. In turn, if there are hundreds or thousands of trades in such series, it may not be practicable for the Exchange to determine the adjustment levels for all non-Customer transactions in a timely fashion, and in turn, it would be in the public interest to instead more promptly deliver a simple, consistent result of nullification.

The Exchange believes that proposed rule change related to review, nullification and/or adjustment of erroneous transactions during a trading halt, an erroneous print in the underlying security, an erroneous quote in the underlying security, or an erroneous transaction in the option with respect to stop and stop limit orders is likewise consistent with Section 6(b)(5) of the Act because the proposal provides for the adjustment or nullification of trades executed at erroneous prices through no fault on the part of the trading participants. Allowing for Exchange review in such situations will promote just and fair principles of trade by protecting investors from harm that is not of their own making. Specifically with respect to the proposed provisions governing erroneous prints and quotes in the underlying security, the Exchange notes that market participants on the Exchange base the value of their quotes and orders on the price of the underlying security. The provisions regarding errors in prints and quotes in the underlying security cover instances where the information market participants use to price options is erroneous through no fault of their own. In these instances, market participants have little, if any, chance of pricing options accurately. Thus, these provisions are designed to provide relief to market participants harmed by such errors in the prints or quotes of the underlying security.

The Exchange believes that the proposed provision related to Linkage Trades is consistent with the Act because it adds additional transparency to the Proposed Rule and makes clear that when a Linkage Trade is adjusted or nullified by another options exchange, the Exchange will take necessary actions to complete the nullification or adjustment of the Linkage Trade.

The Exchange believes that retaining the same appeals process for obvious errors as the Exchange maintains under the Current Rule is consistent with the Act because such process provides TPHs with due process in connection with decisions made by Exchange Officials under the Proposed Rule. The Exchange believes that this process provides fair representation of TPHs by ensuring multiple TPHs are members of any Obvious Error Review Panel, which is consistent with Sections 6(b)(3) and 6(b)(7) of the Act. The Exchange believes adopting a similar appeals process for catastrophic errors is consistent with the Act for the same reasons noted above.

With regard to the portion of the Exchange's proposal related to the applicability of the Obvious Error Rule when the underlying security is in a Limit or Straddle State, the Exchange believes that the proposed rule change is consistent with Section 6(b)(5) of the Act because it will provide certainty about how errors involving options orders and trades will be handled during periods of extraordinary volatility in the underlying security. Further, the Exchange believes that it is necessary and appropriate in the interest of promoting fair and orderly markets to exclude from Rule 6.25 those transactions executed during a Limit or Straddle State.

The Exchange believes the application of the Proposed Rule without the proposed provision would be impracticable given the lack of reliable NBBO in the options market during Limit and Straddle States, and that the resulting actions (*i.e.,* nullified trades or adjusted prices) may not be appropriate given market conditions. The Proposed Rule change would ensure that limit orders that are filled during a Limit State or Straddle State would have certainty of execution in a manner that promotes just and equitable principles of trade, removes impediments to, and perfects the mechanism of a free and open market and a national market system.

Moreover, given the fact that options prices during brief Limit or Straddle States may deviate substantially from those available shortly following the Limit or Straddle State, the Exchange believes giving market participants time to re-evaluate a transaction would create an unreasonable adverse selection opportunity that would discourage participants from providing liquidity during Limit or Straddle States. In this respect, the Exchange notes that only those orders with a limit price will be executed during a Limit or Straddle State. Therefore, on balance, the Exchange believes that removing the potential inequity of nullifying or adjusting executions occurring during Limit or Straddle States outweighs any potential benefits from applying certain provisions during such unusual market conditions. Additionally, as discussed above, there are additional pre-trade protections in place outside of the Obvious and Catastrophic Error Rule that will continue to safeguard customers.

The Exchange notes that under certain limited circumstances the Proposed Rule will permit the Exchange to review transactions in options that overlay a security that is in a Limit or Straddle State. Specifically, an Official will have authority to review a transaction on his or her own motion in the interest of maintaining a fair and orderly market and for the protection of investors. Furthermore, the Exchange will have the authority to adjust or nullify transactions in the event of a Significant Market Event, a trading halt in the affected option, an erroneous print or quote in the underlying security, or with respect to stop and stop limit orders that have been triggered based on erroneous trades. The Exchange believes that the safeguards described above will protect market participants and will provide the Exchange with the flexibility to act when necessary and appropriate to nullify or adjust a transaction, while also providing market participants with certainty that, under normal circumstances, the trades they effect with quotes and/or orders having limit prices will stand irrespective of subsequent moves in the underlying security. The right to review those transactions that occur during a Limit or Straddle State would allow the Exchange to account for unforeseen circumstances that result in Obvious or Catastrophic Errors for which a nullification or adjustment may be necessary in the interest of maintaining a fair and orderly market and for the protection of investors. Similarly, the ability to nullify or adjust transactions that occur during a Significant Market Event or trading halt, erroneous print or quote in the underlying security, or erroneous trade in the option (*i.e.,* stop and stop limit orders) may also be necessary in the interest of maintaining a fair and orderly market and for the protection of investors. Furthermore, the Exchange will administer this provision in a manner that is consistent with the principles of the Act and will create and maintain records relating to the use of the authority to act on its own motion during a Limit or Straddle State or any adjustments or trade breaks based on other proposed provisions under the Rule.

Similarly, the portion of the Exchange's proposal related to allowing opening transactions to be nullified if the transactions do not satisfy the requirements of Rule 5.4 is consistent with Section 6(b)(5) of the Act because the provision allows the Exchange to more efficiently address scenarios where an opening transaction that does not satisfy the requirements of Rule 5.4 may have occurred inadvertently.

Finally, the portions of the Exchange's proposal related to Binary Options and Credit options are also consistent with Section 6(b)(5) of the Act because the provisions help protect investors and the public interest by applying the Obvious Error rule in a manner that is appropriate for the unique nature of Binary and Credit Options.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Importantly, the Exchange believes the proposal will not impose a burden on intermarket competition but will rather alleviate any burden on competition because it is the result of a collaborative effort by all options exchanges to harmonize and improve the process related to the adjustment and nullification of erroneous options transactions. The Exchange does not believe that the rules applicable to such process is an area where options exchanges should compete, but rather, that all options exchanges should have consistent rules to the extent possible. Particularly where a market participant trades on several different exchanges and an erroneous trade may occur on multiple markets nearly simultaneously, the Exchange believes that a participant should have a consistent experience with respect to the nullification or adjustment of transactions. The Exchange understands that all other options exchanges intend to file proposals that are substantially similar to this proposal.

The Exchange does not believe that the proposed rule change imposes a burden on intramarket competition because the provisions apply to all market participants equally within each participant category (*i.e.,* Customers and non-Customers). With respect to competition between Customer and non-Customer market participants, the Exchange believes that the Proposed Rule acknowledges competing concerns and tries to strike the appropriate balance between such concerns. For instance, as noted above, the Exchange believes that protection of Customers is important due to their direct participation in the options markets as well as the fact that they are not, by definition, market professionals. At the same time, the Exchange believes due to the quote-driven nature of the options markets, the importance of liquidity provision in such markets and the risk that liquidity providers bear when quoting a large breadth of products that are derivative of underlying securities, that the protection of liquidity providers and the practice of adjusting transactions rather than nullifying them is of critical importance. As described above, the Exchange will apply specific and objective criteria to determine whether an erroneous transaction has occurred and, if so, how to adjust or nullify a transaction.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [31] and Rule 19b–4(f)(6) thereunder.[32]

The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, as it will enable the Exchange to meet its proposed implementation date of May 8, 2015, which will help facilitate the implementation of harmonized rules related to the adjustment and nullification of erroneous options transactions across the options exchanges. For this reason, the Commission designates the proposed rule change to be operative upon filing.[33]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml);* or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2015–039 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR–CBOE–2015–039. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2015–039 and should be submitted on or before June 3, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[34]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2015–11484 Filed 5–12–15; 8:45 am]

BILLING CODE 8011–01–P

[31] 15 U.S.C. 78s(b)(3)(A).

[32] 17 CFR 240.19b–4(f)(6). As required under Rule 19b–4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

[33] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[34] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–74901; File No. SR–NYSEARCA–2015–36]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending the Fees for NYSE Arca BBO and NYSE Arca Trades To Add a Late Fee in Connection With Failure To Submit the Non-Display Use Declaration

May 7, 2015.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on April 30, 2015, NYSE Arca, Inc. (the ''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the fees for NYSE Arca BBO and NYSE Arca Trades to add a late fee in connection with failure to submit the non-display use declaration, operative on May 1, 2015. The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text

[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the fees for NYSE Arca BBO and NYSE Arca Trades, as set forth on the NYSE Arca Equities Proprietary Market Data Fee Schedule (''Fee Schedule''), to add a late fee in connection with failure to submit an updated non-display use declaration. The proposed change to the Fee Schedule would be operative on May 1, 2015.

The Exchange established the current fees for non-display services for NYSE Arca BBO and NYSE Arca Trades in April 2013 and amended those fees in September 2014.[4] The 2013 Non-Display Filing established a requirement that data recipients that receive real-time NYSE Arca market data subject to Non-Display Use fees submit a declaration with respect to their use of non-display data.[5] In connection with the fee changes in the 2014 Non-Display Filing, the Exchange required data recipients that receive real-time NYSE Arca market data subject to Non-Display Use fees to complete and submit an updated Non-Display Use Declaration by September 1, 2014.[6] The 2014 Non-Display Filing also established that data recipients are required to submit an updated annual Non-Display Use Declaration by January 31st of each year beginning in 2016. In addition, if a data recipient's use of real-time NYSE Arca market data changes at any time after the data recipient submits a Non-Display Use Declaration, the data recipient must inform the Exchange of the change by completing and submitting at the time of the change an updated declaration reflecting the change of use.

The Exchange notes that if a data recipient does not timely submit a Non-Display Use Declaration, the Exchange does not have up-to-date information about the data recipient's data use and therefore may not be charging the correct fees to the data recipient. In order to correctly assess fees for the non-display use of NYSE Arca BBO and NYSE Arca Trades, the Exchange needs to have current and accurate information about the use of NYSE Arca BBO and NYSE Arca Trades. The failure of data recipients to submit the Non-Display Use Declaration on time leads to potentially incorrect billing and administrative burdens, including tracking and obtaining late Non-Display Use Declarations and correcting customer records in connection with late Non-Display Use Declarations. The purpose of the proposed late fee is to incent data recipients to submit the Non-Display Use Declaration promptly to avoid the administrative burdens associated with the late submission of Non-Display Use Declarations.

The Exchange proposes to establish a Non-Display Declaration Late Fee of $1,000 per month. The proposed fee would be charged to any data recipient that pays an Access Fee for NYSE Arca BBO and NYSE Arca Trades that has failed to timely complete and submit a Non-Display Use Declaration.

With respect to the Non-Display Use Declaration that was due by September 1, 2014, the Non-Display Declaration Late Fee would apply to NYSE Arca BBO and NYSE Arca Trades data recipients that have not submitted the Non-Display Use Declaration by June 30, 2015, and would apply beginning July 1, 2015 and for each month thereafter until the data recipient has completed and submitted the Non-Display Use Declaration. With respect to the annual Non-Display Use Declaration due by January 31st of each year beginning in 2016, the Non-Display Declaration Late Fee would apply to data recipients that fail to complete and submit the annual Non-Display Use Declaration by the January 31st due date, and would apply beginning February 1st and for each month thereafter until the data recipient has completed and submitted the annual Non-Display Use Declaration.[7] A Non-Display Use Declaration that is clearly incomplete would not be considered to have been completed and submitted to the Exchange on time.

In addition to adding the Non-Display Declaration Late Fee for NYSE Arca BBO and NYSE Arca Trades to the Fee Schedule, the Exchange proposes to add an endnote to the Fee Schedule that would specify the effective dates for the Non-Display Declaration Late Fee as described above, and to change the numbering for the existing endnotes as needed.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[8] in general, and Sections 6(b)(4) and 6(b)(5) of the Act,[9] in particular, in that it provides an equitable allocation of reasonable fees among users and recipients of the data and is not designed to permit unfair discrimination among customers, issuers, and brokers.

The Exchange believes that it is reasonable to impose a late fee in connection with the submission of the Non-Display Use Declaration. In order to correctly assess fees for the non-display use of NYSE Arca BBO and NYSE Arca Trades, the Exchange needs to have current and accurate information about the use of NYSE Arca BBO and NYSE Arca Trades. The failure of data recipients to submit the Non-Display Use Declaration on time leads to potentially incorrect billing and administrative burdens, including tracking and obtaining late Non-Display Use Declarations and correcting and following up on payments owed in connection with late Non-Display Use Declarations. The purpose of the late fee is to incent data recipients to submit the Non-Display Use Declaration promptly to avoid the administrative burdens associated with the late submission of Non-Display Use Declarations. The Non-Display Declaration Late Fee is equitable and not unfairly discriminatory because it will apply to all data recipients that choose to subscribe to the NYSE Arca BBO and NYSE Arca Trades feed.

The Non-Display Declaration Late Fee is also consistent with similar pricing adopted in 2013 by the Consolidated Tape Association (''CTA'').[10] The CTA imposes a monthly fee of $2,500 for

[4] *See* Securities Exchange Act Release Nos. 69315 (Apr. 5, 2013), 78 FR 21668 (Apr. 11, 2013) (SR–NYSEArca–2013–37) (''2013 Non-Display Filing'') and 73011 (Sept. 5, 2014), 79 FR 54315 (Sept. 11, 2014) (SR–NYSEArca–2014–93) (''2014 Non-Display Filing'').

[5] The non-display fee structure established in the 2013 Non-Display Filing replaced a monthly reporting obligation with respect to non-display devices with the requirement to submit the non-display use declaration. The Exchange also notes that if a data recipient only subscribes to products for which there are no non-display usage fees, *e.g.,* NYSE Arca Realtime Reference Prices, then no declaration is required.

[6] The current form of the Non-Display Use Declaration reflected the changes to the non-display fees set forth in the 2014 Non-Display Filing and replaced the NYSE Euronext Non-Display Use Declaration established in connection with the 2013 Non-Display Filing.

[7] The Exchange has established the Non-Display Declaration Late Fee with respect to NYSE Arca Integrated Feed and in that filing adopted the text in endnote 2, which specifies the effective dates for the Non-Display Declaration Late Fee as described above, so the text in endnote 2 to the Fee Schedule is not new. See SR–NYSEArca–2015–34.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(4), (5).

[10] *See* Securities Exchange Act Release No. 70010 (July 19, 2013), 78 FR 44984 (July 25, 2013) (SR–CTA/CQ–2013–04).

each of Network A and Network B for firms that fail to comply with their reporting obligations in a timely manner.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. An exchange's ability to price its proprietary market data feed products is constrained by actual competition for the sale of proprietary market data products, the joint product nature of exchange platforms, and the existence of alternatives to the Exchange's proprietary data. In addition to being able to choose which proprietary data products (if any) to use and how to use them, a user can avoid the late fees that are the subject of this filing entirely by simply complying with the requisite deadlines.

In setting the proposed fees, the Exchange considered the competitiveness of the market for proprietary data and all of the implications of that competition. The Exchange believes that it has considered all relevant factors and has not considered irrelevant factors in order to establish fair, reasonable, and not unreasonably discriminatory fees and an equitable allocation of fees among all users. The existence of fierce competition to sell proprietary data products and for order flow, as well as numerous alternatives to the Exchange's products, including proprietary data from other sources, ensures that the Exchange cannot set unreasonable fees, or fees that are unreasonably discriminatory, when vendors and subscribers can elect these alternatives or choose not to purchase a specific proprietary data product if the attendant fees are not justified by the returns that any particular vendor or data recipient would achieve through the purchase (the returns on use being a particularly important aspect of non-display uses of proprietary data).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A) [11] of the Act and subparagraph (f)(2) of Rule 19b–4 [12] thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) [13] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

• Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or

• Send an email to *rule-comments@sec.gov*. Please include File Number SR–NYSEARCA–2015–36 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR–NYSEARCA–2015–36. This file number should be included on the subject line if email is used.

To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing will also be available for inspection and copying at the NYSE's principal office and on its Internet Web site at *www.nyse.com*. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEARCA–2015–36, and should be submitted on or before June 3, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Robert W. Errett,

Deputy Secretary.

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[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(2).

[13] 15 U.S.C. 78s(b)(2)(B).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–74896; File No. SR–ISE–2015–18]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Related to the Nullification and Adjustment of Options Transactions Including Obvious Errors

May 7, 2015.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that, on May 6, 2015 the International Securities Exchange, LLC (the ''Exchange'' or the ''ISE'') filed with the Securities and Exchange Commission the proposed rule change, as described in Items I and II below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The ISE proposes to amend current Rule 720 (''Current Rule''), and rename it ''Nullification and Adjustment of Options Transactions including Obvious

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Errors'' (''Proposed Rule''). Rule 720 relates to the adjustment and nullification of options transactions executed on the Exchange (''ISE Options''). The text of the proposed rule change is available on the Exchange's Web site (*http://www.ise.com*), at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Background

For several months the Exchange has been working with other options exchanges to identify ways to improve the process related to the adjustment and nullification of erroneous options transactions. The goal of the process that the options exchanges have undertaken is to adopt harmonized rules related to the adjustment and nullification of erroneous options transactions as well as a specific provision related to coordination in connection with large-scale events involving erroneous options transactions. As described below, the Exchange believes that the changes the options exchanges and the Exchange have agreed to propose will provide transparency and finality with respect to the adjustment and nullification of erroneous options transactions. Particularly, the proposed changes seek to achieve consistent results for participants across U.S. options exchanges while maintaining a fair and orderly market, protecting investors and protecting the public interest.

The Proposed Rule is the culmination of this coordinated effort and reflects discussions by the options exchanges to universally adopt: (1) Certain provisions already in place on one or more options exchanges; and (2) new provisions that the options exchanges collectively believe will improve the handling of erroneous options transactions. Thus, although the Proposed Rule is in many ways similar to and based on the Exchange's Current Rule, the Exchange is adopting various provisions to conform with existing rules of one or more options exchanges and also to adopt rules that are not currently in place on any options exchange. As noted above, in order to adopt a rule that is similar in most material respects to the rules adopted by other options exchanges, the Exchange proposes to delete the Current Rule in its entirety, with two exceptions,[3] and to replace it with the Proposed Rule.

The Exchange notes that it has proposed additional objective standards in the Proposed Rule as compared to the Current Rule. The Exchange also notes that the Proposed Rule will ensure that the Exchange will have the same standards as all other options exchanges. However, there are still areas under the Proposed Rule where subjective determinations need to be made by Exchange personnel with respect to the calculation of Theoretical Price. The Exchange notes that the Exchange and all other options exchanges have been working to further improve the review of potentially erroneous transactions as well as their subsequent adjustment by creating an objective and universal way to determine Theoretical Price in the event a reliable NBBO is not available. For instance, the Exchange and all other options exchanges may utilize an independent third party to calculate and disseminate or make available Theoretical Price. However, this initiative requires additional exchange and industry discussion as well as additional time for development and implementation. The Exchange will continue to work with other options exchanges and the options industry towards the goal of additional objectivity and uniformity with respect to the calculation of Theoretical Price.

As additional background, the Exchange believes that the Proposed Rule supports an approach consistent with long-standing principles in the options industry under which the general policy is to adjust rather than nullify transactions. The Exchange acknowledges that adjustment of transactions is contrary to the operation of analogous rules applicable to the equities markets, where erroneous transactions are typically nullified rather than adjusted and where there is no distinction between the types of market participants involved in a transaction. For the reasons set forth below, the Exchange believes that the distinctions in market structure between equities and options markets continue to support these distinctions between the rules for handling obvious errors in the equities and options markets. The Exchange also believes that the Proposed Rule properly balances several competing concerns based on the structure of the options markets.

Various general structural differences between the options and equities markets point toward the need for a different balancing of risks for options market participants and are reflected in the Proposed Rule. Option pricing is formulaic and is tied to the price of the underlying stock, the volatility of the underlying security and other factors. Because options market participants can generally create new open interest in response to trading demand, as new open interest is created, correlated trades in the underlying or related series are generally also executed to hedge a market participant's risk. This pairing of open interest with hedging interest differentiates the options market specifically (and the derivatives markets broadly) from the cash equities markets. In turn, the Exchange believes that the hedging transactions engaged in by market participants necessitates protection of transactions through adjustments rather than nullifications when possible and otherwise appropriate.

The options markets are also quote driven markets dependent on liquidity providers to an even greater extent than equities markets. In contrast to the approximately 7,000 different securities traded in the U.S. equities markets each day, there are more than 500,000 unique, regularly quoted option series. Given this breadth in options series the options markets are more dependent on liquidity providers than equities markets; such liquidity is provided most

[3] The Exchange is not proposing to delete from its Current Rule a provision regarding the treatment of Obvious Errors involving complex orders. The current rule found in Supplementary Material .06 to Rule 720 provides that ''[i]f both parties to a trade that is one component of a complex order execution are parties to all of the trades that together comprise the execution of a complex order at a single net debit or credit, then if one of those component trades can be nullified under this Rule 720, all component trades that were part of the same complex order shall be nullified as well.''

The Exchange also proposes to keep language in Supplementary Material .01 to Rule 720 that authorizes the Exchange to disclose the identity of parties to a trade to each other when the Market Control determines that an Obvious or Catastrophic Error has occurred. The Exchange believes that this provision is important to encourage conflict resolution between two parties to a trade.

With the remaining text in the Supplementary Material to Rule 720 now being deleted, the Exchange proposes to renumber Supplementary Material .01 and .06.

commonly by registered market makers but also by other professional traders. With the number of instruments in which registered market makers must quote and the risk attendant with quoting so many products simultaneously, the Exchange believes that those liquidity providers should be afforded a greater level of protection. In particular, the Exchange believes that liquidity providers should be allowed protection of their trades given the fact that they typically engage in hedging activity to protect them from significant financial risk to encourage continued liquidity provision and maintenance of the quote-driven options markets.

In addition to the factors described above, there are other fundamental differences between options and equities markets which lend themselves to different treatment of different classes of participants that are reflected in the Proposed Rule. For example, there is no trade reporting facility in the options markets. Thus, all transactions must occur on an options exchange. This leads to significantly greater retail customer participation directly on exchanges than in the equities markets, where a significant amount of retail customer participation never reaches the Exchange but is instead executed in off-exchange venues such as alternative trading systems, broker-dealer market making desks and internalizers. In turn, because of such direct retail customer participation, the exchanges have taken steps to afford those retail customers—generally Customers—more favorable treatment in some circumstances.

Definitions

The Exchange proposes to adopt various definitions that will be used in the Proposed Rule, as described below.

First, the Exchange proposes to adopt a definition of ''Customer,'' to make clear that this term has the same definition as Priority Customer in Rule 100(a)(37A). Although other portions of the Exchange's rules address the capacity of market participants, including customers, the proposed definition is consistent with such rules and the Exchange believes it is important for all options exchanges to have the same definition of Customer in the context of nullifying and adjusting trades in order to have harmonized rules. As set forth in detail below, orders on behalf of a Customer are in many cases treated differently than non-Customer orders in light of the fact that Customers are not necessarily immersed in the day-to-day trading of the markets, are less likely to be watching trading activity in a particular option throughout the day, and may have limited funds in their trading accounts.

Second, the Exchange proposes to adopt definitions for both an ''erroneous sell transaction'' and an ''erroneous buy transaction.'' As proposed, an erroneous sell transaction is one in which the price received by the person selling the option is erroneously low, and an erroneous buy transaction is one in which the price paid by the person purchasing the option is erroneously high. This provision helps to reduce the possibility that a party can intentionally submit an order hoping for the market to move in their favor while knowing that the transaction will be nullified or adjusted if the market does not. For instance, when a market participant who is buying options in a particular series sees an aggressively priced sell order posted on the Exchange, and the buyer believes that the price of the options is such that it might qualify for obvious error, the option buyer can trade with the aggressively priced order, then wait to see which direction the market moves. If the market moves in their direction, the buyer keeps the trade and if it moves against them, the buyer calls the Exchange hoping to get the trade adjusted or busted.

Third, the Exchange proposes to adopt a definition of ''Official,'' which would mean an Officer of the Exchange or such other employee designee of the Exchange that is trained in the application of the Proposed Rule.

Fourth, the Exchange proposes to adopt a new term, a ''Size Adjustment Modifier,'' which would apply to individual transactions and would modify the applicable adjustment for orders under certain circumstances, as discussed in further detail below. As proposed, the Size Adjustment Modifier will be applied to individual transactions as follows:

Number of contracts per execution	Adjustment—TP plus/minus
1–50	N/A.
51–250	2 times adjustment amount.
251–1000	2.5 times adjustment amount.
1001 or more	3 times adjustment amount.

The Size Adjustment Modifier attempts to account for the additional risk that the parties to the trade undertake for transactions that are larger in scope. The Exchange believes that the Size Adjustment Modifier creates additional incentives to prevent more impactful Obvious Errors and it lessens the impact on the contra-party to an adjusted trade. The Exchange notes that these contra-parties may have preferred to only trade the size involved in the transaction at the price at which such trade occurred, and in trading larger size has committed a greater level of capital and bears a larger hedge risk.

When setting the proposed size adjustment modifier thresholds the Exchange has tried to correlate the size breakpoints with typical small and larger ''block'' execution sizes of underlying stock. For instance, SEC Rule 10b–18(a)(5)(ii) defines a ''block'' as a quantity of stock that is at least 5,000 shares and a purchase price of at least $50,000, among others.[4] Similarly, NYSE Rule 72 defines a ''block'' as an order to buy or sell ''at least 10,000 shares or a quantity of stock having a market value of $200,000 or more, whichever is less.'' Thus, executions of 51 to 100 option contracts, which are generally equivalent to executions of 5,100 and 10,000 shares of underlying stock, respectively, are proposed to be subject to the lowest size adjustment modifier. An execution of over 1,000 contracts is roughly equivalent to a block transaction of more than 100,000 shares of underlying stock, and is proposed to be subject to the highest size adjustment modifier. The Exchange has correlated the proposed size adjustment modifier thresholds to smaller and larger scale blocks because the Exchange believes that the execution cost associated with transacting in block sizes scales according to the size of the block. In other words, in the same way that executing a 100,000 share stock order will have a proportionately larger market impact and will have a higher overall execution cost than executing a 500, 1,000 or 5,000 share order in the same stock, all other market factors being equal, executing a 1,000 option contract order will have a larger market impact and higher overall execution cost than executing a 5, 10 or 50 contract option order.

Calculation of Theoretical Price

Theoretical Price in Normal Circumstances

Under both the Current Rule and the Proposed Rule, when reviewing a transaction as potentially erroneous, the Exchange needs to first determine the ''Theoretical Price'' of the option, *i.e.,* the Exchange's estimate of the correct market price for the option. Pursuant to the Proposed Rule, if the applicable option series is traded on at least one other options exchange, then the Theoretical Price of an option series is the last national best bid (''NBB'') just prior to the trade in question with

[4] *See* 17 CFR 240.10b–18(a)(5)(ii).

respect to an erroneous sell transaction or the last national best offer (''NBO'') just prior to the trade in question with respect to an erroneous buy transaction unless one of the exceptions described below exists. Thus, the Exchange proposes that whenever the Exchange has a reliable NBB or NBO, as applicable, just prior to the transaction, then the Exchange will use this NBB or NBO as the Theoretical Price.

The Exchange also proposes to specify in the Proposed Rule that when a single order received by the Exchange is executed at multiple price levels, the last NBB and last NBO just prior to the trade in question would be the last NBB and last NBO just prior to the Exchange's receipt of the order.

The Exchange also proposes to set forth in the Proposed Rule various provisions governing specific situations where the NBB or NBO is not available or may not be reliable. Specifically, the Exchange is proposing additional detail specifying situations in which there are no quotes or no valid quotes (as defined below), when the national best bid or offer (''NBBO'') is determined to be too wide to be reliable, and at the open of trading on each trading day.

No Valid Quotes

As is true under the Current Rule, pursuant to the Proposed Rule the Exchange will determine the Theoretical Price if there are no quotes or no valid quotes for comparison purposes. As proposed, quotes that are not valid are all quotes in the applicable option series published at a time where the last NBB is higher than the last NBO in such series (a ''crossed market''), quotes published by the Exchange that were submitted by either party to the transaction in question, and quotes published by another options exchange against which the Exchange has declared self-help. Thus, in addition to scenarios where there are literally no quotes to be used as Theoretical Price, the Exchange will exclude quotes in certain circumstances if such quotes are not deemed valid. The Proposed Rule is consistent with the Exchange's application of the Current Rule but the descriptions of the various scenarios where the Exchange considers quotes to be invalid represent additional detail that is not included in the Current Rule.

The Exchange notes that Exchange personnel currently are required to determine Theoretical Price in certain circumstances. While the Exchange continues to pursue alternative solutions that might further enhance the objectivity and consistency of determining Theoretical Price, the Exchange believes that the discretion currently afforded to Exchange Officials is appropriate in the absence of a reliable NBBO that can be used to set the Theoretical Price. Under the current Rule, Exchange personnel will generally consult and refer to data such as the prices of related series, especially the closest strikes in the option in question. Exchange personnel may also take into account the price of the underlying security and the volatility characteristics of the option as well as historical pricing of the option and/or similar options.

Wide Quotes

Similarly, pursuant to the Proposed Rule the Exchange will determine the Theoretical Price if the bid/ask differential of the NBB and NBO for the affected series just prior to the erroneous transaction was equal to or greater than the Minimum Amount set forth below and there was a bid/ask differential less than the Minimum Amount during the 10 seconds prior to the transaction. If there was no bid/ask differential less than the Minimum Amount during the 10 seconds prior to the transaction then the Theoretical Price of an option series is the last NBB or NBO just prior to the transaction in question. The Exchange proposes to use the following chart to determine whether a quote is too wide to be reliable:

Bid price at time of trade	Minimum amount
Below $2.00	$0.75
$2.00 to $5.00	1.25
Above $5.00 to $10.00	1.50
Above $10.00 to $20.00	2.50
Above $20.00 to $50.00	3.00
Above $50.00 to $100.00	4.50
Above $100.00	6.00

The Exchange notes that the values set forth above generally represent a multiple of 3 times the bid/ask differential requirements of other options exchanges, with certain rounding applied (*e.g.,* $1.25 as proposed rather than $1.20).[5] The Exchange believes that basing the Wide Quote table on a multiple of the permissible bid/ask differential rule provides a reasonable baseline for quotations that are indeed so wide that they cannot be considered reliable for purposes of determining Theoretical Price unless they have been consistently wide. As described above, while the Exchange will determine Theoretical Price when the bid/ask differential equals or exceeds the amount set forth in the chart above and within the previous 10 seconds there was a bid/ask differential smaller than such amount, if a quote has been persistently wide for at least 10 seconds the Exchange will use such quote for purposes of Theoretical Price. The Exchange believes that there should be a greater level of protection afforded to market participants that enter the market when there are liquidity gaps and price fluctuations. The Exchange does not believe that a similar level of protection is warranted when market participants choose to enter a market that is wide and has been consistently wide for some time. The Exchange notes that it has previously determined that, given the largely electronic nature of today's markets, as little as one second (or less) is a long enough time for market participants to receive, process and account for and respond to new market information.[6] While introducing this new provision the Exchange believes it is being appropriately cautious by selecting a time frame that is an order of magnitude above and beyond what the Exchange has previously determined is sufficient for information dissemination. The table above bases the wide quote provision off of bid price in order to provide a relatively straightforward beginning point for the analysis.

As an example, assume an option is quoted $3.00 by $6.00 with 50 contracts posted on each side of the market for an extended period of time. If a market participant were to enter a market order to buy 20 contracts the Exchange believes that the buyer should have a reasonable expectation of paying $6.00 for the contracts which they are buying. This should be the case even if immediately after the purchase of those options, the market conditions change and the same option is then quoted at $3.75 by $4.25. Although the quote was wide according to the table above at the time immediately prior to and the time of the execution of the market order, it was also well established and well known. The Exchange believes that an execution at the then prevailing market price should not in and of itself constitute an erroneous trade.

Transactions at the Open

Under the Proposed Rule, for a transaction occurring during the

[5] *See, e.g.,* NYSE Arca Options Rule 6.37(b)(1).

[6] *See, e.g.,* Supplementary Material .04 to Exchange Rule 717, which requires certain orders to be exposed for at least one second before they can be executed; *see also* Securities Exchange Act Release No. 66306 (February 2, 2012), 77 FR 6608 (February 8, 2012) (SR–BX–2011–084) (order granting approval of proposed rule change to reduce the duration of the PIP from one second to one hundred milliseconds).

opening rotation the Exchange will determine the Theoretical Price where there is no NBB or NBO for the affected series just prior to the erroneous transaction or if the bid/ask differential of the NBBO just prior to the erroneous transaction is equal to or greater than the Minimum Amount set forth in the chart proposed for the wide quote provision described above. The Exchange believes that this discretion is necessary because it is consistent with other scenarios in which the Exchange will determine the Theoretical Price if there are no quotes or no valid quotes for comparison purposes, including the wide quote provision proposed by the Exchange as described above. If, however, there are valid quotes and the bid/ask differential of the NBBO is less than the Minimum Amount set forth in the chart proposed for the wide quote provision described above, then the Exchange will use the NBB or NBO just prior to the transaction as it would in any other normal review scenario.

As an example of an erroneous transaction for which the NBBO is wide at the open, assume the NBBO at the time of the opening transaction is $1.00 x $5.00 and the opening transaction takes place at $1.25. The Exchange would be responsible for determining the Theoretical Price because the NBBO was wider than the applicable minimum amount set forth in the wide quote provision as described above. The Exchange believes that it is necessary to determine theoretical price at the open in the event of a wide quote at the open for the same reason that the Exchange has proposed to determine theoretical price during the remainder of the trading day pursuant to the proposed wide quote provision, namely that a wide quote cannot be reliably used to determine Theoretical Price because the Exchange does not know which of the two quotes, the NBB or the NBO, is closer to the real value of the option.

Obvious Errors

The Exchange proposes to adopt numerical thresholds that would qualify transactions as ''Obvious Errors.'' These thresholds are similar to those in place under the Current Rule. As proposed, a transaction will qualify as an Obvious Error if the Exchange receives a properly submitted filing and the execution price of a transaction is higher or lower than the Theoretical Price for the series by an amount equal to at least the amount shown below:

Theoretical price	Minimum amount
Below $2.00	$0.25
$2.00 to $5.00	0.40
Above $5.00 to $10.00	0.50
Above $10.00 to $20.00	0.80
Above $20.00 to $50.00	1.00
Above $50.00 to $100.00	1.50
Above $100.00	2.00

Applying the Theoretical Price, as described above, to determine the applicable threshold and comparing the Theoretical Price to the actual execution price provides the Exchange with an objective methodology to determine whether an Obvious Error occurred. The Exchange believes that the proposed amounts are reasonable as they are generally consistent with the standards of the Current Rule and reflect a significant disparity from Theoretical Price. The Exchange notes that the Minimum Amounts in the Proposed Rule and as set forth above are identical to the Current Rule except for the last two categories, for options where the Theoretical Price is above $50.00 to $100.00 and above $100.00. The Exchange believes that this additional granularity is reasonable because given the proliferation of additional strikes that have been created in the past several years there are many more high-priced options that are trading with open interest for extended periods. The Exchange believes that it is appropriate to account for these high-priced options with additional Minimum Amount levels for options with Theoretical Prices above $50.00.

Under the Proposed Rule, a party that believes that it participated in a transaction that was the result of an Obvious Error must notify the Exchange's Market Control [7] in the manner specified from time to time by the Exchange in a circular distributed to Members. The Exchange believes that maintaining flexibility in the Rule is important to allow for changes to the process.

The Exchange also proposes to adopt notification timeframes that must be met in order for a transaction to qualify as an Obvious Error. Specifically, as proposed a filing must be received by the Exchange within thirty (30) minutes of the execution with respect to an execution of a Customer order and within fifteen (15) minutes of the execution for any other participant. The Exchange also proposes to provide additional time for trades that are routed through other options exchanges to the Exchange. Under the Proposed Rule, any other options exchange will have a total of forty-five (45) minutes for Customer orders and thirty (30) minutes for non-Customer orders, measured from the time of execution on the Exchange, to file with the Exchange for review of transactions routed to the Exchange from that options exchange and executed on the Exchange (''linkage trades''). This includes filings on behalf of another options exchange filed by a third-party routing broker if such third-party broker identifies the affected transactions as linkage trades. In order to facilitate timely reviews of linkage trades the Exchange will accept filings from either the other options exchange or, if applicable, the third-party routing broker that routed the applicable order(s). The additional fifteen (15) minutes provided with respect to linkage trades shall only apply to the extent the options exchange that originally received and routed the order to the Exchange itself received a timely filing from the entering participant (*i.e.,* within 30 minutes if a Customer order or 15 minutes if a non-Customer order). The Exchange believes that additional time for filings related to Customer orders is appropriate in light of the fact that Customers are not necessarily immersed in the day-to-day trading of the markets and are less likely to be watching trading activity in a particular option throughout the day. The Exchange believes that the additional time afforded to linkage trades is appropriate given the interconnected nature of the markets today and the practical difficulty that an end user may face in getting requests for review filed in a timely fashion when the transaction originated at a different exchange than where the error took place. Without this additional time the Exchange believes it would be common for a market participant to satisfy the filing deadline at the original exchange to which an order was routed but that requests for review of executions from orders routed to other options exchanges would not qualify for review as potential Obvious Errors by the time filings were received by such other options exchanges, in turn leading to potentially disparate results under the applicable rules of options exchanges to which the orders were routed.

Pursuant to the Proposed Rule, an Official may review a transaction believed to be erroneous on his/her own motion in the interest of maintaining a fair and orderly market and for the protection of investors. This proposed provision is designed to give an Official the ability to provide parties relief in those situations where they have failed to report an apparent error within the

[7] Market Control consists of designated personnel in the Exchange's market control center.

established notification period. A transaction reviewed pursuant to the proposed provision may be nullified or adjusted only if it is determined by the Official that the transaction is erroneous in accordance with the provisions of the Proposed Rule, provided that the time deadlines for filing a request for review described above shall not apply. The Proposed Rule would require the Official to act as soon as possible after becoming aware of the transaction; action by the Official would ordinarily be expected on the same day that the transaction occurred. However, because a transaction under review may have occurred near the close of trading or due to unusual circumstances, the Proposed Rule provides that the Official shall act no later than 8:30 a.m. Eastern Time on the next trading day following the date of the transaction in question.

The Exchange also proposes to state that a party affected by a determination to nullify or adjust a transaction after an Official's review on his or her own motion may appeal such determination in accordance with paragraph (k), which is described below. The Proposed Rule would make clear that a determination by an Official not to review a transaction or determination not to nullify or adjust a transaction for which a review was conducted on an Official's own motion is not appealable and further that if a transaction is reviewed and a determination is rendered pursuant to another provision of the Proposed Rule, no additional relief may be granted by an Official.

If it is determined that an Obvious Error has occurred based on the objective numeric criteria and time deadlines described above, the Exchange will adjust or nullify the transaction as described below and promptly notify both parties to the trade electronically or via telephone. The Exchange proposes different adjustment and nullification criteria for Customers and non-Customers.

As proposed, where neither party to the transaction is a Customer, the execution price of the transaction will be adjusted by the Official pursuant to the table below.

Theoretical price (TP)	Buy transaction adjustment—TP plus	Sell transaction adjustment—TP minus
Below $3.00	$0.15	$0.15
At or above $3.00	0.30	0.30

The Exchange believes that it is appropriate to adjust to prices a specified amount away from Theoretical Price rather than to adjust to Theoretical Price because even though the Exchange has determined a given trade to be erroneous in nature, the parties in question should have had some expectation of execution at the price or prices submitted. Also, it is common that by the time it is determined that an obvious error has occurred additional hedging and trading activity has already occurred based on the executions that previously happened. The Exchange is concerned that an adjustment to Theoretical Price in all cases would not appropriately incentivize market participants to maintain appropriate controls to avoid potential errors.

Further, as proposed any non-Customer Obvious Error exceeding 50 contracts will be subject to the Size Adjustment Modifier described above. The Exchange believes that it is appropriate to apply the Size Adjustment Modifier to non-Customer orders because the hedging cost associated with trading larger sized options orders and the market impact of larger blocks of underlying can be significant.

As an example of the application of the Size Adjustment Modifier, assume Exchange A has a quoted bid to buy 50 contracts at $2.50, Exchange B has a quoted bid to buy 100 contracts at $2.05 and there is no other options exchange quoting a bid priced higher than $2.00. Assume that the NBBO is $2.50 by $3.00. Finally, assume that all orders quoted and submitted to Exchange B in connection with this example are non-Customer orders.

- Assume Exchange A's quoted bid at $2.50 is either executed or cancelled.
- Assume Exchange B immediately thereafter receives an incoming market order to sell 100 contracts.
- The incoming order would be executed against Exchange B's resting bid at $2.05 for 100 contracts.
- Because the 100 contract execution of the incoming sell order was priced at $2.05, which is $0.45 below the Theoretical Price of $2.50, the 100 contract execution would qualify for adjustment as an Obvious Error.
- The normal adjustment process would adjust the execution of the 100 contracts to $2.35 per contract, which is the Theoretical Price minus $0.15.
- However, because the execution would qualify for the Size Adjustment Modifier of 2 times the adjustment price, the adjusted transaction would instead be to $2.20 per contract, which is the Theoretical Price minus $0.30.

By reference to the example above, the Exchange reiterates that it believes that a Size Adjustment Modifier is appropriate, as the buyer in this example was originally willing to buy 100 contracts at $2.05 and ended up paying $2.20 per contract for such execution. Without the Size Adjustment Modifier the buyer would have paid $2.35 per contract. Such buyer may be advantaged by the trade if the Theoretical Price is indeed closer to $2.50 per contract, however the buyer may not have wanted to buy so many contracts at a higher price and does incur increasing cost and risk due to the additional size of their quote. Thus, the proposed rule is attempting to strike a balance between various competing objectives, including recognition of cost and risk incurred in quoting larger size and incentivizing market participants to maintain appropriate controls to avoid errors.

In contrast to non-Customer orders, where trades will be adjusted if they qualify as Obvious Errors, pursuant the Proposed Rule a trade that qualifies as an Obvious Error will be nullified where at least one party to the Obvious Error is a Customer. The Exchange also proposes, however, that if any Member submits requests to the Exchange for review of transactions pursuant to the Proposed Rule, and in aggregate that Member has 200 or more Customer transactions under review concurrently and the orders resulting in such transactions were submitted during the course of 2 minutes or less, where at least one party to the Obvious Error is a non-Customer, the Exchange will apply the non-Customer adjustment criteria described above to such transactions. The Exchange based its proposal of 200 transactions on the fact that the proposed level is reasonable as it is representative of an extremely large number of orders submitted to the Exchange that are, in turn, possibly erroneous. Similarly, the Exchange based its proposal of orders received in 2 minutes or less on the fact that this is a very short amount of time under which one Member could generate multiple erroneous transactions. In order for a participant to have more than 200 transactions under review concurrently when the orders triggering such transactions were received in 2 minutes or less, the market participant will have far exceeded the normal behavior of customers deserving protected status.[8] While the Exchange continues to believe that it is appropriate to nullify transactions in such a circumstance if both participants to a transaction are Customers, the Exchange does not believe it is appropriate to place the overall risk of a significant number of trade breaks on non-Customers that in the normal course of business may have engaged in additional hedging activity or trading activity based on such transactions. Thus, the Exchange believes it is necessary and appropriate to protect non-Customers in such a circumstance by applying the non-Customer adjustment criteria, and thus adjusting transactions as set forth above, in the event a Member has more than 200 transactions under review concurrently.

Catastrophic Errors

Consistent with the Current Rule, the Exchange proposes to adopt separate numerical thresholds for review of transactions for which the Exchange does not receive a filing requesting review within the Obvious Error timeframes set forth above. Based on this review these transactions may qualify as ''Catastrophic Errors.'' As proposed, a Catastrophic Error will be deemed to have occurred when the execution price of a transaction is higher or lower than the Theoretical Price for the series by an amount equal to at least the amount shown below:

Theoretical price	Minimum amount
Below $2.00	$0.50
$2.00 to $5.00	1.00
Above $5.00 to $10.00	1.50
Above $10.00 to $20.00	2.00
Above $20.00 to $50.00	2.50
Above $50.00 to $100.00	3.00
Above $100.00	4.00

Based on industry feedback on the Catastrophic Error thresholds set forth under the Current Rule, the thresholds proposed as set forth above are more granular and lower (*i.e.,* more likely to qualify) than the thresholds under the Current Rule. As noted above, under the Proposed Rule as well as the Current Rule, parties have additional time to submit transactions for review as Catastrophic Errors. As proposed, notification requesting review must be received by the Exchange's Market Control by 8:30 a.m. Eastern Time on the first trading day following the execution. For transactions in an expiring options series that take place on an expiration day, a party must notify the Exchange's Market Control within 45 minutes after the close of trading that same day. As is true for requests for review under the Obvious Error provision of the Proposed Rule, a party requesting review of a transaction as a Catastrophic Error must notify the Exchange's Market Control in the manner specified from time to time by the Exchange in a circular distributed to Members. By definition, any execution that qualifies as a Catastrophic Error is also an Obvious Error. However, the Exchange believes it is appropriate to maintain these two types of errors because the Catastrophic Error provisions provide market participants with a longer notification period under which they may file a request for review with the Exchange of a potential Catastrophic Error than a potential Obvious Error. This provides an additional level of protection for transactions that are severely erroneous even in the event a participant does not submit a request for review in a timely fashion.

The Proposed Rule would specify the action to be taken by the Exchange if it is determined that a Catastrophic Error has occurred, as described below, and would require the Exchange to promptly notify both parties to the trade electronically or via telephone. In the event of a Catastrophic Error, the execution price of the transaction will be adjusted by the Official pursuant to the table below.

Theoretical Price (TP)	Buy transaction adjustment—TP plus	Sell transaction adjustment—TP minus
Below $2.00	$0.50	$0.50
$2.00 to $5.00	1.00	1.00
Above $5.00 to $10.00	1.50	1.50
Above $10.00 to $20.00	2.00	2.00
Above $20.00 to $50.00	2.50	2.50
Above $50.00 to $100.00	3.00	3.00
Above $100.00	4.00	4.00

Although Customer orders would be adjusted in the same manner as non-Customer orders, any Customer order that qualifies as a Catastrophic Error will be nullified if the adjustment would result in an execution price higher (for buy transactions) or lower (for sell transactions) than the Customer's limit price. Based on industry feedback, the levels proposed above with respect to adjustment amounts are the same levels as the thresholds at which a transaction may be deemed a Catastrophic Error pursuant to the chart set forth above.

As is true for Obvious Errors as described above, the Exchange believes that it is appropriate to adjust to prices a specified amount away from Theoretical Price rather than to adjust to Theoretical Price because even though the Exchange has determined a given trade to be erroneous in nature, the parties in question should have had some expectation of execution at the price or prices submitted. Also, it is common that by the time it is determined that a Catastrophic Error has occurred additional hedging and trading activity has already occurred based on the executions that previously happened. The Exchange is concerned that an adjustment to Theoretical Price in all cases would not appropriately incentivize market participants to maintain appropriate controls to avoid potential errors. Further, the Exchange believes it is appropriate to maintain a higher adjustment level for Catastrophic

[8] The Exchange notes that in the third quarter of this year across all options exchanges the average number of valid Customer orders received and executed was less than 38 valid orders every two minutes. The number of obvious errors resulting from valid orders is, of course, a very small fraction of such orders.

Errors than Obvious Errors given the significant additional time that can potentially pass before an adjustment is requested and applied and the amount of hedging and trading activity that can occur based on the executions at issue during such time. For the same reasons, other than honoring the limit prices established for Customer orders, the Exchange has proposed to treat all market participants the same in the context of the Catastrophic Error provision. Specifically, the Exchange believes that treating market participants the same in this context will provide additional certainty to market participants with respect to their potential exposure and hedging activities, including comfort that even if a transaction is later adjusted (*i.e.,* past the standard time limit for filing under the Obvious Error provision), such transaction will not be fully nullified. However, as noted above, under the Proposed Rule where at least one party to the transaction is a Customer, the trade will be nullified if the adjustment would result in an execution price higher (for buy transactions) or lower (for sell transactions) than the Customer's limit price. The Exchange has retained the protection of a Customer's limit price in order to avoid a situation where the adjustment could be to a price that the Customer could not afford, which is less likely to be an issue for a market professional.

Significant Market Events

In order to improve consistency for market participants in the case of a widespread market event and in light of the interconnected nature of the options exchanges, the Exchange proposes to adopt a new provision that calls for coordination between the options exchanges in certain circumstances and provides limited flexibility in the application of other provisions of the Proposed Rule in order to promptly respond to a widespread market event.[9] The Exchange proposes to describe such an event as a Significant Market Event, and to set forth certain objective criteria that will determine whether such an event has occurred. The Exchange developed these objective criteria in consultation with the other options exchanges by reference to historical patterns and events with a goal of setting thresholds that very rarely will be triggered so as to limit the application of the provision to truly significant market events. As proposed, a Significant Market Event will be deemed to have occurred when proposed criterion (A) below is met or exceeded or the sum of all applicable event statistics, where each is expressed as a percentage of the relevant threshold in criteria (A) through (D) below, is greater than or equal to 150% and 75% or more of at least one category is reached, provided that no single category can contribute more than 100% to the sum. All criteria set forth below will be measured in aggregate across all exchanges.

The proposed criteria for determining a Significant Market Event are as follows:

(A) Transactions that are potentially erroneous would result in a total Worst-Case Adjustment Penalty of $30,000,000, where the Worst-Case Adjustment Penalty is computed as the sum, across all potentially erroneous trades, of: (i) $0.30 (*i.e.,* the largest Transaction Adjustment value listed in sub-paragraph (e)(3)(A) below); times; (ii) the contract multiplier for each traded contract; times (iii) the number of contracts for each trade; times (iv) the appropriate Size Adjustment Modifier for each trade, if any, as defined in sub-paragraph (e)(3)(A) below;

(B) Transactions involving 500,000 options contracts are potentially erroneous;

(C) Transactions with a notional value (*i.e.,* number of contracts traded multiplied by the option premium multiplied by the contract multiplier) of $100,000,000 are potentially erroneous;

(D) 10,000 transactions are potentially erroneous.

As described above, the Exchange proposes to adopt a Worst Case Adjustment Penalty, proposed as criterion (A), which is the only criterion that can on its own result in an event being designated as a significant market event. The Worst Case Adjustment Penalty is intended to develop an objective criterion that can be quickly determined by the Exchange in consultation with other options exchanges that approximates the total overall exposure to market participants on the negatively impacted side of each transaction that occurs during an event. If the Worst Case Adjustment criterion is equal to or exceeds $30,000,000, then an event is a Significant Market Event. As an example of the Worst Case Adjustment Penalty, assume that a single potentially erroneous transaction in an event is as follows: sale of 100 contracts of a standard option (*i.e.,* an option with a 100 share multiplier). The highest potential adjustment penalty for this single transaction would be $6,000, which would be calculated as $0.30 times 100 (contract multiplier) times 100 (number of contracts) times 2 (applicable Size Adjustment Modifier). The Exchange would calculate the highest potential adjustment penalty for each of the potentially erroneous transactions in the event and the Worst Case Adjustment Penalty would be the sum of such penalties on the Exchange and all other options exchanges with affected transactions.

As described above, under the Proposed Rule if the Worst Case Adjustment Penalty does not equal or exceed $30,000,000, then a Significant Market Event has occurred if the sum of all applicable event statistics (expressed as a percentage of the relevant thresholds), is greater than or equal to 150% and 75% or more of at least one category is reached. The Proposed Rule further provides that no single category can contribute more than 100% to the sum. As an example of the application of this provision, assume that in a given event across all options exchanges that: (A) the Worst Case Adjustment Penalty is $12,000,000 (40% of $30,000,000), (B) 300,000 options contracts are potentially erroneous (60% of 500,000), (C) the notional value of potentially erroneous transactions is $30,000,000 (30% of $100,000,000), and (D) 12,000 transactions are potentially erroneous (120% of 10,000). This event would qualify as a Significant Market Event because the sum of all applicable event statistics would be 230%, far exceeding the 150% threshold. The 230% sum is reached by adding 40%, 60%, 30% and last, 100% (*i.e.,* rounded down from 120%) for the number of transactions. The Exchange notes that no single category can contribute more than 100% to the sum and any category contributing more than 100% will be rounded down to 100%.

As an alternative example, assume a large-scale event occurs involving low-priced options with a small number of contracts in each execution. Assume in this event across all options exchanges that: (A) the Worst Case Adjustment Penalty is $600,000 (2% of $30,000,000), (B) 20,000 options contracts are potentially erroneous (4% of 500,000), (C) the notional value of potentially erroneous transactions is $20,000,000 (20% of $100,000,000), and (D) 20,000 transactions are potentially erroneous (200% of 10,000, but rounded

[9] Although the Exchange has proposed a specific provision related to coordination amongst options exchanges in the context of a widespread event, the Exchange does not believe that the Significant Market Event provision or any other provision of the proposed rule alters the Exchange's ability to coordinate with other options exchanges in the normal course of business with respect to market events or activity. The Exchange does already coordinate with other options exchanges to the extent possible if such coordination is necessary to maintain a fair and orderly market and/or to fulfill the Exchange's duties as a self-regulatory organization.

down to 100%). This event would not qualify as a Significant Market Event because the sum of all applicable event statistics would be 126%, below the 150% threshold. The Exchange reiterates that as proposed, even when a single category other than criterion (A) is fully met, that does not necessarily qualify an event as a Significant Market Event.

The Exchange believes that the breadth and scope of the obvious error rules are appropriate and sufficient for handling of typical and common obvious errors. Coordination between and among the exchanges should generally not be necessary even when a member has an error that results in executions on more than one exchange. In setting the thresholds above the Exchange believes that the requirements will be met only when truly widespread and significant errors happen and the benefits of coordination and information sharing far outweigh the costs of the logistics of additional intra-exchange coordination. The Exchange notes that in addition to its belief that the proposed thresholds are sufficiently high, the Exchange has proposed the requirement that either criterion (A) is met or exceeded or the sum of applicable event statistics for proposed (A) through (D) equals or exceeds 150% in order to ensure that an event is sufficiently large but also to avoid situations where an event is extremely large but just misses potential qualifying thresholds. For instance, the proposal is designed to help avoid a situation where the Worst Case Adjustment Penalty is $15,000,000, so the event does not qualify based on criterion (A) alone, but there are transactions in 490,000 options contracts that are potentially erroneous (missing criterion (B) by 10,000 contracts), there are transactions with a notional value of $99,000,000 (missing criterion (C) by $1,000,000), and there are 9,000 potentially erroneous transactions overall (missing criterion (D) by 1,000 transactions). The Exchange believes that the proposed formula, while slightly more complicated than simply requiring a certain threshold to be met in each category, may help to avoid inapplicability of the proposed provisions in the context of an event that would be deemed significant by most subjective measures but that barely misses each of the objective criteria proposed by the Exchange.

To ensure consistent application across options exchanges, in the event of a suspected Significant Market Event, the Exchange shall initiate a coordinated review of potentially erroneous transactions with all other affected options exchanges to determine the full scope of the event. Under the Proposed Rule, the Exchange will promptly coordinate with the other options exchanges to determine the appropriate review period as well as select one or more specific points in time prior to the transactions in question and use one or more specific points in time to determine Theoretical Price. Other than the selected points in time, if applicable, the Exchange will determine Theoretical Price as described above. For example, around the start of a SME that is triggered by a large and aggressively priced buy order, three exchanges have multiple orders on the offer side of the market: Exchange A has offers priced at $2.20, $2.25, $2.30 and several other price levels to $3.00, Exchange B has offers at $2.45, $2.30 and several other price levels to $3.00, Exchange C has offers at price levels between $2.50 and $3.00. Assume an event occurs starting at 10:05:25 a.m. ET and in this particular series the executions begin on Exchange A and subsequently begin to occur on Exchanges B and C. Without coordination and information sharing between the exchanges, Exchange B and Exchange C cannot know with certainty that whether or not the execution at Exchange A that happened at $2.20 immediately prior to their executions at $2.45 and $2.50 is part of the same erroneous event or not. With proper coordination, the exchanges can determine that in this series, the proper point in time from which the event should be analyzed is 10:05:25 a.m. ET, and thus, the NBO of $2.20 should be used as the Theoretical Price for purposes of all buy transactions in such options series that occurred during the event.

If it is determined that a Significant Market Event has occurred then, using the parameters agreed with respect to the times from which Theoretical Price will be calculated, if applicable, an Official will determine whether any or all transactions under review qualify as Obvious Errors. The Proposed Rule would require the Exchange to use the criteria in Proposed Rule 720(c), as described above, to determine whether an Obvious Error has occurred for each transaction that was part of the Significant Market Event. Upon taking any final action, the Exchange would be required to promptly notify both parties to the trade electronically or via telephone.

The execution price of each affected transaction will be adjusted by an Official to the price provided below, unless both parties agree to adjust the transaction to a different price or agree to bust the trade.

Theoretical price (TP)	Buy transaction adjustment—TP plus	Sell transaction adjustment—TP minus
Below $3.00	$0.15	$0.15
At or above $3.00	0.30	0.30

Thus, the proposed adjustment criteria for Significant Market Events are identical to the proposed adjustment levels for Obvious Errors generally. In addition, in the context of a Significant Market Event, any error exceeding 50 contracts will be subject to the Size Adjustment Modifier described above. Also, the adjustment criteria would apply equally to all market participants (*i.e.,* Customers and non-Customers) in a Significant Market Event. However, as is true for the proposal with respect to Catastrophic Errors, under the Proposed Rule where at least one party to the transaction is a Customer, the trade will be nullified if the adjustment would result in an execution price higher (for buy transactions) or lower (for sell transactions) than the Customer's limit price. The Exchange has retained the protection of a Customer's limit price in order to avoid a situation where the adjustment could be to a price that the Customer could not afford, which is less likely to be an issue for a market professional. The Exchange has otherwise proposed to treat all market participants the same in the context of a Significant Market Event to provide additional certainty to market participants with respect to their potential exposure as soon as an event has occurred.

Another significant distinction between the proposed Obvious Error provision and the proposed Significant Market Event provision is that if the Exchange, in consultation with other options exchanges, determines that timely adjustment is not feasible due to the extraordinary nature of the situation, then the Exchange will nullify some or all transactions arising out of the Significant Market Event during the review period selected by the Exchange and other options exchanges. To the extent the Exchange, in consultation with other options exchanges, determines to nullify less than all transactions arising out of the Significant Market Event, those transactions subject to nullification will be selected based upon objective criteria with a view toward maintaining a fair and orderly market and the protection of investors and the public interest. For example, assume a Significant Market Event causes 25,000 potentially erroneous transactions and impacts 51 options classes. Of the 25,000 transactions, 24,000 of them are concentrated in a single options class. The exchanges may decide the most appropriate solution because it will provide the most certainty to participants and allow for the prompt resumption of regular trading is to bust all trades in the most heavily affected class between two specific points in time, while the other 1,000 trades across the other 50 classes are reviewed and adjusted as appropriate. A similar situation might arise directionally where a Customer submits both erroneous buy and sell orders and the number of errors that happened that were erroneously low priced (*i.e.,* erroneous sell orders) were 50,000 in number but the number of errors that were erroneously high (*i.e.,* erroneous buy orders) were only 500 in number. The most effective and efficient approach that provides the most certainty to the marketplace in a reasonable amount of time while most closely following the generally prescribed obvious error rules could be to bust all of the erroneous sell transactions but to adjust the erroneous buy transactions.

With respect to rulings made pursuant to the proposed Significant Market Event provision the Exchange believes that the number of affected transactions is such that immediate finality is necessary to maintain a fair and orderly market and to protect investors and the public interest. Accordingly, rulings by the Exchange pursuant to the Significant Market Event provision would be non-appealable pursuant to the Proposed Rule.

Additional Provisions

Mutual Agreement

In addition to the objective criteria described above, the Proposed Rule also proposes to make clear that the determination as to whether a trade was executed at an erroneous price may be made by mutual agreement of the affected parties to a particular transaction. The Proposed Rule would state that a trade may be nullified or adjusted on the terms that all parties to a particular transaction agree, provided, however, that such agreement to nullify or adjust must be conveyed to the Exchange in a manner prescribed by the Exchange prior to 8:30 a.m. Eastern Time on the first trading day following the execution.

The Exchange also proposes to explicitly state that it is considered conduct inconsistent with just and equitable principles of trade for any Member to use the mutual adjustment process to circumvent any applicable Exchange rule, the Act or any of the rules and regulations thereunder. Thus, for instance, a Member is precluded from seeking to avoid applicable trade-through rules by executing a transaction and then adjusting such transaction to a price at which the Exchange would not have allowed it to execute at the time of the execution because it traded through the quotation of another options exchange. The Exchange notes that in connection with its obligations as a self-regulatory organization, the Exchange's Surveillance Department reviews adjustments to transactions to detect potential violations of Exchange rules or the Act and the rules and regulations thereunder.

Trading Halts

Exchange Rule 702 describes the Exchange's authority to declare trading halts in one or more options traded on the Exchange. The Exchange proposes to make clear in the Proposed Rule that it will nullify any transaction that occurs during a trading halt in the affected option on the Exchange pursuant to Rule 702, or with respect to equity options (including options overlying ETFs), during a regulatory halt as declared by the primary listing market for the underlying security.[10] If any trades occur notwithstanding a trading halt then the Exchange believes it appropriate to nullify such transactions. While trading may be halted for various reasons, such a scenario almost certainly is due to extraordinary circumstances and is potentially the result of market-wide coordination to halt options trading or trading generally. Accordingly, the Exchange does not believe it is appropriate to allow trades to stand if such trades should not have occurred in the first place.

The Exchange currently does not have a rule that permits the nullification of transactions that occur during a trading halt of an option class on the Exchange, or with respect to equity options (including options overlying ETFs), during a regulatory halt as declared by the primary listing market for the underlying security. As part of the harmonization effort, the Exchange proposes to adopt rule text to permit the Exchange to nullify transactions, as described above. The Exchange's ability to nullify the affected transactions will ensure consistency with the trading halt provision of the Proposed Rule.

Erroneous Print and Quotes in Underlying Security

Market participants on the Exchange likely base the pricing of their orders submitted to the Exchange on the price of the underlying security for the option. Thus, the Exchange believes it is appropriate to adopt provisions that allow adjustment or nullification of transactions based on erroneous prints or erroneous quotes in the underlying security.

The Exchange proposes to adopt language in the Proposed Rule stating that a trade resulting from an erroneous print(s) disseminated by the underlying market that is later nullified by that underlying market shall be adjusted or busted as set forth in the Obvious Error provisions of the Proposed Rule, provided a party notifies the Exchange's Market Control in a timely manner, as further described below. The Exchange proposes to define a trade resulting from an erroneous print(s) as any options trade executed during a period of time for which one or more executions in the underlying security are nullified and for one second thereafter. The Exchange believes that one second is an appropriate amount of time in which an options trade would be directly based on executions in the underlying equity security. The Exchange also proposes to require that if a party believes that it participated in an erroneous transaction resulting from an erroneous print(s) pursuant to the proposed erroneous print provision it must notify the Exchange's Market Control within the timeframes set forth in the Obvious Error provision described above. The

[10] After a regulatory halt, if it is determined that trading should resume according to Rule 702(b), trades occurring after the resumption will be valid and not subject to nullification under Supplementary Material .01(b) to Rule 702, unless trading is subsequently subject to another separate regulatory halt.

Exchange has also proposed to state that the allowed notification timeframe commences at the time of notification by the underlying market(s) of nullification of transactions in the underlying security. Further, the Exchange proposes that if multiple underlying markets nullify trades in the underlying security, the allowed notification timeframe will commence at the time of the first market's notification.

As an example of a situation in which a trade results from an erroneous print disseminated by the underlying market that is later nullified by the underlying market, assume that a given underlying is trading in the $49.00–$50.00 price range then has an erroneous print at $5.00. Given that there is the potential perception that the underlying has gone through a dramatic price revaluation, numerous options trades could promptly trigger based off of this new price. However, because the price that triggered them was not a valid price it would be appropriate to review said option trades when the underlying print that triggered them is removed.

The Exchange also proposes to add a provision stating that a trade resulting from an erroneous quote(s) in the underlying security shall be adjusted or busted as set forth in the Obvious Error provisions of the Proposed Rule, provided a party notifies the Exchange's Market Control in a timely manner, as further described below. Pursuant to the Proposed Rule, an erroneous quote occurs when the underlying security has a width of at least $1.00 and has a width at least five times greater than the average quote width for such underlying security during the time period encompassing two minutes before and after the dissemination of such quote. For purposes of the Proposed Rule, the average quote width will be determined by adding the quote widths of sample quotations at regular 15-second intervals during the four-minute time period referenced above (excluding the quote(s) in question) and dividing by the number of quotes during such time period (excluding the quote(s) in question).[11] Similar to the proposal with respect to erroneous prints described above, if a party believes that it participated in an erroneous transaction resulting from an erroneous quote(s) it must notify the Exchange's Market Control in accordance with the notification provisions of the Obvious Error provision described above. The Proposed Rule, therefore, puts the onus on each Member to notify the Exchange if such Member believes that a trade should be reviewed pursuant to either of the proposed provisions, as the Exchange is not in position to determine the impact of erroneous prints or quotes on individual Members. The Exchange notes that it does not believe that additional time is necessary with respect to a trade based on an erroneous quote because a Member has all information necessary to detect the error at the time of an option transaction that was triggered by an erroneous quote, which is in contrast to the proposed erroneous print provision that includes a dependency on an action by the market where the underlying security traded.

As an example of a situation in which a trade results from an erroneous quote in the underlying security, assume again that a given underlying is quoting and trading in the $49.00–$50.00 price range then a liquidity gap occurs, with bidders not representing quotes in the market place and an offer quoted at $5.00. Quoting may quickly return to normal, again in the $49.00–$50.00 price range, but due to the potential perception that the underlying has gone through a dramatic price revaluation, numerous options trades could trigger based off of this new quoted price in the interim. Because the price that triggered such trades was not a valid price it would be appropriate to review said option trades.

Stop (and Stop-Limit) Order Trades Triggered by Erroneous Trades

The Exchange notes that certain market participants and their customers enter stop or stop limit orders that are triggered based on executions in the marketplace. As proposed, transactions resulting from the triggering of a stop or stop-limit order by an erroneous trade in an option contract shall be nullified by the Exchange, provided a party notifies the Exchange's Market Control in a timely manner as set forth below. The Exchange believes it is appropriate to nullify executions of stop or stop-limit orders that were wrongly triggered because such transactions should not have occurred. If a party believes that it participated in an erroneous transaction pursuant to the Proposed Rule it must notify the Exchange's Market Control within the timeframes set forth in the Obvious Error Rule above, with the allowed notification timeframe commencing at the time of notification of the nullification of transaction(s) that triggered the stop or stop-limit order.

Linkage Trades

The Exchange also proposes to adopt language that clearly provides the Exchange with authority to take necessary actions when another options exchange nullifies or adjusts a transaction pursuant to its respective rules and the transaction resulted from an order that has passed through the Exchange and been routed on to another options exchange on behalf of the Exchange. Specifically, if the Exchange routes an order pursuant to the Options Order Protection and Locked/Crossed Market Plan[12] that results in a transaction on another options exchange (a "Linkage Trade") and such options exchange subsequently nullifies or adjusts the Linkage Trade pursuant to its rules, the Exchange will perform all actions necessary to complete the nullification or adjustment of the Linkage Trade. Although the Exchange is not utilizing its own authority to nullify or adjust a transaction related to an action taken on a Linkage Trade by another options exchange, the Exchange does have to assist in the processing of the adjustment or nullification of the order, such as notification to the Member and the OCC of the adjustment or nullification. Thus, the Exchange believes that the proposed provision adds additional transparency to the Proposed Rule.

Appeals

The Exchange proposes to generally maintain its current appeals process in connection with the Proposed Rule with minor adjustments to accommodate a harmonized rule. Specifically, if a Member affected by a determination made under the Proposed Rule requests within the time permitted below, the Obvious Error Panel ("Obvious Error Panel") will review decisions made by the Exchange Official, including whether an obvious error occurred and whether the correct determination was made.

In order to maintain a diverse group of participants, the Obvious Error Panel will be comprised of representatives from four (4) Members. Two (2) of the representatives must be directly engaged in market making (any such representative, a "MM Representative") and the other two (2) representatives must be employed by an Electronic Access Member (any such representative, a "Non-MM

[11] The Exchange has proposed the price and time parameters for quote width and average quote width used to determine whether an erroneous quote has occurred based on established rules of options exchanges that currently apply such parameters. *See, e.g.,* CBOE Rule 6.25(a)(5); NYSE Arca Rule 6.87(a)(5). Based on discussions with these exchanges, the Exchange believes that the parameters are a reasonable approach to determine whether an erroneous quote has occurred for purposes of the proposed rule.

[12] As defined in Exchange Rule 1900(n).

Representative'').[13] To qualify as a Non-MM Representative a person must: Be employed by a Member whose revenues from options market making activity do not exceed ten percent (10%) of its total revenues; or have as his or her primary responsibility the handling of Public Customer orders or supervisory responsibility over persons with such responsibility, and not have any responsibilities with respect to market making activities.

In order to further assure a diverse group of potential participants on an Obvious Error Panel, the Exchange shall designate at least ten (10) MM Representatives and at least ten (10) Non-MM Representatives to be called upon to serve on the Obvious Error Panel as needed. To assure fairness, in no case shall an Obvious Error Panel include a person affiliated with a party to the trade in question. Also, to the extent reasonably possible, the Exchange shall call upon the designated representatives to participate on an Obvious Error Panel on an equally frequent basis.

Under the Proposed Rule a request for review on appeal must be made in writing via email or other electronic means specified from time to time by the Exchange in a circular distributed to Members within thirty (30) minutes after the party making the appeal is given notification of the initial determination being appealed. The Obvious Error Panel shall review the facts and render a decision as soon as practicable, but generally on the same trading day as the execution(s) under review. On requests for appeal received after 3:00 p.m. Eastern Time, a decision will be rendered as soon as practicable, but in no case later than the trading day following the date of the execution under review.

The Obvious Error Panel may overturn or modify an action taken by the Exchange Official under this Rule. All determinations by the Obvious Error Panel shall constitute final action by the Exchange on the matter at issue. The Exchange believes that this is necessary given the purpose of the appeal is finality.

In order to deter frivolous appeals, if the Obvious Error Panel votes to uphold the decision made pursuant to the Proposed Rule, the Exchange will assess a $5,000.00 fee against the Member(s) who initiated the request for appeal. In addition, in instances where the Exchange, on behalf of a Member, requests a determination by another market center that a transaction is clearly erroneous, the Exchange will pass any resulting charges through to the relevant Member.

Any determination by an Official or by the Obvious Error Panel shall be rendered without prejudice as to the rights of the parties to the transaction to submit their dispute to arbitration.

Limit Up-Limit Down Plan

The Exchange is proposing to adopt Supplementary Material .01 to the Proposed Rule to provide for how the Exchange will treat Obvious and Catastrophic Errors in response to the Regulation NMS Plan to Address Extraordinary Market Volatility Pursuant to Rule 608 of Regulation NMS under the Act (the ''Limit Up-Limit Down Plan'' or the ''Plan),[14] which is applicable to all NMS stocks, as defined in Regulation NMS Rule 600(b)(47).[15] Under the Proposed Rule, during a pilot period to coincide with the pilot period for the Plan, including any extensions to the pilot period for the Plan, an execution will not be subject to review as an Obvious Error or Catastrophic Error pursuant to paragraph (c) or (d) of the Proposed Rule if it occurred while the underlying security was in a ''Limit State'' or ''Straddle State,'' as defined in the Plan. The Exchange, however, proposes to retain authority to review transactions on an Official's own motion pursuant to sub-paragraph (c)(3) of the Proposed Rule and to bust or adjust transactions pursuant to the proposed Significant Market Event provision, the proposed trading halts provision, the proposed provisions with respect to erroneous prints and quotes in the underlying security, or the proposed provision related to stop and stop limit orders that have been triggered by an erroneous execution. The Exchange believes that these safeguards will provide the Exchange with the flexibility to act when necessary and appropriate to nullify or adjust a transaction, while also providing market participants with certainty that, under normal circumstances, the trades they affect with quotes and/or orders having limit prices will stand irrespective of subsequent moves in the underlying security.

During a Limit or Straddle State, options prices may deviate substantially from those available immediately prior to or following such States. Thus, determining a Theoretical Price in such situations would often be very subjective, creating unnecessary uncertainty and confusion for investors. Because of this uncertainty, the Exchange is proposing to amend Rule 720 to provide that the Exchange will not review transactions as Obvious Errors or Catastrophic Errors when the underlying security is in a Limit or Straddle State.

The Exchange notes that there are additional protections in place outside of the Obvious and Catastrophic Error Rule that will continue to safeguard customers. First, the Exchange rejects all un-priced options orders received by the Exchange (*i.e.,* Market Orders) during a Limit or Straddle State for the underlying security. Second, SEC Rule 15c3–5 requires that, ''financial risk management controls and supervisory procedures must be reasonably designed to prevent the entry of orders that exceed appropriate pre-set credit or capital thresholds, or that appear to be erroneous.'' [16] Third, the Exchange has price checks applicable to limit orders that reject limit orders that are priced sufficiently far through the national best bid or national best offer (''NBBO'') that it seems likely an error occurred. The rejection of Market Orders, the requirements placed upon broker dealers to adopt controls to prevent the entry of orders that appear to be erroneous, and Exchange functionality that filters out orders that appear to be erroneous, will all serve to sharply reduce the incidence of erroneous transactions.

The Exchange represents that it will conduct its own analysis concerning the elimination of the Obvious Error and Catastrophic Error provisions during Limit and Straddle States and agrees to provide the Commission with relevant data to assess the impact of this proposed rule change. As part of its analysis, the Exchange will evaluate (1) the options market quality during Limit and Straddle States, (2) assess the character of incoming order flow and transactions during Limit and Straddle States, and (3) review any complaints from Members and their customers concerning executions during Limit and Straddle States. The Exchange also agrees to provide to the Commission data requested to evaluate the impact of the inapplicability of the Obvious Error and Catastrophic Error provisions, including data relevant to assessing the various analyses noted above.

[13] The composition of the Obvious Error Panel will be similar to that of the Review Panel currently utilized by the Exchange to determine whether erroneous trades due to system disruptions and malfunctions should be adjusted or nullified. *See* ISE Rule 720A.

[14] Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012) (order approving the Plan on a pilot basis).

[15] 17 CFR 242.600(b)(47).

[16] *See* Securities and Exchange Act Release No. 63241 (November 3, 2010), 75 FR 69791 (November 15, 2010) (File No. S7–03–10).

In connection with this proposal, the Exchange will provide to the Commission and the public a dataset containing the data for each Straddle State and Limit State in NMS Stocks underlying options traded on the Exchange beginning in the month during which the proposal is approved, limited to those option classes that have at least one (1) trade on the Exchange during a Straddle State or Limit State. For each of those option classes affected, each data record will contain the following information:

- Stock symbol, option symbol, time at the start of the Straddle or Limit State, an indicator for whether it is a Straddle or Limit State.
- For activity on the Exchange:
  - Executed volume, time-weighted quoted bid-ask spread, time-weighted average quoted depth at the bid, time-weighted average quoted depth at the offer;
  - high execution price, low execution price;
  - number of trades for which a request for review for error was received during Straddle and Limit States;
  - an indicator variable for whether those options outlined above have a price change exceeding 30% during the underlying stock's Limit or Straddle State compared to the last available option price as reported by OPRA before the start of the Limit or Straddle State (1 if observe 30% and 0 otherwise). Another indicator variable for whether the option price within five minutes of the underlying stock leaving the Limit or Straddle State (or halt if applicable) is 30% away from the price before the start of the Limit or Straddle State.

In addition, by May 29, 2015, the Exchange shall provide to the Commission and the public assessments relating to the impact of the operation of the Obvious Error rules during Limit and Straddle States as follows: (1) Evaluate the statistical and economic impact of Limit and Straddle States on liquidity and market quality in the options markets; and (2) Assess whether the lack of Obvious Error rules in effect during the Straddle and Limit States are problematic. The timing of this submission would coordinate with Participants' proposed time frame to submit to the Commission assessments as required under Appendix B of the Plan. The Exchange notes that the pilot program is intended to run concurrent with the pilot period of the Plan, which has been extended to October 23, 2015. The Exchange proposes to reflect this date in the Proposed Rule.

No Adjustments to a Worse Price

Finally, the Exchange proposes to include Supplementary Material .02 to the Proposed Rule, which would make clear that to the extent the provisions of the proposed Rule would result in the Exchange applying an adjustment of an erroneous sell transaction to a price lower than the execution price or an erroneous buy transaction to a price higher than the execution price, the Exchange will not adjust or nullify the transaction, but rather, the execution price will stand.

Implementation Date

In order to ensure that other options exchanges are able to adopt rules consistent with this proposal and to coordinate the effectiveness of such harmonized rules, the Exchange proposes to delay the operative date of this proposal to May 8, 2015.

2. Statutory Basis

The Exchange believes that its proposal is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of section 6(b) of the Act.[17] Specifically, the proposal is consistent with section 6(b)(5) of the Act[18] because it would promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of, a free and open market and a national market system, and, in general, protect investors and the public interest.

As described above, the Exchange and other options exchanges are seeking to adopt harmonized rules related to the adjustment and nullification of erroneous options transactions. The Exchange believes that the Proposed Rule will provide greater transparency and clarity with respect to the adjustment and nullification of erroneous options transactions. Particularly, the proposed changes seek to achieve consistent results for participants across U.S. options exchanges while maintaining a fair and orderly market, protecting investors and protecting the public interest. Based on the foregoing, the Exchange believes that the proposal is consistent with section 6(b)(5) of the Act[19] in that the Proposed Rule will foster cooperation and coordination with persons engaged in regulating and facilitating transactions.

[17] 15 U.S.C. 78f(b).

[18] 15 U.S.C. 78f(b)(5).

[19] 15 U.S.C. 78f(b)(5).

The Exchange believes the various provisions allowing or dictating adjustment rather than nullification of a trade are necessary given the benefits of adjusting a trade price rather than nullifying the trade completely. Because options trades are used to hedge, or are hedged by, transactions in other markets, including securities and futures, many Members, and their customers, would rather adjust prices of executions rather than nullify the transactions and, thus, lose a hedge altogether. As such, the Exchange believes it is in the best interest of investors to allow for price adjustments as well as nullifications. The Exchange further discusses specific aspects of the Proposed Rule below.

The Exchange does not believe that the proposal is unfairly discriminatory, even though it differentiates in many places between Customers and non-Customers. The rules of the options exchanges, including the Exchange's existing Obvious Error provision, often treat Customers differently, often affording them preferential treatment. This treatment is appropriate in light of the fact that Customers are not necessarily immersed in the day-to-day trading of the markets, are less likely to be watching trading activity in a particular option throughout the day, and may have limited funds in their trading accounts. At the same time, the Exchange reiterates that in the U.S. options markets generally there is significant retail customer participation that occurs directly on (and only on) options exchanges such as the Exchange. Accordingly, differentiating among market participants with respect to the adjustment and nullification of erroneous options transactions is not unfairly discriminatory because it is reasonable and fair to provide Customers with additional protections as compared to non-Customers.

The Exchange believes that its proposal with respect to the allowance of mutual agreed upon adjustments or nullifications is appropriate and consistent with the Act, as such proposal removes impediments to and perfects the mechanism of a free and open market and a national market system, allowing participants to mutually agree to correct an erroneous transactions without the Exchange mandating the outcome. The Exchange also believes that its proposal with respect to mutual adjustments is consistent with the Act because it is designed to prevent fraudulent and manipulative acts and practices by explicitly stating that it is considered conduct inconsistent with just and equitable principles of trade for any

Member to use the mutual adjustment process to circumvent any applicable Exchange rule, the Act or any of the rules and regulations thereunder.

The Exchange believes its proposal to provide within the Proposed Rule definitions of Customer, erroneous sell transaction and erroneous buy transaction, and Official is consistent with section 6(b)(5) of the Act because such terms will provide more certainty to market participants as to the meaning of the Proposed Rule and reduce the possibility that a party can intentionally submit an order hoping for the market to move in their favor in reliance on the Rule as a safety mechanism, thereby promoting just and fair principles of trade. Similarly, the Exchange believes that proposed Supplementary Material .02 is consistent with the Act as it would make clear that the Exchange will not adjust or nullify a transaction, but rather, the execution price will stand when the applicable adjustment criteria would actually adjust the price of the transaction to a worse price (*i.e.,* higher for an erroneous buy or lower for an erroneous sell order).

As set forth below, the Exchange believes it is consistent with section 6(b)(5) of the Act for the Exchange to determine Theoretical Price when the NBBO cannot reasonably be relied upon because the alternative could result in transactions that cannot be adjusted or nullified even when they are otherwise clearly at a price that is significantly away from the appropriate market for the option. Similarly, reliance on an NBBO that is not reliable could result in adjustment to prices that are still significantly away from the appropriate market for the option.

The Exchange believes that its proposal with respect to determining Theoretical Price is consistent with the Act in that it has retained the standard of the current rule, which is to rely on the NBBO to determine Theoretical Price if such NBBO can reasonably be relied upon. Because, however, there is not always an NBBO that can or should be used in order to administer the rule, the Exchange has proposed various provisions that provide the Exchange with the authority to determine a Theoretical Price. The Exchange believes that the Proposed Rule is transparent with respect to the circumstances under which the Exchange will determine Theoretical Price, and has sought to limit such circumstances as much as possible. The Exchange notes that Exchange personnel currently are required to determine Theoretical Price in certain circumstances. While the Exchange continues to pursue alternative solutions that might further enhance the objectivity and consistency of determining Theoretical Price, the Exchange believes that the discretion currently afforded to Exchange Officials is appropriate in the absence of a reliable NBBO that can be used to set the Theoretical Price.

With respect to the specific proposed provisions for determining Theoretical Price for transactions that occur during the opening rotation and in situations where there is a wide quote, the Exchange believes both provisions are consistent with the Act because they provide objective criteria that will determine Theoretical Price with limited exceptions for situations where the Exchange does not believe the NBBO is a reasonable benchmark or there is no NBBO. The Exchange notes in particular with respect to the wide quote provision that the Proposed Rule will result in the Exchange determining Theoretical Price less frequently than it would pursuant to wide quote provisions that have previously been approved. The Exchange believes that it is appropriate and consistent with the Act to afford protections to market participants by not relying on the NBBO to determine Theoretical Price when the quote is extremely wide but had been, in the prior 10 seconds, at much more reasonable width. The Exchange also believes it is appropriate and consistent with the Act to use the NBBO to determine Theoretical Price when the quote has been wider than the applicable amount for more than 10 seconds, as the Exchange does not believe it is necessary to apply any other criteria in such a circumstance. The Exchange believes that market participants can easily use or adopt safeguards to prevent errors when such market conditions exist. When entering an order into a market with a persistently wide quote, the Exchange does not believe that the entering party should reasonably expect anything other than the quoted price of an option.

The Exchange believes that its proposal to adopt clear but disparate standards with respect to the deadline for submitting a request for review of Customer and non-Customer transactions is consistent with the Act, particularly in that it creates a greater level of protection for Customers. As noted above, the Exchange believes that this is appropriate and not unfairly discriminatory in light of the fact that Customers are not necessarily immersed in the day-to-day trading of the markets and are less likely to be watching trading activity in a particular option throughout the day. Thus, Members representing Customer orders reasonably may need additional time to submit a request for review. The Exchange also believes that its proposal to provide additional time for submission of requests for review of linkage trades is reasonable and consistent with the protection of investors and the public interest due to the time that it might take an options exchange or third-party routing broker to file a request for review with the Exchange if the initial notification of an error is received by the originating options exchange near the end of such options exchange's filing deadline. Without this additional time, there could be disparate results based purely on the existence of intermediaries and an interconnected market structure.

In relation to the aspect of the proposal giving Officials the ability to review transactions for obvious errors on their own motion, the Exchange notes that an Official can adjust or nullify a transaction under the authority granted by this provision only if the transaction meets the specific and objective criteria for an Obvious Error under the Proposed Rule. As noted above, this is designed to give an Official the ability to provide parties relief in those situations where they have failed to report an apparent error within the established notification period. However, the Exchange will only grant relief if the transaction meets the requirements for an Obvious Error as described in the Proposed Rule.

The Exchange believes that its proposal to adjust non-Customer transactions and to nullify Customer transactions that qualify as Obvious Errors is appropriate for reasons consistent with those described above. In particular, Customers are not necessarily immersed in the day-to-day trading of the markets, are less likely to be watching trading activity in a particular option throughout the day, and may have limited funds in their trading accounts.

The Exchange acknowledges that the proposal contains some uncertainty regarding whether a trade will be adjusted or nullified, depending on whether one of the parties is a Customer, because a party may not know whether the other party to a transaction was a Customer at the time of entering into the transaction. However, the Exchange believes that the proposal nevertheless promotes just and equitable principles of trade and protects investors as well as the public interest because it eliminates the possibility that a Customer's order will be adjusted to a significantly different price. As noted above, the Exchange believes it is consistent with the Act to afford Customers greater protections under the Proposed Rule than are afforded to non-Customers. Thus, the Exchange believes that its proposal is consistent with the Act in that it protects investors and the public interest by providing additional protections to those that are less informed and potentially less able to afford an adjustment of a transaction that was executed in error. Customers are also less likely to have engaged in significant hedging or other trading activity based on earlier transactions, and thus, are less in need of maintaining a position at an adjusted price than non-Customers.

If any Member submits requests to the Exchange for review of transactions pursuant to the Proposed Rule, and in aggregate that Member has 200 or more Customer transactions under review concurrently and the orders resulting in such transactions were submitted during the course of 2 minutes or less, the Exchange believes it is appropriate for the Exchange apply the non-Customer adjustment criteria described above to such transactions. The Exchange believes that the proposed aggregation is reasonable as it is representative of an extremely large number of orders submitted to the Exchange over a relatively short period of time that are, in turn, possibly erroneous (and within a time frame significantly less than an entire day), and thus is most likely to occur because of a systems issue experienced by a Member representing Customer orders or a systems issue coupled with the erroneous marking of orders. The Exchange does not believe it is possible at a level of 200 Customer orders over a 2 minute period that are under review at one time that multiple, separate Customers were responsible for the errors in the ordinary course of trading. In the event of a large-scale issue caused by a Member that has submitted orders over a 2 minute period marked as Customer that resulted in more than 200 transactions under review, the Exchange does not believe it is appropriate to nullify all such transactions because of the negative impact that nullification could have on the market participants on the contra-side of such transactions, who might have engaged in hedging and trading activity following such transactions. In order for a participant to have more than 200 transactions under review concurrently when the orders triggering such transactions were received in 2 minutes or less, the Exchange believes that a market participant will have far exceeded the normal behavior of customers deserving protected status. While the Exchange continues to believe that it is appropriate to nullify transactions in such a circumstance if both participants to a transaction are Customers, the Exchange does not believe it is appropriate to place the overall risk of a significant number of trade breaks on non-Customers that in the normal course of business may have engaged in additional hedging activity or trading activity based on such transactions. Thus, the Exchange believes it is necessary and appropriate to protect non-Customers in such a circumstance by applying the non-Customer adjustment criteria, and thus adjusting transactions as set forth above, in the event a Member has more than 200 transactions under review concurrently. In summary, due to the extreme level at which the proposal is set, the Exchange believes that the proposal is consistent with Section 6(b)(5) of the Act in that it promotes just and equitable principles of trade by encouraging market participants to retain appropriate controls over their systems to avoid submitting a large number of erroneous orders in a short period of time.

Similarly, the Exchange believes that the proposed Size Adjustment Modifier, which would increase the adjustment amount for non-Customer transactions, is appropriate because it attempts to account for the additional risk that the parties to the trade undertake for transactions that are larger in scope. The Exchange believes that the Size Adjustment Modifier creates additional incentives to prevent more impactful Obvious Errors and it lessens the impact on the contra-party to an adjusted trade. The Exchange notes that these contra-parties may have preferred to only trade the size involved in the transaction at the price at which such trade occurred, and in trading larger size has committed a greater level of capital and bears a larger hedge risk.

The Exchange similarly believes that its Proposed Rule with respect to Catastrophic Errors is consistent with the Act as it affords additional time for market participants to file for review of erroneous transactions that were further away from the Theoretical Price. At the same time, the Exchange believes that the Proposed Rule is consistent with the Act in that it generally would adjust transactions, including Customer transactions, because this will protect against hedge risk, particularly for transactions that may have occurred several hours earlier and thus, which all parties to the transaction might presume are protected from further modification. Similarly, by providing larger adjustment amounts away from Theoretical Price than are set forth under the Obvious Error provision, the Catastrophic Error provision also takes into account the possibility that the party that was advantaged by the erroneous transaction has already taken actions based on the assumption that the transaction would stand. The Exchange believes it is reasonable to specifically protect Customers from adjustments through their limit prices for the reasons stated above, including that Customers are less likely to be watching trading throughout the day and that they may have less capital to afford an adjustment price. The Exchange believes that the proposal provides a fair process that will ensure that Customers are not forced to accept a trade that was executed in violation of their limit order price. In contrast, market professionals are more likely to have engaged in hedging or other trading activity based on earlier trading activity, and thus, are more likely to be willing to accept an adjustment rather than a nullification to preserve their positions even if such adjustment is to a price through their limit price.

The Exchange believes that proposed rule change to adopt the Significant Market Event provision is consistent with section 6(b)(5) of the Act in that it will foster cooperation and coordination with persons engaged in regulating the options markets. In particular, the Exchange believes it is important for options exchanges to coordinate when there is a widespread and significant event, as commonly, multiple options exchanges are impacted in such an event. Further, while the Exchange recognizes that the Proposed Rule will not guarantee a consistent result for all market participants on every market, the Exchange does believe that it will assist in that outcome. For instance, if options exchanges are able to agree as to the time from which Theoretical Price should be determined and the period of time that should be reviewed, the likely disparity between the Theoretical Prices used by such exchanges should be very slight and, in turn, with otherwise consistent rules, the results should be similar. The Exchange also believes that the Proposed Rule is consistent with the Act in that it generally would adjust transactions, including Customer transactions, because this will protect against hedge risk, particularly for liquidity providers that might have been quoting in thousands or tens of thousands of different series and might have affected executions throughout such quoted series. The Exchange believes that when weighing the competing interests between preferring a nullification for a Customer transaction and an adjustment for a transaction of a market professional, while nullification is appropriate in a typical one-off situation that it is necessary to protect liquidity providers in a widespread market event because, presumably, they will be the most affected by such an event (in contrast to a Customer who, by virtue of their status as such, likely would not have more than a small number of affected transactions). The Exchange believes that the protection of liquidity providers by favoring adjustments in the context of Significant Market Events can also benefit Customers indirectly by better enabling liquidity providers, which provides a cumulative benefit to the market. Also, as stated above with respect to Catastrophic Errors, the Exchange believes it is reasonable to specifically protect Customers from adjustments through their limit prices for the reasons stated above, including that Customers are less likely to be watching trading throughout the day and that they may have less capital to afford an adjustment price. The Exchange believes that the proposal provides a fair process that will ensure that Customers are not forced to accept a trade that was executed in violation of their limit order price. In contrast, market professionals are more likely to have engaged in hedging or other trading activity based on earlier trading activity, and thus, are more likely to be willing to accept an adjustment rather than a nullification to preserve their positions even if such adjustment is to a price through their limit price. In addition, the Exchange believes it is important to have the ability to nullify some or all transactions arising out of a Significant Market Event in the event timely adjustment is not feasible due to the extraordinary nature of the situation. In particular, although the Exchange has worked to limit the circumstances in which it has to determine Theoretical Price, in a widespread event it is possible that hundreds if not thousands of series would require an Exchange determination of Theoretical Price. In turn, if there are hundreds or thousands of trades in such series, it may not be practicable for the Exchange to determine the adjustment levels for all non-Customer transactions in a timely fashion, and in turn, it would be in the public interest to instead more promptly deliver a simple, consistent result of nullification.

The Exchange believes that proposed rule change related to review, nullification and/or adjustment of erroneous transactions during a trading halt (including the proposed modification to Rule 702), an erroneous print in the underlying security, an erroneous quote in the underlying security, or an erroneous transaction in the option with respect to stop and stop limit orders is likewise consistent with section 6(b)(5) of the Act because the proposal provides for the adjustment or nullification of trades executed at erroneous prices through no fault on the part of the trading participants. Allowing for Exchange review in such situations will promote just and fair principles of trade by protecting investors from harm that is not of their own making. Specifically with respect to the proposed provisions governing erroneous prints and quotes in the underlying security, the Exchange notes that market participants on the Exchange base the value of their quotes and orders on the price of the underlying security. The provisions regarding errors in prints and quotes in the underlying security cover instances where the information market participants use to price options is erroneous through no fault of their own. In these instances, market participants have little, if any, chance of pricing options accurately. Thus, these provisions are designed to provide relief to market participants harmed by such errors in the prints or quotes of the underlying security.

The Exchange believes that the proposed provision related to Linkage Trades is consistent with the Act because it adds additional transparency to the Proposed Rule and makes clear that when a Linkage Trade is adjusted or nullified by another options exchange, the Exchange will take necessary actions to complete the nullification or adjustment of the Linkage Trade.

The Exchange believes that retaining the same appeals process as the Exchange maintains under the Current Rule is consistent with the Act because such process provides Members with due process in connection with decisions made by Exchange Officials under the Proposed Rule. The Exchange believes that this process provides fair representation of Members by ensuring diversity amongst the members of any Obvious Error Review Panel, which is consistent with sections 6(b)(3) and 6(b)(7) of the Act. The Exchange also believes that the proposed appeals process is appropriate with respect to financial penalties for appeals that result in a decision of the Exchange being upheld because it discourages frivolous appeals, thereby reducing the possibility of overusing Exchange resources that can instead be focused on other, more productive activities. The fees with respect to such financial penalties are the same as under the Current Rule, and are equitable and not unfairly discriminatory because they will be applied uniformly to all Members and are designed to reduce administrative burden on the Exchange as well as market participants that volunteer to participate on Obvious Error Review Panels.

With regard to the portion of the Exchange's proposal related to the applicability of the Obvious Error Rule when the underlying security is in a Limit or Straddle State, the Exchange believes that the proposed rule change is consistent with section 6(b)(5) of the Act because it will provide certainty about how errors involving options orders and trades will be handled during periods of extraordinary volatility in the underlying security. Further, the Exchange believes that it is necessary and appropriate in the interest of promoting fair and orderly markets to exclude from Rule 720 those transactions executed during a Limit or Straddle State.

The Exchange believes the application of the Proposed Rule without the proposed provision would be impracticable given the lack of reliable NBBO in the options market during Limit and Straddle States, and that the resulting actions (*i.e.,* nullified trades or adjusted prices) may not be appropriate given market conditions. The Proposed Rule change would ensure that limit orders that are filled during a Limit State or Straddle State would have certainty of execution in a manner that promotes just and equitable principles of trade, removes impediments to, and perfects the mechanism of a free and open market and a national market system.

Moreover, given the fact that options prices during brief Limit or Straddle States may deviate substantially from those available shortly following the Limit or Straddle State, the Exchange believes giving market participants time to re-evaluate a transaction would create an unreasonable adverse selection opportunity that would discourage participants from providing liquidity during Limit or Straddle States. In this respect, the Exchange notes that only those orders with a limit price will be executed during a Limit or Straddle State. Therefore, on balance, the Exchange believes that removing the potential inequity of nullifying or adjusting executions occurring during Limit or Straddle States outweighs any potential benefits from applying certain provisions during such unusual market conditions. Additionally, as discussed above, there are additional pre-trade protections in place outside of the Obvious and Catastrophic Error Rule that will continue to safeguard customers.

The Exchange notes that under certain limited circumstances the Proposed Rule will permit the Exchange to review transactions in options that overlay a security that is in a Limit or Straddle State. Specifically, an Official will have authority to review a transaction on his or her own motion in the interest of maintaining a fair and orderly market and for the protection of investors. Furthermore, the Exchange will have the authority to adjust or nullify transactions in the event of a Significant Market Event, a trading halt in the affected option, an erroneous print or quote in the underlying security, or with respect to stop and stop limit orders that have been triggered based on erroneous trades. The Exchange believes that the safeguards described above will protect market participants and will provide the Exchange with the flexibility to act when necessary and appropriate to nullify or adjust a transaction, while also providing market participants with certainty that, under normal circumstances, the trades they effect with quotes and/or orders having limit prices will stand irrespective of subsequent moves in the underlying security. The right to review those transactions that occur during a Limit or Straddle State would allow the Exchange to account for unforeseen circumstances that result in Obvious or Catastrophic Errors for which a nullification or adjustment may be necessary in the interest of maintaining a fair and orderly market and for the protection of investors. Similarly, the ability to nullify or adjust transactions that occur during a Significant Market Event or trading halt, erroneous print or quote in the underlying security, or erroneous trade in the option (*i.e.,* stop and stop limit orders) may also be necessary in the interest of maintaining a fair and orderly market and for the protection of investors. Furthermore, the Exchange will administer this provision in a manner that is consistent with the principles of the Act and will create and maintain records relating to the use of the authority to act on its own motion during a Limit or Straddle State or any adjustments or trade breaks based on other proposed provisions under the Rule.

B. Self-Regulatory Organization's Statement on Burden on Competition

ISE believes the entire proposal is consistent with section 6(b)(8) of the Act[20] in that it does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act as explained below.

Importantly, the Exchange believes the proposal will not impose a burden on intermarket competition but will rather alleviate any burden on competition because it is the result of a collaborative effort by all options exchanges to harmonize and improve the process related to the adjustment and nullification of erroneous options transactions. The Exchange does not believe that the rules applicable to such process is an area where options exchanges should compete, but rather, that all options exchanges should have consistent rules to the extent possible. Particularly where a market participant trades on several different exchanges and an erroneous trade may occur on multiple markets nearly simultaneously, the Exchange believes that a participant should have a consistent experience with respect to the nullification or adjustment of transactions. The Exchange understands that all other options exchanges intend to file proposals that are substantially similar to this proposal.

The Exchange does not believe that the proposed rule change imposes a burden on intramarket competition because the provisions apply to all market participants equally within each participant category (*i.e.,* Customers and non-Customers). With respect to competition between Customer and non-Customer market participants, the Exchange believes that the Proposed Rule acknowledges competing concerns and tries to strike the appropriate balance between such concerns. For instance, as noted above, the Exchange believes that protection of Customers is important due to their direct participation in the options markets as well as the fact that they are not, by definition, market professionals. At the same time, the Exchange believes due to the quote-driven nature of the options markets, the importance of liquidity provision in such markets and the risk that liquidity providers bear when quoting a large breadth of products that are derivative of underlying securities, that the protection of liquidity providers and the practice of adjusting transactions rather than nullifying them is of critical importance. As described above, the Exchange will apply specific and objective criteria to determine whether an erroneous transaction has occurred and, if so, how to adjust or nullify a transaction.

[20] 15 U.S.C. 78f(b)(8).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to section 19(b)(3)(A) of the Act[21] and Rule 19b–4(f)(6) thereunder.[22]

The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, as it will enable the Exchange to meet its proposed implementation date of May 8, 2015, which will help facilitate the implementation of harmonized rules related to the adjustment and nullification of erroneous options transactions across the options exchanges. For this reason, the Commission designates the proposed rule change to be operative upon filing.[23]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the

[21] 15 U.S.C. 78s(b)(3)(A).

[22] 17 CFR 240.19b–4(f)(6). As required under Rule 19b–4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

[23] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

• Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml);* or

• Send an email to *rule-comments@sec.gov. Please include File Number SR–ISE–2015–18 on the subject line.*

Paper Comments

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

All submissions should refer to File Number SR–ISE–2015–18. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ISE–2015–18 and should be submitted on or before June 3, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[24]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2015–11587 Filed 5–12–15; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–74902; File No. SR–NYSEARCA–2015–40]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending the Fees for NYSE ArcaBook To Add a Late Fee in Connection With Failure To Submit the Non-Display Use Declaration

May 7, 2015.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the "Act") [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on May 1, 2015, NYSE Arca, Inc. (the "Exchange" or "NYSE Arca") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the fees for NYSE ArcaBook to add a late fee in connection with failure to submit the non-display use declaration, operative on May 1, 2015. The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the fees for NYSE ArcaBook, as set forth on the NYSE Arca Equities Proprietary Market Data Fee Schedule ("Fee Schedule"), to add a late fee in connection with failure to submit an updated non-display use declaration. The proposed change to the Fee Schedule would be operative on May 1, 2015.

The Exchange established the current fees for non-display services for NYSE ArcaBook in April 2013 and amended those fees in September 2014.[4] The 2013 Non-Display Filing established a requirement that data recipients that receive real-time NYSE Arca market data subject to Non-Display Use fees submit a declaration with respect to their use of non-display data.[5] In connection with the fee changes in the 2014 Non-Display Filing, the Exchange required data recipients that receive real-time NYSE Arca market data subject to Non-Display Use fees to complete and submit an updated Non-Display Use Declaration by September 1, 2014.[6] The 2014 Non-Display Filing also established that data recipients are required to submit an updated annual Non-Display Use Declaration by January 31st of each year beginning in 2016. In addition, if a data recipient's use of real-time NYSE Arca market data changes at any time after the data recipient submits a Non-Display Use Declaration, the data recipient must inform the Exchange of the change by completing and submitting at the time of the change an

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[24] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See* Securities Exchange Act Release Nos. 69315 (Apr. 5, 2013), 78 FR 21668 (Apr. 11, 2013) (SR–NYSEArca–2013–37) ("2013 Non-Display Filing") and 73011 (Sept. 5, 2014), 79 FR 54315 (Sept. 11, 2014) (SR–NYSEArca–2014–93) ("2014 Non-Display Filing").

[5] The non-display fee structure established in the 2013 Non-Display Filing replaced a monthly reporting obligation with respect to non-display devices with the requirement to submit the non-display use declaration. The Exchange also notes that if a data recipient only subscribes to products for which there are no non-display usage fees, *e.g.,* NYSE Arca Realtime Reference Prices, then no declaration is required.

[6] The current form of the Non-Display Use Declaration reflected the changes to the non-display fees set forth in the 2014 Non-Display Filing and replaced the NYSE Euronext Non-Display Use Declaration established in connection with the 2013 Non-Display Filing.

updated declaration reflecting the change of use.

The Exchange notes that if a data recipient does not timely submit a Non-Display Use Declaration, the Exchange does not have up-to-date information about the data recipient's data use and therefore may not be charging the correct fees to the data recipient. In order to correctly assess fees for the non-display use of NYSE ArcaBook, the Exchange needs to have current and accurate information about the use of NYSE ArcaBook. The failure of data recipients to submit the Non-Display Use Declaration on time leads to potentially incorrect billing and administrative burdens, including tracking and obtaining late Non-Display Use Declarations and correcting customer records in connection with late Non-Display Use Declarations. The purpose of the proposed late fee is to incent data recipients to submit the Non-Display Use Declaration promptly to avoid the administrative burdens associated with the late submission of Non-Display Use Declarations.

The Exchange proposes to establish a Non-Display Declaration Late Fee of $1,000 per month. The proposed fee would be charged to any data recipient that pays an Access Fee for NYSE ArcaBook that has failed to timely complete and submit a Non-Display Use Declaration.

With respect to the Non-Display Use Declaration that was due by September 1, 2014, the Non-Display Declaration Late Fee would apply to NYSE ArcaBook data recipients that have not submitted the Non-Display Use Declaration by June 30, 2015, and would apply beginning July 1, 2015 and for each month thereafter until the data recipient has completed and submitted the Non-Display Use Declaration. With respect to the annual Non-Display Use Declaration due by January 31st of each year beginning in 2016, the Non-Display Declaration Late Fee would apply to data recipients that fail to complete and submit the annual Non-Display Use Declaration by the January 31st due date, and would apply beginning February 1st and for each month thereafter until the data recipient has completed and submitted the annual Non-Display Use Declaration.[7] A Non-Display Use Declaration that is clearly incomplete would not be considered to have been completed and submitted to the Exchange on time.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[8] in general, and Sections 6(b)(4) and 6(b)(5) of the Act,[9] in particular, in that it provides an equitable allocation of reasonable fees among users and recipients of the data and is not designed to permit unfair discrimination among customers, issuers, and brokers.

The Exchange believes that it is reasonable to impose a late fee in connection with the submission of the Non-Display Use Declaration. In order to correctly assess fees for the non-display use of NYSE ArcaBook, the Exchange needs to have current and accurate information about the use of NYSE ArcaBook. The failure of data recipients to submit the Non-Display Use Declaration on time leads to potentially incorrect billing and administrative burdens, including tracking and obtaining late Non-Display Use Declarations and correcting and following up on payments owed in connection with late Non-Display Use Declarations. The purpose of the late fee is to incent data recipients to submit the Non-Display Use Declaration promptly to avoid the administrative burdens associated with the late submission of Non-Display Use Declarations. The Non-Display Declaration Late Fee is equitable and not unfairly discriminatory because it will apply to all data recipients that choose to subscribe to the NYSE ArcaBook feed.

The Non-Display Declaration Late Fee is also consistent with similar pricing adopted in 2013 by the Consolidated Tape Association (''CTA'').[10] The CTA imposes a monthly fee of $2,500 for each of Network A and Network B for firms that fail to comply with their reporting obligations in a timely manner.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. An exchange's ability to price its proprietary market data feed products is constrained by actual competition for the sale of proprietary market data products, the joint product nature of exchange platforms, and the existence of alternatives to the Exchange's proprietary data. In addition to being able to choose which proprietary data products (if any) to use and how to use them, a user can avoid the late fees that are the subject of this filing entirely by simply complying with the requisite deadlines.

In setting the proposed fees, the Exchange considered the competitiveness of the market for proprietary data and all of the implications of that competition. The Exchange believes that it has considered all relevant factors and has not considered irrelevant factors in order to establish fair, reasonable, and not unreasonably discriminatory fees and an equitable allocation of fees among all users. The existence of fierce competition to sell proprietary data products and for order flow, as well as numerous alternatives to the Exchange's products, including proprietary data from other sources, ensures that the Exchange cannot set unreasonable fees, or fees that are unreasonably discriminatory, when vendors and subscribers can elect these alternatives or choose not to purchase a specific proprietary data product if the attendant fees are not justified by the returns that any particular vendor or data recipient would achieve through the purchase (the returns on use being a particularly important aspect of non-display uses of proprietary data).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)[11] of the Act and subparagraph (f)(2) of Rule 19b–4[12] thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of

[7] The Exchange has established the Non-Display Declaration Late Fee with respect to NYSE Arca Integrated Feed and in that filing adopted the text in endnote 2, which specifies the effective dates for the Non-Display Declaration Late Fee as described above, so the text in endnote 2 to the Fee Schedule is not new. See SR–NYSEArca-2015–34.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(4), (5).

[10] *See* Securities Exchange Act Release No. 70010 (July 19, 2013), 78 FR 44984 (July 25, 2013) (SR–CTA/CQ–2013–04).

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(2).

the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) [13] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEARCA–2015–40 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR–NYSEARCA–2015–40. This file number should be included on the subject line if email is used.

To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing will also be available for inspection and copying at the NYSE's principal office and on its Internet Web site at *www.nyse.com.* All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEARCA–2015–40, and should be submitted on or before June 3, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2015–11492 Filed 5–12–15; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–74900; File No. SR–C2–2015–012]

Self-Regulatory Organizations; C2 Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to the Nullification and Adjustment of Options Transactions Including Obvious Errors

May 7, 2015.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b 4 thereunder,[2] notice is hereby given that on May 6, 2015, C2 Options Exchange, Incorporated (the ''Exchange'' or ''C2'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange seeks to amend Exchange rules related to the nullification and adjustment of options transactions including obvious errors. The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Background

For several months the Exchange has been working with other options exchanges to identify ways to improve the process related to the adjustment and nullification of erroneous options transactions. The goal of the process that the options exchanges have undertaken is to adopt harmonized rules related to the adjustment and nullification of erroneous options transactions as well as a specific provision related to coordination in connection with large-scale events involving erroneous options transactions. As described below, the Exchange believes that the changes the options exchanges and the Exchange have agreed to propose will provide transparency and finality with respect to the adjustment and nullification of erroneous options transactions. Particularly, the proposed changes seek to achieve consistent results for participants across U.S. options exchanges while maintaining a fair and orderly market, protecting investors and protecting the public interest.

The Proposed Rule is the culmination of this coordinated effort and reflects discussions by the options exchanges to universally adopt: (1) Certain provisions already in place on one or more options exchanges; and (2) new provisions that the options exchanges collectively believe will improve the handling of erroneous options transactions. Thus, although the Proposed Rule is in many ways similar to and based on the Exchange's Current Rule, the Exchange is adopting various provisions to conform with existing rules of one or more options exchanges and also to adopt rules that are not currently in place on any options exchange. As noted above, in order to adopt a rule that is similar in most material respects to the rules adopted by other options exchanges, the Exchange proposes to delete the Current Rule in its entirety and to replace it with the Proposed Rule.

The Exchange notes that it has proposed additional objective standards

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[13] 15 U.S.C. 78s(b)(2)(B).

[14] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

in the Proposed Rule as compared to the Current Rule. The Exchange also notes that the Proposed Rule will ensure that the Exchange will have the same standards as all other options exchanges. However, there are still areas under the Proposed Rule where subjective determinations need to be made by Exchange personnel with respect to the calculation of Theoretical Price. The Exchange notes that the Exchange and all other options exchanges have been working to further improve the review of potentially erroneous transactions as well as their subsequent adjustment by creating an objective and universal way to determine Theoretical Price in the event a reliable NBBO is not available. For instance, the Exchange and all other options exchanges may utilize an independent third party to calculate and disseminate or make available Theoretical Price. However, this initiative requires additional exchange and industry discussion as well as additional time for development and implementation. The Exchange will continue to work with other options exchanges and the options industry towards the goal of additional objectivity and uniformity with respect to the calculation of Theoretical Price.

As additional background, the Exchange believes that the Proposed Rule supports an approach consistent with long-standing principles in the options industry under which the general policy is to adjust rather than nullify transactions. The Exchange acknowledges that adjustment of transactions is contrary to the operation of analogous rules applicable to the equities markets, where erroneous transactions are typically nullified rather than adjusted and where there is no distinction between the types of market participants involved in a transaction. For the reasons set forth below, the Exchange believes that the distinctions in market structure between equities and options markets continue to support these distinctions between the rules for handling obvious errors in the equities and options markets. The Exchange also believes that the Proposed Rule properly balances several competing concerns based on the structure of the options markets.

Various general structural differences between the options and equities markets point toward the need for a different balancing of risks for options market participants and are reflected in the Proposed Rule. Option pricing is formulaic and is tied to the price of the underlying stock, the volatility of the underlying security and other factors. Because options market participants can generally create new open interest in response to trading demand, as new open interest is created, correlated trades in the underlying or related series are generally also executed to hedge a market participant's risk. This pairing of open interest with hedging interest differentiates the options market specifically (and the derivatives markets broadly) from the cash equities markets. In turn, the Exchange believes that the hedging transactions engaged in by market participants necessitates protection of transactions through adjustments rather than nullifications when possible and otherwise appropriate.

The options markets are also quote driven markets dependent on liquidity providers to an even greater extent than equities markets. In contrast to the approximately 7,000 different securities traded in the U.S. equities markets each day, there are more than 500,000 unique, regularly quoted option series. Given this breadth in options series the options markets are more dependent on liquidity providers than equities markets; such liquidity is provided most commonly by registered market makers but also by other professional traders. With the number of instruments in which registered market makers must quote and the risk attendant with quoting so many products simultaneously, the Exchange believes that those liquidity providers should be afforded a greater level of protection. In particular, the Exchange believes that liquidity providers should be allowed protection of their trades given the fact that they typically engage in hedging activity to protect them from significant financial risk to encourage continued liquidity provision and maintenance of the quote-driven options markets.

In addition to the factors described above, there are other fundamental differences between options and equities markets which lend themselves to different treatment of different classes of participants that are reflected in the Proposed Rule. For example, there is no trade reporting facility in the options markets. Thus, all transactions must occur on an options exchange. This leads to significantly greater retail customer participation directly on exchanges than in the equities markets, where a significant amount of retail customer participation never reaches the Exchange but is instead executed in off-exchange venues such as alternative trading systems, broker-dealer market making desks and internalizers. In turn, because of such direct retail customer participation, the exchanges have taken steps to afford those retail customers—generally Priority Customers—more favorable treatment in some circumstances.

Definitions

The Exchange proposes to adopt various definitions that will be used in the Proposed Rule, as described below.

First, the Exchange proposes to adopt a definition of ''Customer,'' to make clear that this term would not include any broker-dealer, Professional Customer, or Voluntary Professional Customer.[3] Although other portions of the Exchange's rules address the capacity of market participants, including customers, the proposed definition is consistent with such rules and the Exchange believes it is important for all options exchanges to have the same definition of Customer in the context of nullifying and adjusting trades in order to have harmonized rules. As set forth in detail below, orders on behalf of a Customer are in many cases treated differently than non-Customer orders in light of the fact that Customers are not necessarily immersed in the day-to-day trading of the markets, are less likely to be watching trading activity in a particular option throughout the day, and may have limited funds in their trading accounts.

Second, the Exchange proposes to adopt definitions for both an ''erroneous sell transaction'' and an ''erroneous buy transaction.'' As proposed, an erroneous sell transaction is one in which the price received by the person selling the option is erroneously low, and an erroneous buy transaction is one in which the price paid by the person purchasing the option is erroneously high. This provision helps to reduce the possibility that a party can intentionally submit an order hoping for the market to move in their favor while knowing that the transaction will be nullified or adjusted if the market does not. For instance, when a market participant who is buying options in a particular series sees an aggressively priced sell order posted on the Exchange, and the buyer believes that the price of the options is such that it might qualify for obvious error, the option buyer can trade with the aggressively priced order, then wait to see which direction the market moves. If the market moves in their direction, the buyer keeps the trade and if it moves against them, the

[3] A ''Professional'' is any person or entity that (i) is not a broker or dealer in securities; and (ii) places more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s). *See* Rule 1.1. A ''Voluntary Professional'' is any person or entity that is not a broker or dealer in securities that elects, in writing, to be treated in the same manner as a broker or dealer in securities for purposes of various C2 rules. *See* Rule 1.1.

buyer calls the Exchange hoping to get the trade adjusted or busted.

Third, the Exchange proposes to adopt a definition of ''Official,'' which would mean an Officer of the Exchange or such other employee designee of the Exchange that is trained in the application of the Proposed Rule.

Fourth, the Exchange proposes to adopt a new term, a ''Size Adjustment Modifier,'' which would apply to individual transactions and would modify the applicable adjustment for orders under certain circumstances, as discussed in further detail below. As proposed, the Size Adjustment Modifier will be applied to individual transactions as follows:

Number of contracts per execution	Adjustment—TP Plus/Minus
1–50	N/A.
51–250	2 times adjustment amount.
251–1000	2.5 times adjustment amount.
1001 or more	3 times adjustment amount.

The Size Adjustment Modifier attempts to account for the additional risk that the parties to the trade undertake for transactions that are larger in scope. The Exchange believes that the Size Adjustment Modifier creates additional incentives to prevent more impactful Obvious Errors and it lessens the impact on the contra-party to an adjusted trade. The Exchange notes that these contra-parties may have preferred to only trade the size involved in the transaction at the price at which such trade occurred, and in trading larger size has committed a greater level of capital and bears a larger hedge risk.

When setting the proposed size adjustment modifier thresholds the Exchange has tried to correlate the size breakpoints with typical small and larger ''block'' execution sizes of underlying stock. For instance, SEC Rule 10b–18(a)(5)(ii) defines a ''block'' as a quantity of stock that is at least 5,000 shares and a purchase price of at least $50,000, among others.[4] Similarly, NYSE Rule 72 defines a ''block'' as an order to buy or sell ''at least 10,000 shares or a quantity of stock having a market value of $200,000 or more, whichever is less.'' Thus, executions of 51 to 100 option contracts, which are generally equivalent to executions of 5,100 and 10,000 shares of underlying stock, respectively, are proposed to be subject to the lowest size adjustment modifier. An execution of over 1,000 contracts is roughly equivalent to a block transaction of more than 100,000 shares of underlying stock, and is proposed to be subject to the highest size adjustment modifier. The Exchange has correlated the proposed size adjustment modifier thresholds to smaller and larger scale blocks because the Exchange believes that the execution cost associated with transacting in block sizes scales according to the size of the block. In other words, in the same way that executing a 100,000 share stock order will have a proportionately larger market impact and will have a higher overall execution cost than executing a 500, 1,000 or 5,000 share order in the same stock, all other market factors being equal, executing a 1,000 option contract order will have a larger market impact and higher overall execution cost than executing a 5, 10 or 50 contract option order.

Calculation of Theoretical Price

Theoretical Price in Normal Circumstances

Under both the Current Rule and the Proposed Rule, when reviewing a transaction as potentially erroneous, the Exchange needs to first determine the ''Theoretical Price'' of the option, *i.e.,* the Exchange's estimate of the correct market price for the option. Pursuant to the Proposed Rule, if the applicable option series is traded on at least one other options exchange, then the Theoretical Price of an option series is the last national best bid (''NBB'') just prior to the trade in question with respect to an erroneous sell transaction or the last national best offer (''NBO'') just prior to the trade in question with respect to an erroneous buy transaction unless one of the exceptions described below exists. Thus, the Exchange proposes that whenever the Exchange has a reliable NBB or NBO, as applicable, just prior to the transaction, then the Exchange will use this NBB or NBO as the Theoretical Price.

The Exchange also proposes to specify in the Proposed Rule that when a single order received by the Exchange is executed at multiple price levels, the last NBB and last NBO just prior to the trade in question would be the last NBB and last NBO just prior to the Exchange's receipt of the order.

The Exchange also proposes to set forth in the Proposed Rule various provisions governing specific situations where the NBB or NBO is not available or may not be reliable. Specifically, the Exchange is proposing additional detail specifying situations in which there are no quotes or no valid quotes (as defined below), when the national best bid or offer (''NBBO'') is determined to be too wide to be reliable, and at the open of trading on each trading day.

No Valid Quotes

As is true under the Current Rule, pursuant to the Proposed Rule the Exchange will determine the Theoretical Price if there are no quotes or no valid quotes for comparison purposes. As proposed, quotes that are not valid are all quotes in the applicable option series published at a time where the last NBB is higher than the last NBO in such series (a ''crossed market''), quotes published by the Exchange that were submitted by either party to the transaction in question, and quotes published by another options exchange against which the Exchange has declared self-help. Thus, in addition to scenarios where there are literally no quotes to be used as Theoretical Price, the Exchange will exclude quotes in certain circumstances if such quotes are not deemed valid. The Proposed Rule is consistent with the Exchange's application of the Current Rule but the descriptions of the various scenarios where the Exchange considers quotes to be invalid represent additional detail that is not included in the Current Rule.

The Exchange notes that Exchange personnel currently are required to determine Theoretical Price in certain circumstances. While the Exchange continues to pursue alternative solutions that might further enhance the objectivity and consistency of determining Theoretical Price, the Exchange believes that the discretion currently afforded to Exchange Officials is appropriate in the absence of a reliable NBBO that can be used to set the Theoretical Price. Under the Current Rule, Exchange personnel will generally consult and refer to data such as the prices of related series, especially the closest strikes in the option in question. Exchange personnel may also take into account the price of the underlying security and the volatility characteristics of the option as well as historical pricing of the option and/or similar options.

Wide Quotes

Similarly, pursuant to the Proposed Rule the Exchange will determine the Theoretical Price if the bid/ask differential of the NBB and NBO for the affected series just prior to the erroneous transaction was equal to or greater than the Minimum Amount set forth below and there was a bid/ask differential less than the Minimum Amount during the 10 seconds prior to the transaction. If there was no bid/ask differential less than the Minimum Amount during the 10 seconds prior to

[4] *See* 17 CFR 240.10b–18(a)(5)(ii).

the transaction then the Theoretical Price of an option series is the last NBB or NBO just prior to the transaction in question. The Exchange proposes to use the following chart to determine whether a quote is too wide to be reliable:

Bid price at time of trade	Minimum amount
Below $2.00	$0.75
$2.00 to $5.00	1.25
Above $5.00 to $10.00	1.50
Above $10.00 to $20.00	2.50
Above $20.00 to $50.00	3.00
Above $50.00 to $100.00	4.50
Above $100.00	6.00

The Exchange notes that the values set forth above generally represent a multiple of 3 times the bid/ask differential requirements of other options exchanges, with certain rounding applied (*e.g.,* $1.25 as proposed rather than $1.20).[5] The Exchange believes that basing the Wide Quote table on a multiple of the permissible bid/ask differential rule provides a reasonable baseline for quotations that are indeed so wide that they cannot be considered reliable for purposes of determining Theoretical Price unless they have been consistently wide. As described above, while the Exchange will determine Theoretical Price when the bid/ask differential equals or exceeds the amount set forth in the chart above and within the previous 10 seconds there was a bid/ask differential smaller than such amount, if a quote has been persistently wide for at least 10 seconds the Exchange will use such quote for purposes of Theoretical Price. The Exchange believes that there should be a greater level of protection afforded to market participants that enter the market when there are liquidity gaps and price fluctuations. The Exchange does not believe that a similar level of protection is warranted when market participants choose to enter a market that is wide and has been consistently wide for some time. Given the largely electronic nature of today's markets, the Exchange believes the designated time frame is appropriate and is long enough for market participants to receive, process, and account for and respond to new market information. The table above bases the wide quote provision off of bid price in order to provide a relatively straightforward beginning point for the analysis.

As an example, assume an option is quoted $3.00 by $6.00 with 50 contracts posted on each side of the market for an extended period of time. If a market participant were to enter a market order to buy 20 contracts the Exchange believes that the buyer should have a reasonable expectation of paying $6.00 for the contracts which they are buying. This should be the case even if immediately after the purchase of those options, the market conditions change and the same option is then quoted at $3.75 by $4.25. Although the quote was wide according to the table above at the time immediately prior to and the time of the execution of the market order, it was also well established and well known. The Exchange believes that an execution at the then prevailing market price should not in and of itself constitute an erroneous trade.

Transactions at the Open

Under the Proposed Rule, for a transaction occurring as part of the Opening Process[6] the Exchange will determine the Theoretical Price where there is no NBB or NBO for the affected series just prior to the erroneous transaction or if the bid/ask differential of the NBBO just prior to the erroneous transaction is equal to or greater than the Minimum Amount set forth in the chart proposed for the wide quote provision described above. The Exchange believes that this discretion is necessary because it is consistent with other scenarios in which the Exchange will determine the Theoretical Price if there are no quotes or no valid quotes for comparison purposes, including the wide quote provision proposed by the Exchange as described above. If, however, there are valid quotes and the bid/ask differential of the NBBO is less than the Minimum Amount set forth in the chart proposed for the wide quote provision described above, then the Exchange will use the NBB or NBO just prior to the transaction as it would in any other normal review scenario.

As an example of an erroneous transaction for which the NBBO is wide at the open, assume the NBBO at the time of the opening transaction is $1.00 × $5.00 and the opening transaction takes place at $1.25. The Exchange would be responsible for determining the Theoretical Price because the NBBO was wider than the applicable minimum amount set forth in the wide quote provision as described above. The Exchange believes that it is necessary to determine Theoretical Price at the open in the event of a wide quote at the open for the same reason that the Exchange has proposed to determine Theoretical Price during the remainder of the trading day pursuant to the proposed wide quote provision, namely that a wide quote cannot be reliably used to determine Theoretical Price because the Exchange does not know which of the two quotes, the NBB or the NBO, is closer to the real value of the option.

Obvious Errors

The Exchange proposes to adopt numerical thresholds that would qualify transactions as ''Obvious Errors.'' These thresholds are similar to those in place under the Current Rule. As proposed, a transaction will qualify as an Obvious Error if the Exchange receives a properly submitted filing and the execution price of a transaction is higher or lower than the Theoretical Price for the series by an amount equal to at least the amount shown below:

Theoretical price	Minimum amount
Below $2.00	$0.25
$2.00 to $5.00	0.40
Above $5.00 to $10.00	0.50
Above $10.00 to $20.00	0.80
Above $20.00 to $50.00	1.00
Above $50.00 to $100.00	1.50
Above $100.00	2.00

Applying the Theoretical Price, as described above, to determine the applicable threshold and comparing the Theoretical Price to the actual execution price provides the Exchange with an objective methodology to determine whether an Obvious Error occurred. The Exchange believes that the proposed amounts are reasonable as they are generally consistent with the standards of the Current Rule and reflect a significant disparity from Theoretical Price. The Exchange notes that the Minimum Amounts in the Proposed Rule and as set forth above are identical to the Current Rule except for the last two categories, for options where the Theoretical Price is above $50.00 to $100.00 and above $100.00. The Exchange believes that this additional granularity is reasonable because given the proliferation of additional strikes that have been created in the past several years there are many more high-priced options that are trading with open interest for extended periods. The Exchange believes that it is appropriate to account for these high-priced options with additional Minimum Amount levels for options with Theoretical Prices above $50.00.

Under the Proposed Rule, a party that believes that it participated in a transaction that was the result of an Obvious Error must notify the Exchange's Help Desk in the manner

[5] *See, e.g.,* NYSE Arca Options Rule 6.37(b)(1).

[6] *See* Exchange Rule 6.11—Openings (and sometimes Closing) for a description of the Exchange's Opening Process.

specified from time to time by the Exchange in a circular distributed to Participants.

The Exchange also proposes to adopt notification timeframes that must be met in order for a transaction to qualify as an Obvious Error. Specifically, as proposed a filing must be received by the Exchange within thirty (30) minutes of the execution with respect to an execution of a Customer order and within fifteen (15) minutes of the execution for any other participant. The Exchange also proposes to provide additional time for trades that are routed through other options exchanges to the Exchange. Under the Proposed Rule, any other options exchange will have a total of forty-five (45) minutes for Customer orders and thirty (30) minutes for non-Customer orders, measured from the time of execution on the Exchange, to file with the Exchange for review of transactions routed to the Exchange from that options exchange and executed on the Exchange (''linkage trades''). This includes filings on behalf of another options exchange filed by a third-party routing broker if such third-party broker identifies the affected transactions as linkage trades. In order to facilitate timely reviews of linkage trades the Exchange will accept filings from either the other options exchange or, if applicable, the third-party routing broker that routed the applicable order(s). The additional fifteen (15) minutes provided with respect to linkage trades shall only apply to the extent the options exchange that originally received and routed the order to the Exchange itself received a timely filing from the entering participant (*i.e.,* within 30 minutes if a Customer order or 15 minutes if a non-Customer order). The Exchange believes that additional time for filings related to Customer orders is appropriate in light of the fact that Customers are not necessarily immersed in the day-to-day trading of the markets and are less likely to be watching trading activity in a particular option throughout the day. The Exchange believes that the additional time afforded to linkage trades is appropriate given the interconnected nature of the markets today and the practical difficulty that an end user may face in getting requests for review filed in a timely fashion when the transaction originated at a different exchange than where the error took place. Without this additional time the Exchange believes it would be common for a market participant to satisfy the filing deadline at the original exchange to which an order was routed but that requests for review of executions from orders routed to other options exchanges would not qualify for review as potential Obvious Errors by the time filings were received by such other options exchanges, in turn leading to potentially disparate results under the applicable rules of options exchanges to which the orders were routed.

Pursuant to the Proposed Rule, an Official may review a transaction believed to be erroneous on his/her own motion in the interest of maintaining a fair and orderly market and for the protection of investors. This proposed provision is designed to give an Official the ability to provide parties relief in those situations where they have failed to report an apparent error within the established notification period. A transaction reviewed pursuant to the proposed provision may be nullified or adjusted only if it is determined by the Official that the transaction is erroneous in accordance with the provisions of the Proposed Rule, provided that the time deadlines for filing a request for review described above shall not apply. The Proposed Rule would require the Official to act as soon as possible after becoming aware of the transaction; action by the Official would ordinarily be expected on the same day that the transaction occurred. However, because a transaction under review may have occurred near the close of trading or due to unusual circumstances, the Proposed Rule provides that the Official shall act no later than 7:30 a.m. Central Time on the next trading day following the date of the transaction in question.

The Exchange also proposes to state that a party affected by a determination to nullify or adjust a transaction after an Official's review on his or her own motion may appeal such determination in accordance with paragraph (m), which is described below, but may not seek a review by an Obvious Error Panel under paragraph (k). The Proposed Rule would make clear that a determination by an Official not to review a transaction or determination not to nullify or adjust a transaction for which a review was conducted on an Official's own motion is not appealable and further that if a transaction is reviewed and a determination is rendered pursuant to another provision of the Proposed Rule, no additional relief may be granted by an Official.

If it is determined that an Obvious Error has occurred based on the objective numeric criteria and time deadlines described above, the Exchange will adjust or nullify the transaction as described below and promptly notify both parties to the trade electronically or via telephone. The Exchange proposes different adjustment and nullification criteria for Customers and non-Customers.

As proposed, where neither party to the transaction is a Customer, the execution price of the transaction will be adjusted by the Official pursuant to the table below.

Theoretical price (TP)	Buy transaction adjustment—TP Plus	Sell transaction adjustment—TP Minus
Below $3.00	$0.15	$0.15
At or above $3.00	$0.30	$0.30

The Exchange believes that it is appropriate to adjust to prices a specified amount away from Theoretical Price rather than to adjust to Theoretical Price because even though the Exchange has determined a given trade to be erroneous in nature, the parties in question should have had some expectation of execution at the price or prices submitted. Also, it is common that by the time it is determined that an obvious error has occurred additional hedging and trading activity has already occurred based on the executions that previously happened. The Exchange is concerned that an adjustment to Theoretical Price in all cases would not appropriately incentivize market participants to maintain appropriate controls to avoid potential errors.

Further, as proposed any non-Customer Obvious Error exceeding 50 contracts will be subject to the Size Adjustment Modifier described above. The Exchange believes that it is appropriate to apply the Size Adjustment Modifier to non-Customer orders because the hedging cost associated with trading larger sized options orders and the market impact of larger blocks of underlying can be significant.

As an example of the application of the Size Adjustment Modifier, assume Exchange A has a quoted bid to buy 50 contracts at $2.50, Exchange B has a quoted bid to buy 100 contracts at $2.05 and there is no other options exchange quoting a bid priced higher than $2.00. Assume that the NBBO is $2.50 by $3.00. Finally, assume that all orders quoted and submitted to Exchange B in connection with this example are non-Customer orders.

- Assume Exchange A's quoted bid at $2.50 is either executed or cancelled.
- Assume Exchange B immediately thereafter receives an incoming market order to sell 100 contracts.
- The incoming order would be executed against Exchange B's resting bid at $2.05 for 100 contracts.
- Because the 100 contract execution of the incoming sell order was priced at $2.05, which is $0.45 below the Theoretical Price of $2.50, the 100 contract execution would qualify for adjustment as an Obvious Error.
- The normal adjustment process would adjust the execution of the 100 contracts to $2.35 per contract, which is the Theoretical Price minus $0.15.
- However, because the execution would qualify for the Size Adjustment Modifier of 2 times the adjustment price, the adjusted transaction would instead be to $2.20 per contract, which is the Theoretical Price minus $0.30.

By reference to the example above, the Exchange reiterates that it believes that a Size Adjustment Modifier is appropriate, as the buyer in this example was originally willing to buy 100 contracts at $2.05 and ended up paying $2.20 per contract for such execution. Without the Size Adjustment Modifier the buyer would have paid $2.35 per contract. Such buyer may be advantaged by the trade if the Theoretical Price is indeed closer to $2.50 per contract, however the buyer may not have wanted to buy so many contracts at a higher price and does incur increasing cost and risk due to the additional size of their quote. Thus, the proposed rule is attempting to strike a balance between various competing objectives, including recognition of cost and risk incurred in quoting larger size and incentivizing market participants to maintain appropriate controls to avoid errors.

In contrast to non-Customer orders, where trades will be adjusted if they qualify as Obvious Errors, pursuant the Proposed Rule a trade that qualifies as an Obvious Error will be nullified where at least one party to the Obvious Error is a Customer. The Exchange also proposes, however, that if any Participant submits requests to the Exchange for review of transactions pursuant to the Proposed Rule, and in aggregate that Participant has 200 or more Customer transactions under review concurrently and the orders resulting in such transactions were submitted during the course of 2 minutes or less, where at least one party to the Obvious Error is a non-Customer, the Exchange will apply the non-Customer adjustment criteria described above to such transactions. The Exchange based its proposal of 200 transactions on the fact that the proposed level is reasonable as it is representative of an extremely large number of orders submitted to the Exchange that are, in turn, possibly erroneous. Similarly, the Exchange based its proposal of orders received in 2 minutes or less on the fact that this is a very short amount of time under which one Participant could generate multiple erroneous transactions. In order for a participant to have more than 200 transactions under review concurrently when the orders triggering such transactions were received in 2 minutes or less, the market participant will have far exceeded the normal behavior of customers deserving protected status.[7] While the Exchange continues to believe that it is appropriate to nullify transactions in such a circumstance if both participants to a transaction are Customers, the Exchange does not believe it is appropriate to place the overall risk of a significant number of trade breaks on non-Customers that in the normal course of business may have engaged in additional hedging activity or trading activity based on such transactions. Thus, the Exchange believes it is necessary and appropriate to protect non-Customers in such a circumstance by applying the non-Customer adjustment criteria, and thus adjusting transactions as set forth above, in the event a Participant has more than 200 transactions under review concurrently.

Catastrophic Errors

Consistent with the Current Rule, the Exchange proposes to adopt separate numerical thresholds for review of transactions for which the Exchange does not receive a filing requesting review within the Obvious Error timeframes set forth above. Based on this review these transactions may qualify as ''Catastrophic Errors.'' As proposed, a Catastrophic Error will be deemed to have occurred when the execution price of a transaction is higher or lower than the Theoretical Price for the series by an amount equal to at least the amount shown below:

Theoretical price	Minimum amount
Below $2.00	$0.50
$2.00 to $5.00	1.00
Above $5.00 to $10.00	1.50
Above $10.00 to $20.00	2.00
Above $20.00 to $50.00	2.50
Above $50.00 to $100.00	3.00
Above $100.00	4.00

Based on industry feedback on the Catastrophic Error thresholds set forth under the Current Rule, the thresholds proposed as set forth above are more granular and lower (*i.e.,* more likely to qualify) than the thresholds under the Current Rule. As noted above, under the Proposed Rule as well as the Current Rule, parties have additional time to submit transactions for review as Catastrophic Errors. As proposed, notification requesting review must be received by the Exchange's Help Desk by 7:30 a.m. Central Time on the first trading day following the execution. For transactions in an expiring options series that take place on an expiration day, a party must notify the Exchange's Help Desk within 45 minutes after the close of trading that same day. As is true for requests for review under the Obvious Error provision of the Proposed Rule, a party requesting review of a transaction as a Catastrophic Error must notify the Exchange's Help Desk in the manner specified from time to time by the Exchange in a circular distributed to Participants. By definition, any execution that qualifies as a Catastrophic Error is also an Obvious Error. However, the Exchange believes it is appropriate to maintain these two types of errors because the Catastrophic Error provisions provide market participants with a longer notification period under which they may file a request for review with the Exchange of a potential Catastrophic Error than a potential Obvious Error. This provides an additional level of protection for transactions that are severely erroneous even in the event a participant does not submit a request for review in a timely fashion.

The Proposed Rule would specify that relief under the catastrophic error provision would not be granted under paragraph (d) if an Obvious Error Panel has previously rendered a decision with respect to the transaction(s) in question. In addition, if it is determined that a Catastrophic Error has not occurred, the

[7] The Exchange notes that in the third quarter of this year across all options exchanges the average number of valid Customer orders received and executed was less than 38 valid orders every two minutes. The number of obvious errors resulting from valid orders is, of course, a very small fraction of such orders.

Participant will be subject to a charge of $5,000. The Proposed Rule also specifies the action to be taken by the Exchange if it is determined that a Catastrophic Error has occurred, as described below, and would require the Exchange to promptly notify both parties to the trade electronically or via telephone. In the event of a Catastrophic Error, the execution price of the transaction will be adjusted by the Official pursuant to the table below.

Theoretical price (TP)	Buy transaction adjustment— TP Plus	Sell transaction adjustment— TP Minus
Below $2.00	$0.50	$0.50
$2.00 to $5.00	1.00	1.00
Above $5.00 to $10.00	1.50	1.50
Above $10.00 to $20.00	2.00	2.00
Above $20.00 to $50.00	2.50	2.50
Above $50.00 to $100.00	3.00	3.00
Above $100.00	4.00	4.00

Although Customer orders would be adjusted in the same manner as non-Customer orders, any Customer order that qualifies as a Catastrophic Error will be nullified if the adjustment would result in an execution price higher (for buy transactions) or lower (for sell transactions) than the Customer's limit price. Based on industry feedback, the levels proposed above with respect to adjustment amounts are the same levels as the thresholds at which a transaction may be deemed a Catastrophic Error pursuant to the chart set forth above.

As is true for Obvious Errors as described above, the Exchange believes that it is appropriate to adjust to prices a specified amount away from Theoretical Price rather than to adjust to Theoretical Price because even though the Exchange has determined a given trade to be erroneous in nature, the parties in question should have had some expectation of execution at the price or prices submitted. Also, it is common that by the time it is determined that a Catastrophic Error has occurred additional hedging and trading activity has already occurred based on the executions that previously happened. The Exchange is concerned that an adjustment to Theoretical Price in all cases would not appropriately incentivize market participants to maintain appropriate controls to avoid potential errors. Further, the Exchange believes it is appropriate to maintain a higher adjustment level for Catastrophic Errors than Obvious Errors given the significant additional time that can potentially pass before an adjustment is requested and applied and the amount of hedging and trading activity that can occur based on the executions at issue during such time. For the same reasons, other than honoring the limit prices established for Customer orders, the Exchange has proposed to treat all market participants the same in the context of the Catastrophic Error provision. Specifically, the Exchange believes that treating market participants the same in this context will provide additional certainty to market participants with respect to their potential exposure and hedging activities, including comfort that even if a transaction is later adjusted (*i.e.,* past the standard time limit for filing under the Obvious Error provision), such transaction will not be fully nullified. However, as noted above, under the Proposed Rule where at least one party to the transaction is a Customer, the trade will be nullified if the adjustment would result in an execution price higher (for buy transactions) or lower (for sell transactions) than the Customer's limit price. The Exchange has retained the protection of a Customer's limit price in order to avoid a situation where the adjustment could be to a price that the Customer could not afford, which is less likely to be an issue for a market professional.

Significant Market Events

In order to improve consistency for market participants in the case of a widespread market event and in light of the interconnected nature of the options exchanges, the Exchange proposes to adopt a new provision that calls for coordination between the options exchanges in certain circumstances and provides limited flexibility in the application of other provisions of the Proposed Rule in order to promptly respond to a widespread market event.[8] The Exchange proposes to describe such an event as a Significant Market Event, and to set forth certain objective criteria that will determine whether such an event has occurred. The Exchange developed these objective criteria in consultation with the other options exchanges by reference to historical patterns and events with a goal of setting thresholds that very rarely will be triggered so as to limit the application of the provision to truly significant market events. As proposed, a Significant Market Event will be deemed to have occurred when proposed criterion (A) below is met or exceeded or the sum of all applicable event statistics, where each is expressed as a percentage of the relevant threshold in criteria (A) through (D) below, is greater than or equal to 150% and 75% or more of at least one category is reached, provided that no single category can contribute more than 100% to the sum. All criteria set forth below will be measured in aggregate across all exchanges.

The proposed criteria for determining a Significant Market Event are as follows:

(A) Transactions that are potentially erroneous would result in a total Worst-Case Adjustment Penalty of $30,000,000, where the Worst-Case Adjustment Penalty is computed as the sum, across all potentially erroneous trades, of: (i) $0.30 (*i.e.,* the largest Transaction Adjustment value listed in sub-paragraph (e)(3)(A) below); times; (ii) the contract multiplier for each traded contract; times (iii) the number of contracts for each trade; times (iv) the appropriate Size Adjustment Modifier for each trade, if any, as defined in sub-paragraph (e)(3)(A) below;

(B) Transactions involving 500,000 options contracts are potentially erroneous;

(C) Transactions with a notional value (*i.e.,* number of contracts traded multiplied by the option premium

[8] Although the Exchange has proposed a specific provision related to coordination amongst options exchanges in the context of a widespread event, the Exchange does not believe that the Significant Market Event provision or any other provision of the proposed rule alters the Exchange's ability to coordinate with other options exchanges in the normal course of business with respect to market events or activity. The Exchange does already coordinate with other options exchanges to the extent possible if such coordination is necessary to maintain a fair and orderly market and/or to fulfill the Exchange's duties as a self-regulatory organization.

multiplied by the contract multiplier) of $100,000,000 are potentially erroneous;

(D) 10,000 transactions are potentially erroneous.

As described above, the Exchange proposes to adopt a the Worst Case Adjustment Penalty, proposed as criterion (A), which is the only criterion that can on its own result in an event being designated as a significant market event. The Worst Case Adjustment Penalty is intended to develop an objective criterion that can be quickly determined by the Exchange in consultation with other options exchanges that approximates the total overall exposure to market participants on the negatively impacted side of each transaction that occurs during an event. If the Worst Case Adjustment criterion is equal to or exceeds $30,000,000, then an event is a Significant Market Event. As an example of the Worst Case Adjustment Penalty, assume that a single potentially erroneous transaction in an event is as follows: sale of 100 contracts of a standard option (*i.e.,* an option with a 100 share multiplier). The highest potential adjustment penalty for this single transaction would be $6,000, which would be calculated as $0.30 times 100 (contract multiplier) times 100 (number of contracts) times 2 (applicable Size Adjustment Modifier). The Exchange would calculate the highest potential adjustment penalty for each of the potentially erroneous transactions in the event and the Worst Case Adjustment Penalty would be the sum of such penalties on the Exchange and all other options exchanges with affected transactions.

As described above, under the Proposed Rule if the Worst Case Adjustment Penalty does not equal or exceed $30,000,000, then a Significant Market Event has occurred if the sum of all applicable event statistics (expressed as a percentage of the relevant thresholds), is greater than or equal to 150% and 75% or more of at least one category is reached. The Proposed Rule further provides that no single category can contribute more than 100% to the sum. As an example of the application of this provision, assume that in a given event across all options exchanges that: (A) The Worst Case Adjustment Penalty is $12,000,000 (40% of $30,000,000), (B) 300,000 options contracts are potentially erroneous (60% of 500,000), (C) the notional value of potentially erroneous transactions is $30,000,000 (30% of $100,000,000), and (D) 12,000 transactions are potentially erroneous (120% of 10,000). This event would qualify as a Significant Market Event because the sum of all applicable event statistics would be 230%, far exceeding the 150% threshold. The 230% sum is reached by adding 40%, 60%, 30% and last, 100% (*i.e.,* rounded down from 120%) for the number of transactions. The Exchange notes that no single category can contribute more than 100% to the sum and any category contributing more than 100% will be rounded down to 100%.

As an alternative example, assume a large-scale event occurs involving low-priced options with a small number of contracts in each execution. Assume in this event across all options exchanges that: (A) The Worst Case Adjustment Penalty is $600,000 (2% of $30,000,000), (B) 20,000 options contracts are potentially erroneous (4% of 500,000), (C) the notional value of potentially erroneous transactions is $20,000,000 (20% of $100,000,000), and (D) 20,000 transactions are potentially erroneous (200% of 10,000, but rounded down to 100%). This event would not qualify as a Significant Market Event because the sum of all applicable event statistics would be 126%, below the 150% threshold. The Exchange reiterates that as proposed, even when a single category other than criterion (A) is fully met, that does not necessarily qualify an event as a Significant Market Event.

The Exchange believes that the breadth and scope of the obvious error rules are appropriate and sufficient for handling of typical and common obvious errors. Coordination between and among the exchanges should generally not be necessary even when a Participant has an error that results in executions on more than one exchange. In setting the thresholds above the Exchange believes that the requirements will be met only when truly widespread and significant errors happen and the benefits of coordination and information sharing far outweigh the costs of the logistics of additional intra-exchange coordination. The Exchange notes that in addition to its belief that the proposed thresholds are sufficiently high, the Exchange has proposed the requirement that either criterion (A) is met or the sum of applicable event statistics for proposed (A) through (D) equals or exceeds 150% in order to ensure that an event is sufficiently large but also to avoid situations where an event is extremely large but just misses potential qualifying thresholds. For instance, the proposal is designed to help avoid a situation where the Worst Case Adjustment Penalty is $15,000,000, so the event does not qualify based on criterion (A) alone, but there are transactions in 490,000 options contracts that are potentially erroneous (missing criterion (B) by 10,000 contracts), there transactions with a notional value of $99,000,000 (missing criterion (C) by $1,000,000), and there are 9,000 potentially erroneous transactions overall (missing criterion (D) by 1,000 transactions). The Exchange believes that the proposed formula, while slightly more complicated than simply requiring a certain threshold to be met in each category, may help to avoid inapplicability of the proposed provisions in the context of an event that would be deemed significant by most subjective measures but that barely misses each of the objective criteria proposed by the Exchange.

To ensure consistent application across options exchanges, in the event of a suspected Significant Market Event, the Exchange shall initiate a coordinated review of potentially erroneous transactions with all other affected options exchanges to determine the full scope of the event. Under the Proposed Rule, the Exchange will promptly coordinate with the other options exchanges to determine the appropriate review period as well as select one or more specific points in time prior to the transactions in question and use one or more specific points in time to determine Theoretical Price. Other than the selected points in time, if applicable, the Exchange will determine Theoretical Price as described above. For example, around the start of a SME that is triggered by a large and aggressively priced buy order, three exchanges have multiple orders on the offer side of the market: Exchange A has offers priced at $2.20, $2.25, $2.30 and several other price levels to $3.00, Exchange B has offers at $2.45, $2.30 and several other price levels to $3.00, Exchange C has offers at price levels between $2.50 and $3.00. Assume an event occurs starting at 9:05:25 a.m. CT and in this particular series the executions begin on Exchange A and subsequently begin to occur on Exchanges B and C. Without coordination and information sharing between the exchanges, Exchange B and Exchange C cannot know with certainty that whether or not the execution at Exchange A that happened at $2.20 immediately prior to their executions at $2.45 and $2.50 is part of the same erroneous event or not. With proper coordination, the exchanges can determine that in this series, the proper point in time from which the event should be analyzed is 9:05:25 a.m. CT, and thus, the NBO of $2.20 should be used as the Theoretical Price for purposes of all buy transactions in such options series that occurred during the event.

If it is determined that a Significant Market Event has occurred then, using the parameters agreed with respect to the times from which Theoretical Price will be calculated, if applicable, an Official will determine whether any or all transactions under review qualify as Obvious Errors. The Proposed Rule would require the Exchange to use the criteria in Proposed Rule 6.15(c), as described above, to determine whether an Obvious Error has occurred for each transaction that was part of the Significant Market Event. Upon taking any final action, the Exchange would be required to promptly notify both parties to the trade electronically or via telephone.

The execution price of each affected transaction will be adjusted by an Official to the price provided below, unless both parties agree to adjust the transaction to a different price or agree to bust the trade.

Theoretical price (TP)	Buy transaction adjustment—TP Plus	Sell transaction adjustment—TP Minus
Below $3.00	$0.15	$0.15
At or above $3.00	$0.30	$0.30

Thus, the proposed adjustment criteria for Significant Market Events are identical to the proposed adjustment levels for Obvious Errors generally. In addition, in the context of a Significant Market Event, any error exceeding 50 contracts will be subject to the Size Adjustment Modifier described above. Also, the adjustment criteria would apply equally to all market participants (*i.e.,* Customers and non-Customers) in a Significant Market Event. However, as is true for the proposal with respect to Catastrophic Errors, under the Proposed Rule where at least one party to the transaction is a Customer, the trade will be nullified if the adjustment would result in an execution price higher (for buy transactions) or lower (for sell transactions) than the Customer's limit price. The Exchange has retained the protection of a Customer's limit price in order to avoid a situation where the adjustment could be to a price that the Customer could not afford, which is less likely to be an issue for a market professional. The Exchange has otherwise proposed to treat all market participants the same in the context of a Significant Market Event to provide additional certainty to market participants with respect to their potential exposure as soon as an event has occurred.

Another significant distinction between the proposed Obvious Error provision and the proposed Significant Market Event provision is that if the Exchange, in consultation with other options exchanges, determines that timely adjustment is not feasible due to the extraordinary nature of the situation, then the Exchange will nullify some or all transactions arising out of the Significant Market Event during the review period selected by the Exchange and other options exchanges. To the extent the Exchange, in consultation with other options exchanges, determines to nullify less than all transactions arising out of the Significant Market Event, those transactions subject to nullification will be selected based upon objective criteria with a view toward maintaining a fair and orderly market and the protection of investors and the public interest. For example, assume a Significant Market Event causes 25,000 potentially erroneous transactions and impacts 51 options classes. Of the 25,000 transactions, 24,000 of them are concentrated in a single options class. The exchanges may decide the most appropriate solution because it will provide the most certainty to participants and allow for the prompt resumption of regular trading is to bust all trades in the most heavily affected class between two specific points in time, while the other 1,000 trades across the other 50 classes are reviewed and adjusted as appropriate. A similar situation might arise directionally where a Customer submits both erroneous buy and sell orders and the number of errors that happened that were erroneously low priced (*i.e.,* erroneous sell orders) were 50,000 in number but the number of errors that were erroneously high (*i.e.,* erroneous buy orders) were only 500 in number. The most effective and efficient approach that provides the most certainty to the marketplace in a reasonable amount of time while most closely following the generally prescribed obvious error rules could be to bust all of the erroneous sell transactions but to adjust the erroneous buy transactions.

With respect to rulings made pursuant to the proposed Significant Market Event provision the Exchange believes that the number of affected transactions is such that immediate finality is necessary to maintain a fair and orderly market and to protect investors and the public interest. Accordingly, rulings by the Exchange pursuant to the Significant Market Event provision would be non-appealable pursuant to the Proposed Rule.

Additional Provisions

Mutual Agreement

In addition to the objective criteria described above, the Proposed Rule also proposes to make clear that the determination as to whether a trade was executed at an erroneous price may be made by mutual agreement of the affected parties to a particular transaction. The Proposed Rule would state that a trade may be nullified or adjusted on the terms that all parties to a particular transaction agree, provided, however, that such agreement to nullify or adjust must be conveyed to the Exchange in a manner prescribed by the Exchange prior to 7:30 a.m. Central Time on the first trading day following the execution.

The Exchange also proposes to explicitly state that it is considered conduct inconsistent with just and equitable principles of trade for any Participant to use the mutual adjustment process to circumvent any applicable Exchange rule, the Act or any of the rules and regulations thereunder. Thus, for instance, a Participant is precluded from seeking to avoid applicable trade-through rules by executing a transaction and then adjusting such transaction to a price at which the Exchange would not have allowed it to execute at the time of the execution because it traded through the quotation of another options exchange. The Exchange notes that in connection with its obligations as a self-regulatory organization, the Exchange's Regulatory Department reviews adjustments to transactions to detect potential violations of Exchange rules or the Act and the rules and regulations thereunder.

Trading Halts

Exchange Rule 6.32 describes the Exchange's authority to declare trading halts in one or more options traded on the Exchange. The Exchange proposes to make clear in the Proposed Rule that it will nullify any transaction that occurs during a trading halt in the affected option on the Exchange pursuant to Rule 6.32. If any trades occur notwithstanding a trading halt then the Exchange believes it appropriate to nullify such transactions. While the Exchange may halt options trading for various reasons, such a scenario almost certainly is due to extraordinary circumstances and is potentially the result of market-wide coordination to halt options trading or trading generally. Accordingly, the Exchange does not believe it is appropriate to allow trades to stand if such trades should not have occurred in the first place.

The Exchange proposes to add Interpretation and Policy .05 to Rule 6.32. The Interpretation and Policy will also state that the Exchange shall nullify any transaction that occurs: (a) During a trading halt in the affected option on the Exchange; or (b) with respect to equity options (including options overlying ETFs), during a regulatory halt as declared by the primary listing market for the underlying security.

Erroneous Print and Quotes in Underlying Security

Market participants on the Exchange likely base the pricing of their orders submitted to the Exchange on the price of the underlying security for the option. Thus, the Exchange believes it is appropriate to adopt provisions that allow adjustment or nullification of transactions based on erroneous prints or erroneous quotes in the underlying security.

The Exchange proposes to adopt language in the Proposed Rule stating that a trade resulting from an erroneous print(s) disseminated by the underlying market that is later nullified by that underlying market shall be adjusted or busted as set forth in the Obvious Error provisions of the Proposed Rule, provided a party notifies the Exchange's Help Desk in a timely manner, as further described below. The Exchange proposes to define a trade resulting from an erroneous print(s) as any options trade executed during a period of time for which one or more executions in the underlying security are nullified and for one second thereafter. The Exchange believes that one second is an appropriate amount of time in which an options trade would be directly based on executions in the underlying equity security. The Exchange also proposes to require that if a party believes that it participated in an erroneous transaction resulting from an erroneous print(s) pursuant to the proposed erroneous print provision it must notify the Exchange's Help Desk within the timeframes set forth in the Obvious Error provision described above. The Exchange has also proposed to state that the allowed notification timeframe commences at the time of notification by the underlying market(s) of nullification of transactions in the underlying security. Further, the Exchange proposes that if multiple underlying markets nullify trades in the underlying security, the allowed notification timeframe will commence at the time of the first market's notification.

As an example of a situation in which a trade results from an erroneous print disseminated by the underlying market that is later nullified by the underlying market, assume that a given underlying is trading in the $49.00–$50.00 price range then has an erroneous print at $5.00. Given that there is the potential perception that the underlying has gone through a dramatic price revaluation, numerous options trades could promptly trigger based off of this new price. However, because the price that triggered them was not a valid price it would be appropriate to review said option trades when the underlying print that triggered them is removed.

The Exchange also proposes to add a provision stating that a trade resulting from an erroneous quote(s) in the underlying security shall be adjusted or busted as set forth in the Obvious Error provisions of the Proposed Rule, provided a party notifies the Exchange's Help Desk in a timely manner, as further described below. Pursuant to the Proposed Rule, an erroneous quote occurs when the underlying security has a width of at least $1.00 and has a width at least five times greater than the average quote width for such underlying security during the time period encompassing two minutes before and after the dissemination of such quote. For purposes of the Proposed Rule, the average quote width will be determined by adding the quote widths of sample quotations at regular 15-second intervals during the four-minute time period referenced above (excluding the quote(s) in question) and dividing by the number of quotes during such time period (excluding the quote(s) in question).[9]

Similar to the proposal with respect to erroneous prints described above, if a party believes that it participated in an erroneous transaction resulting from an erroneous quote(s) it must notify the Exchange's Help Desk in accordance with the notification provisions of the Obvious Error provision described above. The Proposed Rule, therefore, puts the onus on each Participant to notify the Exchange if such Participant believes that a trade should be reviewed pursuant to either of the proposed provisions, as the Exchange is not in position to determine the impact of erroneous prints or quotes on individual Participants. The Exchange notes that it does not believe that additional time is necessary with respect to a trade based on an erroneous quote because a Participant has all information necessary to detect the error at the time of an option transaction that was triggered by an erroneous quote, which is in contrast to the proposed erroneous print provision that includes a dependency on an action by the market where the underlying security traded.

As an example of a situation in which a trade results from an erroneous quote in the underlying security, assume again that a given underlying is quoting and trading in the $49.00–$50.00 price range then a liquidity gap occurs, with bidders not representing quotes in the market place and an offer quoted at $5.00. Quoting may quickly return to normal, again in the $49.00–$50.00 price range, but due to the potential perception that the underlying has gone through a dramatic price revaluation, numerous options trades could trigger based off of this new quoted price in the interim. Because the price that triggered such trades was not a valid price it would be appropriate to review said option trades.

Stop (and Stop-Limit) Order Trades Triggered by Erroneous Trades

The Exchange notes that certain market participants and their customers enter stop or stop limit orders that are triggered based on executions in the marketplace. As proposed, transactions resulting from the triggering of a stop or stop-limit order by an erroneous trade in an option contract shall be nullified by the Exchange, provided a party notifies the Exchange's Help Desk in a timely manner as set forth below. The Exchange believes it is appropriate to nullify executions of stop or stop-limit orders that were wrongly triggered because such transactions should not have occurred. If a party believes that it participated in an erroneous transaction

[9] The Exchange has proposed the price and time parameters for quote width and average quote width used to determine whether an erroneous quote has occurred based on established rules of options exchanges that currently apply such parameters. *See, e.g.,* CBOE Rule 6.25(a)(5); NYSE Arca Rule 6.87(a)(5). Based on discussions with these exchanges, the Exchange believes that the parameters are a reasonable approach to determine whether an erroneous quote has occurred for purposes of the proposed rule.

pursuant to the Proposed Rule it must notify the Exchange's Help Desk within the timeframes set forth in the Obvious Error Rule above, with the allowed notification timeframe commencing at the time of notification of the nullification of transaction(s) that triggered the stop or stop-limit order.

Linkage Trades

The Exchange also proposes to adopt language that clearly provides the Exchange with authority to take necessary actions when another options exchange nullifies or adjusts a transaction pursuant to its respective rules and the transaction resulted from an order that has passed through the Exchange and been routed on to another options exchange on behalf of the Exchange. Specifically, if the Exchange routes an order pursuant to the Intermarket Options Linkage Plan [10] that results in a transaction on another options exchange (a ''Linkage Trade'') and such options exchange subsequently nullifies or adjusts the Linkage Trade pursuant to its rules, the Exchange will perform all actions necessary to complete the nullification or adjustment of the Linkage Trade. Although the Exchange is not utilizing its own authority to nullify or adjust a transaction related to an action taken on a Linkage Trade by another options exchange, the Exchange does have to assist in the processing of the adjustment or nullification of the order, such as notification to the Participant and the OCC of the adjustment or nullification. Thus, the Exchange believes that the proposed provision adds additional transparency to the Proposed Rule.

Obvious Error Panel

The Exchange proposes to maintain its current appeals process in connection with obvious errors. Specifically, if a party affected by a determination made under paragraph (c) so requests within the time permitted in paragraph (k)(3) below, an Obvious Error Panel will review decisions made under this Rule, including whether an obvious error occurred, whether the correct Theoretical Price was used, and whether the correct adjustment was made at the correct price. A party may also request that the Obvious Error Panel provide relief as required in this Rule in cases where the party failed to provide the notification required in paragraph (c)(2) and an extension was not granted, but unusual circumstances must merit special consideration. A party cannot request review by an Obvious Error Panel of determinations by a C2 Official made pursuant to paragraph (c)(3) of this Rule.

The Obvious Error Panel will be comprised of representatives from four (4) Participants. Two (2) of the representatives must be directly engaged in market making activity and two (2) of the representatives must be employed by non-Market-Maker Participants.[11]

Under Proposed Rule (k)(3) a request for review must be made in writing within thirty (30) minutes after a party receives notification of the determination being appealed, except that if notification is made after 2:30 p.m. Central Time (''CT''), either party has until 8:30 a.m. CT the next trading day to request review. The Obvious Error Panel shall review the facts and render a decision on the day of the transaction, or the next trade day in the case where a request is properly made the next trade day.

The Obvious Error Panel may overturn or modify an action taken under this Rule upon agreement by a majority of the Panel representatives. All determinations by the Obvious Error Panel may be appealed in accordance with paragraph (m) of this Rule.

Catastrophic Error Panel

The Exchange proposes to modify the procedure and function of the Catastrophic Error Panel in the Current Rule to conform the appeals process for catastrophic errors to the appeals process for obvious errors. Under the Current Rule, the Catastrophic Error Panel does not review initial determinations regarding catastrophic errors; rather, the Catastrophic Error Panel makes initial determinations with regards to whether a catastrophic error has occurred. In order to conform to the Proposed Rule, which provides that initial determinations regarding potential catastrophic errors are made by C2 Officials, the Exchange is proposing to adopt procedures similar to the Obvious Error Panel for the proposed Catastrophic Error Panel. Specifically, if a party affected by a determination made under paragraph (d) so requests within the time permitted in paragraph (l)(3), a Catastrophic Error Panel will review decisions made under this Rule, including whether a catastrophic error occurred, whether the correct Theoretical Price was used, and whether the correct adjustment was made at the correct price. The composition of the Catastrophic Error Panel will be the same as the Obvious Error Panel.

Additionally, under paragraph (l)(3), a request for review must be made in writing within thirty (30) minutes after a party receives notification of a determination under paragraph (d), except that if notification is made after 2:30 p.m. Central Time (''CT''), either party has until 8:30 a.m. CT the next trading day to request review. The Catastrophic Error Panel shall review the facts and render a decision on the day of the transaction, or the next trade day in the case where a request is properly made the next trade day.

Finally, as with the Obvious Error Panel, the Catastrophic Error Panel may overturn or modify an action taken under this Rule upon agreement by a majority of the Panel representatives. All determinations by the Catastrophic Error Panel may be appealed in accordance with paragraph (m) of this Rule.

Review

Determinations made by an Obvious Error Panel or Catastrophic Error Panel can be appealed in accordance with paragraph (m) of the Proposed Rule. Paragraph (m) provides that, subject to the limitations contained in (c)(3),[12] a Participant affected by a determination made under this Rule may appeal such determination, in accordance with chapter XIX of the Exchange's rules. For purposes of this Rule, a Participant must be aggrieved as described in Rule 19.1. Notwithstanding any provision in Rule 19.2 to the contrary, a request for review must be made in writing (in a form and manner prescribed by the Exchange) no later than the close of trading on the next trade date after the Participant receives notification of such determination from the Exchange.

Limit Up-Limit Down Plan

The Exchange is proposing to adopt Interpretation and Policy .01 to the Proposed Rule to provide for how the Exchange will treat Obvious and Catastrophic Errors in response to the Regulation NMS Plan to Address Extraordinary Market Volatility Pursuant to Rule 608 of Regulation NMS under the Act (the ''Limit Up-Limit

[10] *See* Securities Exchange Act Release No. 34–54551 (September 29, 2006), 71 FR 194 (October 6, 2006).

[11] The Exchange notes that the Proposed Rule also includes Interpretation and Policy .03 and .04, which are being carried over from the Current Rule and describes qualification requirements for panelists. *See* Rule 6.15.02 and .03. The same provisions are applicable to the Catastrophic Error Panel.

[12] Transactions adjusted or nullified under (c)(3) cannot be reviewed by an Obvious Error Panel under paragraph (k) but can be appealed in accordance with paragraph (m).

Down Plan'' or the ''Plan),[13] which is applicable to all NMS stocks, as defined in Regulation NMS Rule 600(b)(47).[14] Under the Proposed Rule, during a pilot period to coincide with the pilot period for the Plan, including any extensions to the pilot period for the Plan, an execution will not be subject to review as an Obvious Error or Catastrophic Error pursuant to paragraph (c) or (d) of the Proposed Rule if it occurred while the underlying security was in a ''Limit State'' or ''Straddle State,'' as defined in the Plan. The Exchange, however, proposes to retain authority to review transactions on an Official's own motion pursuant to sub-paragraph (c)(3) of the Proposed Rule and to bust or adjust transactions pursuant to the proposed Significant Market Event provision, the proposed trading halts provision, the proposed provisions with respect to erroneous prints and quotes in the underlying security, or the proposed provision related to stop and stop limit orders that have been triggered by an erroneous execution. The Exchange believes that these safeguards will provide the Exchange with the flexibility to act when necessary and appropriate to nullify or adjust a transaction, while also providing market participants with certainty that, under normal circumstances, the trades they affect with quotes and/or orders having limit prices will stand irrespective of subsequent moves in the underlying security.

During a Limit or Straddle State, options prices may deviate substantially from those available immediately prior to or following such States. Thus, determining a Theoretical Price in such situations would often be very subjective, creating unnecessary uncertainty and confusion for investors. Because of this uncertainty, and consistent with the Current Rule, the Exchange proposes to provide that the Exchange will not review transactions as Obvious Errors or Catastrophic Errors when the underlying security is in a Limit or Straddle State.

The Exchange represents that it will conduct its own analysis concerning the elimination of the Obvious Error and Catastrophic Error provisions during Limit and Straddle States and agrees to provide the Commission with relevant data to assess the impact of this proposed rule change. As part of its analysis, the Exchange will evaluate (1) the options market quality during Limit and Straddle States, (2) assess the character of incoming order flow and transactions during Limit and Straddle States, and (3) review any complaints from Participants and their customers concerning executions during Limit and Straddle States. The Exchange also agrees to provide to the Commission data requested to evaluate the impact of the inapplicability of the Obvious Error and Catastrophic Error provisions, including data relevant to assessing the various analyses noted above.

In connection with this proposal, the Exchange will provide to the Commission and the public a dataset containing the data for each Straddle State and Limit State in NMS Stocks underlying options traded on the Exchange beginning in the month during which the proposal is approved, limited to those option classes that have at least one (1) trade on the Exchange during a Straddle State or Limit State. For each of those option classes affected, each data record will contain the following information:

- Stock symbol, option symbol, time at the start of the Straddle or Limit State, an indicator for whether it is a Straddle or Limit State.
- For activity on the Exchange:
  - executed volume, time-weighted quoted bid-ask spread, time-weighted average quoted depth at the bid, time-weighted average quoted depth at the offer;
  - high execution price, low execution price;
  - number of trades for which a request for review for error was received during Straddle and Limit States;
  - an indicator variable for whether those options outlined above have a price change exceeding 30% during the underlying stock's Limit or Straddle State compared to the last available option price as reported by OPRA before the start of the Limit or Straddle State (1 if observe 30% and 0 otherwise). Another indicator variable for whether the option price within five minutes of the underlying stock leaving the Limit or Straddle state (or halt if applicable) is 30% away from the price before the start of the Limit or Straddle State.

In addition, by May 29, 2015, the Exchange shall provide to the Commission and the public assessments relating to the impact of the operation of the Obvious Error rules during Limit and Straddle States as follows: (1) Evaluate the statistical and economic impact of Limit and Straddle States on liquidity and market quality in the options markets; and (2) Assess whether the lack of Obvious Error rules in effect during the Straddle and Limit States are problematic. The timing of this submission would coordinate with Participants' proposed time frame to submit to the Commission assessments as required under Appendix B of the Plan. The Exchange notes that the pilot program is intended to run concurrent with the pilot period of the Plan, which has been extended to October 23, 2015. The Exchange proposes to reflect this date in the Proposed Rule.

No Adjustments to a Worse Price

The Exchange also proposes to include Interpretation and Policy .02 to the Proposed Rule, which would make clear that to the extent the provisions of the proposed Rule would result in the Exchange applying an adjustment of an erroneous sell transaction to a price lower than the execution price or an erroneous buy transaction to a price higher than the execution price, the Exchange will not adjust or nullify the transaction, but rather, the execution price will stand.

Arbitration

Additionally, the Exchange proposes to adopt Interpretation and Policy .05, which provides that any determination made by an Official, an Obvious Error Panel, or a Catastrophic Error Panel under Proposed Rule shall be rendered without prejudice as to the rights of the parties to the transaction to submit a dispute to arbitration.

Implementation Date

In order to ensure that other options exchanges are able to adopt rules consistent with this proposal and to coordinate the effectiveness of such harmonized rules, the Exchange proposes to delay the operative date of this proposal to May 8, 2015.

2. Statutory Basis

The Exchange believes that its proposal is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of section 6(b) of the Act.[15] Specifically, the proposal is consistent with section 6(b)(5) of the Act[16] because it would promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of, a free and open market and a national market system, and, in general, protect investors and the public interest.

As described above, the Exchange and other options exchanges are seeking to adopt harmonized rules related to the adjustment and nullification of

[13] Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012) (order approving the Plan on a pilot basis).

[14] 17 CFR 242.600(b)(47).

[15] 15 U.S.C. 78f(b).

[16] 15 U.S.C. 78f(b)(5).

erroneous options transactions. The Exchange believes that the Proposed Rule will provide greater transparency and clarity with respect to the adjustment and nullification of erroneous options transactions. Particularly, the proposed changes seek to achieve consistent results for participants across U.S. options exchanges while maintaining a fair and orderly market, protecting investors and protecting the public interest. Based on the foregoing, the Exchange believes that the proposal is consistent with section 6(b)(5) of the Act[17] in that the Proposed Rule will foster cooperation and coordination with persons engaged in regulating and facilitating transactions.

The Exchange believes the various provisions allowing or dictating adjustment rather than nullification of a trade are necessary given the benefits of adjusting a trade price rather than nullifying the trade completely. Because options trades are used to hedge, or are hedged by, transactions in other markets, including securities and futures, many Participants, and their customers, would rather adjust prices of executions rather than nullify the transactions and, thus, lose a hedge altogether. As such, the Exchange believes it is in the best interest of investors to allow for price adjustments as well as nullifications. The Exchange further discusses specific aspects of the Proposed Rule below.

The Exchange does not believe that the proposal is unfairly discriminatory, even though it differentiates in many places between Customers and non-Customers. The rules of the options exchanges, including the Exchange's existing Obvious Error provision, often treat Customers differently, often affording them preferential treatment. This treatment is appropriate in light of the fact that Customers are not necessarily immersed in the day-to-day trading of the markets, are less likely to be watching trading activity in a particular option throughout the day, and may have limited funds in their trading accounts. At the same time, the Exchange reiterates that in the U.S. options markets generally there is significant retail customer participation that occurs directly on (and only on) options exchanges such as the Exchange. Accordingly, differentiating among market participants with respect to the adjustment and nullification of erroneous options transactions is not unfairly discriminatory because it is reasonable and fair to provide Customers with additional protections as compared to non-Customers.

The Exchange believes that its proposal with respect to the allowance of mutual agreed upon adjustments or nullifications is appropriate and consistent with the Act, as such proposal removes impediments to and perfects the mechanism of a free and open market and a national market system, allowing participants to mutually agree to correct an erroneous transactions without the Exchange mandating the outcome. The Exchange also believes that its proposal with respect to mutual adjustments is consistent with the Act because it is designed to prevent fraudulent and manipulative acts and practices by explicitly stating that it is considered conduct inconsistent with just and equitable principles of trade for any Participant to use the mutual adjustment process to circumvent any applicable Exchange rule, the Act or any of the rules and regulations thereunder.

The Exchange believes its proposal to provide within the Proposed Rule definitions of Customer, erroneous sell transaction and erroneous buy transaction, and Official is consistent with section 6(b)(5) of the Act because such terms will provide more certainty to market participants as to the meaning of the Proposed Rule and reduce the possibility that a party can intentionally submit an order hoping for the market to move in their favor in reliance on the Rule as a safety mechanism, thereby promoting just and fair principles of trade. Similarly, the Exchange believes that proposed Interpretation and Policy .02 is consistent with the Act as it would make clear that the Exchange will not adjust or nullify a transaction, but rather, the execution price will stand when the applicable adjustment criteria would actually adjust the price of the transaction to a worse price (*i.e.,* higher for an erroneous buy or lower for an erroneous sell order).

As set forth below, the Exchange believes it is consistent with section 6(b)(5) of the Act for the Exchange to determine Theoretical Price when the NBBO cannot reasonably be relied upon because the alternative could result in transactions that cannot be adjusted or nullified even when they are otherwise clearly at a price that is significantly away from the appropriate market for the option. Similarly, reliance on an NBBO that is not reliable could result in adjustment to prices that are still significantly away from the appropriate market for the option.

The Exchange believes that its proposal with respect to determining Theoretical Price is consistent with the Act in that it has retained the standard of the current rule, which is to rely on the NBBO to determine Theoretical Price if such NBBO can reasonably be relied upon. Because, however, there is not always an NBBO that can or should be used in order to administer the rule, the Exchange has proposed various provisions that provide the Exchange with the authority to determine a Theoretical Price. The Exchange believes that the Proposed Rule is transparent with respect to the circumstances under which the Exchange will determine Theoretical Price, and has sought to limit such circumstances as much as possible. The Exchange notes that Exchange personnel currently are required to determine Theoretical Price in certain circumstances. While the Exchange continues to pursue alternative solutions that might further enhance the objectivity and consistency of determining Theoretical Price, the Exchange believes that the discretion currently afforded to Exchange Officials is appropriate in the absence of a reliable NBBO that can be used to set the Theoretical Price.

With respect to the specific proposed provisions for determining Theoretical Price for transactions that occur as part of the Exchange's Opening Process and in situations where there is a wide quote, the Exchange believes both provisions are consistent with the Act because they provide objective criteria that will determine Theoretical Price with limited exceptions for situations where the Exchange does not believe the NBBO is a reasonable benchmark or there is no NBBO. The Exchange notes in particular with respect to the wide quote provision that the Proposed Rule will result in the Exchange determining Theoretical Price less frequently than it would pursuant to wide quote provisions that have previously been approved. The Exchange believes that it is appropriate and consistent with the Act to afford protections to market participants by not relying on the NBBO to determine Theoretical Price when the quote is extremely wide but had been, in the prior 10 seconds, at much more reasonable width. The Exchange also believes it is appropriate and consistent with the Act to use the NBBO to determine Theoretical Price when the quote has been wider than the applicable amount for more than 10 seconds, as the Exchange does not believe it is necessary to apply any other criteria in such a circumstance. The Exchange believes that market participants can easily use or adopt safeguards to prevent errors when such

[17] 15 U.S.C. 78f(b)(5).

market conditions exist. When entering an order into a market with a persistently wide quote, the Exchange does not believe that the entering party should reasonably expect anything other than the quoted price of an option.

The Exchange believes that its proposal to adopt clear but disparate standards with respect to the deadline for submitting a request for review of Customer and non-Customer transactions is consistent with the Act, particularly in that it creates a greater level of protection for Customers. As noted above, the Exchange believes that this is appropriate and not unfairly discriminatory in light of the fact that Customers are not necessarily immersed in the day-to-day trading of the markets and are less likely to be watching trading activity in a particular option throughout the day. Thus, Participants representing Customer orders reasonably may need additional time to submit a request for review. The Exchange also believes that its proposal to provide additional time for submission of requests for review of linkage trades is reasonable and consistent with the protection of investors and the public interest due to the time that it might take an options exchange or third-party routing broker to file a request for review with the Exchange if the initial notification of an error is received by the originating options exchange near the end of such options exchange's filing deadline. Without this additional time, there could be disparate results based purely on the existence of intermediaries and an interconnected market structure.

In relation to the aspect of the proposal giving Officials the ability to review transactions for obvious errors on their own motion, the Exchange notes that an Official can adjust or nullify a transaction under the authority granted by this provision only if the transaction meets the specific and objective criteria for an Obvious Error under the Proposed Rule. As noted above, this is designed to give an Official the ability to provide parties relief in those situations where they have failed to report an apparent error within the established notification period. However, the Exchange will only grant relief if the transaction meets the requirements for an Obvious Error as described in the Proposed Rule.

The Exchange believes that its proposal to adjust non-Customer transactions and to nullify Customer transactions that qualify as Obvious Errors is appropriate for reasons consistent with those described above. In particular, Customers are not necessarily immersed in the day-to-day trading of the markets, are less likely to be watching trading activity in a particular option throughout the day, and may have limited funds in their trading accounts.

The Exchange acknowledges that the proposal contains some uncertainty regarding whether a trade will be adjusted or nullified, depending on whether one of the parties is a Customer, because a party may not know whether the other party to a transaction was a Customer at the time of entering into the transaction. However, the Exchange believes that the proposal nevertheless promotes just and equitable principles of trade and protects investors as well as the public interest because it eliminates the possibility that a Customer's order will be adjusted to a significantly different price. As noted above, the Exchange believes it is consistent with the Act to afford Customers greater protections under the Proposed Rule than are afforded to non-Customers. Thus, the Exchange believes that its proposal is consistent with the Act in that it protects investors and the public interest by providing additional protections to those that are less informed and potentially less able to afford an adjustment of a transaction that was executed in error. Customers are also less likely to have engaged in significant hedging or other trading activity based on earlier transactions, and thus, are less in need of maintaining a position at an adjusted price than non-Customers.

If any Participant submits requests to the Exchange for review of transactions pursuant to the Proposed Rule, and in aggregate that Participant has 200 or more Customer transactions under review concurrently and the orders resulting in such transactions were submitted during the course of 2 minutes or less, the Exchange believes it is appropriate for the Exchange apply the non-Customer adjustment criteria described above to such transactions. The Exchange believes that the proposed aggregation is reasonable as it is representative of an extremely large number of orders submitted to the Exchange over a relatively short period of time that are, in turn, possibly erroneous (and within a time frame significantly less than an entire day), and thus is most likely to occur because of a systems issue experienced by a Participant representing Customer orders or a systems issue coupled with the erroneous marking of orders. The Exchange does not believe it is possible at a level of 200 Customer orders over a 2 minute period that are under review at one time that multiple, separate Customers were responsible for the errors in the ordinary course of trading. In the event of a large-scale issue caused by a Participant that has submitted orders over a 2 minute period marked as Customer that resulted in more than 200 transactions under review, the Exchange does not believe it is appropriate to nullify all such transactions because of the negative impact that nullification could have on the market participants on the contra-side of such transactions, who might have engaged in hedging and trading activity following such transactions. In order for a participant to have more than 200 transactions under review concurrently when the orders triggering such transactions were received in 2 minutes or less, the Exchange believes that a market participant will have far exceeded the normal behavior of customers deserving protected status. While the Exchange continues to believe that it is appropriate to nullify transactions in such a circumstance if both participants to a transaction are Customers, the Exchange does not believe it is appropriate to place the overall risk of a significant number of trade breaks on non-Customers that in the normal course of business may have engaged in additional hedging activity or trading activity based on such transactions. Thus, the Exchange believes it is necessary and appropriate to protect non-Customers in such a circumstance by applying the non-Customer adjustment criteria, and thus adjusting transactions as set forth above, in the event a Participant has more than 200 transactions under review concurrently. In summary, due to the extreme level at which the proposal is set, the Exchange believes that the proposal is consistent with section 6(b)(5) of the Act in that it promotes just and equitable principles of trade by encouraging market participants to retain appropriate controls over their systems to avoid submitting a large number of erroneous orders in a short period of time.

Similarly, the Exchange believes that the proposed Size Adjustment Modifier, which would increase the adjustment amount for non-Customer transactions, is appropriate because it attempts to account for the additional risk that the parties to the trade undertake for transactions that are larger in scope. The Exchange believes that the Size Adjustment Modifier creates additional incentives to prevent more impactful Obvious Errors and it lessens the impact on the contra-party to an adjusted trade. The Exchange notes that these contra-parties may have preferred to only trade the size involved in the transaction at the price at which such trade occurred, and in trading larger size has committed a greater level of capital and bears a larger hedge risk.

The Exchange similarly believes that its Proposed Rule with respect to Catastrophic Errors is consistent with the Act as it affords additional time for market participants to file for review of erroneous transactions that were further away from the Theoretical Price. At the same time, the Exchange believes that the Proposed Rule is consistent with the Act in that it generally would adjust transactions, including Customer transactions, because this will protect against hedge risk, particularly for transactions that may have occurred several hours earlier and thus, which all parties to the transaction might presume are protected from further modification. Similarly, by providing larger adjustment amounts away from Theoretical Price than are set forth under the Obvious Error provision, the Catastrophic Error provision also takes into account the possibility that the party that was advantaged by the erroneous transaction has already taken actions based on the assumption that the transaction would stand. The Exchange believes it is reasonable to specifically protect Customers from adjustments through their limit prices for the reasons stated above, including that Customers are less likely to be watching trading throughout the day and that they may have less capital to afford an adjustment price. The Exchange believes that the proposal provides a fair process that will ensure that Customers are not forced to accept a trade that was executed in violation of their limit order price. In contrast, market professionals are more likely to have engaged in hedging or other trading activity based on earlier trading activity, and thus, are more likely to be willing to accept an adjustment rather than a nullification to preserve their positions even if such adjustment is to a price through their limit price.

The Exchange believes that proposed rule change to adopt the Significant Market Event provision is consistent with section 6(b)(5) of the Act in that it will foster cooperation and coordination with persons engaged in regulating the options markets. In particular, the Exchange believes it is important for options exchanges to coordinate when there is a widespread and significant event, as commonly, multiple options exchanges are impacted in such an event. Further, while the Exchange recognizes that the Proposed Rule will not guarantee a consistent result for all market participants on every market, the Exchange does believe that it will assist in that outcome. For instance, if options exchanges are able to agree as to the time from which Theoretical Price should be determined and the period of time that should be reviewed, the likely disparity between the Theoretical Prices used by such exchanges should be very slight and, in turn, with otherwise consistent rules, the results should be similar. The Exchange also believes that the Proposed Rule is consistent with the Act in that it generally would adjust transactions, including Customer transactions, because this will protect against hedge risk, particularly for liquidity providers that might have been quoting in thousands or tens of thousands of different series and might have affected executions throughout such quoted series. The Exchange believes that when weighing the competing interests between preferring a nullification for a Customer transaction and an adjustment for a transaction of a market professional, while nullification is appropriate in a typical one-off situation that it is necessary to protect liquidity providers in a widespread market event because, presumably, they will be the most affected by such an event (in contrast to a Customer who, by virtue of their status as such, likely would not have more than a small number of affected transactions). The Exchange believes that the protection of liquidity providers by favoring adjustments in the context of Significant Market Events can also benefit Customers indirectly by better enabling liquidity providers, which provides a cumulative benefit to the market. Also, as stated above with respect to Catastrophic Errors, the Exchange believes it is reasonable to specifically protect Customers from adjustments through their limit prices for the reasons stated above, including that Customers are less likely to be watching trading throughout the day and that they may have less capital to afford an adjustment price. The Exchange believes that the proposal provides a fair process that will ensure that Customers are not forced to accept a trade that was executed in violation of their limit order price. In contrast, market professionals are more likely to have engaged in hedging or other trading activity based on earlier trading activity, and thus, are more likely to be willing to accept an adjustment rather than a nullification to preserve their positions even if such adjustment is to a price through their limit price. In addition, the Exchange believes it is important to have the ability to nullify some or all transactions arising out of a Significant Market Event in the event timely adjustment is not feasible due to the extraordinary nature of the situation. In particular, although the Exchange has worked to limit the circumstances in which it has to determine Theoretical Price, in a widespread event it is possible that hundreds if not thousands of series would require an Exchange determination of Theoretical Price. In turn, if there are hundreds or thousands of trades in such series, it may not be practicable for the Exchange to determine the adjustment levels for all non-Customer transactions in a timely fashion, and in turn, it would be in the public interest to instead more promptly deliver a simple, consistent result of nullification.

The Exchange believes that proposed rule change related to review, nullification and/or adjustment of erroneous transactions during a trading halt, an erroneous print in the underlying security, an erroneous quote in the underlying security, or an erroneous transaction in the option with respect to stop and stop limit orders is likewise consistent with section 6(b)(5) of the Act because the proposal provides for the adjustment or nullification of trades executed at erroneous prices through no fault on the part of the trading participants. Allowing for Exchange review in such situations will promote just and fair principles of trade by protecting investors from harm that is not of their own making. Specifically with respect to the proposed provisions governing erroneous prints and quotes in the underlying security, the Exchange notes that market participants on the Exchange base the value of their quotes and orders on the price of the underlying security. The provisions regarding errors in prints and quotes in the underlying security cover instances where the information market participants use to price options is erroneous through no fault of their own. In these instances, market participants have little, if any, chance of pricing options accurately. Thus, these provisions are designed to provide relief to market participants harmed by such errors in the prints or quotes of the underlying security.

The Exchange believes that the proposed provision related to Linkage Trades is consistent with the Act because it adds additional transparency to the Proposed Rule and makes clear that when a Linkage Trade is adjusted or nullified by another options exchange, the Exchange will take necessary actions to complete the nullification or adjustment of the Linkage Trade.

The Exchange believes that retaining the same appeals process for obvious errors as the Exchange maintains under the Current Rule is consistent with the Act because such process provides Participants with due process in connection with decisions made by Exchange Officials under the Proposed Rule. The Exchange believes that this process provides fair representation of Participants by ensuring multiple Participants are members of any Obvious Error Review Panel, which is consistent with sections 6(b)(3) and 6(b)(7) of the Act. The Exchange believes adopting a similar appeals process for catastrophic errors is consistent with the Act for the same reasons noted above.

With regard to the portion of the Exchange's proposal related to the applicability of the Obvious Error Rule when the underlying security is in a Limit or Straddle State, the Exchange believes that the proposed rule change is consistent with section 6(b)(5) of the Act because it will provide certainty about how errors involving options orders and trades will be handled during periods of extraordinary volatility in the underlying security. Further, the Exchange believes that it is necessary and appropriate in the interest of promoting fair and orderly markets to exclude from Rule 6.15 those transactions executed during a Limit or Straddle State.

The Exchange believes the application of the Proposed Rule without the proposed provision would be impracticable given the lack of reliable NBBO in the options market during Limit and Straddle States, and that the resulting actions (*i.e.,* nullified trades or adjusted prices) may not be appropriate given market conditions. The Proposed Rule change would ensure that limit orders that are filled during a Limit State or Straddle State would have certainty of execution in a manner that promotes just and equitable principles of trade, removes impediments to, and perfects the mechanism of a free and open market and a national market system.

Moreover, given the fact that options prices during brief Limit or Straddle States may deviate substantially from those available shortly following the Limit or Straddle State, the Exchange believes giving market participants time to re-evaluate a transaction would create an unreasonable adverse selection opportunity that would discourage participants from providing liquidity during Limit or Straddle States. In this respect, the Exchange notes that only those orders with a limit price will be executed during a Limit or Straddle State. Therefore, on balance, the Exchange believes that removing the potential inequity of nullifying or adjusting executions occurring during Limit or Straddle States outweighs any potential benefits from applying certain provisions during such unusual market conditions. Additionally, as discussed above, there are additional pre-trade protections in place outside of the Obvious and Catastrophic Error Rule that will continue to safeguard customers.

The Exchange notes that under certain limited circumstances the Proposed Rule will permit the Exchange to review transactions in options that overlay a security that is in a Limit or Straddle State. Specifically, an Official will have authority to review a transaction on his or her own motion in the interest of maintaining a fair and orderly market and for the protection of investors. Furthermore, the Exchange will have the authority to adjust or nullify transactions in the event of a Significant Market Event, a trading halt in the affected option, an erroneous print or quote in the underlying security, or with respect to stop and stop limit orders that have been triggered based on erroneous trades. The Exchange believes that the safeguards described above will protect market participants and will provide the Exchange with the flexibility to act when necessary and appropriate to nullify or adjust a transaction, while also providing market participants with certainty that, under normal circumstances, the trades they effect with quotes and/or orders having limit prices will stand irrespective of subsequent moves in the underlying security. The right to review those transactions that occur during a Limit or Straddle State would allow the Exchange to account for unforeseen circumstances that result in Obvious or Catastrophic Errors for which a nullification or adjustment may be necessary in the interest of maintaining a fair and orderly market and for the protection of investors. Similarly, the ability to nullify or adjust transactions that occur during a Significant Market Event or trading halt, erroneous print or quote in the underlying security, or erroneous trade in the option (*i.e.,* stop and stop limit orders) may also be necessary in the interest of maintaining a fair and orderly market and for the protection of investors. Furthermore, the Exchange will administer this provision in a manner that is consistent with the principles of the Act and will create and maintain records relating to the use of the authority to act on its own motion during a Limit or Straddle State or any adjustments or trade breaks based on other proposed provisions under the Rule.

B. Self-Regulatory Organization's Statement on Burden on Competition

C2 does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Importantly, the Exchange believes the proposal will not impose a burden on intermarket competition but will rather alleviate any burden on competition because it is the result of a collaborative effort by all options exchanges to harmonize and improve the process related to the adjustment and nullification of erroneous options transactions. The Exchange does not believe that the rules applicable to such process is an area where options exchanges should compete, but rather, that all options exchanges should have consistent rules to the extent possible. Particularly where a market participant trades on several different exchanges and an erroneous trade may occur on multiple markets nearly simultaneously, the Exchange believes that a participant should have a consistent experience with respect to the nullification or adjustment of transactions. The Exchange understands that all other options exchanges intend to file proposals that are substantially similar to this proposal.

The Exchange does not believe that the proposed rule change imposes a burden on intramarket competition because the provisions apply to all market participants equally within each participant category (*i.e.,* Customers and non-Customers). With respect to competition between Customer and non-Customer market participants, the Exchange believes that the Proposed Rule acknowledges competing concerns and tries to strike the appropriate balance between such concerns. For instance, as noted above, the Exchange believes that protection of Customers is important due to their direct participation in the options markets as well as the fact that they are not, by definition, market professionals. At the same time, the Exchange believes due to the quote-driven nature of the options markets, the importance of liquidity provision in such markets and the risk that liquidity providers bear when quoting a large breadth of products that are derivative of underlying securities, that the protection of liquidity providers and the practice of adjusting transactions rather than nullifying them is of critical importance. As described above, the Exchange will apply specific and objective criteria to determine whether an erroneous transaction has occurred and, if so, how to adjust or nullify a transaction.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to section 19(b)(3)(A) of the Act [18] and Rule 19b–4(f)(6) thereunder.[19]

The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, as it will enable the Exchange to meet its proposed implementation date of May 8, 2015, which will help facilitate the implementation of harmonized rules related to the adjustment and nullification of erroneous options transactions across the options exchanges. For this reason, the Commission designates the proposed rule change to be operative upon filing.[20]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

• Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or

• Send an email to *rule-comments@sec.gov. Please include File Number SR–C2–2015–012 on the subject line.*

Paper Comments

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

All submissions should refer to File Number SR–C2–2015–012. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–C2–2015–012 and should be submitted on or before June 3, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[21]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2015–11485 Filed 5–12–15; 8:45 am]

BILLING CODE 8011–01–P

[18] 15 U.S.C. 78s(b)(3)(A).

[19] 17 CFR 240.19b–4(f)(6). As required under Rule 19b–4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

[20] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[21] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–74914; File No. SR–CBOE–2015–044]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Proposed Rule To Introduce Asian Style Settlement and Cliquet Style Settlement for FLexible Exchange Broad-Based Index Options

May 8, 2015.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 6, 2015, the Chicago Board Options Exchange, Incorporated (the ''Exchange'' or ''CBOE'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Chicago Board Options Exchange, Incorporated (''CBOE'' or ''Exchange'') proposes to introduce Asian style settlement and Cliquet style settlement for FLexible Exchange (''FLEX'') Broad-Based Index options. The proposed rule change would not amend the text of Rule 12.4 (Portfolio Margin); however, the Exchange believes that it would be appropriate to include the proposed options in portfolio margining. The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposed rule change is to permit the Exchange to introduce Asian style settlement and Cliquet style settlement for FLexible Exchange (''FLEX'') Broad-Based Index options. In general, Asian style settlement provides for payout based on the average of prices of a broad-based index on pre-determined dates over a specified time period and Cliquet style settlement provides for a payout that is the greater of $0 or the (positive) sum of ''capped'' monthly returns of a broad-based index on pre-determined dates over a specified period of time.

FLEX Broad-Based Index options provide users with the ability to customize key contract terms, like exercise prices, exercise styles, expiration dates and exercise settlement values. After surveying potential FLEX Broad-Based index options users, the Exchange learned that indexed annuity writers (insurance companies) extensively use over-the-counter (''OTC'') options with Asian and Cliquet style settlement as a crediting method.[3] Because of the level of customization that FLEX Broad-Based Index options provide, the Exchange seeks to introduce exchange-traded products that would provide potential market users with an alternative to the OTC market in customized options.

Index Annuity Writer Use of Asian and Cliquet Options

For background, an indexed annuity is an insurance contract that is typically tied to a financial market index, *e.g.,* S&P 500 Index, and the return is guaranteed not to fall below a level specified in the contract. Indexed annuity contracts typically provide that the contract holder will be credited interest according to a specified formula based on changes to the index to which the annuity contract is linked. Indexed annuity contracts often have exotic option liabilities embedded within those contracts.

One type of annuity contract is an Asian contract (sometimes referred to as an averaging contract) because the settlement value is based on an average of selected closing prices of an index over a year. The contract holder of this type of contract is typically entitled to receive a credit on the anniversary date in an amount equal to the greater of $0 and the difference between the average price of an index and the level of the index from the date of inception or the previous anniversary date.

Another type of annuity contract is a Cliquet contract (sometimes referred to as a contract with a monthly return cap with a global floor) because its payoff is the greater of zero or the sum of monthly capped returns of an index over a year. The contract holder of this type of contract is typically entitled to receive a credit on the anniversary date in an amount based on the sum of monthly returns (subject to a monthly cap) if the sum of monthly returns is greater than 0. If the sum of the monthly capped returns is 0 or less, the holder would not realize a loss (other than the premium paid) because the sum of monthly capped returns has a global floor of 0.

Insurance companies that write indexed annuity contracts, therefore, seek financial tools to manage and hedge the embedded exotic option risk in these contracts. Historically, these insurers have traded exclusively in the OTC market by entering into bilateral contracts tailored to the terms of indexed annuity contracts. CBOE proposes to introduce two new kinds of settlement styles for FLEX Broad-Based Index options that would provide insurers with alternative hedging tools to OTC products, coupled with traditional exchange-traded benefits like price discovery, transparency and centralized clearing.

Asian Style Settlement

FLEX Broad-Based Index options with Asian style settlement would be cash-settled call[4] option contracts for which the final payout would be based on an arithmetic average of specified closing values of the underlying broad-based index (''Asian option''). Exercise (strike) prices and premium quotations for Asian options would be expressed and governed as provided for in Rules 24A.4(b)(2) and 24B.(b)(2). Asian options would have a term of approximately one year and would expire anytime from 350 to 371 days (which is approximately 50 to 53 calendar weeks) from the date of initial listing. The contract multiplier for an Asian option would be $100.[5]

The parties to an Asian option contract would designate a set of monthly observation dates and an expiration date for each contract. The monthly observation date would the date each month on which the price of the underlying broad-based index would be observed for the purpose of calculating the exercise settlement value for Asian options. Each Asian option would have 12 consecutive monthly observation dates (which includes an observation on the expiration date) and each observation would be based on the closing price of the underlying broad-based index. The specific monthly observation dates would be determined by working backward from the farthest out observation date prior to the expiration date. If a given monthly observation date falls on a non CBOE business day (*e.g.,* holiday or weekend), the monthly observation would be on the immediately preceding business day (''preceding business day convention''). The parties may not designate a subsequent business day convention for Asian options.

Asian options would have European-style exercise and may not be exercised prior to the expiration date. The exercise settlement value for Asian options would be the arithmetic average of the closing values of the underlying broad-based index on the 12 consecutive monthly observation dates, which include the expiration date of the option. Mathematically this is expressed as:

[3] A ''crediting method'' is the method used to measure the change in the underlying index (*e.g.,* point-to-point or annual reset).

[4] Puts would not be permitted.

[5] *See* Rules 24A.1(i) and 24B.1(m). ''The Index Multiplier for FLEX Index Options is $100.''

$$\text{Exercise Settlement Value} = \frac{\sum_{i=1}^{12} S_i}{12}$$

Where S_i is the closing price of the underlying broad-based index on monthly observation date on the ith monthly observation date.

The exercise settlement amount for Asian options would be calculated similarly to other options, *i.e.,* the difference between the strike price and the averaged settlement value would determine the value, or ''moneyness'' of the contract at expiration.

An example of an Asian FLEX call option expiring in-the-money follows. On January 21, 2015, an investor hedging the value of the S&P 500 Index over a year purchases a call option expiring on January 22, 2016 with a strike price of 2000 and a contract multiplier of $100. The option has monthly observation dates occurring on the 23rd of each month.

Monthly observation date	S&P 500 Index closing value
23–Feb–15	2025.36
23–Mar–15	2049.34
23–Apr–15	2019.77
22–May–15 *	1989.65
23–Jun–15	2005.64
23–Jul–15	2035.10
21–Aug–15 *	2032.15
23–Sep–15	2076.18
23–Oct–15	2099.01
23–Nov–15	2109.32
23–Dec–15	2085.42
22–Jan–16	2084.81
Exercise (Averaged) Settlement Value.	24,611.75/12 = 2050.98

* Because Asian FLEX options use the ''preceding business day convention,'' the dates of May 23, 2015 and August 23, 2015, were not used in the above example because those dates will fall on a weekend or a holiday. Instead the business days immediately preceding those dates were used as the monthly observation date.

The exercise settlement amount for this 2000 Asian FLEX call option would be equal to $5,098. This amount would be determined by adding the 12 observed closing values for the S&P 500 Index and dividing that amount by 12 (24,611.75/12), which is equal to 2050.98 (when rounded). As a result, this 2000 call option would be $5,098 in-the-money (50.98 × $100).

If, in the above example, the strike price for the Asian FLEX call option was 2060, that contract would have expired out-of-the-money. This is because the exercise settlement value for this 2060 call option is equal to 2050.98 (when rounded). Since the strike price of 2060 is more than the 2050.98 exercise settlement value, this option would not be exercised and would expire worthless.

Cliquet Style Settlement

FLEX Broad-Based Index options with Cliquet style settlement would be cash-settled call[6] option contracts for which the final payout would be based on the sum of monthly returns (*i.e.,* percent changes in the closing value of the underlying broad-based index from one monthly observation date to the next monthly observation date), subject to a monthly return ''cap'' (*e.g.,* 2%) applied over 12 monthly observation dates (''Cliquet option''). Premium quotations for Cliquet options would be expressed and governed as provided for in Rules 24A.4(b)(2) and 24B.(b)(2). Cliquet options would have a term of approximately one year and would expire anytime from 350 to 371 days (which is approximately 50 to 53 calendar weeks) from the date of initial listing. The contract multiplier for a Cliquet option would be $100.[7]

The parties to a Cliquet option would designate a set of monthly observation dates for each contract and an expiration date for each contract. The monthly observation date would be the date each month on which the price of the underlying broad-based index would be observed for the purpose of calculating the exercise settlement value for Cliquet FLEX options. Each Cliquet FLEX option would have 12 consecutive monthly observation dates (which includes an observation on the expiration date) and each observation would be based on the closing price of the underlying broad-based index. The specific monthly observation dates would be determined working backward from the farther out observation date prior to the expiration date. If a given monthly observation date fell on a non CBOE business day (*e.g.,* holiday or weekend), the monthly observation would be on the immediately preceding business day (''preceding business day convention''). The parties may not designate a subsequent business day convention for Cliquet options.

The parties to a Cliquet option would designate a capped monthly return (percent change in the closing values of the underlying broad-based index from one month to the next month) for the contract, which would be the maximum monthly return that would be included in the calculation of the exercise settlement value for the contract. On each monthly observation date, the Exchange would determine the actual monthly return (the percent change of the underlying broad-based index) using the closing value of the broad-based index on the current monthly observation date and the closing value of the broad-based index on the previous monthly observation date. The Exchange would then compare the actual monthly return to the capped monthly return. The value to be included as the monthly return for a Cliquet option would be the lesser of the actual monthly return or the capped monthly return.

For example, if the actual monthly return of the underlying broad-based index was 1.75% and the designated capped monthly return for a Cliquet option was 2%, the 1.75% value would be included (and not the 2%) as the value for the observation date to determine the exercise settlement value. Using this same example, if the actual monthly return of the underlying broad-based index was 3.30%, the 2% value would be included (and not the 3.30%) as the value of the observation date to determine the exercise settlement value. This latter example illustrates that, Cliquet options have a capped upside. Cliquet options do not, however, have a capped downside for the monthly return that would be included in determining the exercise settlement value. Drawing on this same example, if the actual monthly return of the underlying broad-based index was −4.07%, the −4.07% value would be included as the value for the observation date to determine the exercise settlement value. There would be, however, be a global floor for Cliquet options so that if the sum of the monthly returns is negative, a Cliquet option would expire worthless.

Unlike other options, Cliquet options would not have a traditional exercise (strike) price. Rather, the exercise (strike) price field for a Cliquet option would represent the designated capped monthly return for the contract and would be expressed in dollars and cents. For example, a capped monthly return of 2.25% would be represented by the dollar amount of $2.25. The ''strike'' price for a Cliquet option may only be expressed in a dollar and cents amount and the ''strike'' price for a Cliquet option may only span a range

[6] Puts would not be permitted.

[7] *See* Rules 24A.1(i) and 24B.1(m). ''The Index Multiplier for FLEX Index Options is $100.''

between $0.05 and $25.95. In addition, the ''strike'' price for a Cliquet option may only be designated in $0.05 increments, *e.g.,* $1.75, $2.50, $4.15. Increments of $0.01 in the ''strike'' price field (representing the capped monthly return) would not be permitted.

The first ''monthly'' return for a Cliquet option would be based on the initial reference value, which would be the closing value of the underlying broad-based index on the date a new Cliquet option is listed. The time period measured for the first ''monthly'' return would be between the initial listing date and the first monthly observation date. For example, if a Cliquet option was opened on January 1 and the parties designated the 31st of each month as the monthly observation date, the measurement period for the first monthly return would span the time period from January 1 to January 31. The time period measured for the second monthly return, and all subsequent monthly returns, would run from the 31st of one month to the 31st of the next month (or the last CBOE business day of each month depending on the actual number of calendar days in each month covered by the contract).

Cliquet options would have European-style exercise and may not be exercised prior to the expiration date. The exercise settlement value for Cliquet options would be equal to the initial reference price of the underlying broad-based index multiplied by the sum of the monthly returns (with the cap applied) on the 12 consecutive monthly observation dates, which include the expiration date of the option, provided that the sum is greater than 0. If the sum of the monthly returns (with the applied cap) is 0 or a less, the option would expire worthless.[8] Mathematically this is expressed as:

1. $S_0 \times (1+ \sum_{i=1}^{12} CMR_i)$; and

2. S_0

Where: $\boldsymbol{S_0}$ = Initial Reference Price

$\boldsymbol{CMR_i}$ = MIN (Actual Monthly Return$_i$, Capped Monthly Return)

$$\textbf{\textit{Monthly Return}}_i = \frac{(S_i - S_{i-1})}{S_{i-1}}$$

$\boldsymbol{S_i}$ = Closing Price of the Underlying Broad-Based Index on Monthly Observation Date ($_i$).

An example of a Cliquet option follows. On January 21, 2015, an investor hedging the value of the S&P 500 Index over a year purchases a Cliquet FLEX call option expiring on January 22, 2016 with a capped monthly return of 2% and a contract multiplier of $100. The initial reference price of the S&P 500 Index (closing value) on January 21, 2015 is 2000. The option has monthly observation dates occurring on the 23rd of each month.

Monthly observation date	S&P 500 Index closing value (S_i)	Actual monthly return (percent)	Capped monthly return (CMR_i) (percent)	Sum of monthly returns (percent)
23–Feb–15	2025.36	1.27	1.27	1.27
23–Mar–15	2049.34	1.18	1.18	2.45
23–Apr–15	2019.77	−1.44	−1.44	1.01
*22–May–15**	1989.65	−1.49	−1.49	−0.48
23–Jun–15	2005.64	0.80	0.80	0.32
23–Jul–15	2035.10	1.47	1.47	1.79
*21–Aug–15**	2032.15	−0.14	−0.14	1.65
23–Sep–15	2076.18	2.17	** *2.00*	3.65
23–Oct–15	2099.01	1.10	1.10	4.75
23–Nov–15	2109.32	0.49	0.49	5.24
23–Dec–15	2085.42	−1.13	−1.13	4.11
22–Jan–16	2084.81	−0.03	−0.03	4.08

[8] Prior to expiration, it is possible that the accumulated monthly returns could become negative to a point at which it is known that the value of the contract at expiration would be zero. The holder or writer of such a position may choose to exit the position prior to expiration for a negligible credit or debit amount, respectively.

Monthly observation date	S&P 500 Index closing value (S_i)	Actual monthly return (percent)	Capped monthly return (CMR_i) (percent)	Sum of monthly returns (percent)
Exercise Settlement Value:	[(4.08% * 2000.00)] + 2 = 83.60			

* Because Cliquet FLEX options use the ''preceding business day convention,'' the dates of May 23, 2015, and August 23, 2015, were not used in the above example because those dates will fall on a weekend or a holiday. Instead the business days immediately preceding those dates were used as the monthly observation dates.

** Monthly capped return applied.

The exercise settlement amount for this January 22, 2016 Cliquet option, with a capped monthly 2% return (''strike price'') and a contract multiplier of $100 would be equal to $8,360. This value would be calculated by summing the monthly capped returns (equal to 4.08%) and multiplying that amount by the initial reference price (equal to 2000), which equals 81.60. The ''strike price'' (2%) amount would then be added to that amount (81.60) to arrive at an exercise settlement value of 83.60. Because the ''strike price'' field for a Cliquet option would be the manner in which the designated capped monthly return would be identified for the contract and because the designated monthly return for the contract would have been already substantively applied to determine the exercise settlement value, the ''strike price'' of 2.0 would be subtracted from the exercise settlement value before the contract multiplier ($100) would be applied [(83.60 − 2) * 100]. Accordingly, resulting payout for this contract would be $8,160.

If the sum of the monthly capped returns had been negative, this option would have expired worthless.

Specific Rule Text Changes

To expressly permit Asian style settlement and Cliquet style settlement for FLEX Broad-Based Index options, CBOE is proposing to amend Rules 24A.1 (Definitions), 24A.4 (Terms of FLEX Options), 24B.1 (Definitions) and 24B.4 (Terms of FLEX Options).[9] First, CBOE proposes to amend Rules 24A.1 [10] and 24B.1 [11] by adding the below definitions to those rules:

The term ''Asian style settlement'' is a settlement style that may be designated for FLEX Broad-Based Index Options and results in the contract settling to an exercise settlement value that is based on an arithmetic average of the specified closing prices of an underlying broad-based index taken on 12 predetermined monthly observation dates (including on the expiration date). FLEX Broad-Based Index Options with Asian style settlement have ''preceding business day convention,'' meaning that if a monthly observation date falls on a non CBOE business day (*e.g.,* holiday or weekend), the monthly observation would be on the immediately preceding business day. FLEX Broad-Based Index Options with Asian style settlement have European-style exercise.

The term ''Cliquet style settlement'' is a settlement style that may be designated for FLEX Broad-Based Index Options and results in the contract settling to an exercise settlement value that is equal to the greater of $0 or the sum of capped monthly returns (*i.e.,* percent changes in the closing value of the underlying broad-based index from one month to the next month) applied over 12 predetermined monthly observation dates (including on the expiration date). FLEX Broad-Based Index Options with Cliquet style settlement have ''preceding business day convention,'' meaning that if a monthly observation date falls on a non CBOE business day (*e.g.,* holiday or weekend), the monthly observation would be on the immediately preceding business day. FLEX Broad-Based Index Options with Cliquet style settlement have European-style exercise.

Second, the CBOE proposes to amend Rules 24A.4(b) [12] and 24B.4(b) [13] by adding the below terms that the parties to Asian options and Cliquet options must designate and the parameters governing the parties' designations:

Asian style settlement. The parties to FLEX Broad-Based Index Options may designate Asian style settlement. FLEX Broad-Based Index Options with Asian style settlement shall be call options (no puts) and designated by: (i) The duration of the contract which may range from 350 to 371 days (which is approximately 50 to 53 calendar weeks) from the date of listing; (ii) the strike price; (iii) the expiration date which must be a CBOE business day; and (iv) a set of monthly observation dates.

Cliquet style settlement. The parties to FLEX Broad-Based Index Options may designate Cliquet style settlement. FLEX Broad-Based Index Options with Cliquet style settlement shall be call options (no puts) and be designated by: (i) The duration of the contract which may range from 350 to 371 days (which is approximately 50 to 53 calendar weeks) from the date of listing; (ii) the capped monthly return that must be expressed in dollars and cents and in increments not less than $0.05 and must be a value between $0.05 and $25.95; (iii) the expiration date which must be a CBOE business day; and (iv) a set of monthly observation dates. The capped monthly return will serve as the ''exercise (strike) price'' for a FLEX Broad-Based Index Option with Cliquet style settlement.

Exhibit 3 presents contract specifications for Asian style settlement and Cliquet style settlement for FLEX Broad-Based Index options.

In CBOE's experience, successful and popular products have often originated in the OTC marketplace. When such products lend themselves to more standardized terms, there is a natural migration to exchange trading which benefits the users of exchange listed products. CBOE believes that market participants can benefit from being able to trade these customized options in an exchange environment in several ways, including, but not limited to the following: (1) Enhanced efficiency in initiating and closing out positions; (2) increased market transparency; and (3) heightened contra-party creditworthiness due to the role of The Options Clearing Corporation (''OCC'') as issuer and guarantor of FLEX Broad-Based Index options.[14]

CBOE believes that expressly permitting Asian and Cliquet FLEX Broad-Based Index options is important and necessary to the Exchange's efforts to create a market that provides individuals interested in FLEX-type options with an improved but comparable alternative to the OTC market in customized options, which can take on contract characteristics similar to FLEX Options but are not subject to the same restrictions. By making these changes, market participants would now have greater flexibility in determining whether to execute their customized options in an exchange environment or in the OTC market.

[9] Chapter XXIVA sets forth Flexible Exchange Options rules and Chapter XXIVB sets forth FLEX Hybrid Trading System rules.

[10] The Exchange proposes to add the definitions of ''Asian style settlement'' and ''Cliquet style settlement'' to Rule 24A.1 as new subparagraphs (r) and (s), respectively.

[11] The Exchange proposes to add the definitions of ''Asian style settlement'' and ''Cliquet style settlement'' to Rule 24B.1 as new subparagraphs (aa) and (bb), respectively.

[12] The Exchange proposes to set forth the terms for Asian options and Cliquet options to Rule 24A.4(b) as new subparagraphs (5) and (6), respectively.

[13] The Exchange proposes to set forth the terms for Asian options and Cliquet options to Rule 24B.4(b) as new subparagraphs (5) and (6), respectively.

[14] The launch of Asian and Cliquet options would be permitted subject to the Commission's approval of an OCC rule filing to make risk model changes necessary to accommodate the clearance and settlement of the proposed options. The Exchange would issue a circular to Trading Permit Holders to announce a specific launch date for the proposed options.

Margin

CBOE proposes a strategy-based margin requirement in Rule 12.3 (Margin Requirements) for short Asian options that would incrementally decrease over time. Settlement of Asian options would be based on the arithmetic average of closing values (on specified observation dates) of the underlying broad-based index. Volatility would be generally lowered due to the averaging effect. A cumulative average develops as observation dates pass, and subsequent observation date broad-based index values have gradually less influence on the average. Because of the averaging effect, CBOE believes that a margin requirement that incrementally decreases over time is warranted.

For an Asian option having an underlying index that is broad-based, CBOE proposes that the same margin requirement currently applicable to a standard broad-based index call option be applied to an Asian option during the first quartile of its life, which ends with the third observation date. The current initial and maintenance margin requirement for a standard broad-based index call option carried short is the option premium received (or current market value), plus 15% of the underlying broad-based index value less any out-of-the-money amount, to a minimum of the option premium received (or current market value), plus 10% of the underlying broad-based index value. CBOE proposes to decrease the 15% basic and 10% minimum to 8% and 6%, respectively, after the third observation date; to 6% and 4% after the sixth observation date; and lastly, to 5% and 3% after the ninth observation date.

CBOE believes it is appropriate to include Asian options in portfolio margining.[15]

CBOE proposes a strategy-based margin requirement in Rule 12.3 for short Cliquet options that, with one exception, would also incrementally decrease over time. Settlement of Cliquet options would be based on the sum of the returns for 12 consecutive time periods of approximately 30 days in length, each ending on an observation date. In the case of Cliquet options with capped monthly returns, volatility would be generally lowered because of the capping effect. In addition, the lower the capped monthly return, the lower the sensitivity to moves in the underlying broad-based index.

Also, the sum of returns for 12 consecutive time periods, based on historical analysis, is expected to be less than the return on the underlying broad-based index from beginning to end of the same 12 consecutive month time period, except in the case of a negative return. However, with a Cliquet option, a negative sum of returns would be excluded as a possibility because a floor of zero would be set for the sum of returns. Additionally, a cumulative return develops as observation dates pass, and as subsequent observation date returns compile, the likelihood of the sum of returns increasing or decreasing significantly would gradually be lowered. Because of these influences, CBOE believes that a margin requirement that incrementally decreases over time is warranted.

Because Cliquet options would not have a traditional exercise (strike) price, no out-of-the-money amount deduction would be calculated for margin purposes. Therefore, no minimum percentage margin requirement would be necessary in that, without an out-of-the-money calculation, the margin requirement calculated using the basic margin requirement percentage would never be reduced.

For Cliquet options, three separate categories, based on a time frame within the life of a Cliquet option, would be established for margin requirement purposes. The three categories proposed are: (1) The time period starting with the trade through the 10th observation date; (2) the time period starting after the 10th observation date through the 11th observation date; and (3) the time period starting after the 11th observation date through the 12th (final) observation date.

During the time period starting with a Cliquet option's trade date through its 10th observation date, in the case of an index that is broad-based, CBOE proposes a margin requirement of 100% of the current market value of the option plus the percentage of the current ''underlying component value.'' The percentage required would be the lesser of: the cap percentage multiplied by three (3) or 15%.[16]

CBOE proposes to decrease the percentage requirement to the lesser of: The cap percentage multiplied by two (2) or 15% beginning after the 10th observation date through the 11th observation date, and to further decrease the percentage requirement to the lesser of: the cap percentage or 15% beginning after the 11th observation date through the 12th (final) observation date.

CBOE believes it is appropriate to include Cliquet options in portfolio margining.[17]

Exchange Rules Applicable

Except as modified herein, the rules in Chapters I through XIX, XXIV, XXIVA and XXIVB would equally apply to Asian and Cliquet options. For example, per Rule 6.1A (Extended Trading Hours), Asian and Cliquet options would not be eligible for trading during Extended Trading Hours. Also, for example, Rules 24A.7 and 24A.8 set forth the position limits and reporting requirements applicable to FLEX Broad-Based Index options and Rules 24A.7 and 24B.7 set forth the exercise limits applicable to FLEX Broad-Based Index options. Respecting positions and exercise limits, these provisions set forth general rules and carve-outs for certain broad-based FLEX Broad-Based Index options, which would apply with equal force to Asian and Cliquet options.

Surveillance

The Exchange would use the same surveillance procedures currently utilized for the Exchange's other FLEX Broad-Based Index options to monitor trading in Asian and Cliquet options. The Exchange further represents that these surveillance procedures shall be adequate to monitor trading in options on these option products. For surveillance purposes, the Exchange will have complete access to information regarding trading activity in the pertinent underlying securities.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[18] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[19] requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to remove impediments to and to perfect the mechanism for a free and open market and a national market

[15] A theoretical pricing model would continue to be used to derive position values at each valuation point for the purpose of determining the gain or loss. Currently the only model that qualifies is OCC's Theoretical Intermarket Margining System (''TIMS'').

[16] As noted previously, proposed CBOE Rules 24A.4(b) and 24B.4(b) would not permit the monthly return cap to exceed 25.95%.

[17] A theoretical pricing model would continue to be used to derive position values at each valuation point for the purpose of determining the gain or loss. Currently the only model that qualifies is OCC's TIMS.

[18] 15 U.S.C. 78f(b).

[19] 15 U.S.C. 78f(b)(5).

system, and, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change is designed to promote just and equitable principles of trade in that the availability of Asian and Cliquet FLEX Broad-Based Index options would give market participants greater flexibility in determining where they will execute their customized options. By trading a product in an exchange traded environment (that is currently being used extensively in the OTC market) would also enable the Exchange to compete more effectively with the OTC market.

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that it would hopefully lead to the migration of options currently trading in the OTC market to trading to the Exchange and the development of more standardized products. Also, any migration to the Exchange would result in increased market transparency.

Additionally, the Exchange believes that the proposed rule change is designed to remove impediments to and to perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest in that it should create greater trading and hedging opportunities and flexibility. The proposed rule change should also result in enhanced efficiency in initiating and closing out positions and heightened contra-party creditworthiness due to the role of OCC as issuer and guarantor of FLEX Broad-Based Index options. Further, the proposal would result in increased competition by permitting the Exchange to offer products that are currently used extensively in the OTC market.

The Exchange believes that the proposed strategy-based margin requirements for Asian and Cliquet options are consistent with the Act because they are designed to protect investors and the public interest by setting margin levels at appropriate levels for these instruments. First, the proposed options are limited to broad-based indexes and the index on which the Exchange expects the most interest is the S&P 500 Index, which has deep and liquid markets. Second, the short option margin levels proposed to be established would apply to retail customers, whom the Exchange does not believe to be the primary sellers (*i.e.,* writers) of the proposed options. Third, as to short Asian and Cliquet positions, the Exchange notes that the proposed margin levels would start at the same level that is required for regular options on broad-based indexes (15%) and would incrementally decrease over time. The Exchange believes that the incremental decrease over time is appropriate given the nature of the proposed options (*i.e.,* the risk associated with the options decreases as the time to expiration nears). Also, the Exchange represents that it conducted an extensive analysis over various time periods when considering the proposed margin levels and represents that for each percentage movement observed, the proposed margin level percentages closely track the percentage movements observed. In other words, the Exchange is proposing conservative and well-founded margin levels for the proposed options. As a result, the Exchange believes that the proposed margin levels would protect the integrity of the Exchange's marketplace by setting margins at levels that are appropriate for these instruments.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. Specifically, CBOE believes that the introduction of new settlement types (Asian and Cliquet) for FLEX Broad-Based Index options would enhance competition among market participants and would also enable the Exchange to compete more effectively with the OTC market by offering a product that is currently use extensively in the OTC market.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

A. By order approve or disapprove such proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

• Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or

• Send an email to *rule-comments@sec.gov*. Please include File Number SR–CBOE–2015–044 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR–CBOE–2015–044. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the CBOE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2015–044 and should be submitted on or before June 3, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2015–11592 Filed 5–12–15; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–74897; File No. SR–ISEGemini–2015–11]

Self-Regulatory Organizations; ISE Gemini, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Related to the Nullification and Adjustment of Options Transactions Including Obvious Errors

May 7, 2015.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that, on May 6, 2015 ISE Gemini, LLC (the ''Exchange'' or ''ISE Gemini'') filed with the Securities and Exchange Commission the proposed rule change, as described in Items I and II below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

ISE Gemini proposes to amend current Rule 720 (''Current Rule''), and rename it ''Nullification and Adjustment of Options Transactions including Obvious Errors'' (''Proposed Rule''). Rule 720 relates to the adjustment and nullification of options transactions executed on the Exchange (''ISE Gemini Options''). The text of the proposed rule change is available on the Exchange's Web site (*http://www.ise.com*), at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Background

For several months the Exchange has been working with other options exchanges to identify ways to improve the process related to the adjustment and nullification of erroneous options transactions. The goal of the process that the options exchanges have undertaken is to adopt harmonized rules related to the adjustment and nullification of erroneous options transactions as well as a specific provision related to coordination in connection with large-scale events involving erroneous options transactions. As described below, the Exchange believes that the changes the options exchanges and the Exchange have agreed to propose will provide transparency and finality with respect to the adjustment and nullification of erroneous options transactions. Particularly, the proposed changes seek to achieve consistent results for participants across U.S. options exchanges while maintaining a fair and orderly market, protecting investors and protecting the public interest.

The Proposed Rule is the culmination of this coordinated effort and reflects discussions by the options exchanges to universally adopt: (1) Certain provisions already in place on one or more options exchanges; and (2) new provisions that the options exchanges collectively believe will improve the handling of erroneous options transactions. Thus, although the Proposed Rule is in many ways similar to and based on the Exchange's Current Rule, the Exchange is adopting various provisions to conform with existing rules of one or more options exchanges and also to adopt rules that are not currently in place on any options exchange. As noted above, in order to adopt a rule that is similar in most material respects to the rules adopted by other options exchanges, the Exchange proposes to delete the Current Rule in its entirety, with one exception,[3] and to replace it with the Proposed Rule.

The Exchange notes that it has proposed additional objective standards in the Proposed Rule as compared to the Current Rule. The Exchange also notes that the Proposed Rule will ensure that the Exchange will have the same standards as all other options exchanges. However, there are still areas under the Proposed Rule where subjective determinations need to be made by Exchange personnel with respect to the calculation of Theoretical Price. The Exchange notes that the Exchange and all other options exchanges have been working to further improve the review of potentially erroneous transactions as well as their subsequent adjustment by creating an objective and universal way to determine Theoretical Price in the event a reliable NBBO is not available. For instance, the Exchange and all other options exchanges may utilize an independent third party to calculate and disseminate or make available Theoretical Price. However, this initiative requires additional exchange and industry discussion as well as additional time for development and implementation. The Exchange will continue to work with other options exchanges and the options industry towards the goal of additional objectivity and uniformity with respect to the calculation of Theoretical Price.

As additional background, the Exchange believes that the Proposed Rule supports an approach consistent with long-standing principles in the options industry under which the general policy is to adjust rather than nullify transactions. The Exchange acknowledges that adjustment of transactions is contrary to the operation of analogous rules applicable to the equities markets, where erroneous transactions are typically nullified rather than adjusted and where there is no distinction between the types of market participants involved in a transaction. For the reasons set forth below, the Exchange believes that the distinctions in market structure between equities and options markets continue to support these distinctions between the rules for handling obvious errors in the equities and options markets. The Exchange also believes that the Proposed Rule properly balances several

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[20] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Exchange proposes to keep language in Supplementary Material .01 to Rule 720 that authorizes the Exchange to disclose the identity of parties to a trade to each other when the Market Control determines that an Obvious or Catastrophic Error has occurred. The Exchange believes that this provision is important to encourage conflict resolution between two parties to a trade.

With the remaining text in the Supplementary Material to Rule 720 now being deleted, the Exchange proposes to renumber Supplementary Material .01.

competing concerns based on the structure of the options markets.

Various general structural differences between the options and equities markets point toward the need for a different balancing of risks for options market participants and are reflected in the Proposed Rule. Option pricing is formulaic and is tied to the price of the underlying stock, the volatility of the underlying security and other factors. Because options market participants can generally create new open interest in response to trading demand, as new open interest is created, correlated trades in the underlying or related series are generally also executed to hedge a market participant's risk. This pairing of open interest with hedging interest differentiates the options market specifically (and the derivatives markets broadly) from the cash equities markets. In turn, the Exchange believes that the hedging transactions engaged in by market participants necessitates protection of transactions through adjustments rather than nullifications when possible and otherwise appropriate.

The options markets are also quote driven markets dependent on liquidity providers to an even greater extent than equities markets. In contrast to the approximately 7,000 different securities traded in the U.S. equities markets each day, there are more than 500,000 unique, regularly quoted option series. Given this breadth in options series the options markets are more dependent on liquidity providers than equities markets; such liquidity is provided most commonly by registered market makers but also by other professional traders. With the number of instruments in which registered market makers must quote and the risk attendant with quoting so many products simultaneously, the Exchange believes that those liquidity providers should be afforded a greater level of protection. In particular, the Exchange believes that liquidity providers should be allowed protection of their trades given the fact that they typically engage in hedging activity to protect them from significant financial risk to encourage continued liquidity provision and maintenance of the quote-driven options markets.

In addition to the factors described above, there are other fundamental differences between options and equities markets which lend themselves to different treatment of different classes of participants that are reflected in the Proposed Rule. For example, there is no trade reporting facility in the options markets. Thus, all transactions must occur on an options exchange. This leads to significantly greater retail customer participation directly on exchanges than in the equities markets, where a significant amount of retail customer participation never reaches the Exchange but is instead executed in off-exchange venues such as alternative trading systems, broker-dealer market making desks and internalizers. In turn, because of such direct retail customer participation, the exchanges have taken steps to afford those retail customers—generally Customers—more favorable treatment in some circumstances.

Definitions

The Exchange proposes to adopt various definitions that will be used in the Proposed Rule, as described below.

First, the Exchange proposes to adopt a definition of ''Customer,'' to make clear that this term has the same definition as Priority Customer in Rule 100(a)(37A). Although other portions of the Exchange's rules address the capacity of market participants, including customers, the proposed definition is consistent with such rules and the Exchange believes it is important for all options exchanges to have the same definition of Customer in the context of nullifying and adjusting trades in order to have harmonized rules. As set forth in detail below, orders on behalf of a Customer are in many cases treated differently than non-Customer orders in light of the fact that Customers are not necessarily immersed in the day-to-day trading of the markets, are less likely to be watching trading activity in a particular option throughout the day, and may have limited funds in their trading accounts.

Second, the Exchange proposes to adopt definitions for both an ''erroneous sell transaction'' and an ''erroneous buy transaction.'' As proposed, an erroneous sell transaction is one in which the price received by the person selling the option is erroneously low, and an erroneous buy transaction is one in which the price paid by the person purchasing the option is erroneously high. This provision helps to reduce the possibility that a party can intentionally submit an order hoping for the market to move in their favor while knowing that the transaction will be nullified or adjusted if the market does not. For instance, when a market participant who is buying options in a particular series sees an aggressively priced sell order posted on the Exchange, and the buyer believes that the price of the options is such that it might qualify for obvious error, the option buyer can trade with the aggressively priced order, then wait to see which direction the market moves. If the market moves in their direction, the buyer keeps the trade and if it moves against them, the buyer calls the Exchange hoping to get the trade adjusted or busted.

Third, the Exchange proposes to adopt a definition of ''Official,'' which would mean an Officer of the Exchange or such other employee designee of the Exchange that is trained in the application of the Proposed Rule.

Fourth, the Exchange proposes to adopt a new term, a ''Size Adjustment Modifier,'' which would apply to individual transactions and would modify the applicable adjustment for orders under certain circumstances, as discussed in further detail below. As proposed, the Size Adjustment Modifier will be applied to individual transactions as follows:

Number of contracts per execution	Adjustment—TP plus/minus
1–50	N/A.
51–250	2 times adjustment amount.
251–1,000	2.5 times adjustment amount.
1,001 or more	3 times adjustment amount.

The Size Adjustment Modifier attempts to account for the additional risk that the parties to the trade undertake for transactions that are larger in scope. The Exchange believes that the Size Adjustment Modifier creates additional incentives to prevent more impactful Obvious Errors and it lessens the impact on the contra-party to an adjusted trade. The Exchange notes that these contra-parties may have preferred to only trade the size involved in the transaction at the price at which such trade occurred, and in trading larger size has committed a greater level of capital and bears a larger hedge risk.

When setting the proposed size adjustment modifier thresholds the Exchange has tried to correlate the size breakpoints with typical small and larger ''block'' execution sizes of underlying stock. For instance, SEC Rule 10b–18(a)(5)(ii) defines a ''block'' as a quantity of stock that is at least 5,000 shares and a purchase price of at least $50,000, among others.[4] Similarly, NYSE Rule 72 defines a ''block'' as an order to buy or sell ''at least 10,000 shares or a quantity of stock having a market value of $200,000 or more, whichever is less.'' Thus, executions of 51 to 100 option contracts, which are generally equivalent to executions of 5,100 and 10,000 shares of underlying stock, respectively, are proposed to be subject to the lowest size adjustment modifier. An execution of over 1,000 contracts is roughly equivalent to a

[4] *See* 17 CFR 240.10b–18(a)(5)(ii).

block transaction of more than 100,000 shares of underlying stock, and is proposed to be subject to the highest size adjustment modifier. The Exchange has correlated the proposed size adjustment modifier thresholds to smaller and larger scale blocks because the Exchange believes that the execution cost associated with transacting in block sizes scales according to the size of the block. In other words, in the same way that executing a 100,000 share stock order will have a proportionately larger market impact and will have a higher overall execution cost than executing a 500, 1,000 or 5,000 share order in the same stock, all other market factors being equal, executing a 1,000 option contract order will have a larger market impact and higher overall execution cost than executing a 5, 10 or 50 contract option order.

Calculation of Theoretical Price

Theoretical Price in Normal Circumstances

Under both the Current Rule and the Proposed Rule, when reviewing a transaction as potentially erroneous, the Exchange needs to first determine the ''Theoretical Price'' of the option, *i.e.,* the Exchange's estimate of the correct market price for the option. Pursuant to the Proposed Rule, if the applicable option series is traded on at least one other options exchange, then the Theoretical Price of an option series is the last national best bid (''NBB'') just prior to the trade in question with respect to an erroneous sell transaction or the last national best offer (''NBO'') just prior to the trade in question with respect to an erroneous buy transaction unless one of the exceptions described below exists. Thus, the Exchange proposes that whenever the Exchange has a reliable NBB or NBO, as applicable, just prior to the transaction, then the Exchange will use this NBB or NBO as the Theoretical Price.

The Exchange also proposes to specify in the Proposed Rule that when a single order received by the Exchange is executed at multiple price levels, the last NBB and last NBO just prior to the trade in question would be the last NBB and last NBO just prior to the Exchange's receipt of the order.

The Exchange also proposes to set forth in the Proposed Rule various provisions governing specific situations where the NBB or NBO is not available or may not be reliable. Specifically, the Exchange is proposing additional detail specifying situations in which there are no quotes or no valid quotes (as defined below), when the national best bid or offer (''NBBO'') is determined to be too wide to be reliable, and at the open of trading on each trading day.

No Valid Quotes

As is true under the Current Rule, pursuant to the Proposed Rule the Exchange will determine the Theoretical Price if there are no quotes or no valid quotes for comparison purposes. As proposed, quotes that are not valid are all quotes in the applicable option series published at a time where the last NBB is higher than the last NBO in such series (a ''crossed market''), quotes published by the Exchange that were submitted by either party to the transaction in question, and quotes published by another options exchange against which the Exchange has declared self-help. Thus, in addition to scenarios where there are literally no quotes to be used as Theoretical Price, the Exchange will exclude quotes in certain circumstances if such quotes are not deemed valid. The Proposed Rule is consistent with the Exchange's application of the Current Rule but the descriptions of the various scenarios where the Exchange considers quotes to be invalid represent additional detail that is not included in the Current Rule.

The Exchange notes that Exchange personnel currently are required to determine Theoretical Price in certain circumstances. While the Exchange continues to pursue alternative solutions that might further enhance the objectivity and consistency of determining Theoretical Price, the Exchange believes that the discretion currently afforded to Exchange Officials is appropriate in the absence of a reliable NBBO that can be used to set the Theoretical Price. Under the current Rule, Exchange personnel will generally consult and refer to data such as the prices of related series, especially the closest strikes in the option in question. Exchange personnel may also take into account the price of the underlying security and the volatility characteristics of the option as well as historical pricing of the option and/or similar options.

Wide Quotes

Similarly, pursuant to the Proposed Rule the Exchange will determine the Theoretical Price if the bid/ask differential of the NBB and NBO for the affected series just prior to the erroneous transaction was equal to or greater than the Minimum Amount set forth below and there was a bid/ask differential less than the Minimum Amount during the 10 seconds prior to the transaction. If there was no bid/ask differential less than the Minimum Amount during the 10 seconds prior to the transaction then the Theoretical Price of an option series is the last NBB or NBO just prior to the transaction in question. The Exchange proposes to use the following chart to determine whether a quote is too wide to be reliable:

Bid price at time of trade	Minimum amount
Below $2.00	$0.75
$2.00 to $5.00	1.25
Above $5.00 to $10.00	1.50
Above $10.00 to $20.00	2.50
Above $20.00 to $50.00	3.00
Above $50.00 to $100.00	4.50
Above $100.00	6.00

The Exchange notes that the values set forth above generally represent a multiple of 3 times the bid/ask differential requirements of other options exchanges, with certain rounding applied (*e.g.,* $1.25 as proposed rather than $1.20).[5] The Exchange believes that basing the Wide Quote table on a multiple of the permissible bid/ask differential rule provides a reasonable baseline for quotations that are indeed so wide that they cannot be considered reliable for purposes of determining Theoretical Price unless they have been consistently wide. As described above, while the Exchange will determine Theoretical Price when the bid/ask differential equals or exceeds the amount set forth in the chart above and within the previous 10 seconds there was a bid/ask differential smaller than such amount, if a quote has been persistently wide for at least 10 seconds the Exchange will use such quote for purposes of Theoretical Price. The Exchange believes that there should be a greater level of protection afforded to market participants that enter the market when there are liquidity gaps and price fluctuations. The Exchange does not believe that a similar level of protection is warranted when market participants choose to enter a market that is wide and has been consistently wide for some time. The Exchange notes that it has previously determined that, given the largely electronic nature of today's markets, as little as one second (or less) is a long enough time for market participants to receive, process and account for and respond to new market information.[6] While introducing this

[5] *See, e.g.,* NYSE Arca Options Rule 6.37(b)(1).

[6] *See, e.g.,* Supplementary Material .04 to Exchange Rule 717, which requires certain orders to be exposed for at least one second before they can be executed; *see also* Securities Exchange Act Release No. 66306 (February 2, 2012), 77 FR 6608 (February 8, 2012) (SR–BX–2011–084) (order

Continued

new provision the Exchange believes it is being appropriately cautious by selecting a time frame that is an order of magnitude above and beyond what the Exchange has previously determined is sufficient for information dissemination. The table above bases the wide quote provision off of bid price in order to provide a relatively straightforward beginning point for the analysis.

As an example, assume an option is quoted $3.00 by $6.00 with 50 contracts posted on each side of the market for an extended period of time. If a market participant were to enter a market order to buy 20 contracts the Exchange believes that the buyer should have a reasonable expectation of paying $6.00 for the contracts which they are buying. This should be the case even if immediately after the purchase of those options, the market conditions change and the same option is then quoted at $3.75 by $4.25. Although the quote was wide according to the table above at the time immediately prior to and the time of the execution of the market order, it was also well established and well known. The Exchange believes that an execution at the then prevailing market price should not in and of itself constitute an erroneous trade.

Transactions at the Open

Under the Proposed Rule, for a transaction occurring during the opening rotation the Exchange will determine the Theoretical Price where there is no NBB or NBO for the affected series just prior to the erroneous transaction or if the bid/ask differential of the NBBO just prior to the erroneous transaction is equal to or greater than the Minimum Amount set forth in the chart proposed for the wide quote provision described above. The Exchange believes that this discretion is necessary because it is consistent with other scenarios in which the Exchange will determine the Theoretical Price if there are no quotes or no valid quotes for comparison purposes, including the wide quote provision proposed by the Exchange as described above. If, however, there are valid quotes and the bid/ask differential of the NBBO is less than the Minimum Amount set forth in the chart proposed for the wide quote provision described above, then the Exchange will use the NBB or NBO just prior to the transaction as it would in any other normal review scenario.

As an example of an erroneous transaction for which the NBBO is wide at the open, assume the NBBO at the time of the opening transaction is $1.00 × $5.00 and the opening transaction takes place at $1.25. The Exchange would be responsible for determining the Theoretical Price because the NBBO was wider than the applicable minimum amount set forth in the wide quote provision as described above. The Exchange believes that it is necessary to determine theoretical price at the open in the event of a wide quote at the open for the same reason that the Exchange has proposed to determine theoretical price during the remainder of the trading day pursuant to the proposed wide quote provision, namely that a wide quote cannot be reliably used to determine Theoretical Price because the Exchange does not know which of the two quotes, the NBB or the NBO, is closer to the real value of the option.

Obvious Errors

The Exchange proposes to adopt numerical thresholds that would qualify transactions as ''Obvious Errors.'' These thresholds are similar to those in place under the Current Rule. As proposed, a transaction will qualify as an Obvious Error if the Exchange receives a properly submitted filing and the execution price of a transaction is higher or lower than the Theoretical Price for the series by an amount equal to at least the amount shown below:

Theoretical price	Minimum amount
Below $2.00	$0.25
$2.00 to $5.00	0.40
Above $5.00 to $10.00	0.50
Above $10.00 to $20.00	0.80
Above $20.00 to $50.00	1.00
Above $50.00 to $100.00	1.50
Above $100.00	2.00

Applying the Theoretical Price, as described above, to determine the applicable threshold and comparing the Theoretical Price to the actual execution price provides the Exchange with an objective methodology to determine whether an Obvious Error occurred. The Exchange believes that the proposed amounts are reasonable as they are generally consistent with the standards of the Current Rule and reflect a significant disparity from Theoretical Price. The Exchange notes that the Minimum Amounts in the Proposed Rule and as set forth above are identical to the Current Rule except for the last two categories, for options where the Theoretical Price is above $50.00 to $100.00 and above $100.00. The Exchange believes that this additional granularity is reasonable because given the proliferation of additional strikes that have been created in the past several years there are many more high-priced options that are trading with open interest for extended periods. The Exchange believes that it is appropriate to account for these high-priced options with additional Minimum Amount levels for options with Theoretical Prices above $50.00.

Under the Proposed Rule, a party that believes that it participated in a transaction that was the result of an Obvious Error must notify the Exchange's Market Control [7] in the manner specified from time to time by the Exchange in a circular distributed to Members. The Exchange believes that maintaining flexibility in the Rule is important to allow for changes to the process.

The Exchange also proposes to adopt notification timeframes that must be met in order for a transaction to qualify as an Obvious Error. Specifically, as proposed a filing must be received by the Exchange within thirty (30) minutes of the execution with respect to an execution of a Customer order and within fifteen (15) minutes of the execution for any other participant. The Exchange also proposes to provide additional time for trades that are routed through other options exchanges to the Exchange. Under the Proposed Rule, any other options exchange will have a total of forty-five (45) minutes for Customer orders and thirty (30) minutes for non-Customer orders, measured from the time of execution on the Exchange, to file with the Exchange for review of transactions routed to the Exchange from that options exchange and executed on the Exchange (''linkage trades''). This includes filings on behalf of another options exchange filed by a third-party routing broker if such third-party broker identifies the affected transactions as linkage trades. In order to facilitate timely reviews of linkage trades the Exchange will accept filings from either the other options exchange or, if applicable, the third-party routing broker that routed the applicable order(s). The additional fifteen (15) minutes provided with respect to linkage trades shall only apply to the extent the options exchange that originally received and routed the order to the Exchange itself received a timely filing from the entering participant (*i.e.,* within 30 minutes if a Customer order or 15 minutes if a non-Customer order). The Exchange believes that additional time for filings related to Customer orders is appropriate in light of the fact that Customers are not necessarily

granting approval of proposed rule change to reduce the duration of the PIP from one second to one hundred milliseconds).

[7] Market Control consists of designated personnel in the Exchange's market control center.

immersed in the day-to-day trading of the markets and are less likely to be watching trading activity in a particular option throughout the day. The Exchange believes that the additional time afforded to linkage trades is appropriate given the interconnected nature of the markets today and the practical difficulty that an end user may face in getting requests for review filed in a timely fashion when the transaction originated at a different exchange than where the error took place. Without this additional time the Exchange believes it would be common for a market participant to satisfy the filing deadline at the original exchange to which an order was routed but that requests for review of executions from orders routed to other options exchanges would not qualify for review as potential Obvious Errors by the time filings were received by such other options exchanges, in turn leading to potentially disparate results under the applicable rules of options exchanges to which the orders were routed.

Pursuant to the Proposed Rule, an Official may review a transaction believed to be erroneous on his/her own motion in the interest of maintaining a fair and orderly market and for the protection of investors. This proposed provision is designed to give an Official the ability to provide parties relief in those situations where they have failed to report an apparent error within the established notification period. A transaction reviewed pursuant to the proposed provision may be nullified or adjusted only if it is determined by the Official that the transaction is erroneous in accordance with the provisions of the Proposed Rule, provided that the time deadlines for filing a request for review described above shall not apply. The Proposed Rule would require the Official to act as soon as possible after becoming aware of the transaction; action by the Official would ordinarily be expected on the same day that the transaction occurred. However, because a transaction under review may have occurred near the close of trading or due to unusual circumstances, the Proposed Rule provides that the Official shall act no later than 8:30 a.m. Eastern Time on the next trading day following the date of the transaction in question.

The Exchange also proposes to state that a party affected by a determination to nullify or adjust a transaction after an Official's review on his or her own motion may appeal such determination in accordance with paragraph (k), which is described below. The Proposed Rule would make clear that a determination by an Official not to review a transaction or determination not to nullify or adjust a transaction for which a review was conducted on an Official's own motion is not appealable and further that if a transaction is reviewed and a determination is rendered pursuant to another provision of the Proposed Rule, no additional relief may be granted by an Official.

If it is determined that an Obvious Error has occurred based on the objective numeric criteria and time deadlines described above, the Exchange will adjust or nullify the transaction as described below and promptly notify both parties to the trade electronically or via telephone. The Exchange proposes different adjustment and nullification criteria for Customers and non-Customers.

As proposed, where neither party to the transaction is a Customer, the execution price of the transaction will be adjusted by the Official pursuant to the table below.

Theoretical price (TP)	Buy transaction adjustment—TP plus	Sell transaction adjustment—TP minus
Below $3.00	$0.15	$0.15
At or above $3.00	0.30	0.30

The Exchange believes that it is appropriate to adjust to prices a specified amount away from Theoretical Price rather than to adjust to Theoretical Price because even though the Exchange has determined a given trade to be erroneous in nature, the parties in question should have had some expectation of execution at the price or prices submitted. Also, it is common that by the time it is determined that an obvious error has occurred additional hedging and trading activity has already occurred based on the executions that previously happened. The Exchange is concerned that an adjustment to Theoretical Price in all cases would not appropriately incentivize market participants to maintain appropriate controls to avoid potential errors.

Further, as proposed any non-Customer Obvious Error exceeding 50 contracts will be subject to the Size Adjustment Modifier described above. The Exchange believes that it is appropriate to apply the Size Adjustment Modifier to non-Customer orders because the hedging cost associated with trading larger sized options orders and the market impact of larger blocks of underlying can be significant.

As an example of the application of the Size Adjustment Modifier, assume Exchange A has a quoted bid to buy 50 contracts at $2.50, Exchange B has a quoted bid to buy 100 contracts at $2.05 and there is no other options exchange quoting a bid priced higher than $2.00. Assume that the NBBO is $2.50 by $3.00. Finally, assume that all orders quoted and submitted to Exchange B in connection with this example are non-Customer orders.

- Assume Exchange A's quoted bid at $2.50 is either executed or cancelled.
- Assume Exchange B immediately thereafter receives an incoming market order to sell 100 contracts.
- The incoming order would be executed against Exchange B's resting bid at $2.05 for 100 contracts.
- Because the 100 contract execution of the incoming sell order was priced at $2.05, which is $0.45 below the Theoretical Price of $2.50, the 100 contract execution would qualify for adjustment as an Obvious Error.
- The normal adjustment process would adjust the execution of the 100 contracts to $2.35 per contract, which is the Theoretical Price minus $0.15.
- However, because the execution would qualify for the Size Adjustment Modifier of 2 times the adjustment price, the adjusted transaction would instead be to $2.20 per contract, which is the Theoretical Price minus $0.30.

By reference to the example above, the Exchange reiterates that it believes that a Size Adjustment Modifier is appropriate, as the buyer in this example was originally willing to buy 100 contracts at $2.05 and ended up paying $2.20 per contract for such execution. Without the Size Adjustment Modifier the buyer would have paid $2.35 per contract. Such buyer may be advantaged by the trade if the Theoretical Price is indeed closer to $2.50 per contract, however the buyer may not have wanted to buy so many contracts at a higher price and does incur increasing cost and risk due to the additional size of their quote. Thus, the proposed rule is attempting to strike a balance between various competing objectives, including recognition of cost and risk incurred in quoting larger size and incentivizing market participants to maintain appropriate controls to avoid errors.

In contrast to non-Customer orders, where trades will be adjusted if they qualify as Obvious Errors, pursuant the Proposed Rule a trade that qualifies as an Obvious Error will be nullified where at least one party to the Obvious Error is a Customer. The Exchange also proposes, however, that if any Member submits requests to the Exchange for review of transactions pursuant to the Proposed Rule, and in aggregate that Member has 200 or more Customer transactions under review concurrently and the orders resulting in such transactions were submitted during the course of 2 minutes or less, where at least one party to the Obvious Error is a non-Customer, the Exchange will apply the non-Customer adjustment criteria described above to such transactions. The Exchange based its proposal of 200 transactions on the fact that the proposed level is reasonable as it is representative of an extremely large number of orders submitted to the Exchange that are, in turn, possibly erroneous. Similarly, the Exchange based its proposal of orders received in 2 minutes or less on the fact that this is a very short amount of time under which one Member could generate multiple erroneous transactions. In order for a participant to have more than 200 transactions under review concurrently when the orders triggering such transactions were received in 2 minutes or less, the market participant will have far exceeded the normal behavior of customers deserving protected status.[8] While the Exchange continues to believe that it is appropriate to nullify transactions in such a circumstance if both participants to a transaction are Customers, the Exchange does not believe it is appropriate to place the overall risk of a significant number of trade breaks on non-Customers that in the normal course of business may have engaged in additional hedging activity or trading activity based on such transactions. Thus, the Exchange believes it is necessary and appropriate to protect non-Customers in such a circumstance by applying the non-Customer adjustment criteria, and thus adjusting transactions as set forth above, in the event a Member has more than 200 transactions under review concurrently.

Catastrophic Errors

Consistent with the Current Rule, the Exchange proposes to adopt separate numerical thresholds for review of transactions for which the Exchange does not receive a filing requesting review within the Obvious Error timeframes set forth above. Based on this review these transactions may qualify as ''Catastrophic Errors.'' As proposed, a Catastrophic Error will be deemed to have occurred when the execution price of a transaction is higher or lower than the Theoretical Price for the series by an amount equal to at least the amount shown below:

Theoretical price	Minimum amount
Below $2.00	$0.50
$2.00 to $5.00	1.00
Above $5.00 to $10.00	1.50
Above $10.00 to $20.00	2.00
Above $20.00 to $50.00	2.50
Above $50.00 to $100.00	3.00
Above $100.00	4.00

Based on industry feedback on the Catastrophic Error thresholds set forth under the Current Rule, the thresholds proposed as set forth above are more granular and lower (*i.e.,* more likely to qualify) than the thresholds under the Current Rule. As noted above, under the Proposed Rule as well as the Current Rule, parties have additional time to submit transactions for review as Catastrophic Errors. As proposed, notification requesting review must be received by the Exchange's Market Control by 8:30 a.m. Eastern Time on the first trading day following the execution. For transactions in an expiring options series that take place on an expiration day, a party must notify the Exchange's Market Control within 45 minutes after the close of trading that same day. As is true for requests for review under the Obvious Error provision of the Proposed Rule, a party requesting review of a transaction as a Catastrophic Error must notify the Exchange's Market Control in the manner specified from time to time by the Exchange in a circular distributed to Members. By definition, any execution that qualifies as a Catastrophic Error is also an Obvious Error. However, the Exchange believes it is appropriate to maintain these two types of errors because the Catastrophic Error provisions provide market participants with a longer notification period under which they may file a request for review with the Exchange of a potential Catastrophic Error than a potential Obvious Error. This provides an additional level of protection for transactions that are severely erroneous even in the event a participant does not submit a request for review in a timely fashion.

The Proposed Rule would specify the action to be taken by the Exchange if it is determined that a Catastrophic Error has occurred, as described below, and would require the Exchange to promptly notify both parties to the trade electronically or via telephone. In the event of a Catastrophic Error, the execution price of the transaction will be adjusted by the Official pursuant to the table below.

Theoretical price (TP)	Buy transaction adjustment— TP plus	Sell transaction adjustment— TP minus
Below $2.00	$0.50	$0.50
$2.00 to $5.00	1.00	1.00
Above $5.00 to $10.00	1.50	1.50
Above $10.00 to $20.00	2.00	2.00
Above $20.00 to $50.00	2.50	2.50
Above $50.00 to $100.00	3.00	3.00
Above $100.00	4.00	4.00

Although Customer orders would be adjusted in the same manner as non-Customer orders, any Customer order that qualifies as a Catastrophic Error will be nullified if the adjustment would result in an execution price

[8] The Exchange notes that in the third quarter of this year across all options exchanges the average number of valid Customer orders received and executed was less than 38 valid orders every two minutes. The number of obvious errors resulting from valid orders is, of course, a very small fraction of such orders.

higher (for buy transactions) or lower (for sell transactions) than the Customer's limit price. Based on industry feedback, the levels proposed above with respect to adjustment amounts are the same levels as the thresholds at which a transaction may be deemed a Catastrophic Error pursuant to the chart set forth above.

As is true for Obvious Errors as described above, the Exchange believes that it is appropriate to adjust to prices a specified amount away from Theoretical Price rather than to adjust to Theoretical Price because even though the Exchange has determined a given trade to be erroneous in nature, the parties in question should have had some expectation of execution at the price or prices submitted. Also, it is common that by the time it is determined that a Catastrophic Error has occurred additional hedging and trading activity has already occurred based on the executions that previously happened. The Exchange is concerned that an adjustment to Theoretical Price in all cases would not appropriately incentivize market participants to maintain appropriate controls to avoid potential errors. Further, the Exchange believes it is appropriate to maintain a higher adjustment level for Catastrophic Errors than Obvious Errors given the significant additional time that can potentially pass before an adjustment is requested and applied and the amount of hedging and trading activity that can occur based on the executions at issue during such time. For the same reasons, other than honoring the limit prices established for Customer orders, the Exchange has proposed to treat all market participants the same in the context of the Catastrophic Error provision. Specifically, the Exchange believes that treating market participants the same in this context will provide additional certainty to market participants with respect to their potential exposure and hedging activities, including comfort that even if a transaction is later adjusted (*i.e.,* past the standard time limit for filing under the Obvious Error provision), such transaction will not be fully nullified. However, as noted above, under the Proposed Rule where at least one party to the transaction is a Customer, the trade will be nullified if the adjustment would result in an execution price higher (for buy transactions) or lower (for sell transactions) than the Customer's limit price. The Exchange has retained the protection of a Customer's limit price in order to avoid a situation where the adjustment could be to a price that the Customer could not afford, which is less likely to be an issue for a market professional.

Significant Market Events

In order to improve consistency for market participants in the case of a widespread market event and in light of the interconnected nature of the options exchanges, the Exchange proposes to adopt a new provision that calls for coordination between the options exchanges in certain circumstances and provides limited flexibility in the application of other provisions of the Proposed Rule in order to promptly respond to a widespread market event.[9] The Exchange proposes to describe such an event as a Significant Market Event, and to set forth certain objective criteria that will determine whether such an event has occurred. The Exchange developed these objective criteria in consultation with the other options exchanges by reference to historical patterns and events with a goal of setting thresholds that very rarely will be triggered so as to limit the application of the provision to truly significant market events. As proposed, a Significant Market Event will be deemed to have occurred when proposed criterion (A) below is met or exceeded or the sum of all applicable event statistics, where each is expressed as a percentage of the relevant threshold in criteria (A) through (D) below, is greater than or equal to 150% and 75% or more of at least one category is reached, provided that no single category can contribute more than 100% to the sum. All criteria set forth below will be measured in aggregate across all exchanges.

The proposed criteria for determining a Significant Market Event are as follows:

(A) Transactions that are potentially erroneous would result in a total Worst-Case Adjustment Penalty of $30,000,000, where the Worst-Case Adjustment Penalty is computed as the sum, across all potentially erroneous trades, of: (i) $0.30 (*i.e.,* the largest Transaction Adjustment value listed in sub-paragraph (e)(3)(A) below); times; (ii) the contract multiplier for each traded contract; times (iii) the number of contracts for each trade; times (iv) the appropriate Size Adjustment Modifier for each trade, if any, as defined in sub-paragraph (e)(3)(A) below;

(B) Transactions involving 500,000 options contracts are potentially erroneous;

(C) Transactions with a notional value (*i.e.,* number of contracts traded multiplied by the option premium multiplied by the contract multiplier) of $100,000,000 are potentially erroneous;

(D) 10,000 transactions are potentially erroneous.

As described above, the Exchange proposes to adopt a Worst Case Adjustment Penalty, proposed as criterion (A), which is the only criterion that can on its own result in an event being designated as a significant market event. The Worst Case Adjustment Penalty is intended to develop an objective criterion that can be quickly determined by the Exchange in consultation with other options exchanges that approximates the total overall exposure to market participants on the negatively impacted side of each transaction that occurs during an event. If the Worst Case Adjustment criterion is equal to or exceeds $30,000,000, then an event is a Significant Market Event. As an example of the Worst Case Adjustment Penalty, assume that a single potentially erroneous transaction in an event is as follows: Sale of 100 contracts of a standard option (*i.e.,* an option with a 100 share multiplier). The highest potential adjustment penalty for this single transaction would be $6,000, which would be calculated as $0.30 times 100 (contract multiplier) times 100 (number of contracts) times 2 (applicable Size Adjustment Modifier). The Exchange would calculate the highest potential adjustment penalty for each of the potentially erroneous transactions in the event and the Worst Case Adjustment Penalty would be the sum of such penalties on the Exchange and all other options exchanges with affected transactions.

As described above, under the Proposed Rule if the Worst Case Adjustment Penalty does not equal or exceed $30,000,000, then a Significant Market Event has occurred if the sum of all applicable event statistics (expressed as a percentage of the relevant thresholds), is greater than or equal to 150% and 75% or more of at least one category is reached. The Proposed Rule further provides that no single category can contribute more than 100% to the sum. As an example of the application of this provision, assume that in a given event across all options exchanges that: (A) The Worst Case Adjustment Penalty

[9] Although the Exchange has proposed a specific provision related to coordination amongst options exchanges in the context of a widespread event, the Exchange does not believe that the Significant Market Event provision or any other provision of the proposed rule alters the Exchange's ability to coordinate with other options exchanges in the normal course of business with respect to market events or activity. The Exchange does already coordinate with other options exchanges to the extent possible if such coordination is necessary to maintain a fair and orderly market and/or to fulfill the Exchange's duties as a self-regulatory organization.

is $12,000,000 (40% of $30,000,000), (B) 300,000 options contracts are potentially erroneous (60% of 500,000), (C) the notional value of potentially erroneous transactions is $30,000,000 (30% of $100,000,000), and (D) 12,000 transactions are potentially erroneous (120% of 10,000). This event would qualify as a Significant Market Event because the sum of all applicable event statistics would be 230%, far exceeding the 150% threshold. The 230% sum is reached by adding 40%, 60%, 30% and last, 100% (*i.e.,* rounded down from 120%) for the number of transactions. The Exchange notes that no single category can contribute more than 100% to the sum and any category contributing more than 100% will be rounded down to 100%.

As an alternative example, assume a large-scale event occurs involving low-priced options with a small number of contracts in each execution. Assume in this event across all options exchanges that: (A) The Worst Case Adjustment Penalty is $600,000 (2% of $30,000,000), (B) 20,000 options contracts are potentially erroneous (4% of 500,000), (C) the notional value of potentially erroneous transactions is $20,000,000 (20% of $100,000,000), and (D) 20,000 transactions are potentially erroneous (200% of 10,000, but rounded down to 100%). This event would not qualify as a Significant Market Event because the sum of all applicable event statistics would be 126%, below the 150% threshold. The Exchange reiterates that as proposed, even when a single category other than criterion (A) is fully met, that does not necessarily qualify an event as a Significant Market Event.

The Exchange believes that the breadth and scope of the obvious error rules are appropriate and sufficient for handling of typical and common obvious errors. Coordination between and among the exchanges should generally not be necessary even when a member has an error that results in executions on more than one exchange. In setting the thresholds above the Exchange believes that the requirements will be met only when truly widespread and significant errors happen and the benefits of coordination and information sharing far outweigh the costs of the logistics of additional intra-exchange coordination. The Exchange notes that in addition to its belief that the proposed thresholds are sufficiently high, the Exchange has proposed the requirement that either criterion (A) is met or exceeded or the sum of applicable event statistics for proposed (A) through (D) equals or exceeds 150% in order to ensure that an event is sufficiently large but also to avoid situations where an event is extremely large but just misses potential qualifying thresholds. For instance, the proposal is designed to help avoid a situation where the Worst Case Adjustment Penalty is $15,000,000, so the event does not qualify based on criterion (A) alone, but there are transactions in 490,000 options contracts that are potentially erroneous (missing criterion (B) by 10,000 contracts), there are transactions with a notional value of $99,000,000 (missing criterion (C) by $1,000,000), and there are 9,000 potentially erroneous transactions overall (missing criterion (D) by 1,000 transactions). The Exchange believes that the proposed formula, while slightly more complicated than simply requiring a certain threshold to be met in each category, may help to avoid inapplicability of the proposed provisions in the context of an event that would be deemed significant by most subjective measures but that barely misses each of the objective criteria proposed by the Exchange.

To ensure consistent application across options exchanges, in the event of a suspected Significant Market Event, the Exchange shall initiate a coordinated review of potentially erroneous transactions with all other affected options exchanges to determine the full scope of the event. Under the Proposed Rule, the Exchange will promptly coordinate with the other options exchanges to determine the appropriate review period as well as select one or more specific points in time prior to the transactions in question and use one or more specific points in time to determine Theoretical Price. Other than the selected points in time, if applicable, the Exchange will determine Theoretical Price as described above. For example, around the start of a SME that is triggered by a large and aggressively priced buy order, three exchanges have multiple orders on the offer side of the market: Exchange A has offers priced at $2.20, $2.25, $2.30 and several other price levels to $3.00, Exchange B has offers at $2.45, $2.30 and several other price levels to $3.00, Exchange C has offers at price levels between $2.50 and $3.00. Assume an event occurs starting at 10:05:25 a.m. ET and in this particular series the executions begin on Exchange A and subsequently begin to occur on Exchanges B and C. Without coordination and information sharing between the exchanges, Exchange B and Exchange C cannot know with certainty that whether or not the execution at Exchange A that happened at $2.20 immediately prior to their executions at $2.45 and $2.50 is part of the same erroneous event or not. With proper coordination, the exchanges can determine that in this series, the proper point in time from which the event should be analyzed is 10:05:25 a.m. ET, and thus, the NBO of $2.20 should be used as the Theoretical Price for purposes of all buy transactions in such options series that occurred during the event.

If it is determined that a Significant Market Event has occurred then, using the parameters agreed with respect to the times from which Theoretical Price will be calculated, if applicable, an Official will determine whether any or all transactions under review qualify as Obvious Errors. The Proposed Rule would require the Exchange to use the criteria in Proposed Rule 720(c), as described above, to determine whether an Obvious Error has occurred for each transaction that was part of the Significant Market Event. Upon taking any final action, the Exchange would be required to promptly notify both parties to the trade electronically or via telephone.

The execution price of each affected transaction will be adjusted by an Official to the price provided below, unless both parties agree to adjust the transaction to a different price or agree to bust the trade.

Theoretical price (TP)	Buy transaction adjustment—TP plus	Sell transaction adjustment—TP minus
Below $3.00	$0.15	$0.15
At or above $3.00	0.30	0.30

Thus, the proposed adjustment criteria for Significant Market Events are identical to the proposed adjustment levels for Obvious Errors generally. In addition, in the context of a Significant Market Event, any error exceeding 50 contracts will be subject to the Size Adjustment Modifier described above. Also, the adjustment criteria would apply equally to all market participants (*i.e.,* Customers and non-Customers) in a Significant Market Event. However, as is true for the proposal with respect to Catastrophic Errors, under the Proposed Rule where at least one party to the transaction is a Customer, the trade will be nullified if the adjustment would result in an execution price higher (for buy transactions) or lower (for sell transactions) than the Customer's limit price. The Exchange has retained the protection of a Customer's limit price in order to avoid a situation where the adjustment could be to a price that the Customer could not afford, which is less likely to be an issue for a market professional. The Exchange has otherwise proposed to treat all market participants the same in the context of a Significant Market Event to provide additional certainty to market participants with respect to their potential exposure as soon as an event has occurred.

Another significant distinction between the proposed Obvious Error provision and the proposed Significant Market Event provision is that if the Exchange, in consultation with other options exchanges, determines that timely adjustment is not feasible due to the extraordinary nature of the situation, then the Exchange will nullify some or all transactions arising out of the Significant Market Event during the review period selected by the Exchange and other options exchanges. To the extent the Exchange, in consultation with other options exchanges, determines to nullify less than all transactions arising out of the Significant Market Event, those transactions subject to nullification will be selected based upon objective criteria with a view toward maintaining a fair and orderly market and the protection of investors and the public interest. For example, assume a Significant Market Event causes 25,000 potentially erroneous transactions and impacts 51 options classes. Of the 25,000 transactions, 24,000 of them are concentrated in a single options class. The exchanges may decide the most appropriate solution because it will provide the most certainty to participants and allow for the prompt resumption of regular trading is to bust all trades in the most heavily affected class between two specific points in time, while the other 1,000 trades across the other 50 classes are reviewed and adjusted as appropriate. A similar situation might arise directionally where a Customer submits both erroneous buy and sell orders and the number of errors that happened that were erroneously low priced (*i.e.,* erroneous sell orders) were 50,000 in number but the number of errors that were erroneously high (*i.e.,* erroneous buy orders) were only 500 in number. The most effective and efficient approach that provides the most certainty to the marketplace in a reasonable amount of time while most closely following the generally prescribed obvious error rules could be to bust all of the erroneous sell transactions but to adjust the erroneous buy transactions.

With respect to rulings made pursuant to the proposed Significant Market Event provision the Exchange believes that the number of affected transactions is such that immediate finality is necessary to maintain a fair and orderly market and to protect investors and the public interest. Accordingly, rulings by the Exchange pursuant to the Significant Market Event provision would be non-appealable pursuant to the Proposed Rule.

Additional Provisions

Mutual Agreement

In addition to the objective criteria described above, the Proposed Rule also proposes to make clear that the determination as to whether a trade was executed at an erroneous price may be made by mutual agreement of the affected parties to a particular transaction. The Proposed Rule would state that a trade may be nullified or adjusted on the terms that all parties to a particular transaction agree, provided, however, that such agreement to nullify or adjust must be conveyed to the Exchange in a manner prescribed by the Exchange prior to 8:30 a.m. Eastern Time on the first trading day following the execution.

The Exchange also proposes to explicitly state that it is considered conduct inconsistent with just and equitable principles of trade for any Member to use the mutual adjustment process to circumvent any applicable Exchange rule, the Act or any of the rules and regulations thereunder. Thus, for instance, a Member is precluded from seeking to avoid applicable trade-through rules by executing a transaction and then adjusting such transaction to a price at which the Exchange would not have allowed it to execute at the time of the execution because it traded through the quotation of another options exchange. The Exchange notes that in connection with its obligations as a self-regulatory organization, the Exchange's Surveillance Department reviews adjustments to transactions to detect potential violations of Exchange rules or the Act and the rules and regulations thereunder.

Trading Halts

Exchange Rule 702 describes the Exchange's authority to declare trading halts in one or more options traded on the Exchange. The Exchange proposes to make clear in the Proposed Rule that it will nullify any transaction that occurs during a trading halt in the affected option on the Exchange pursuant to Rule 702, or with respect to equity options (including options overlying ETFs), during a regulatory halt as declared by the primary listing market for the underlying security.[10] If any trades occur notwithstanding a trading halt then the Exchange believes it appropriate to nullify such transactions. While trading may be halted for various reasons, such a scenario almost certainly is due to extraordinary circumstances and is potentially the result of market-wide coordination to halt options trading or trading generally. Accordingly, the Exchange does not believe it is appropriate to allow trades to stand if such trades should not have occurred in the first place.

The Exchange currently does not have a rule that permits the nullification of transactions that occur during a trading halt of an option class on the Exchange, or with respect to equity options (including options overlying ETFs), during a regulatory halt as declared by the primary listing market for the underlying security. As part of the harmonization effort, the Exchange proposes to adopt rule text to permit the Exchange to nullify transactions, as described above. The Exchange's ability to nullify the affected transactions will ensure consistency with the trading halt provision of the Proposed Rule.

Erroneous Print and Quotes in Underlying Security

Market participants on the Exchange likely base the pricing of their orders submitted to the Exchange on the price of the underlying security for the option. Thus, the Exchange believes it is appropriate to adopt provisions that allow adjustment or nullification of transactions based on erroneous prints or erroneous quotes in the underlying security.

[10] After a regulatory halt, if it is determined that trading should resume according to Rule 702(b), trades occurring after the resumption will be valid and not subject to nullification under Supplementary Material .01(b) to Rule 702, unless trading is subsequently subject to another separate regulatory halt.

The Exchange proposes to adopt language in the Proposed Rule stating that a trade resulting from an erroneous print(s) disseminated by the underlying market that is later nullified by that underlying market shall be adjusted or busted as set forth in the Obvious Error provisions of the Proposed Rule, provided a party notifies the Exchange's Market Control in a timely manner, as further described below. The Exchange proposes to define a trade resulting from an erroneous print(s) as any options trade executed during a period of time for which one or more executions in the underlying security are nullified and for one second thereafter. The Exchange believes that one second is an appropriate amount of time in which an options trade would be directly based on executions in the underlying equity security. The Exchange also proposes to require that if a party believes that it participated in an erroneous transaction resulting from an erroneous print(s) pursuant to the proposed erroneous print provision it must notify the Exchange's Market Control within the timeframes set forth in the Obvious Error provision described above. The Exchange has also proposed to state that the allowed notification timeframe commences at the time of notification by the underlying market(s) of nullification of transactions in the underlying security. Further, the Exchange proposes that if multiple underlying markets nullify trades in the underlying security, the allowed notification timeframe will commence at the time of the first market's notification.

As an example of a situation in which a trade results from an erroneous print disseminated by the underlying market that is later nullified by the underlying market, assume that a given underlying is trading in the $49.00–$50.00 price range then has an erroneous print at $5.00. Given that there is the potential perception that the underlying has gone through a dramatic price revaluation, numerous options trades could promptly trigger based off of this new price. However, because the price that triggered them was not a valid price it would be appropriate to review said option trades when the underlying print that triggered them is removed.

The Exchange also proposes to add a provision stating that a trade resulting from an erroneous quote(s) in the underlying security shall be adjusted or busted as set forth in the Obvious Error provisions of the Proposed Rule, provided a party notifies the Exchange's Market Control in a timely manner, as further described below. Pursuant to the Proposed Rule, an erroneous quote occurs when the underlying security has a width of at least $1.00 and has a width at least five times greater than the average quote width for such underlying security during the time period encompassing two minutes before and after the dissemination of such quote. For purposes of the Proposed Rule, the average quote width will be determined by adding the quote widths of sample quotations at regular 15-second intervals during the four-minute time period referenced above (excluding the quote(s) in question) and dividing by the number of quotes during such time period (excluding the quote(s) in question).[11] Similar to the proposal with respect to erroneous prints described above, if a party believes that it participated in an erroneous transaction resulting from an erroneous quote(s) it must notify the Exchange's Market Control in accordance with the notification provisions of the Obvious Error provision described above. The Proposed Rule, therefore, puts the onus on each Member to notify the Exchange if such Member believes that a trade should be reviewed pursuant to either of the proposed provisions, as the Exchange is not in position to determine the impact of erroneous prints or quotes on individual Members. The Exchange notes that it does not believe that additional time is necessary with respect to a trade based on an erroneous quote because a Member has all information necessary to detect the error at the time of an option transaction that was triggered by an erroneous quote, which is in contrast to the proposed erroneous print provision that includes a dependency on an action by the market where the underlying security traded.

As an example of a situation in which a trade results from an erroneous quote in the underlying security, assume again that a given underlying is quoting and trading in the $49.00–$50.00 price range then a liquidity gap occurs, with bidders not representing quotes in the market place and an offer quoted at $5.00. Quoting may quickly return to normal, again in the $49.00–$50.00 price range, but due to the potential perception that the underlying has gone through a dramatic price revaluation, numerous options trades could trigger based off of this new quoted price in the interim. Because the price that triggered such trades was not a valid price it would be appropriate to review said option trades.

Stop (and Stop-Limit) Order Trades Triggered by Erroneous Trades

The Exchange notes that certain market participants and their customers enter stop or stop limit orders that are triggered based on executions in the marketplace. As proposed, transactions resulting from the triggering of a stop or stop-limit order by an erroneous trade in an option contract shall be nullified by the Exchange, provided a party notifies the Exchange's Market Control in a timely manner as set forth below. The Exchange believes it is appropriate to nullify executions of stop or stop-limit orders that were wrongly triggered because such transactions should not have occurred. If a party believes that it participated in an erroneous transaction pursuant to the Proposed Rule it must notify the Exchange's Market Control within the timeframes set forth in the Obvious Error Rule above, with the allowed notification timeframe commencing at the time of notification of the nullification of transaction(s) that triggered the stop or stop-limit order.

Linkage Trades

The Exchange also proposes to adopt language that clearly provides the Exchange with authority to take necessary actions when another options exchange nullifies or adjusts a transaction pursuant to its respective rules and the transaction resulted from an order that has passed through the Exchange and been routed on to another options exchange on behalf of the Exchange. Specifically, if the Exchange routes an order pursuant to the Options Order Protection and Locked/Crossed Market Plan[12] that results in a transaction on another options exchange (a ''Linkage Trade'') and such options exchange subsequently nullifies or adjusts the Linkage Trade pursuant to its rules, the Exchange will perform all actions necessary to complete the nullification or adjustment of the Linkage Trade. Although the Exchange is not utilizing its own authority to nullify or adjust a transaction related to an action taken on a Linkage Trade by another options exchange, the Exchange does have to assist in the processing of the adjustment or nullification of the order, such as notification to the Member and the OCC of the adjustment or nullification. Thus, the Exchange believes that the proposed provision

[11] The Exchange has proposed the price and time parameters for quote width and average quote width used to determine whether an erroneous quote has occurred based on established rules of options exchanges that currently apply such parameters. *See, e.g.,* CBOE Rule 6.25(a)(5); NYSE Arca Rule 6.87(a)(5). Based on discussions with these exchanges, the Exchange believes that the parameters are a reasonable approach to determine whether an erroneous quote has occurred for purposes of the proposed rule.

[12] As defined in Exchange Rule 1900(n).

adds additional transparency to the Proposed Rule.

Appeals

The Exchange proposes to generally maintain its current appeals process in connection with the Proposed Rule with minor adjustments to accommodate a harmonized rule. Specifically, if a Member affected by a determination made under the Proposed Rule requests within the time permitted below, the Obvious Error Panel (''Obvious Error Panel'') will review decisions made by the Exchange Official, including whether an obvious error occurred and whether the correct determination was made.

In order to maintain a diverse group of participants, the Obvious Error Panel will be comprised of representatives from four (4) Members. Two (2) of the representatives must be directly engaged in market making (any such representative, a ''MM Representative'') and the other two (2) representatives must be employed by an Electronic Access Member (any such representative, a ''Non-MM Representative'').[13] To qualify as a Non-MM Representative a person must: Be employed by a Member whose revenues from options market making activity do not exceed ten percent (10%) of its total revenues; or have as his or her primary responsibility the handling of Public Customer orders or supervisory responsibility over persons with such responsibility, and not have any responsibilities with respect to market making activities.

In order to further assure a diverse group of potential participants on an Obvious Error Panel, the Exchange shall designate at least ten (10) MM Representatives and at least ten (10) Non-MM Representatives to be called upon to serve on the Obvious Error Panel as needed. To assure fairness, in no case shall an Obvious Error Panel include a person affiliated with a party to the trade in question. Also, to the extent reasonably possible, the Exchange shall call upon the designated representatives to participate on an Obvious Error Panel on an equally frequent basis.

Under the Proposed Rule a request for review on appeal must be made in writing via email or other electronic means specified from time to time by the Exchange in a circular distributed to Members within thirty (30) minutes after the party making the appeal is given notification of the initial determination being appealed. The Obvious Error Panel shall review the facts and render a decision as soon as practicable, but generally on the same trading day as the execution(s) under review. On requests for appeal received after 3:00 p.m. Eastern Time, a decision will be rendered as soon as practicable, but in no case later than the trading day following the date of the execution under review.

The Obvious Error Panel may overturn or modify an action taken by the Exchange Official under this Rule. All determinations by the Obvious Error Panel shall constitute final action by the Exchange on the matter at issue. The Exchange believes that this is necessary given the purpose of the appeal is finality.

In order to deter frivolous appeals, if the Obvious Error Panel votes to uphold the decision made pursuant to the Proposed Rule, the Exchange will assess a $5,000.00 fee against the Member(s) who initiated the request for appeal. In addition, in instances where the Exchange, on behalf of a Member, requests a determination by another market center that a transaction is clearly erroneous, the Exchange will pass any resulting charges through to the relevant Member.

Any determination by an Official or by the Obvious Error Panel shall be rendered without prejudice as to the rights of the parties to the transaction to submit their dispute to arbitration.

Limit Up-Limit Down Plan

The Exchange is proposing to adopt Supplementary Material .01 to the Proposed Rule to provide for how the Exchange will treat Obvious and Catastrophic Errors in response to the Regulation NMS Plan to Address Extraordinary Market Volatility Pursuant to Rule 608 of Regulation NMS under the Act (the ''Limit Up-Limit Down Plan'' or the ''Plan),[14] which is applicable to all NMS stocks, as defined in Regulation NMS Rule 600(b)(47).[15] Under the Proposed Rule, during a pilot period to coincide with the pilot period for the Plan, including any extensions to the pilot period for the Plan, an execution will not be subject to review as an Obvious Error or Catastrophic Error pursuant to paragraph (c) or (d) of the Proposed Rule if it occurred while the underlying security was in a ''Limit State'' or ''Straddle State,'' as defined in the Plan. The Exchange, however, proposes to retain authority to review transactions on an Official's own motion pursuant to sub-paragraph (c)(3) of the Proposed Rule and to bust or adjust transactions pursuant to the proposed Significant Market Event provision, the proposed trading halts provision, the proposed provisions with respect to erroneous prints and quotes in the underlying security, or the proposed provision related to stop and stop limit orders that have been triggered by an erroneous execution. The Exchange believes that these safeguards will provide the Exchange with the flexibility to act when necessary and appropriate to nullify or adjust a transaction, while also providing market participants with certainty that, under normal circumstances, the trades they affect with quotes and/or orders having limit prices will stand irrespective of subsequent moves in the underlying security.

During a Limit or Straddle State, options prices may deviate substantially from those available immediately prior to or following such States. Thus, determining a Theoretical Price in such situations would often be very subjective, creating unnecessary uncertainty and confusion for investors. Because of this uncertainty, the Exchange is proposing to amend Rule 720 to provide that the Exchange will not review transactions as Obvious Errors or Catastrophic Errors when the underlying security is in a Limit or Straddle State.

The Exchange notes that there are additional protections in place outside of the Obvious and Catastrophic Error Rule that will continue to safeguard customers. First, the Exchange rejects all un-priced options orders received by the Exchange (*i.e.,* Market Orders) during a Limit or Straddle State for the underlying security. Second, SEC Rule 15c3–5 requires that, ''financial risk management controls and supervisory procedures must be reasonably designed to prevent the entry of orders that exceed appropriate pre-set credit or capital thresholds, or that appear to be erroneous.''[16] Third, the Exchange has price checks applicable to limit orders that reject limit orders that are priced sufficiently far through the national best bid or national best offer (''NBBO'') that it seems likely an error occurred. The rejection of Market Orders, the requirements placed upon broker dealers to adopt controls to prevent the entry of orders that appear to be

[13] The composition of the Obvious Error Panel will be similar to that of the Review Panel currently utilized by the Exchange to determine whether erroneous trades due to system disruptions and malfunctions should be adjusted or nullified. *See* ISE Gemini Rule 720A.

[14] Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012) (order approving the Plan on a pilot basis).

[15] 17 CFR 242.600(b)(47).

[16] *See* Securities and Exchange Act Release No. 63241 (November 3, 2010), 75 FR 69791 (November 15, 2010) (File No. S7–03–10).

erroneous, and Exchange functionality that filters out orders that appear to be erroneous, will all serve to sharply reduce the incidence of erroneous transactions.

The Exchange represents that it will conduct its own analysis concerning the elimination of the Obvious Error and Catastrophic Error provisions during Limit and Straddle States and agrees to provide the Commission with relevant data to assess the impact of this proposed rule change. As part of its analysis, the Exchange will evaluate (1) the options market quality during Limit and Straddle States, (2) assess the character of incoming order flow and transactions during Limit and Straddle States, and (3) review any complaints from Members and their customers concerning executions during Limit and Straddle States. The Exchange also agrees to provide to the Commission data requested to evaluate the impact of the inapplicability of the Obvious Error and Catastrophic Error provisions, including data relevant to assessing the various analyses noted above.

In connection with this proposal, the Exchange will provide to the Commission and the public a dataset containing the data for each Straddle State and Limit State in NMS Stocks underlying options traded on the Exchange beginning in the month during which the proposal is approved, limited to those option classes that have at least one (1) trade on the Exchange during a Straddle State or Limit State. For each of those option classes affected, each data record will contain the following information:

- Stock symbol, option symbol, time at the start of the Straddle or Limit State, an indicator for whether it is a Straddle or Limit State.
- For activity on the Exchange:
  - Executed volume, time-weighted quoted bid-ask spread, time-weighted average quoted depth at the bid, time-weighted average quoted depth at the offer;
  - high execution price, low execution price;
  - number of trades for which a request for review for error was received during Straddle and Limit States;
  - an indicator variable for whether those options outlined above have a price change exceeding 30% during the underlying stock's Limit or Straddle State compared to the last available option price as reported by OPRA before the start of the Limit or Straddle State (1 if observe 30% and 0 otherwise). Another indicator variable for whether the option price within five minutes of the underlying stock leaving the Limit or Straddle state (or halt if applicable) is 30% away from the price before the start of the Limit or Straddle State.

In addition, by May 29, 2015, the Exchange shall provide to the Commission and the public assessments relating to the impact of the operation of the Obvious Error rules during Limit and Straddle States as follows: (1) Evaluate the statistical and economic impact of Limit and Straddle States on liquidity and market quality in the options markets; and (2) Assess whether the lack of Obvious Error rules in effect during the Straddle and Limit States are problematic. The timing of this submission would coordinate with Participants' proposed time frame to submit to the Commission assessments as required under Appendix B of the Plan. The Exchange notes that the pilot program is intended to run concurrent with the pilot period of the Plan, which has been extended to October 23, 2015. The Exchange proposes to reflect this date in the Proposed Rule.

No Adjustments to a Worse Price

Finally, the Exchange proposes to include Supplementary Material .02 to the Proposed Rule, which would make clear that to the extent the provisions of the proposed Rule would result in the Exchange applying an adjustment of an erroneous sell transaction to a price lower than the execution price or an erroneous buy transaction to a price higher than the execution price, the Exchange will not adjust or nullify the transaction, but rather, the execution price will stand.

Implementation Date

In order to ensure that other options exchanges are able to adopt rules consistent with this proposal and to coordinate the effectiveness of such harmonized rules, the Exchange proposes to delay the operative date of this proposal to May 8, 2015.

2. Statutory Basis

The Exchange believes that its proposal is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of section 6(b) of the Act.[17] Specifically, the proposal is consistent with section 6(b)(5) of the Act[18] because it would promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of, a free and open market and a national market system, and, in general, protect investors and the public interest.

As described above, the Exchange and other options exchanges are seeking to adopt harmonized rules related to the adjustment and nullification of erroneous options transactions. The Exchange believes that the Proposed Rule will provide greater transparency and clarity with respect to the adjustment and nullification of erroneous options transactions. Particularly, the proposed changes seek to achieve consistent results for participants across U.S. options exchanges while maintaining a fair and orderly market, protecting investors and protecting the public interest. Based on the foregoing, the Exchange believes that the proposal is consistent with section 6(b)(5) of the Act[19] in that the Proposed Rule will foster cooperation and coordination with persons engaged in regulating and facilitating transactions.

The Exchange believes the various provisions allowing or dictating adjustment rather than nullification of a trade are necessary given the benefits of adjusting a trade price rather than nullifying the trade completely. Because options trades are used to hedge, or are hedged by, transactions in other markets, including securities and futures, many Members, and their customers, would rather adjust prices of executions rather than nullify the transactions and, thus, lose a hedge altogether. As such, the Exchange believes it is in the best interest of investors to allow for price adjustments as well as nullifications. The Exchange further discusses specific aspects of the Proposed Rule below.

The Exchange does not believe that the proposal is unfairly discriminatory, even though it differentiates in many places between Customers and non-Customers. The rules of the options exchanges, including the Exchange's existing Obvious Error provision, often treat Customers differently, often affording them preferential treatment. This treatment is appropriate in light of the fact that Customers are not necessarily immersed in the day-to-day trading of the markets, are less likely to be watching trading activity in a particular option throughout the day, and may have limited funds in their trading accounts. At the same time, the Exchange reiterates that in the U.S. options markets generally there is significant retail customer participation that occurs directly on (and only on) options exchanges such as the Exchange. Accordingly, differentiating

[17] 15 U.S.C. 78f(b).

[18] 15 U.S.C. 78f(b)(5).

[19] 15 U.S.C. 78f(b)(5).

among market participants with respect to the adjustment and nullification of erroneous options transactions is not unfairly discriminatory because it is reasonable and fair to provide Customers with additional protections as compared to non-Customers.

The Exchange believes that its proposal with respect to the allowance of mutual agreed upon adjustments or nullifications is appropriate and consistent with the Act, as such proposal removes impediments to and perfects the mechanism of a free and open market and a national market system, allowing participants to mutually agree to correct an erroneous transactions without the Exchange mandating the outcome. The Exchange also believes that its proposal with respect to mutual adjustments is consistent with the Act because it is designed to prevent fraudulent and manipulative acts and practices by explicitly stating that it is considered conduct inconsistent with just and equitable principles of trade for any Member to use the mutual adjustment process to circumvent any applicable Exchange rule, the Act or any of the rules and regulations thereunder.

The Exchange believes its proposal to provide within the Proposed Rule definitions of Customer, erroneous sell transaction and erroneous buy transaction, and Official is consistent with section 6(b)(5) of the Act because such terms will provide more certainty to market participants as to the meaning of the Proposed Rule and reduce the possibility that a party can intentionally submit an order hoping for the market to move in their favor in reliance on the Rule as a safety mechanism, thereby promoting just and fair principles of trade. Similarly, the Exchange believes that proposed Supplementary Material .02 is consistent with the Act as it would make clear that the Exchange will not adjust or nullify a transaction, but rather, the execution price will stand when the applicable adjustment criteria would actually adjust the price of the transaction to a worse price (*i.e.,* higher for an erroneous buy or lower for an erroneous sell order).

As set forth below, the Exchange believes it is consistent with section 6(b)(5) of the Act for the Exchange to determine Theoretical Price when the NBBO cannot reasonably be relied upon because the alternative could result in transactions that cannot be adjusted or nullified even when they are otherwise clearly at a price that is significantly away from the appropriate market for the option. Similarly, reliance on an NBBO that is not reliable could result in adjustment to prices that are still significantly away from the appropriate market for the option.

The Exchange believes that its proposal with respect to determining Theoretical Price is consistent with the Act in that it has retained the standard of the current rule, which is to rely on the NBBO to determine Theoretical Price if such NBBO can reasonably be relied upon. Because, however, there is not always an NBBO that can or should be used in order to administer the rule, the Exchange has proposed various provisions that provide the Exchange with the authority to determine a Theoretical Price. The Exchange believes that the Proposed Rule is transparent with respect to the circumstances under which the Exchange will determine Theoretical Price, and has sought to limit such circumstances as much as possible. The Exchange notes that Exchange personnel currently are required to determine Theoretical Price in certain circumstances. While the Exchange continues to pursue alternative solutions that might further enhance the objectivity and consistency of determining Theoretical Price, the Exchange believes that the discretion currently afforded to Exchange Officials is appropriate in the absence of a reliable NBBO that can be used to set the Theoretical Price.

With respect to the specific proposed provisions for determining Theoretical Price for transactions that occur during the opening rotation and in situations where there is a wide quote, the Exchange believes both provisions are consistent with the Act because they provide objective criteria that will determine Theoretical Price with limited exceptions for situations where the Exchange does not believe the NBBO is a reasonable benchmark or there is no NBBO. The Exchange notes in particular with respect to the wide quote provision that the Proposed Rule will result in the Exchange determining Theoretical Price less frequently than it would pursuant to wide quote provisions that have previously been approved. The Exchange believes that it is appropriate and consistent with the Act to afford protections to market participants by not relying on the NBBO to determine Theoretical Price when the quote is extremely wide but had been, in the prior 10 seconds, at much more reasonable width. The Exchange also believes it is appropriate and consistent with the Act to use the NBBO to determine Theoretical Price when the quote has been wider than the applicable amount for more than 10 seconds, as the Exchange does not believe it is necessary to apply any other criteria in such a circumstance. The Exchange believes that market participants can easily use or adopt safeguards to prevent errors when such market conditions exist. When entering an order into a market with a persistently wide quote, the Exchange does not believe that the entering party should reasonably expect anything other than the quoted price of an option.

The Exchange believes that its proposal to adopt clear but disparate standards with respect to the deadline for submitting a request for review of Customer and non-Customer transactions is consistent with the Act, particularly in that it creates a greater level of protection for Customers. As noted above, the Exchange believes that this is appropriate and not unfairly discriminatory in light of the fact that Customers are not necessarily immersed in the day-to-day trading of the markets and are less likely to be watching trading activity in a particular option throughout the day. Thus, Members representing Customer orders reasonably may need additional time to submit a request for review. The Exchange also believes that its proposal to provide additional time for submission of requests for review of linkage trades is reasonable and consistent with the protection of investors and the public interest due to the time that it might take an options exchange or third-party routing broker to file a request for review with the Exchange if the initial notification of an error is received by the originating options exchange near the end of such options exchange's filing deadline. Without this additional time, there could be disparate results based purely on the existence of intermediaries and an interconnected market structure.

In relation to the aspect of the proposal giving Officials the ability to review transactions for obvious errors on their own motion, the Exchange notes that an Official can adjust or nullify a transaction under the authority granted by this provision only if the transaction meets the specific and objective criteria for an Obvious Error under the Proposed Rule. As noted above, this is designed to give an Official the ability to provide parties relief in those situations where they have failed to report an apparent error within the established notification period. However, the Exchange will only grant relief if the transaction meets the requirements for an Obvious Error as described in the Proposed Rule.

The Exchange believes that its proposal to adjust non-Customer transactions and to nullify Customer transactions that qualify as Obvious

Errors is appropriate for reasons consistent with those described above. In particular, Customers are not necessarily immersed in the day-to-day trading of the markets, are less likely to be watching trading activity in a particular option throughout the day, and may have limited funds in their trading accounts.

The Exchange acknowledges that the proposal contains some uncertainty regarding whether a trade will be adjusted or nullified, depending on whether one of the parties is a Customer, because a party may not know whether the other party to a transaction was a Customer at the time of entering into the transaction. However, the Exchange believes that the proposal nevertheless promotes just and equitable principles of trade and protects investors as well as the public interest because it eliminates the possibility that a Customer's order will be adjusted to a significantly different price. As noted above, the Exchange believes it is consistent with the Act to afford Customers greater protections under the Proposed Rule than are afforded to non-Customers. Thus, the Exchange believes that its proposal is consistent with the Act in that it protects investors and the public interest by providing additional protections to those that are less informed and potentially less able to afford an adjustment of a transaction that was executed in error. Customers are also less likely to have engaged in significant hedging or other trading activity based on earlier transactions, and thus, are less in need of maintaining a position at an adjusted price than non-Customers.

If any Member submits requests to the Exchange for review of transactions pursuant to the Proposed Rule, and in aggregate that Member has 200 or more Customer transactions under review concurrently and the orders resulting in such transactions were submitted during the course of 2 minutes or less, the Exchange believes it is appropriate for the Exchange apply the non-Customer adjustment criteria described above to such transactions. The Exchange believes that the proposed aggregation is reasonable as it is representative of an extremely large number of orders submitted to the Exchange over a relatively short period of time that are, in turn, possibly erroneous (and within a time frame significantly less than an entire day), and thus is most likely to occur because of a systems issue experienced by a Member representing Customer orders or a systems issue coupled with the erroneous marking of orders. The Exchange does not believe it is possible at a level of 200 Customer orders over a 2 minute period that are under review at one time that multiple, separate Customers were responsible for the errors in the ordinary course of trading. In the event of a large-scale issue caused by a Member that has submitted orders over a 2 minute period marked as Customer that resulted in more than 200 transactions under review, the Exchange does not believe it is appropriate to nullify all such transactions because of the negative impact that nullification could have on the market participants on the contra-side of such transactions, who might have engaged in hedging and trading activity following such transactions. In order for a participant to have more than 200 transactions under review concurrently when the orders triggering such transactions were received in 2 minutes or less, the Exchange believes that a market participant will have far exceeded the normal behavior of customers deserving protected status. While the Exchange continues to believe that it is appropriate to nullify transactions in such a circumstance if both participants to a transaction are Customers, the Exchange does not believe it is appropriate to place the overall risk of a significant number of trade breaks on non-Customers that in the normal course of business may have engaged in additional hedging activity or trading activity based on such transactions. Thus, the Exchange believes it is necessary and appropriate to protect non-Customers in such a circumstance by applying the non-Customer adjustment criteria, and thus adjusting transactions as set forth above, in the event a Member has more than 200 transactions under review concurrently. In summary, due to the extreme level at which the proposal is set, the Exchange believes that the proposal is consistent with section 6(b)(5) of the Act in that it promotes just and equitable principles of trade by encouraging market participants to retain appropriate controls over their systems to avoid submitting a large number of erroneous orders in a short period of time.

Similarly, the Exchange believes that the proposed Size Adjustment Modifier, which would increase the adjustment amount for non-Customer transactions, is appropriate because it attempts to account for the additional risk that the parties to the trade undertake for transactions that are larger in scope. The Exchange believes that the Size Adjustment Modifier creates additional incentives to prevent more impactful Obvious Errors and it lessens the impact on the contra-party to an adjusted trade. The Exchange notes that these contra-parties may have preferred to only trade the size involved in the transaction at the price at which such trade occurred, and in trading larger size has committed a greater level of capital and bears a larger hedge risk.

The Exchange similarly believes that its Proposed Rule with respect to Catastrophic Errors is consistent with the Act as it affords additional time for market participants to file for review of erroneous transactions that were further away from the Theoretical Price. At the same time, the Exchange believes that the Proposed Rule is consistent with the Act in that it generally would adjust transactions, including Customer transactions, because this will protect against hedge risk, particularly for transactions that may have occurred several hours earlier and thus, which all parties to the transaction might presume are protected from further modification. Similarly, by providing larger adjustment amounts away from Theoretical Price than are set forth under the Obvious Error provision, the Catastrophic Error provision also takes into account the possibility that the party that was advantaged by the erroneous transaction has already taken actions based on the assumption that the transaction would stand. The Exchange believes it is reasonable to specifically protect Customers from adjustments through their limit prices for the reasons stated above, including that Customers are less likely to be watching trading throughout the day and that they may have less capital to afford an adjustment price. The Exchange believes that the proposal provides a fair process that will ensure that Customers are not forced to accept a trade that was executed in violation of their limit order price. In contrast, market professionals are more likely to have engaged in hedging or other trading activity based on earlier trading activity, and thus, are more likely to be willing to accept an adjustment rather than a nullification to preserve their positions even if such adjustment is to a price through their limit price.

The Exchange believes that proposed rule change to adopt the Significant Market Event provision is consistent with section 6(b)(5) of the Act in that it will foster cooperation and coordination with persons engaged in regulating the options markets. In particular, the Exchange believes it is important for options exchanges to coordinate when there is a widespread and significant event, as commonly, multiple options exchanges are impacted in such an event. Further, while the Exchange recognizes that the Proposed Rule will not guarantee a consistent result for all market participants on every market, the Exchange does believe that it will assist in that outcome. For instance, if options exchanges are able to agree as to the time from which Theoretical Price should be determined and the period of time that should be reviewed, the likely disparity between the Theoretical Prices used by such exchanges should be very slight and, in turn, with otherwise consistent rules, the results should be similar. The Exchange also believes that the Proposed Rule is consistent with the Act in that it generally would adjust transactions, including Customer transactions, because this will protect against hedge risk, particularly for liquidity providers that might have been quoting in thousands or tens of thousands of different series and might have affected executions throughout such quoted series. The Exchange believes that when weighing the competing interests between preferring a nullification for a Customer transaction and an adjustment for a transaction of a market professional, while nullification is appropriate in a typical one-off situation that it is necessary to protect liquidity providers in a widespread market event because, presumably, they will be the most affected by such an event (in contrast to a Customer who, by virtue of their status as such, likely would not have more than a small number of affected transactions). The Exchange believes that the protection of liquidity providers by favoring adjustments in the context of Significant Market Events can also benefit Customers indirectly by better enabling liquidity providers, which provides a cumulative benefit to the market. Also, as stated above with respect to Catastrophic Errors, the Exchange believes it is reasonable to specifically protect Customers from adjustments through their limit prices for the reasons stated above, including that Customers are less likely to be watching trading throughout the day and that they may have less capital to afford an adjustment price. The Exchange believes that the proposal provides a fair process that will ensure that Customers are not forced to accept a trade that was executed in violation of their limit order price. In contrast, market professionals are more likely to have engaged in hedging or other trading activity based on earlier trading activity, and thus, are more likely to be willing to accept an adjustment rather than a nullification to preserve their positions even if such adjustment is to a price through their limit price. In addition, the Exchange believes it is important to have the ability to nullify some or all transactions arising out of a Significant Market Event in the event timely adjustment is not feasible due to the extraordinary nature of the situation. In particular, although the Exchange has worked to limit the circumstances in which it has to determine Theoretical Price, in a widespread event it is possible that hundreds if not thousands of series would require an Exchange determination of Theoretical Price. In turn, if there are hundreds or thousands of trades in such series, it may not be practicable for the Exchange to determine the adjustment levels for all non-Customer transactions in a timely fashion, and in turn, it would be in the public interest to instead more promptly deliver a simple, consistent result of nullification.

The Exchange believes that proposed rule change related to review, nullification and/or adjustment of erroneous transactions during a trading halt (including the proposed modification to Rule 702), an erroneous print in the underlying security, an erroneous quote in the underlying security, or an erroneous transaction in the option with respect to stop and stop limit orders is likewise consistent with section 6(b)(5) of the Act because the proposal provides for the adjustment or nullification of trades executed at erroneous prices through no fault on the part of the trading participants. Allowing for Exchange review in such situations will promote just and fair principles of trade by protecting investors from harm that is not of their own making. Specifically with respect to the proposed provisions governing erroneous prints and quotes in the underlying security, the Exchange notes that market participants on the Exchange base the value of their quotes and orders on the price of the underlying security. The provisions regarding errors in prints and quotes in the underlying security cover instances where the information market participants use to price options is erroneous through no fault of their own. In these instances, market participants have little, if any, chance of pricing options accurately. Thus, these provisions are designed to provide relief to market participants harmed by such errors in the prints or quotes of the underlying security.

The Exchange believes that the proposed provision related to Linkage Trades is consistent with the Act because it adds additional transparency to the Proposed Rule and makes clear that when a Linkage Trade is adjusted or nullified by another options exchange, the Exchange will take necessary actions to complete the nullification or adjustment of the Linkage Trade.

The Exchange believes that retaining the same appeals process as the Exchange maintains under the Current Rule is consistent with the Act because such process provides Members with due process in connection with decisions made by Exchange Officials under the Proposed Rule. The Exchange believes that this process provides fair representation of Members by ensuring diversity amongst the members of any Obvious Error Review Panel, which is consistent with sections 6(b)(3) and 6(b)(7) of the Act. The Exchange also believes that the proposed appeals process is appropriate with respect to financial penalties for appeals that result in a decision of the Exchange being upheld because it discourages frivolous appeals, thereby reducing the possibility of overusing Exchange resources that can instead be focused on other, more productive activities. The fees with respect to such financial penalties are the same as under the Current Rule, and are equitable and not unfairly discriminatory because they will be applied uniformly to all Members and are designed to reduce administrative burden on the Exchange as well as market participants that volunteer to participate on Obvious Error Review Panels.

With regard to the portion of the Exchange's proposal related to the applicability of the Obvious Error Rule when the underlying security is in a Limit or Straddle State, the Exchange believes that the proposed rule change is consistent with section 6(b)(5) of the Act because it will provide certainty about how errors involving options orders and trades will be handled during periods of extraordinary volatility in the underlying security. Further, the Exchange believes that it is necessary and appropriate in the interest of promoting fair and orderly markets to exclude from Rule 720 those transactions executed during a Limit or Straddle State.

The Exchange believes the application of the Proposed Rule without the proposed provision would be impracticable given the lack of reliable NBBO in the options market during Limit and Straddle States, and that the resulting actions (*i.e.,* nullified trades or adjusted prices) may not be appropriate given market conditions. The Proposed Rule change would ensure that limit orders that are filled during a Limit State or Straddle State would have certainty of execution in a manner that promotes just and equitable principles of trade, removes impediments to, and perfects the mechanism of a free and open market and a national market system.

Moreover, given the fact that options prices during brief Limit or Straddle States may deviate substantially from those available shortly following the Limit or Straddle State, the Exchange believes giving market participants time to re-evaluate a transaction would create an unreasonable adverse selection opportunity that would discourage participants from providing liquidity during Limit or Straddle States. In this respect, the Exchange notes that only those orders with a limit price will be executed during a Limit or Straddle State. Therefore, on balance, the Exchange believes that removing the potential inequity of nullifying or adjusting executions occurring during Limit or Straddle States outweighs any potential benefits from applying certain provisions during such unusual market conditions. Additionally, as discussed above, there are additional pre-trade protections in place outside of the Obvious and Catastrophic Error Rule that will continue to safeguard customers.

The Exchange notes that under certain limited circumstances the Proposed Rule will permit the Exchange to review transactions in options that overlay a security that is in a Limit or Straddle State. Specifically, an Official will have authority to review a transaction on his or her own motion in the interest of maintaining a fair and orderly market and for the protection of investors. Furthermore, the Exchange will have the authority to adjust or nullify transactions in the event of a Significant Market Event, a trading halt in the affected option, an erroneous print or quote in the underlying security, or with respect to stop and stop limit orders that have been triggered based on erroneous trades. The Exchange believes that the safeguards described above will protect market participants and will provide the Exchange with the flexibility to act when necessary and appropriate to nullify or adjust a transaction, while also providing market participants with certainty that, under normal circumstances, the trades they effect with quotes and/or orders having limit prices will stand irrespective of subsequent moves in the underlying security. The right to review those transactions that occur during a Limit or Straddle State would allow the Exchange to account for unforeseen circumstances that result in Obvious or Catastrophic Errors for which a nullification or adjustment may be necessary in the interest of maintaining a fair and orderly market and for the protection of investors. Similarly, the ability to nullify or adjust transactions that occur during a Significant Market Event or trading halt, erroneous print or quote in the underlying security, or erroneous trade in the option (*i.e.,* stop and stop limit orders) may also be necessary in the interest of maintaining a fair and orderly market and for the protection of investors. Furthermore, the Exchange will administer this provision in a manner that is consistent with the principles of the Act and will create and maintain records relating to the use of the authority to act on its own motion during a Limit or Straddle State or any adjustments or trade breaks based on other proposed provisions under the Rule.

B. Self-Regulatory Organization's Statement on Burden on Competition

ISE Gemini believes the entire proposal is consistent with section 6(b)(8) of the Act [20] in that it does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act as explained below.

Importantly, the Exchange believes the proposal will not impose a burden on intermarket competition but will rather alleviate any burden on competition because it is the result of a collaborative effort by all options exchanges to harmonize and improve the process related to the adjustment and nullification of erroneous options transactions. The Exchange does not believe that the rules applicable to such process is an area where options exchanges should compete, but rather, that all options exchanges should have consistent rules to the extent possible. Particularly where a market participant trades on several different exchanges and an erroneous trade may occur on multiple markets nearly simultaneously, the Exchange believes that a participant should have a consistent experience with respect to the nullification or adjustment of transactions. The Exchange understands that all other options exchanges intend to file proposals that are substantially similar to this proposal.

The Exchange does not believe that the proposed rule change imposes a burden on intramarket competition because the provisions apply to all market participants equally within each participant category (*i.e.,* Customers and non-Customers). With respect to competition between Customer and non-Customer market participants, the Exchange believes that the Proposed Rule acknowledges competing concerns and tries to strike the appropriate balance between such concerns. For instance, as noted above, the Exchange believes that protection of Customers is important due to their direct participation in the options markets as well as the fact that they are not, by definition, market professionals. At the same time, the Exchange believes due to the quote-driven nature of the options markets, the importance of liquidity provision in such markets and the risk that liquidity providers bear when quoting a large breadth of products that are derivative of underlying securities, that the protection of liquidity providers and the practice of adjusting transactions rather than nullifying them is of critical importance. As described above, the Exchange will apply specific and objective criteria to determine whether an erroneous transaction has occurred and, if so, how to adjust or nullify a transaction.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to section 19(b)(3)(A) of the Act [21] and Rule 19b–4(f)(6) thereunder.[22]

The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is

[20] 15 U.S.C. 78f(b)(8).

[21] 15 U.S.C. 78s(b)(3)(A).

[22] 17 CFR 240.19b–4(f)(6). As required under Rule 19b–4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

consistent with the protection of investors and the public interest, as it will enable the Exchange to meet its proposed implementation date of May 8, 2015, which will help facilitate the implementation of harmonized rules related to the adjustment and nullification of erroneous options transactions across the options exchanges. For this reason, the Commission designates the proposed rule change to be operative upon filing.[23]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–ISEGemini–2015–11 on the subject line.

Paper Comments

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

All submissions should refer to File Number *SR–ISEGemini–2015–11.* This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ISEGemini–2015–11 and should be submitted on or before June 3, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[24]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2015–11483 Filed 5–12–15; 8:45 am]

BILLING CODE 8011–01–P

[23] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[24] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–74894; File No. SR–OCC–2015–007]

Self-Regulatory Organizations; The Options Clearing Corporation; Order Approving Proposed Rule Change To Enhance the Measurement Used To Establish Minimum Capital Requirements for Banks Approved To Issue Letters of Credit

May 7, 2015.

On March 6, 2015, The Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change SR–OCC–2015–007 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder.[2] On March 25, 2015, the proposed rule change was published for comment in the **Federal Register**.[3] The Commission did not receive any comments on the proposed rule change. This order approves the proposed rule change.

I. Description

OCC is amending its by-laws and rules in order to enhance the measurement used to establish minimum capital requirements for banks approved to issue letters of credit that may be deposited by clearing members as a form of margin asset. Currently, OCC's Rule 604, Interpretation and Policy .01, requires U.S. banks to have $100,000,000 or more in shareholders' equity, and non-U.S. banks to have $200,000,000 or more in shareholders' equity, in order to be approved as an issuer of letters of credit that may be deposited by clearing members to meet their margin obligations at OCC. The purpose of these minimum capital requirements is to ensure that issuers of letters of credit whose letters of credit are deposited at OCC as a margin asset by clearing members have the ability to honor a demand for payment by OCC under such letters of credit should a need to do so arise, such as in the case of a clearing member default.

The financial requirements set forth in OCC's Rule 604 concerning issuers of letters of credit have been in place for many years.[4] However, since OCC adopted Rule 604 and Interpretation and Policy .01 under Rule 604, bank financial reporting standards have changed. Today, bank regulators place a greater emphasis on Tier 1 Capital as opposed to shareholders' equity[5] such that Tier 1 Capital is now considered the primary component of a bank's total regulatory capital.[6] Moreover, OCC notes that Tier 1 Capital is a more conservative measure of a bank's financial health as it ignores subordinated debt, intermediate-term preferred stock, cumulative and long-term preferred stock and a portion of a bank's allowance for loan and lease losses.

OCC believes that by measuring a bank's financial health based on Tier 1 Capital, instead of shareholders' equity, OCC will reduce its credit risk to banks issuing letters of credit deposited by clearing members as a form of margin asset. As stated above, Tier 1 Capital is a more conservative measure of a bank's

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 74536 (March 19, 2015), 80 FR 15846 (March 25, 2015) (SR–OCC–2015–007).

[4] *See* Securities and Exchange Act Release No. 19422 (January 12, 1983), 48 FR 2481 (SR–OCC–1982–08).

[5] Tier 1 Capital is the measure used by the Basel Committee on Banking Supervision to measure the financial health of a bank. The goal of the Basel Committee on Banking Supervision is to strengthen the regulation, supervision and risk management of the banking sector. The Basel Committee on Banking Supervision's most recent set of reform measures, Basel III, is located at: *http://www.bis.org/publ/bcbs189.pdf.*

[6] *See https://www.kansascityfed.org/Publicat/BasicsforBankDirectors/BasicsforBankDirectors.pdf.*

financial health. Should OCC need to demand payment on a letter of credit deposited by a clearing member as a margin asset, such as in the case of a clearing member default, it is less likely that the bank issuing such letter of credit will not perform upon its payment commitment because the bank will be required to hold a greater amount of capital in order to be an OCC letter of credit bank. In turn, credit risk presented to OCC as a result of accepting letters of credit as a form of margin asset is reduced.[7]

In light of the more universal acceptance of Tier 1 Capital for bank financial reporting standards and the potential to reduce the credit risk associated with the issuance of letters of credit, OCC is amending Rule 604, Interpretation and Policy .01, to substitute Tier 1 Capital for shareholders' equity. Pursuant to the rule change, as approved, OCC is also adding paragraph ''c'' to Interpretation and Policy .01 under Rule 604 to adopt a definition of Tier 1 Capital that leverages the definition of Tier 1 Capital used by a bank's regulatory agency. OCC believes that such a definition is appropriate given that OCC accepts letters of credit from banks regulated by different regulatory authorities.[8] In addition, OCC is making a conforming change to OCC Rule 604, Interpretation and Policy .04, so that any one bank may not issue letters of credit for an individual clearing member exceeding 15% of the bank's Tier 1 Capital (instead of shareholders' equity).

II. Discussion and Commission Findings

Section 19(b)(2)(C) of the Act[9] directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to such organization.

The Commission finds that the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act, which requires, among other things, that the rules of a clearing agency are designed to assure the safeguarding of securities and funds which are in the custody and control of the clearing agency or for which it is responsible.[10] The rule change, as proposed, should help ensure the safeguarding of securities and funds which are in the custody and control of OCC, or for which OCC is responsible, because OCC will assess banks that issue letters of credit to be deposited as margin by clearing members using a more conservative capital requirement. This more conservative capital requirement thereby increases the likelihood that the bank will have the ability to honor a demand for payment made by OCC. For the same reason, OCC believes that the adoption of a more conservative capital requirement for banks approved to issue letters of credit that may be deposited by clearing members as a form of margin asset is consistent with the requirement of Rule 17Ad–22(d)(3), promulgated under the Act, which requires OCC hold assets in a manner that minimizes risk of loss or delay in access to them.[11]

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act, and in particular, with the requirements of Section 17A of the Act[12] and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[13] that the proposed rule change (SR–OCC–2015–007) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2015–11480 Filed 5–12–15; 8:45 am]

BILLING CODE 8011–01–P

[7] OCC does not anticipate that the proposed rule change will impact any of the banks already approved to issue letters of credit that may be deposited by clearing members as a form of margin since all such banks maintain amounts of Tier 1 Capital that exceed, as applicable, $100 million for U.S. banks or $200 million for Non-U.S. banks.

[8] *See* OCC Rule 604(c). For example, OCC accepts letters of credit issued by banks regulated by The Federal Reserve Board, The Office of the Comptroller of the Currency, The Australian Prudential Regulation Authority and The German Federal Financial Supervisory Authority.

[9] 15 U.S.C. 78s(b)(2)(C).

[10] 15 U.S.C. 78q–1(b)(3)(F).

[11] 17 CFR 240.17Ad–22(d)(3).

[12] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[13] 15 U.S.C. 78s(b)(2).

[14] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 9132]

Culturally Significant Objects Imported for Exhibition Determinations: ''Three Paintings by Johan Christian Dahl'' Exhibition

SUMMARY: Notice is hereby given of the following Determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236–3 of August 28, 2000 (and, as appropriate, Delegation of Authority No. 257 of April 15, 2003), I hereby determine that the objects to be included in the exhibition ''Three Paintings by Johan Christian Dahl,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to a loan agreement with the foreign owner or custodian. I also determine that the exhibition or display of the exhibit objects at The Metropolitan Museum of Art, New York, New York, from on or about June 1, 2015, until on or about June 30, 2016, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact the Office of Public Diplomacy and Public Affairs in the Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6471; email: *section2459@state.gov*). The mailing address is U.S. Department of State, L/PD, SA–5, Suite 5H03, Washington, DC 20522–0505.

Dated: May 6, 2015.

Kelly Keiderling,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2015–11557 Filed 5–12–15; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 9131]

In the Matter of the Review of the Designation of al-Qa'ida (and Other Aliases) as a Foreign Terrorist Organization Pursuant to Section 219 of the Immigration and Nationality Act

Based upon a review of the Administrative Record assembled in this matter pursuant to Section 219(a)(4)(C) and (b) of the Immigration and Nationality Act, as amended (8 U.S.C. 1189(a)(4)(C), (b)) (''INA''), and in consultation with the Attorney General and the Secretary of the Treasury, the Secretary of State concludes that the circumstances that were the basis for the 2009 decision to maintain the designation of the aforementioned organization as a Foreign Terrorist Organization have not changed in such a manner as to warrant revocation of the designation and that the national security of the United States does not warrant a revocation of the designation.

Therefore, the Secretary of State hereby determines that the designation of the aforementioned organization as a Foreign Terrorist Organization, pursuant to Section 219 of the INA (8 U.S.C. 1189), shall be maintained.

This determination shall be published in the **Federal Register**.

Dated: May 1, 2015.

John F. Kerry,

Secretary of State.

[FR Doc. 2015–11555 Filed 5–12–15; 8:45 am]

BILLING CODE 4710–AD–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Request To Release Airport Property

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on request to release airport property at the Sikeston Memorial Municipal Airport (SIK), Sikeston, Missouri.

SUMMARY: The FAA proposes to rule and invites public comment on the release of land at the Sikeston Memorial Municipal Airport (SIK), Sikeston, Missouri, under the provisions of 49 U.S.C. 47107(h)(2).

DATES: Comments must be received on or before June 12, 2015.

ADDRESSES: Comments on this application may be mailed or delivered to the FAA at the following address: Lynn D. Martin, Airports Compliance Specialist, Federal Aviation Administration, Airports Division, ACE–610C, 901 Locust Room 364, Kansas City, MO 64106.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to: Charles Leible, City Attorney, City Counselor's Office; P.O. Box 905 Sikeston, Missouri 63801, (573–471–7007).

FOR FURTHER INFORMATION CONTACT: Lynn D. Martin, Airports Compliance Specialist, Federal Aviation Administration, Airports Division, ACE–610C, 901 Locust Room 364, Kansas City, MO 64106, (816) 329–2644, *lynn.martin@faa.gov.*

The request to release property may be reviewed, by appointment, in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA invites public comment on the request to release approximately 69.89± acres of airport property at the Sikeston Memorial Municipal Airport (SIK) under the provisions of 49 U.S. C. 47107(h)(2). On February 23, 2015, the City Attorney of Sikeston, MO requested from the FAA that approximately 69.89± acres of property be released for sale to Pebble Beach, LLC for the purpose of the back nine of a golf course. On April 1, 2015, the FAA determined that the request to release property at the Sikeston Memorial Municipal Airport (SIK) submitted by the Sponsor meets the procedural requirements of the Federal Aviation Administration and the release of the property does not and will not impact future aviation needs at the airport. The FAA may approve the request, in whole or in part, no sooner than thirty days after the publication of this Notice.

The following is a brief overview of the request:

Sikeston Memorial Municipal Airport (SIK) is proposing the release of a parcel, totaling 69.89± acres. The release of land is necessary to comply with Federal Aviation Administration Grant Assurances that do not allow federally acquired airport property to be used for non-aviation purposes. The sale of the subject property will result in the land at the Sikeston Memorial Municipal Airport (SIK) being changed from aeronautical to nonaeronautical use and release the surface lands from the conditions of the AIP Grant Agreement Grant Assurances. In accordance with 49 U.S.C. § 47107(c)(2)(B)(i) and (iii), the airport will receive fair market value for the property.

Any person may inspect, by appointment, the request in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**. In addition, any person may, upon appointment and request, inspect the application, notice and other documents determined by the FAA to be related to the application in person at the Sikeston Memorial Municipal Airport.

Issued in Kansas City, MO, on May 7, 2015.

Jim A. Johnson,

Manager, Airports Division.

[FR Doc. 2015–11552 Filed 5–12–15; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Agency Information Collection Activities: Information Collection Renewal; Submission for OMB Review; Recordkeeping Requirements for Securities Transactions

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: ACTION: Notice and request for comment.

SUMMARY: The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a continuing information collection, as required by the Paperwork Reduction Act of 1995 (PRA).

In accordance with the requirements of the PRA, the OCC may not conduct or sponsor, and the 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 OCC is soliciting comment concerning its information collection titled, ''Recordkeeping Requirements for Securities Transactions.'' The OCC also is giving notice that it has sent the collection to OMB for review.

DATES: You should submit comments by June 12, 2015.

ADDRESSES: Because paper mail in the Washington, DC area and at the OCC is subject to delay, commenters are encouraged to submit comments by email, if possible. Comments may be sent to: Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, Attention: 1557–0142, 400 7th Street SW., Suite 3E–218, Mail Stop 9W–11, Washington, DC 20219. In addition, comments may be sent by fax to (571) 465–4326 or by electronic mail to *regs.comments@occ.treas.gov.* You may personally inspect and photocopy 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. Upon arrival, visitors will be required to present valid government-issued photo identification and submit to security screening in order to inspect and photocopy comments.

All comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not enclose any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

Additionally, please send a copy of your comments by mail to: OCC Desk Officer, 1557–0142, U.S. Office of Management and Budget, 725 17th Street NW., #10235, Washington, DC 20503, or by email to: *oira_submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Shaquita D. Merritt, OCC Clearance Officer, (202) 649–5490, for persons who are deaf or hard of hearing, TTY, (202) 649–5597, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 400 7th Street SW., Suite 3E–218, Mail Stop 9W–11, Washington, DC 20219.

SUPPLEMENTARY INFORMATION: The OCC is proposing to extend OMB approval of the following information collection:

Title: Recordkeeping Requirements for Securities Transactions—12 CFR parts 12 and 151.

OMB Number: 1557–0142.

Description: The information collection requirements in 12 CFR parts 12 and 151 are required to ensure that national banks and Federal savings associations comply with securities laws and to improve the protections afforded to persons who purchase and sell securities through these financial institutions. Parts 12 and 151 establish recordkeeping and confirmation requirements applicable to certain securities transactions effected by national banks or Federal savings associations for customers. The transaction confirmation information required by these regulations ensures that customers receive a record of each securities transaction and that financial institutions and the OCC have the records necessary to monitor compliance with securities laws and regulations. The OCC uses the required information in the course of its examinations to evaluate, among other things, an institution's compliance with the antifraud provisions of the Federal securities laws.

The information collection requirements contained in 12 CFR parts 12 and 151 are as follows:

- 12 CFR 12.3 requires a national bank effecting securities transactions for customers to maintain records for at least three years. The records required by this section must clearly and accurately reflect the information required and provide an adequate basis for the audit of the information.
- 12 CFR 151.50 requires a Federal savings association effecting securities transactions for customers to maintain records for at least three years. 12 CFR 151.60 provides that the records required by 12 CFR 151.50 must clearly and accurately reflect the information required and provide an adequate basis for audit of the information.
- 12 CFR 12.4 requires a national bank to give or send to the customer a written notification of the transaction or a copy of the registered broker/dealer confirmation relating to the transaction at or before completion of the securities transaction and establishes minimum disclosures needed for a customer's securities transactions.
- 12 CFR 151.70, 151.80 and 151.90 establish the minimum disclosures required for a Federal savings association's confirmation of a customer's securities transactions.
- 12 CFR 151.90 requires a Federal savings association to provide its customers with a written notice of each securities transaction, which it must give or send to the customer at or before the completion of the securities transaction.
- 12 CFR 12.5(a), (b), (c), and (e) describe notification procedures that a national bank may elect to use, as an alternative to complying with § 12.4, to notify customers of transactions in which the bank does not exercise investment discretion, trust transactions, agency transactions, and certain periodic plan transactions.
- 12 CFR 151.100 describes notification procedures that a Federal savings association may use, as an alternative to complying with 12 CFR 151.70, 151.80 or 151.90, for an account in which the savings association does not exercise investment discretion, trust transactions, agency transactions, certain periodic plan transactions, collective investment fund transactions, and money market funds.
- 12 CFR 12.7(a)(1) through (a)(3) require national banks to maintain and adhere to policies and procedures that assign responsibility for supervision of employees who perform securities trading functions, provide for the fair and equitable allocation of securities and prices to accounts, and provide for crossing of buy and sell orders on a fair and equitable basis.
- 12 CFR 151.140 requires Federal savings associations to adopt written policies and procedures dealing with the functions involved in effecting securities transactions on behalf of customers. These policies and procedures must assign responsibility for the supervision of employees who perform securities trading functions, provide for the fair and equitable allocation of securities prices to accounts, and provide for crossing of buy and sell orders on a fair and equitable basis.
- 12 CFR 12.7(a)(4) requires certain national bank officers and employees involved in the securities trading process to report to the bank all personal transactions in securities made by them or on their behalf in which they have a beneficial interest.
- 12 CFR 151.150 requires certain Federal savings association officers and employees to report personal transactions they make or that are made on their behalf in which they have a beneficial interest.
- 12 CFR 12.8 requires a national bank seeking a waiver of one or more of the requirements of §§ 12.2 through 12.7 to file a written request for waiver with the OCC.

Type of Review: Regular.

Affected Public: Individuals; Businesses or other for-profit.

Estimated Number of Respondents: 399.

Estimated Frequency of Response: On occasion.

Estimated Total Annual Burden: 2,315 hours.

The OCC issued a notice for 60 days of comment concerning the collection on March 6, 2015 (80 FR 12261). No comments were received. Comments continue to be invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the OCC, including whether the information has practical utility;

(b) The accuracy of the OCC's estimate of the burden of the collection of information;

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

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

(e) Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: May 7, 2015.

Mary H. Gottlieb,

Regulatory Specialist, Office of the Comptroller of the Currency.

[FR Doc. 2015–11487 Filed 5–12–15; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Agency Information Collection Activities: Information Collection Renewal; Submission for OMB Review; Bank Activities and Operations

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a continuing information collection, as required by the Paperwork Reduction Act of 1995 (PRA).

In accordance with the requirements of the PRA, the OCC may not conduct or sponsor, and the 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 OCC is soliciting comment concerning its information collection titled, ''Bank Activities and Operations.'' It also is giving notice that the information collection has been submitted to OMB for review.

DATES: You should submit written comments by: June 12, 2015.

ADDRESSES: Because paper mail in the Washington, DC area and at the OCC is subject to delay, commenters are encouraged to submit comments by email, if possible. Comments may be sent to: Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, Attention: 1557–0204, 400 7th Street SW., Suite 3E–218, Mail Stop 9W–11, Washington, DC 20219. In addition, comments may be sent by fax to (571) 465–4326 or by email to *regs.comments@occ.treas.gov.* You may personally inspect and photocopy 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. Upon arrival, visitors will be required to present valid government-issued photo identification and submit to security screening in order to inspect and photocopy comments.

All 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.

Additionally, please send a copy of your comments by mail to: OCC Desk Officer, 1557–0204, U.S. Office of Management and Budget, 725 17th Street NW., #10235, Washington, DC 20503, or by email to: *oira__submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Shaquita Merritt, OCC Clearance Officer, (202) 649–5490, for persons who are deaf or hard of hearing, TTY, (202) 649–5597, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 400 7th Street SW., Washington, DC 20219.

SUPPLEMENTARY INFORMATION: The OCC is proposing to extend OMB approval, without change, of the following information collection:

Title: Bank Activities and Operations—12 CFR part 7.

OMB Control No.: 1557–0204.

Description: This submission covers an existing regulation and involves no change to the regulation or to the information collection requirements. The OCC requests only that the OMB extend its approval of the information collection.

The information collection requirements ensure that national banks conduct their operations in a safe and sound manner and in accordance with applicable Federal banking statutes and regulations. The information is necessary for regulatory and examination purposes.

The information collection requirements in part 7 are as follows:

- 12 CFR 7.1000(d)(1) (National bank ownership of property—Lease financing of public facilities). National bank lease agreements must provide that the lessee will become the owner of the building or facility upon the expiration of the lease.
- 12 CFR 7.1014 (Sale of money orders at nonbanking outlets). A national bank may designate bonded agents to sell the bank's money orders at nonbanking outlets. The responsibility of both the bank and its agent should be defined in a written agreement setting forth the duties of both parties and providing for remuneration of the agent.
- 12 CFR 7.2000(b) (Corporate governance procedures—Other sources of guidance). A national bank shall designate in its bylaws the body of law selected for its corporate governance procedures.
- 12 CFR 7.2004 (Honorary directors or advisory boards). Any listing of a national bank's honorary or advisory directors must distinguish between them and the bank's board of directors or indicate their advisory status.
- 12 CFR 7.2014(b) (Indemnification of institution-affiliated parties—Administrative proceeding or civil actions not initiated by a Federal agency). A national bank shall designate in its bylaws the body of law selected for making indemnification payments.
- 12 CFR 7.2024(a) (Staggered terms for national bank directors). Any national bank may adopt bylaws that provide for staggering the terms of its directors. National banks shall provide the OCC with copies of any bylaws so amended.
- 12 CFR 7.2024(c) (Size of bank board). A national bank seeking to increase the number of its directors must notify the OCC any time the proposed size would exceed 25 directors.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profit.

Estimated Number of Respondents: 1,300.

Estimated Total Annual Burden: 418 hours.

Frequency of Response: On occasion.

The OCC published a notice concerning the collection for 60 days of comment on February 5, 2015 (80 FR 6569). No comments were received. Comments continue to be invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the OCC, including whether the information has practical utility;

(b) The accuracy of the OCC's estimate of the burden of the collection of information;

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

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

(e) Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: May 7, 2015.

Mary H. Gottlieb,

Regulatory Specialist, Legislative and Regulatory Activities Division.

[FR Doc. 2015–11488 Filed 5–12–15; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13(44 U.S.C. 3506(c)(2)(A)). The IRS is soliciting comments concerning information collection requirements related to information with respect to certain foreign-owned corporations.

DATES: Written comments should be received on or before July 13, 2015 to be assured of consideration.

ADDRESSES: Direct all written comments to Christie Preston, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulations should be directed to Sara Covington at Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet at *Sara.L.Covington@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Information With Respect to Certain Foreign-Owned Corporations.

OMB Number: 1545–1191.

Regulation Project Number: T.D. 8353.

Abstract: This document contains final Income Tax Regulations relating to information that must be reported and records that must be maintained under section 6038A of the Internal Revenue Code. These regulations are necessary to provide appropriate guidance for affected reporting corporations and related parties. The regulations affect any reporting corporation (that is, certain domestic corporations and foreign corporations) as well as certain related parties of the reporting corporation.

Current Actions: There is no change to these existing regulations.

Type of Review: Extension of currently approved collection.

Affected Public: Individuals and business or other for-profit organizations.

Estimated Number of Respondents: 63,000.

Estimated Time per Respondent: 10 hours.

Estimated Total Annual Burden Hours: 630,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request For Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 6, 2015.

Christie Preston,

IRS Reports Clearance Officer.

[FR Doc. 2015–11572 Filed 5–12–15; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Low Income Taxpayer Clinic Grant Program; Availability of 2014 Grant Application Package

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: This document contains a notice that the IRS has made available the *2016 Grant Application Package and Guidelines* (Publication 3319) for organizations interested in applying for a Low Income Taxpayer Clinic (LITC) matching grant for the 2016 grant year, which runs from January 1, 2016, through December 31, 2016. The application period runs through June 15, 2015.

The IRS will award a total of up to $6,000,000 (unless otherwise provided by specific Congressional appropriation) to qualifying organizations, subject to the limitations of Internal Revenue Code section 7526. For fiscal year 2015, Congress appropriated a total of $10,000,000 in federal funds for LITC grants. A qualifying organization may receive a matching grant of up to $100,000 per year for up to a three-year project period. Qualifying organizations that provide representation to low income taxpayers involved in a tax controversy with the IRS or educate individuals for whom English is a second language (ESL) of their taxpayer rights and responsibilities under the Internal Revenue Code are eligible for a grant. Beginning in grant year 2016, the LITC Program will award grants only to qualifying organizations that provide both services. An LITC must provide services for free or for no more than a nominal fee.

Examples of qualifying organizations include: (1) A clinical program at an accredited law, business or accounting school whose students represent low income taxpayers in tax controversies with the IRS, and (2) an organization exempt from tax under I.R.C. § 501(a) whose employees and volunteers represent low income taxpayers in tax controversies with the IRS.

In determining whether to award a grant, the IRS will consider a variety of factors, including: (1) The number of taxpayers who will be assisted by the organization, including the number of ESL taxpayers in that geographic area; (2) the existence of other LITCs assisting the same population of low income and ESL taxpayers; (3) the quality of the program offered by the organization, including the qualifications of its administrators and qualified representatives, and its record, if any, in providing assistance to low income taxpayers; and (4) alternative funding sources available to the organization, including amounts received from other grants and contributions, and the endowment and resources of the institution sponsoring the organization.

DATES: The IRS is authorized to award a multi-year grant not to exceed three years. For an organization not currently receiving a grant for 2015, or an organization whose multi-year grant ends in 2015, the organization must submit the application electronically at *www.grants.gov.* For an organization currently receiving a grant for 2015 which is requesting funding for the second or third year of a multi-year grant, the organization must submit the funding request electronically at *www.grantsolutions.gov.* All organizations must use the funding number of TREAS–GRANTS–052016–001, and applications and funding requests for the 2016 grant year must be electronically filed by June 15, 2015. The Catalog of Federal Domestic Assistance program number is 21.008. *See www.cfda.gov.*

ADDRESSES: The LITC Program Office is located at: Internal Revenue Service, Taxpayer Advocate Service, LITC Grant Program Administration Office, TA:LITC, 1111 Constitution Avenue NW., Room 1034, Washington, DC 20224. Copies of the *2016 Grant Application Package and Guidelines,* IRS Publication 3319 (Rev. 5–2015), can be downloaded from the IRS Internet site at *www.irs.gov/advocate* or ordered by calling the IRS Distribution Center at 1–800–829–3676.

FOR FURTHER INFORMATION CONTACT: The LITC Program Office at (202) 317–4700 (not a toll-free number) or by email at *LITCProgramOffice@irs.gov.*

SUPPLEMENTARY INFORMATION:

Background

Section 7526 of the Internal Revenue Code authorizes the IRS, subject to the availability of appropriated funds, to award qualified organizations matching grants of up to $100,000 per year for the development, expansion, or continuation of qualified low income taxpayer clinics. A qualified organization is one that represents low income taxpayers in controversies with the IRS or informs individuals for whom English is a second language of their taxpayer rights and responsibilities, and does not charge more than a nominal fee for its services (except for reimbursement of actual costs incurred). The IRS may award grants to qualified organizations to fund one-year, two-year, or three-year project periods. Grant funds may be awarded for start-up expenditures incurred by new clinics during the grant year.

Mission Statement

Low Income Taxpayer Clinics ensure the fairness and integrity of the tax system by educating low income taxpayers about their rights and responsibilities, by providing *pro bono* representation to taxpayers in tax disputes with the IRS, by conducting outreach and education to taxpayers who speak English as a second language, and by identifying and advocating for issues that impact low income taxpayers.

Selection Consideration

Applications that pass the eligibility screening process will undergo a two-tier evaluation process. Applications will be subject to both a technical evaluation and a Program Office evaluation. The final funding decision is made by the National Taxpayer Advocate, unless recused. The costs of preparing and submitting an application (or a request for continued funding) are the responsibility of each applicant. Each application and request for continued funding will be given due consideration and the LITC Program Office will notify each applicant once funding decisions have been made.

Nina E. Olson,

National Taxpayer Advocate, Internal Revenue Service.

[FR Doc. 2015–11567 Filed 5–12–15; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

Privacy Act of 1974

AGENCY: Department of Veteran Affairs

ACTION: Notice of establishment of a new system of records.

SUMMARY: The Privacy Act of 1974, (5 U.S.C. 552a(e)(4)) requires that all agencies publish in the **Federal Register** a notice of the existence and character of their systems of records. Notice is hereby given that the Department of Veterans Affairs (VA) is establishing a new system of records entitled ''Inquiry Routing & Information System (IRIS)–VA'' (151VA005OP6). This system was previously listed as 151VA005N and was published in the **Federal Register**/ Vol. 73, No. 49/Wednesday, March 12, 2008/Notices. The time elapsed since its original publication requires that a new notice be published as 151VA005OP6.

DATES: Comments on this new system of records must be received no later than June 12, 2015. If no public comment is received, the new system will become effective June 12, 2015.

ADDRESSES: Written comments concerning the proposed new system of records may be submitted through *www.Regulations.gov*; by mail or hand delivery to the Director, Regulations Management (00REG), Department of Veterans Affairs, 810 Vermont Avenue NW., Room 1063B, Washington, DC 20420; or by fax to (202) 273–9026 (This is not a toll free number). Copies of comments will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 461–4902 (This is not a toll free number) for an appointment. In addition, during the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at *www.Regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Ms. Diane Huber, Director, Enterprise Web Application Support (EWAS) 005Q3, Service Delivery and Engineering (SDE). Office Location: 1100 1st St. NE., Rm. 513, Washington, DC 20002–4221, telephone (202) 632–7955 (This is not a toll free number).

SUPPLEMENTARY INFORMATION:

I. Description of the Proposed System of Records

The Department of Veterans Affairs (VA) receives and responds to questions, suggestions, compliments, complaints, requests for the status of claims and other information, collectively referred to as inquiries, received from veterans, their representatives and individuals and entities doing business with VA via a Web-based communications system known as the Inquiry Routing & Information System (IRIS). This system is also used by VA call center staff to enter inquiries on behalf of veterans and others doing business with the Department.

The IRIS is accessed by clicking on the ''Contact Us'' link that appears on VA Internet Web sites. Thousands of messages are received each month from VA beneficiaries and other veterans, veterans' family members and/or their representatives, health care professionals, clinicians, employees and managers of small businesses, vendors, funeral directors, mortgage companies, realtors, home buyers, researchers, small business owners, veterans' service organizations, other Federal agencies, State and local government employees, teachers, and other demographic groups representing every segment of the population both at home and abroad. Messages are routed throughout VA based on type of issue and topic as selected by the inquirer and also on the physical location of the inquirer, if provided. Messages go to designated mailgroups in Veterans Benefits Administration, Veterans Health Administration, National Cemetery Administration, and other VA program offices.

In November 2002, VA purchased and implemented a heavily customized version of a Web-based, commercial contact management product for use on VA's Internet Web site at *www.va.gov* and for use by VA call center personnel who enter inquiries on behalf of veterans or other callers. Visitors to the VA Web site and other inquirers may ask questions or provide VA with information by completing an approved form or having the form completed for them by call center staff. All personal data are captured and maintained within a database on a secure Web server running Secure Socket Layer (SSL) and Transport Layer Security (TLS). The Web server resides at the vendor's (Oracle) FedRamp-certified secure government cloud facility in Elk Grove, Illinois. The information that VA requests on the form is necessary for VA to adequately respond to the inquiries. The IRIS gives VA managers the ability to track inquiry traffic, to measure the quality and timeliness of responses, and to develop and post Frequently Asked Questions (FAQs) based on the analysis of messages received.

The use of the IRIS by VA Web site visitors and callers to VA call centers illustrates its utility for communications with VA. VA staff will search the IRIS database by personal identifier to provide a thorough response to the inquirer. The expansion of the search capability in the IRIS database enables VA to provide better service, associate communications from a single individual and provide more thorough responses to their inquiries. The new system of records will cover anyone who chooses to submit an inquiry in person, by calling a VA call center, or by submitting an electronic message directly to VA.

Information requested to process the request may include name, address, telephone number, email address, branch of service and service or claim number and Social Security number if provided by the inquirer. Inquirers are not required to provide personal or contact information; however, in some instances VA may need this information in order to respond to specific inquiries. The authority to maintain these records is title 38, United States Code, section 501.

II. Routine Uses of Records Maintained in the System, Including Categories of Users and the Purposes of Such Uses

Limitation on Routine Use Disclosures: To the extent that records contained in the system include information protected by 45 CFR parts 160 and 164, *i.e.,* individually identifiable health information, and 38 U.S.C. 7332, *i.e.,* medical treatment information related to drug abuse, alcoholism or alcohol abuse, sickle cell anemia or infection with the human immunodeficiency virus, that information cannot be disclosed under a routine use unless there is also specific statutory authority in 38 U.S.C. 7332 and regulatory authority in 45 CFR parts 160 and 164 permitting disclosure.

1. *Contractors:* Disclosure may be made to individuals, organizations, private or public agencies, or other entities or individuals with whom VA has a contract or agreement to perform such services as VA may deem practicable for the purposes of laws administered by VA, in order for the contractor, subcontractor, public or private agency, or other entity or individual with whom VA has an agreement or contract to perform the services of the contract or agreement. This routine use includes disclosures by the individual or entity performing the service for VA to any secondary entity or individual to perform an activity that is necessary for individuals, organizations, private or public agencies, or other entities or individuals with whom VA has a contract or agreement to provide the service to VA.

2. *Equal Employment Opportunity Commission:* To disclose information to the Equal Employment Opportunity Commission when requested in connection with investigations of alleged or possible discriminatory practices, examination of Federal affirmative employment programs, or for other functions of the Commission as authorized by law or regulation.

3. *Merit Systems Protection Board:* To disclose information to officials of the Merit Systems Protection Board, or the Office of the Special Counsel, when requested in connection with appeals, special studies of the civil service and other merit systems, review of rules and regulations, investigation of alleged or possible prohibited personnel practices, and such other functions, promulgated in 5 U.S.C. 1205 and 1206, or as may be authorized by law.

4. *Law enforcement:* VA may disclose on its own initiative any information in this system, except the names and home addresses of veterans and their dependents, which is relevant to a suspected or reasonably imminent violation of law, whether civil, criminal or regulatory in nature and whether arising by general or program statute or by regulation, rule or order issued pursuant thereto, to a Federal, State, local, tribal, or foreign agency charged with the responsibility of investigating or prosecuting such violation, or charged with enforcing or implementing the statute, regulation, rule or order. On its own initiative, VA may also disclose the names and addresses of veterans and their dependents to a Federal agency charged with the responsibility of investigating or prosecuting civil, criminal or regulatory violations of law, or charged with enforcing or implementing the statute, regulation, rule or order issued pursuant thereto.

5. *Credit risk analysis and services:* VA may, on its own initiative, disclose any information or records to appropriate agencies, entities, and persons when (1) VA suspects or has confirmed that the integrity or confidentiality of information in the system of records has been compromised; (2) the Department has determined that as a result of the suspected or confirmed compromise there is a risk of embarrassment or harm to the reputations of the record subjects, harm to economic or property interests, identity theft or fraud, or harm to the security, confidentiality, or integrity of this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the potentially compromised information; and (3) the disclosure is to agencies, entities, or persons whom VA determines are reasonably necessary to assist or carry out the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm. This routine use permits disclosures by the Department to respond to a suspected or confirmed data breach, including the conduct of any risk analysis or provision of credit protection services as provided in 38 U.S.C. 5724, as the terms are defined in 38 U.S.C. 5727.

The Office of Management of Budget (OMB) recommended the inclusion of a routine use in all Privacy Act systems of records to allow for the appropriate mitigation of data breaches.

6. *Litigation:* VA may disclose information in this system of records to the Department of Justice (DoJ), either on VA's initiative or in response to DoJ's request for the information, after either VA or DoJ determines that such information is relevant to DoJ's representation of the United States or any of its components in legal proceedings before a court or adjudicative body, provided that, in each case, the agency also determines prior to disclosure that disclosure of the records to the Department of Justice is a use of the information contained in the records that is compatible with the purpose for which VA collected the records. VA, on its own initiative, may disclose records in this system of

records in legal proceedings before a court or administrative body after determining that the disclosure of the records to the court or administrative body is a use of the information contained in the records that is compatible with the purpose for which VA collected the records.

7. *Congressional Offices:* Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual. The constituent should sign a release of information statement for this purpose.

Individuals sometimes request the help of a Member of Congress in resolving some issues relating to a matter before VA. The Member of Congress then writes VA, and VA must be able to give sufficient information to be responsive to the inquiry. That response may include communications to VA from an individual that was received through the IRIS.

8. *National Archives and Records Administration (NARA):* Disclosure may be made to NARA in records management activities and inspections conducted under authority of title 44 United States Code.

NARA is responsible for archiving records no longer actively used, but which may be appropriate for preservation. NARA is responsible, in general, for the physical maintenance of the Federal government's records. VA must be able to turn records over to this Agency in order to determine the proper disposition of such records.

9. *Other Federal Agencies:* Disclosure to other Federal agencies may be made to assist such agencies in preventing and detecting possible fraud or abuse by individuals in their operations and programs.

III. Compatibility of the Routine Uses

The Privacy Act permits disclosure of information about individuals without their consent for a routine use when the information will be used for a purpose that is compatible with the purpose for which the information is collected. In all of the routine use disclosures described above, either the recipient of the information will use the information in connection with a matter relating to one of VA's programs; to provide a benefit to VA; or because disclosure is required by law.

The Report of Intent to Publish a New System of Records Notice and an advance copy of the system notice has been sent to the appropriate Congressional committees and to the Director of the Office of Management and Budget (OMB) as required by 5 U.S.C. 552a(r) (Privacy Act), as amended, and guidelines issued by OMB (65 FR 77677), December 12, 2000.

Signing Authority

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. Jose D. Riojas, Chief of Staff, approved this document on April 24, 2015, for publication.

Dated: April 28, 2015.

Kathleen M. Manwell,

VA Privacy Service, Office of Privacy and Records Management, Department of Veterans Affairs.

151VA005OP6

SYSTEM NAME:

Inquiry Routing & Information System (IRIS)-VA

SYSTEM LOCATION:

The system of records is located at Oracle's secure government cloud facility at Equnix Datacenter, 1905 Lunt Avenue, Elk Grove, Illinois 60007.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who contact VA via the VA Web site at *www.va.gov* or by contacting a VA call center including beneficiaries and other veterans, veterans' family members and/or their representatives, health care professionals, clinicians, employees and managers of small businesses, vendors, funeral directors, mortgage companies, realtors, home buyers, researchers, small business owners, veterans' service organizations, other Federal agencies, State and local government employees, teachers, and other demographic groups representing every segment of the population both at home and abroad.

CATEGORIES OF RECORDS IN THE SYSTEM:

The records include questions, complaints, suggestions, compliments, and/or requests for the status of claims and may also include name, address, phone number, email address, service or claim number, Social Security number, date of birth; branch of service; entered on active duty date and released from active duty date,

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title 38, United States Code, Sections 501 and 7304.

PURPOSE:

The purpose of this system of records is to receive and respond to questions, complaints, suggestions, compliments, and requests for the status of claims and other information by gathering sufficient information from the senders of inquiries to provide thorough, accurate and timely responses. The IRIS gives VA the ability to track inquiry traffic, measure the quality and timeliness of responses, and develop and post Frequently Asked Questions (FAQs) based on the analysis of messages received. VA management also uses the information to quantify contacts, analyze issues pertaining to veterans and VA's mission, and to measure staff performance regarding the quality and timeliness of responses.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To the extent that records contained in the system include information protected by 45 CFR parts 160 and 164, *i.e.,* individually identifiable health information, and 38 U.S.C. 7332, *i.e.,* medical treatment information related to drug abuse, alcoholism or alcohol abuse, sickle cell anemia or infection with the human immunodeficiency virus, that information cannot be disclosed under a routine use unless there is also specific statutory authority in 38 U.S.C. 7332 and regulatory authority in 45 CFR parts 160 and 164 permitting disclosure.

1. Disclosure may be made to individuals, organizations, private or public agencies, or other entities or individuals with whom VA has a contract or agreement to perform such services as VA may deem practicable for the purposes of laws administered by VA, in order for the contractor, subcontractor, public or private agency, or other entity or individual with whom VA has an agreement or contract to perform the services of the contract or agreement. This routine use includes disclosures by the individual or entity performing the service for VA to any secondary entity or individual to perform an activity that is necessary for individuals, organizations, private or public agencies, or other entities or individuals with whom VA has a contract or agreement the to provide the service to VA.

2. To disclose information to the Equal Employment Opportunity Commission when requested in connection with investigations of alleged or possible discriminatory practices, examination of Federal affirmative employment programs, or for other functions of the Commission as authorized by law or regulation.

3. To disclose information to officials of the Merit Systems Protection Board, or the Office of the Special Counsel,

when requested in connection with appeals, special studies of the civil service and other merit systems, review of rules and regulations, investigation of alleged or possible prohibited personnel practices, and such other functions, promulgated in 5 U.S.C. 1205 and 1206, or as may be authorized by law.

4. VA may disclose on its own initiative any information in this system, except the names and home addresses of veterans and their dependents, which is relevant to a suspected or reasonably imminent violation of law, whether civil, criminal or regulatory in nature and whether arising by general or program statute or by regulation, rule or order issued pursuant thereto, to a Federal, State, local, tribal, or foreign agency charged with the responsibility of investigating or prosecuting such violation, or charged with enforcing or implementing the statute, regulation, rule or order. On its own initiative, VA may also disclose the names and addresses of veterans and their dependents to a Federal agency charged with the responsibility of investigating or prosecuting civil, criminal or regulatory violations of law, or charged with enforcing or implementing the statute, regulation, rule or order issued pursuant thereto.

5. VA may, on its own initiative, disclose any information or records to appropriate agencies, entities, and persons when (1) VA suspects or has confirmed that the integrity or confidentiality of information in the system of records has been compromised; (2) the Department has determined that as a result of the suspected or confirmed compromise there is a risk of embarrassment or harm to the reputations of the record subjects, harm to economic or property interests, identity theft or fraud, or harm to the security, confidentiality, or integrity of this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the potentially compromised information; and (3) the disclosure is to agencies, entities, or persons whom VA determines are reasonably necessary to assist or carry out the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm. This routine use permits disclosures by the Department to respond to a suspected or confirmed data breach, including the conduct of any risk analysis or provision of credit protection services as provided in 38 U.S.C. 5724, as the terms are defined in 38 U.S.C. 5727.

6. VA may disclose information in this system of records to the Department of Justice (DoJ), either on VA's initiative or in response to DoJ's request for the information, after either VA or DoJ determines that such information is relevant to DoJ's representation of the United States or any of its components in legal proceedings before a court or adjudicative body, provided that, in each case, the agency also determines prior to disclosure that disclosure of the records to the Department of Justice is a use of the information contained in the records that is compatible with the purpose for which VA collected the records. VA, on its own initiative, may disclose records in this system of records in legal proceedings before a court or administrative body after determining that the disclosure of the records to the court or administrative body is a use of the information contained in the records that is compatible with the purpose for which VA collected the records.

7. VA may disclose information to a member of Congress or a congressional staff member in response to an inquiry from the congressional office made at the request of that individual.

8. Disclosure may be made to National Archives and Records Administration (NARA) in records management activities and inspections conducted under authority of title 44 United States Code.

9. Disclosure may be made to other Federal agencies to assist such agencies in preventing and detecting possible fraud or abuse by individuals in their operations and programs.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The IRIS stores electronic and archived messages on the secure IRIS server at the Oracle's FedRamp-approved hosting facility in Elk Grove, Illinois.

RETRIEVABILITY:

All records in the IRIS are electronic only and are retrieved by system inquiry number, and/or name, and/or zip code, and/or email address, and/or Social Security number, and/or claim and/or service number.

SAFEGUARDS:

The IRIS runs on a Secure Socket Layer (SSL) and on Transport Layer Security (TLS) and can only be accessed by authorized persons employed by and/or contracted to VA with the use of unique usernames and passwords, consistent with VA security policy.

The server on which the IRIS software and database reside is located in a secure facility at Equnix Datacenter, 1905 Lunt Ave., Elk Grove, Illinois 60007. This facility is locked down at all times and has a security guard on duty at all times. Access to the computer room is restricted to specifically authorized VA staff or persons contracted to VA. In addition, these persons must have separate and authorized access to the IRIS server itself. All electronic data in this system are backed up nightly, with backups stored electronically and securely in the Elk Grove, Illinois location.

RETENTION AND DISPOSAL:

Records are maintained and disposed of with records disposition authority approved by the Archivist of the United States.

SYSTEM MANAGER(S) AND ADDRESS:

The IRIS system falls under the jurisdiction of the Director, Enterprise Web Applications Support (EWAS) 005Q3, Service Delivery and Engineering (SDE), Office of Information & Technology (OI&T) OI Field Office, 1100 1st St. NE., Room 513, Washington, DC 20002–4221.

NOTIFICATION PROCEDURES:

A person who wishes to determine whether a record is being maintained in this system under his or her name or other personal identifier or wishes to determine the contents of such records should submit a written request or apply in person to Enterprise Web Applications Support (EWAS) 005Q3, Service Delivery and Engineering (SDE), Office of Information & Technology (OI&T),OI Field Office, 1100 1st St. NE., Room 513, Washington, DC 20002–4221. Requests should contain full name, address and phone number of the person making this request.

RECORD ACCESS PROCEDURE:

Individuals seeking information regarding access to and amendment of records in this system may write, call or visit Enterprise Web Applications Support (EWAS)005Q3, Service Delivery and Engineering (SDE), Office of Information & Technology (OI&T), OI Field Office, 1100 1st St. NE., Room 513, Washington, DC 20002–4221. Requests should contain full name, address and phone number of the person making this request.

CONTESTING RECORD PROCEDURES:

(See Record Access Procedure above)

RECORD SOURCE CATEGORIES:

Individuals who contact VA via the VA Web site at *www.va.gov* or by using a VA call center include veterans, veterans' family members and/or their representatives, government employees (Federal, State and local), realtors and home buyers, small business owners, vendors, funeral directors, clinicians, teachers, researchers, employees of veterans' service organizations, member of the public and all other individuals and representatives of organizations.

RECORD SOURCE CATEGORIES:

Information contained in this system of records is provided by Veterans, beneficiaries, family members, and all other persons doing business with VA using Contact VA on department Web sites and utilizing 800 toll free numbers to reach VA call centers, regional offices, medical centers and other VA entities.

[FR Doc. 2015–11493 Filed 5–12–15; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Notice of Intent To Grant an Exclusive License

AGENCY: Office of Research and Development, Department of Veterans Affairs.

ACTION: Notice of intent.

SUMMARY: Notice is hereby given that the Department of Veterans Affairs, Office of Research and Development, intends to grant to Proactive Assistive Technology, LLC, 8606 Leighton Dr., Tampa, FL 33614, USA, an exclusive license to practice the following: U.S. Patent Application No. 14/022,532 and U.S. Patent Application No. 14/022,477 which claimed priority of U.S. Provisional Patent Application No. 61/744,353, ''Transfer Assist Standbar,'' filed September 25, 2012. Copies of the published patent applications may be obtained from the U.S. Patent and Trademark Office at *www.uspto.gov.*

DATES: Comments must be received within 15 days from the date of this published Notice.

ADDRESSES: Written comments may be submitted through *www.regulations.gov*; by mail or hand-delivery to the Director, Regulations Management (02REG), Department of Veterans Affairs, 810 Vermont Avenue NW., Room 1068, Washington, DC 20420; or by fax to (202) 273–9026. Copies of comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays). Call (202) 461–4902 for an appointment (this is not a toll-free number). In addition, during the comment period, comments may be viewed online through the Federal Docket Management System at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Director of Technology Transfer Program, Office of Research and Development (10P9TT), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 443–5640 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: It is in the public interest to license this invention to Proactive Assistive Technology, to facilitate the development and commercialization of a device for an individual that has restricted or limited mobility, to assist the individual while in a standing or sitting position, or switching between sitting and standing positions. The prospective exclusive license will be royalty-bearing, and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted, unless VA ORD receives written evidence and argument within 15 days from the date of this published Notice, which establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Dated: May 7, 2015.

William F. Russo,

Acting Director, Office of Regulation Policy & Management, Office of the General Counsel, Department of Veterans Affairs.

[FR Doc. 2015–11463 Filed 5–12–15; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

Vol. 80 Wednesday,
No. 92 May 13, 2015

Part II

Securities and Exchange Commission

17 CFR Parts 240 and 242

Application of Certain Title VII Requirements to Security-Based Swap Transactions Connected With a Non-U.S. Person's Dealing Activity That Are Arranged, Negotiated, or Executed by Personnel Located in a U.S. Branch or Office or in a U.S. Branch or Office of an Agent; Proposed Rules

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 240 and 242

[Release No. 34–74834; File No. S7–06–15]

RIN 3235–AL73

Application of Certain Title VII Requirements to Security-Based Swap Transactions Connected With a Non-U.S. Person's Dealing Activity That Are Arranged, Negotiated, or Executed by Personnel Located in a U.S. Branch or Office or in a U.S. Branch or Office of an Agent

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rules.

SUMMARY: The Securities and Exchange Commission (''SEC'' or ''Commission'') is publishing for comment proposed amendments and a re-proposed rule to address the application of certain provisions of the Securities Exchange Act of 1934 (''Exchange Act'') that were added by Subtitle B of Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (''Dodd-Frank Act'') to cross-border security-based swap activities. The Commission is proposing amendments to Exchange Act rules 3a71–3 and 3a71–5 that would address the application of the *de minimis* exception to security-based swap transactions connected with a non-U.S. person's security-based swap dealing activity that are arranged, negotiated, or executed by personnel of such person located in a U.S. branch or office, or by personnel of such person's agent, located in a U.S. branch or office. The Commission is also re-proposing Exchange Act rule 3a71–3(c) and proposing certain amendments to Exchange Act rule 3a71–3(a) to address the applicability of external business conduct requirements to the U.S. business and foreign business of registered security-based swap dealers. The Commission also is proposing amendments to Regulation SBSR to apply the regulatory reporting and public dissemination requirements to transactions that are arranged, negotiated, or executed by personnel of non-U.S. persons, or personnel of such non-U.S. persons' agents, that are located in the United States and to transactions effected by or through a registered broker-dealer (including a registered security-based swap execution facility), along with certain related issues, including requiring registered broker-dealers (including registered security-based swap execution facilities) to report certain transactions that are effected by or through the registered broker-dealer.

DATES: Comments should be received on or before July 13, 2015.

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

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/proposed.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number S7–06–15 on the subject line; or
- Use the Federal eRulemaking Portal (*http://www.regulations.gov*). Follow the instructions for submitting comments.

Paper Comments

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

All submissions should refer to File Number S7–06–15. This file number should be included on the subject line if email is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/proposed.shtml*). Comments are also available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

Studies, memoranda, or other substantive items may be added by the Commission or staff to the comment file during this rulemaking. A notification of the inclusion in the comment file of any such materials will be made available on the SEC's Web site. To ensure direct electronic receipt of such notifications, sign up through the ''Stay Connected'' option at *www.sec.gov* to receive notifications by email.

FOR FURTHER INFORMATION CONTACT: Carol McGee, Assistant Director, Richard Gabbert, Senior Special Counsel, or Margaret Rubin, Special Counsel, Office of Derivatives Policy, at 202–551–5870, Division of Trading and Markets, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–7010.

SUPPLEMENTARY INFORMATION: The Commission is proposing the following rules under the Exchange Act regarding the application of Subtitle B of Title VII of the Dodd-Frank Act to cross-border activities.

The Commission is proposing to amend the following rules under the Exchange Act: Rule 3a71–3 (addressing the cross-border implementation of the *de minimis* exception to the ''security-based swap dealer'' definition and the definition of certain terms); rule 3a71–5 (regarding availability of an exception from the dealer *de minimis* analysis for cleared anonymous transactions that fall within proposed rule 3a71–3(b)(1)(iii)(C)); and Rules 900, 901, 906, 907, 908(a)(1), and 908(b) of Regulation SBSR. The Commission also is re-proposing Exchange Act rule 3a71–3(c) (application of external business conduct requirements).

I. Background

A. Scope of This Rulemaking

The Commission is proposing to amend certain rules and is re-proposing a rule regarding the application of Title VII of the Dodd-Frank Act [1] (''Title VII'') to cross-border security-based swap transactions and persons engaged in those transactions. The proposed amendments include rules regarding the application of the *de minimis* exception to the dealing activity of non-U.S. persons carried out, in relevant part, by personnel located in the United States,[2] and the application of Regulation SBSR [3] to such transactions and to transactions effected by or through a registered broker-dealer, along with certain related issues. We are also re-proposing a rule regarding the application of external business conduct requirements to the foreign business and U.S. business of registered security-based swap dealers.

Each of these issues was considered in our May 23, 2013 proposal, in which we proposed rules regarding the application of Title VII in the cross-border context more generally.[4] On June 25, 2014, we adopted rules and guidance based on the May 23, 2013 proposal addressing the application of the ''security-based swap dealer'' and ''major security-based swap participant'' definitions to cross-border security-based swap activities.[5] In that release, among other things, we adopted rules specifying which cross-border transactions must be included in a person's security-based swap dealer *de minimis* or major security-based swap participant calculations.[6] We explained,

[1] Public Law 111–203, 124 Stat. 1376 (2010). Unless otherwise indicated, references to Title VII in this release are to Subtitle B of Title VII.

[2] In this release, unless otherwise noted, we use the terms ''personnel located in the United States'' or ''personnel located in a U.S. branch or office'' interchangeably to refer to personnel of the non-U.S. person engaged in security-based swap dealing activity who are located in a U.S. branch or office, or to personnel of an agent of such non-U.S. person who are located in a U.S. branch or office.

[3] Regulation SBSR—Reporting and Dissemination of Security-Based Swap Information; Final Rule, Exchange Act Release No. 74244 (February 11, 2015), 80 FR 14563 (March 19, 2015) (''Regulation SBSR Adopting Release''). With these proposed rules and rule amendments, the Commission is not re-opening comment on the rules adopted in Regulation SBSR Adopting Release.

[4] *See* Cross-Border Security-Based Swap Activities; Re-Proposal of Regulation SBSR and Certain Rules and Forms Relating to the Registration of Security-Based Swap Dealers and Major Security-Based Swap Participants, Exchange Act Release No. 69490 (May 1, 2013), 78 FR 30968 (May 23, 2013) (''Cross-Border Proposing Release'').

[5] *See* Application of ''Security-Based Swap Dealer'' and ''Major-Security-Based Swap Participant'' Definitions to Cross-Border Security-Based Swap Activities, Exchange Act Release No. 72472 (June 25, 2014), 79 FR 47278 (August 12, 2014 (republication)) (''Cross-Border Adopting Release''). With these proposed rules and rule amendments the Commission is not re-opening comment on the rules adopted in the Cross-Border Adopting Release.

[6] *See id.* at 47279.

however, that we were not addressing the application of the ''security-based swap dealer'' definition to ''transaction[s] conducted within the United States'' because commenters had raised several significant issues related to this requirement of the proposal.[7] We stated that we anticipated soliciting additional public comment on the application of the ''security-based swap dealer'' definition to transactions between two non-U.S. persons where one or both are conducting dealing activity within the United States.[8]

In this release, we propose amendments to Exchange Act rules 3a71–3 and 3a71–5 that reflect a modified approach to this element of the initial proposal and solicit comment on the proposed amendments and re-proposed rule. The proposed amendments would address the activity of a non-U.S. person in the United States in a way that more closely focuses on where personnel of the non-U.S. person engaged in dealing activity (or on where personnel of its agent) are arranging, negotiating, or executing a security-based swap. The proposed amendments would not require a non-U.S. person engaging in dealing activity to consider the location of its non-U.S.-person counterparty or the counterparty's agent in determining whether the transaction needs to be included in its own *de minimis* calculation. Instead, the proposed amendments would require a non-U.S. person to include in its *de minimis* calculation any transaction with another non-U.S. person that is, in connection with its dealing activity, arranged, negotiated, or executed by personnel of the non-U.S. person located in a U.S. branch or office or by personnel of the non-U.S. person's agent located in a U.S. branch or office.

We also are re-proposing rules regarding the application of the external business conduct requirements to the foreign business of registered security-based swap dealers, and we are proposing to amend Regulation SBSR to address the reporting and public dissemination requirements applicable to security-based swap transactions involving non-U.S. persons that engage in relevant activity in the United States and to transactions effected by or through a registered broker-dealer, along with certain related issues.

B. The Dodd-Frank Act

Title VII of the Dodd-Frank Act provides for a comprehensive new regulatory framework for swaps and security-based swaps. Under this framework, the Commodity Futures Trading Commission (''CFTC'') regulates ''swaps'' while the Commission regulates ''security-based swaps,'' and the Commission and CFTC jointly regulate ''mixed swaps.'' The new framework encompasses the registration and comprehensive regulation of security-based swap dealers and major security-based swap participants, as well as requirements related to clearing, trade execution, regulatory reporting, and public dissemination.[9] Security-based swap transactions are largely cross-border in practice,[10] and the various market participants and infrastructures operate in a global market. Dealers and other market participants may transact extensively with counterparties established or located in other jurisdictions and, in doing so, may conduct sales and trading activity in one jurisdiction and book the resulting transactions in another. These market realities and the potential impact that these activities may have on U.S. persons and potentially the U.S. financial system have informed our consideration of these proposed rules.

In developing this proposal, we have consulted and coordinated with the CFTC, the prudential regulators,[11] and foreign regulatory authorities in accordance with the consultation mandate of the Dodd-Frank Act.[12] More generally, as part of our domestic and international efforts, Commission staff has participated in numerous bilateral and multilateral discussions with foreign regulatory authorities addressing the regulation of OTC derivatives.[13] Through these discussions and the Commission staff's participation in various international task forces and working groups,[14] we have gathered information about foreign regulatory reform efforts and their impact on and relationship with the U.S. regulatory regime. We have taken this information into consideration in developing this proposal.

C. The Cross-Border Proposing Release

Our prior proposals and final rules regarding the application of Title VII to security-based swap activity carried out in the cross-border context (including to persons engaged in such activities) reflect the global nature of the security-based swap market and its development prior to the enactment of the Dodd-Frank Act.[15] We also noted our preliminary belief that dealing activity carried out by a non-U.S. person through a branch, office, affiliate, or an agent acting on its behalf in the United States may raise concerns that Title VII addresses, even if a significant proportion—or all—of those transactions involve non-U.S.-person counterparties.[16] We initially proposed to require any non-U.S. person engaged

[7] *See id.* at 47279–80.

[8] *See id.* at 47280.

[9] We have proposed a series of rules regarding these matters. *See* Cross-Border Proposing Release, 78 FR 30972 nn.11–18.

The Dodd-Frank Act further provides that the SEC and CFTC jointly should further define certain terms, including ''security-based swap dealer'' and ''major security-based swap participant.'' *See* Dodd-Frank Act section 712(d). Pursuant to that requirement, the SEC and CFTC jointly adopted rules to further define those terms. *See* Further Definition of ''Swap Dealer,'' ''Security-Based Swap Dealer,'' ''Major Swap Participant,'' ''Major Security-Based Swap Participant'' and ''Eligible Contract Participant,'' Exchange Act Release No. 66868 (April 27, 2012), 77 FR 30596 (May 23, 2012) (''Intermediary Definitions Adopting Release''); *see also* Cross-Border Proposing Release, 78 FR 30972 n.9 (discussing joint rulemaking to further define various Title VII terms).

[10] *See* Section II.B.2, *infra,* regarding the preponderance of cross-border activity in the security-based swap market.

[11] The term ''prudential regulator'' is defined in section 1a(39) of the CEA, 7 U.S.C. 1a(39), and that definition is incorporated by reference in section 3(a)(74) of the Exchange Act, 15 U.S.C. 78c(a)(74). Pursuant to the definition, the Board of Governors of the Federal Reserve System (''Federal Reserve Board''), the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Farm Credit Administration, or the Federal Housing Finance Agency (collectively, the ''prudential regulators'') is the ''prudential regulator'' of a security-based swap dealer or major security-based swap participant if the entity is directly supervised by that regulator.

[12] Section 712(a)(2) of the Dodd-Frank Act provides in part that the Commission shall ''consult and coordinate to the extent possible with the Commodity Futures Trading Commission and the prudential regulators for the purposes of assuring regulatory consistency and comparability, to the extent possible.''

In addition, section 752(a) of the Dodd-Frank Act provides in part that ''[i]n order to promote effective and consistent global regulation of swaps and security-based swaps, the Commodity Futures Trading Commission, the Securities and Exchange Commission, and the prudential regulators . . . as appropriate, shall consult and coordinate with foreign regulatory authorities on the establishment of consistent international standards with respect to the regulation (including fees) of swaps.''

[13] Senior representatives of authorities with responsibility for regulation of OTC derivatives have met on a number of occasions to discuss international coordination of OTC derivatives regulations. *See, e.g.,* Report of the OTC Derivatives Regulators Group (''ODRG'') on Cross-Border Implementation Issues November 2014 (November 7, 2014), available at: *http://www.cftc.gov/ucm/groups/public/@internationalaffairs/documents/file/oia_odrgreportg20_1114.pdf.*

[14] Commission representatives participate in the Financial Stability Board's Working Group on OTC Derivatives Regulation (''ODWG''), both on the Commission's behalf and as the representative of the International Organization of Securities Commissions (''IOSCO''), which is co-chair of the ODWG. A Commission representative also serves as one of the co-chairs of the IOSCO Task Force on OTC Derivatives Regulation.

[15] *See* Cross-Border Proposing Release, 78 FR 30975–76; Regulation SBSR Adopting Release, 80 FR 14724.

[16] *See* Cross-Border Proposing Release, 78 FR 31000–01.

in dealing activity to include in its *de minimis* calculation any ''transaction conducted within the United States.'' Thus, under the Cross-Border Proposing Release, a non-U.S. person engaged in dealing activity would have been required to include in its *de minimis* calculation any transaction where either the person itself or its counterparty performed relevant security-based swap activity within the United States.

The Cross-Border Proposing Release also included proposed rules regarding the application of the clearing, trade execution, regulatory reporting, and public dissemination requirements. Under the rules proposed in that release, the clearing requirement and the trade execution requirement also would have applied to a ''transaction conducted within the United States,'' a transaction having a U.S.-person counterparty, or a transaction having a counterparty that is a non-U.S. person whose counterparty has a right of recourse against a U.S. person,[17] with certain exceptions.[18] The regulatory reporting requirement under that proposal would have applied to a ''transaction conducted within the United States,'' a transaction in which either side of the security-based swap includes an indirect or direct U.S. person counterparty, a transaction in which a security-based swap dealer or major security-based swap participant is a direct or indirect counterparty to the security-based swap, or a transaction that is cleared through a clearing agency having its principal place of business in the United States.[19] The public dissemination requirement would have applied to a ''transaction conducted within the United States,'' a transaction in which a U.S. person is a direct or indirect counterparty on *each* side of the security-based swap, a transaction in which at least one direct counterparty is a U.S. person (except in the case of a transaction conducted through a foreign branch), a transaction in which one side includes a U.S. person and the other side includes a non-U.S. person that is a security-based swap dealer, or a transaction cleared through a clearing agency having its principal place of business in the United States.[20]

D. The CFTC Staff Advisory

In November 2013, the CFTC's Division of Swap Dealer and Intermediary Oversight issued a Staff Advisory (''CFTC Staff Advisory'') addressing the applicability of the CFTC's transaction-level requirements to certain activity by non-U.S. registered swap dealers arranged, negotiated, or executed by personnel or agents of the non-U.S. swap dealer located in the United States.[21] The CFTC Staff Advisory stated CFTC staff's belief that the CFTC ''has a strong supervisory interest in swap dealing activities that occur within the United States, regardless of the status of the counterparties'' and that a non-U.S. swap dealer ''regularly using personnel or agents located in the U.S. to arrange, negotiate, or execute a swap with a non-U.S. person generally would be required to comply with'' the CFTC's transaction-level requirements.[22] On January 8, 2014, the CFTC published a request for comment on various aspects of the CFTC Staff Advisory, including whether the CFTC ''should adopt the Staff Advisory as Commission policy, in whole or in part.'' [23] In response to this request, the CFTC received approximately 20 comment letters addressing various aspects of the CFTC Staff Advisory.[24] CFTC staff subsequently extended no-action relief related to the CFTC Staff Advisory until the earlier of September 30, 2015, or the effective date of any CFTC action in response to the CFTC Request for Comment.[25] We understand that the CFTC Staff Advisory and comments received in response to the CFTC Request for Comment are under review at the CFTC.

E. Comments on the Proposed Definition of ''Transaction Conducted Within the United States'' and Application of the Definition in the Cross-Border Proposing Release

A number of commenters on our Cross-Border Proposing Release addressed the definition of ''transaction conducted within the United States.'' Although two commenters supported our proposed use of this defined term,[26] commenters generally criticized the proposed definition. These criticisms generally focused on four areas: The scope of activity potentially captured by the initially proposed defined term, the operational difficulties of implementing the defined term, the costs of implementation, and competitive concerns. Market participants also expressed a variety of views on the application of the regulatory reporting, public dissemination, clearing, and trade execution requirements. Several market participants opposed the application of the requirements to ''transaction[s] conducted within the United States'' because of concerns about workability or the scope of the statute, while other commenters argued that the application of the requirements should be expanded to apply to any ''transaction conducted within the United States.'' [27] In light of these

[17] In this release, we use the terms ''non-U.S. persons whose counterparties have a right of recourse against a U.S. person under a security-based swap,'' ''non-U.S. persons whose obligations under a security-based swap are guaranteed by a U.S. person,'' and ''guaranteed non-U.S. persons'' interchangeably.

[18] *See* initially proposed Exchange Act rules 3Ca–3 and 3Ch–1.

[19] *See* rule 908(a)(1), as re-proposed in the Cross-Border Proposing Release.

[20] *See* rule 908(a)(2), as re-proposed in the Cross-Border Proposing Release.

[21] *See* CFTC Staff Advisory No. 13–69, ''Division of Swap Dealer and Intermediary Oversight Advisory: Applicability of Transaction-Level Requirements to Activity in the United States'' (November 14, 2013), available at: *http://www.cftc.gov/ucm/groups/public/@lrlettergeneral/documents/letter/13-69.pdf*.

In the Interpretive Guidance and Policy Statement Regarding Compliance with Certain Swap Regulations (July 17, 2013), 78 FR 45292 (July 26, 2013) (''CFTC Cross-Border Guidance''), the CFTC defined transaction-level requirements to include the following: (i) Required clearing and swap processing; (ii) margining (and segregation) for uncleared swaps; (iii) mandatory trade execution; (iv) swap trading relationship documentation; (v) portfolio reconciliation and compression; (vi) real-time public reporting; (vii) trade confirmation; (viii) daily trading records; and (ix) external business conduct standards. *See* CFTC Cross-Border Guidance, 78 FR 45333.

[22] *Id.* at 2.

[23] *See* Request for Comment on Application of Commission Regulations to Swaps Between Non-U.S. Swap Dealers and Non-U.S. Counterparties Involving Personnel or Agents of the Non-U.S. Swap Dealers Located in the United States, 79 FR 1347 (January 8, 2014) (''CFTC Request for Comment'').

[24] The comment file is available at *http://comments.cftc.gov/PublicComments/CommentList.aspx?id=1452*.

[25] *See* Extension of No-Action Relief: Transaction-Level Requirements for Non-U.S. Swap Dealers, CFTC Letter No. 14–140 (November 14, 2014), available at: *http://www.cftc.gov/ucm/groups/public/@lrlettergeneral/documents/letter/14-140.pdf*.

[26] *See* Letter from Citadel Letter to SEC, dated August 21, 2013 (''Citadel Letter'') at 1–2; Letter from ABA to SEC, dated October 2, 2013 (''ABA Letter'') at 3 (noting that the initially proposed conduct-based approach is consistent with longstanding Commission practice but also noting potential ambiguities). One of these commenters supported the initially proposed definition because it would help ensure that Title VII requirements applied to security-based swaps of offshore funds with a connection to the United States. *See* Citadel Letter at 1–2.

[27] These comments are discussed in further detail below, in Sections III.B.2, IV.D, and V.C. As reflected in our discussion throughout this release, we have carefully considered both the CFTC Staff Advisory and the comments submitted in response to the CFTC's request for comment on the CFTC Staff Advisory in developing this proposal. Moreover, in connection with our statutory obligation to consult with the CFTC in connection with Title VII rulemaking, our staff have engaged in extensive discussion with CFTC staff regarding our proposed rules. We note, however, that our discussion of both the CFTC Staff Advisory and the comments received by the CFTC about it reflects our understanding of these documents. Accordingly, neither our discussions of these documents nor any preliminary views expressed herein should be interpreted as necessarily

Continued

comments and our understanding of the structure of the security-based swap market, we determined that our proposed treatment of ''transactions conducted within the United States'' would benefit from further consideration and solicitation of further comment.

II. Economic Considerations and Baseline Analysis

A. Broad Economic Considerations

These proposed amendments and re-proposed rule would determine when a non-U.S. person whose obligations under a security-based swap are not guaranteed by a U.S. person and that is not a conduit affiliate is required to include in its dealer *de minimis* calculation transactions with another non-U.S. person and when certain regulatory requirements apply to these and certain other transactions. To provide context for understanding our proposed rules and the related economic analysis that follows, this section discusses how this particular proposal fits within the Title VII framework and identifies broad economic considerations that we preliminarily believe underlie the proposal's likely economic effects.

This analysis considers the effects of the proposed rules on security-based swap market participants and transactions that, as a result of these proposed rules, would be subject to rules that we have already adopted, or that we have proposed but not yet adopted, pursuant to Title VII. In particular, we consider the potential adverse effect on market participants of a security-based swap market that may remain opaque to regulators and market participants and that may lack robust customer protections.[28] We also consider possible competitive disparities arising under current and proposed rules.

Title VII provides a statutory framework for the OTC derivatives market and divides authority to regulate that market between the CFTC (which regulates swaps) and the Commission (which regulates security-based swaps). The Title VII framework requires certain market participants to register with the Commission as security-based swap dealers or major security-based swap participants and subjects such entities to certain requirements. The Title VII framework mandates that we establish rules that apply to certain security-based swap transactions, including mandatory clearing, mandatory trade execution, regulatory reporting, and public dissemination.

These proposed amendments and re-proposed rule, together with our previously adopted rules defining ''security-based swap dealer'' and ''major security-based swap participant'' and applying those definitions in the cross-border context, would define the scope of entities and transactions that are subject to the requirements of Title VII. Although these proposed amendments and re-proposed rule do not define the specific substantive requirements, the scope of application that they define will play a central role in determining the overall costs and benefits of particular regulatory requirements, and of the Title VII regulatory framework as a whole.[29] For example, to the extent that the proposed application of the *de minimis* exception leads to a higher number of registered security-based swap dealers, it is reasonable to expect that the aggregate costs and benefits associated with requirements applicable to such dealers will increase.[30]

Several broad economic considerations have informed our proposed approach to identify transactions between two non-U.S. persons that should be subject to certain Title VII requirements. First, to the extent that a financial group carries out security-based swap business in the United States, our ability to monitor dealers for market manipulation or other abusive practices may be limited, even with respect to a registered security-based swap dealer's security-based swaps with U.S. persons. For example, permitting a financial group to carry out a dealing business with U.S. persons through a registered security-based swap dealer and to hedge transactions arising out of that business in the inter-dealer market using the same personnel operating out of the same branch or office in the United States, but acting on behalf of an unregistered non-U.S.-person affiliate, would limit our ability to obtain records that would facilitate our ability to identify potentially abusive conduct in connection with the U.S. person's transactions with U.S.-person counterparties both within the security-based swap market as well as in markets for related underlying assets, such as corporate bonds. Moreover, a non-U.S. person engaged in dealing activity with non-U.S. persons in the United States but not subject to Regulation SBSR would not be required to report its trades, which could make it more difficult for the Commission to monitor that activity for compliance with the federal securities laws and could reduce the transparency of prices in the security-based swap market in the United States. The proposed rules thus reflect our assessment of the impact that the scope of security-based swap transactions and security-based swap dealers subject to regulatory reporting and relevant security-based swap dealer requirements (such as external business conduct standards and recordkeeping and reporting requirements) may have on our ability to detect abusive and manipulative practices in the security-based swap market.

Second, in formulating these proposed rules, we have taken into account the potential impact that rules adopted as part of the Intermediary Definitions Adopting Release and the Cross-Border Adopting Release might have on competition between U.S. persons and non-U.S. persons when they engage in security-based swap transactions with non-U.S. persons, and the implications of these competitive frictions for market integrity. As noted in prior Commission releases, although the Dodd-Frank Act, including Title VII, seeks to achieve a number of benefits,[31] it also imposes costs on registered security-based swap dealers that unregistered persons are not required to bear.[32] For example, section 15F of the Exchange Act imposes various requirements on registered security-based swap dealers, including capital and margin requirements, recordkeeping and reporting requirements, and external business conduct requirements. While the Commission currently applies similar requirements to registered broker-dealers, Title VII applies these requirements only to persons that are registered as security-based swap dealers. Under current Exchange Act rule 3a71–3(b)(1)(iii), adopted in the Cross-Border Adopting Release, a non-U.S. person that engages in more than a *de minimis* amount of dealing activity with non-U.S.-person counterparties

reflecting the views of any other agency or regulator, including the CFTC.

[28] *See* Section VI.B.2, *infra,* for further discussion of the economic effects of our proposed application of external business conduct requirements. *See* Section III.B.4, *infra,* for a discussion of how our proposed approach would support regulatory transparency.

[29] *See* Cross-Border Adopting Release, 79 FR 47327 (stating that the registration and regulation of entities as security-based swap dealers and major security-based swap participants will lead to programmatic costs and benefits).

[30] *See* Section VI.B.1, *infra.*

[31] *See* Cross-Border Adopting Release, 79 FR 47280 n.11 (citing Dodd-Frank Act preamble, which states that the Dodd-Frank Act was enacted ''[t]o promote the financial stability of the United States by improving accountability and transparency in the financial system, to end 'too big to fail', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes'').

[32] *See id.* at 47327.

using personnel located in the United States may face lower regulatory costs than a U.S. competitor engaging in identical activity, because the non-U.S. person is not required to include such transactions in its *de minimis* calculation. Competitive disparities may also arise as a result of differences in application of other Title VII requirements between U.S. persons and non-U.S. persons that are engaged in dealing activity using personnel located in the United States. As a result, such a non-U.S. person may be able to offer liquidity to its counterparties on more favorable terms than its U.S. competitors.

Under Exchange Act rule 3a71–3, non-U.S. persons may be able to subsidize their transactions with U.S. persons with profits from transactions with non-U.S. persons, allowing them to gain a competitive advantage with respect to transactions with U.S. persons from other dealing activity that is not subject to Title VII, even though it is carried out using personnel located in a U.S. branch or office. In the absence of the rules being proposed in this release, these competitive effects of disparate regulatory treatment may create an incentive for U.S. persons to use non-U.S.-person affiliates or non-U.S.-person agents that are located in the United States to engage in dealing activity with non-U.S.-person counterparties, because these non-U.S. persons could continue to deal with non-U.S.-person counterparties without being required to comply with any Title VII requirements.[33] This disparity could make transactions with U.S.-person dealers less attractive than transactions with non-U.S.-person dealers, even if the latter are arranging, negotiating, or executing the transaction using personnel located in a U.S. branch or office.

Moreover, differences in the application of the Title VII regulatory requirements may impose differing direct costs on different counterparties. For example, a non-U.S. person seeking to trade in a security-based swap on a U.S. reference entity may prefer to enter into the transaction with a non-U.S.-person dealer rather than a U.S.-person dealer. Even though both dealers are likely to arrange, negotiate, or execute a transaction on a U.S. reference entity using personnel located in a U.S. branch or office, the non-U.S.-person dealer may be more attractive because, for example, a transaction with that dealer may not involve a requirement to post collateral consistent with Title VII margin requirements or to comply with Regulation SBSR. The prospect of directly incurring the costs associated with compliance with Title VII requirements may cause these non-U.S. persons to prefer dealing with unregistered non-U.S.-person dealers, particularly if they can obtain the benefits associated with arranging, negotiating, or executing such a transaction using personnel located in a U.S. branch or office. The rules being proposed in this release are designed to mitigate this outcome.

Regulatory frictions arising from a difference in the treatment of dealing activity occurring in the United States could fragment security-based swap liquidity into two pools, one for U.S. persons and non-U.S. persons whose obligations under a security-based swap are guaranteed by a U.S. person, and the other for non-U.S. persons. Non-U.S. persons that arrange, negotiate, or execute transactions in connection with their dealing activity using personnel located in a U.S. branch or office may, under current Exchange Act rule 3a71–3(b), seek to limit dealing activity with U.S. persons (for example, by quoting larger spreads to compensate for the expected costs of entity-level requirements) or may entirely refuse to supply liquidity to U.S. persons. This disparity in treatment may provide further incentives for U.S. persons to restructure their business to permit them to carry out their business with non-U.S. persons on similar terms.[34] This incentive may be particularly strong among U.S. dealers that are active in the inter-dealer market.

To the extent that the large inter-dealer market[35] shifts in significant part to non-U.S. dealers as a result of current rules, security-based swap activity in the United States could consist of one very large pool of transactions unregulated under Title VII (inter-dealer trades, and transactions between dealers and non-U.S. person non-dealers) and one much smaller pool limited to transactions between dealers and U.S.-person counterparties. This fragmentation could adversely affect the efficiency of risk sharing among security-based swap market participants, as discussed further in Sections VI.B.4(a) and VI.B.4(b), below.

Different treatment of transactions depending on whether they are arranged, negotiated, or executed by personnel located in a U.S. branch or office may create similar fragmentation among agents that may seek to provide services to foreign dealers. To the extent that using agents with personnel located in the United States results in substantial regulatory costs to foreign dealers, such foreign dealers may prefer and primarily use agents located outside the United States, while U.S. dealers may continue to use agents located in the United States. This fragmentation of dealer and agent relationships, as in the case of liquidity fragmentation discussed earlier, may adversely affect the efficiency of risk sharing by security-based swap market participants.

B. Baseline

To assess the economic impact of the proposed amendments and rule described in this release, we are using as our baseline the security-based swap market as it exists at the time of this release, including applicable rules we have already adopted but excluding rules that we have proposed but have not yet finalized.[36] The analysis includes the statutory provisions that currently govern the security-based swap market pursuant to the Dodd-Frank Act as well as rules adopted in the Intermediary Definitions Adopting Release, the Cross-Border Adopting Release, Regulation SBSR, and the Security-Based Swap Data Repository (''SDR'') Rules and Core Principles.[37] Our understanding of the market is informed by available data on security-based swap transactions, though we acknowledge the data limit the extent to which we can quantitatively characterize the market. Because these data do not cover the entire market, we have developed an understanding of market activity using a sample that includes only certain portions of the market.

[33] We note that, under Exchange Act rule 3a71–3, a non-U.S.-person affiliate of a U.S. person is not required to include such transactions in its dealer *de minimis* threshold calculations if that non-U.S. person's counterparties do not have recourse to a U.S. person under the terms of the security-based swap and the non-U.S. person is not a conduit affiliate. *See* Exchange Act rule 3171–3(b)(1)(ii) and (iii) (applying the *de minimis* exception to cross-border dealing activity of conduit affiliates and non-U.S. persons).

[34] *See* Section VI.B, *infra,* for further discussion of potential effects of the proposed rules on non-U.S. persons' incentives to use personnel located in U.S. branches or offices to arrange, negotiate, or execute security-based swap transactions.

[35] *See* Section II.B.2, *infra,* for an analysis of the proportion of the security-based swap market that constitutes inter-dealer transactions. For the purposes of this analysis we classify any security-based swap transaction between two ISDA-recognized dealers as inter-dealer activity.

[36] We also take into account, where appropriate, current industry practice in response to the actions of other regulators, such as the CFTC and the European Securities and Markets Authority.

[37] Exchange Act Release No. 74246 (February 11, 2015), 80 FR 14437 (March 19, 2015). As noted above, we have not yet adopted other substantive requirements of Title VII that may affect how firms structure their security-based swap business and market practices more generally.

1. Current Security-Based Swap Market

Our analysis of the state of the current security-based swap market is based on data obtained from the DTCC Derivatives Repository Limited Trade Information Warehouse (''TIW''), especially data regarding the activity of market participants in the single-name credit default swap (''CDS'') market during the period from 2008 to 2014. According to data published by the Bank for International Settlements (''BIS''), the global notional amount outstanding in equity forwards and swaps as of June 2014 was $2.43 trillion. The notional amount outstanding in single-name CDS was approximately $10.85 trillion, in multi-name index CDS was approximately $7.94 trillion, and in multi-name, non-index CDS was approximately $678 billion.[38] Our analysis in this release focuses on the data relating to single-name CDS. As we have previously noted, although the definition of ''security-based swap'' is not limited to single-name CDS, we believe that the single-name CDS transactions that we observe are sufficiently representative of the market and therefore can directly inform the analysis of the security-based swap market.[39]

We preliminarily believe that the data underlying our analysis here provide reasonably comprehensive information regarding single-name CDS transactions and the composition of the single-name CDS market participants. We note that the data available to us from TIW do not encompass those CDS transactions that both: (i) Do not involve U.S. counterparties;[40] and (ii) are based on non-U.S. reference entities. Notwithstanding this limitation, we preliminarily believe that the TIW data provide sufficient information to identify the types of market participants active in the security-based swap market and the general pattern of dealing within that market.[41]

(a) Dealing Structures and Participant Domiciles

Dealers occupy a central role in the security based swap market and security-based swap dealers use a variety of business models and legal structures to engage in dealing activity with counterparties in jurisdictions all around the world.[42] As we noted in the Cross-Border Adopting Release and as discussed below in Section III.B.4(a), both U.S.-based and foreign-based entities use certain dealing structures for a variety of legal, tax, strategic, and business reasons.[43] Dealers may use a variety of structures in part to reduce risk and enhance credit protection based on the particular characteristics of each entity's business.

Bank and non-bank holding companies may use subsidiaries to deal with counterparties. A U.S.-based holding company may engage in dealing activity through a foreign subsidiary that faces both U.S. and foreign counterparties, and foreign dealers may choose to deal with U.S. and foreign counterparties through U.S. subsidiaries. Similarly, a non-dealer user of security-based swaps may participate in the market using an agent in its home country or abroad. An investment adviser located in one jurisdiction may transact in security-based swaps on behalf of beneficial owners that reside in another.

In some situations, an entity's performance under security-based swaps may be supported by a guarantee provided by an affiliate. Such a guarantee may take the form of a blanket guarantee of an affiliate's performance on all security-based swap contracts, or a guarantee may apply only to a specified transaction or counterparty. Guarantees may give counterparties to a dealer direct recourse to the holding company or another affiliate for its dealer-affiliate's obligations under security-based swaps for which that dealer-affiliate acts as counterparty.

[38] *See* Semi-annual OTC derivatives statistics at end—June 2014 (December 2014), Table 19, available at: *http://www.bis.org/statistics/dt1920a.pdf*.

[39] While other repositories may collect data on transactions in total return swaps on equity and debt, we do not currently have access to such data for these products (or other products that are security-based swaps). In the Cross-Border Proposing Release, we explained that we believed that data related to single-name CDS was reasonable for purposes of this analysis, as such transactions appear to constitute roughly 82% of the security-based swap market as measured on a notional basis. *See* Cross-Border Proposing Release, 78 FR 31120 n.1301. No commenters disputed these assumptions, and we therefore continue to believe that, although the BIS data reflect the global OTC derivatives market, and not just the U.S. market, these ratios are an adequate representation of the U.S. market.

Also consistent with our approach in that release, with the exception of the analysis regarding the degree of overlap between participation in the single-name CDS market and the index CDS market (cross-market activity), our analysis below does not include data regarding index CDS as we do not currently have sufficient information to identify the relative volumes of index CDS that are swaps or security-based swaps.

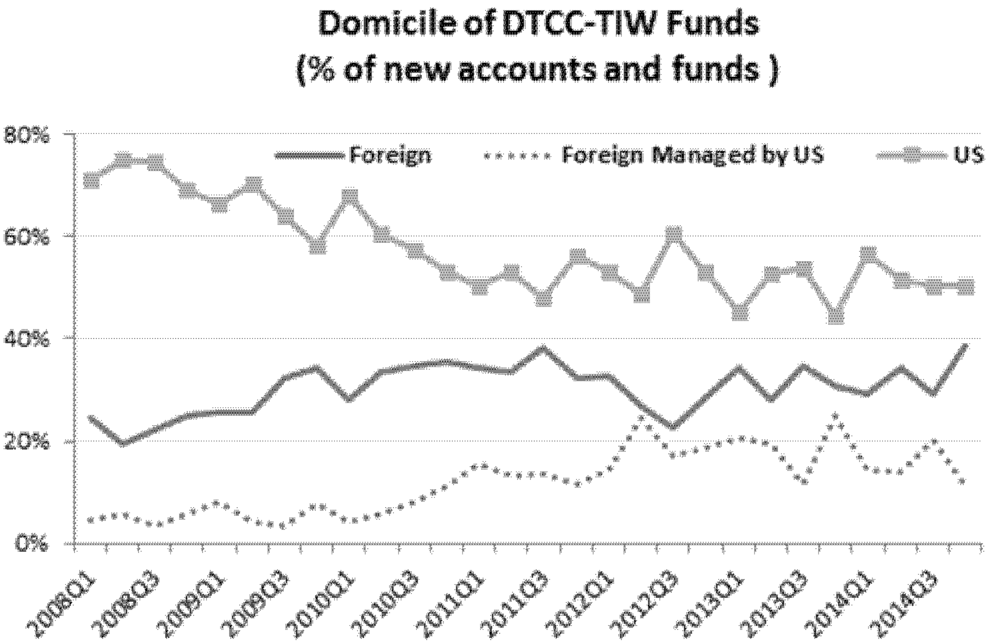
[40] We note that TIW's entity domicile determinations may not reflect our definition of ''U.S. person'' in all cases.

[41] The challenges we face in estimating measures of current market activity stem, in part, from the absence of comprehensive reporting requirements for security-based swap market participants. We have adopted rules regarding trade reporting, data elements, and public reporting for security-based swaps that will, when fully implemented, provide us with appropriate measures of market activity. *See* Regulation SBSR Adopting Release, 80 FR 14699–700.

[42] Commission staff analysis of TIW transaction records indicates that approximately 99% of single-name CDS price-forming transactions in 2014 involved an ISDA-recognized dealer. ''Price-forming transactions'' include all new transactions, assignments, modifications to increase the notional amounts of previously executed transactions, and terminations of previously executed transactions. Transactions terminated, transactions entered into in connection with a compression exercise, and expiration of contracts at maturity are not considered price forming and are therefore excluded, as are replacement trades and all bookkeeping-related trades. *See* Cross-Border Proposing Release, 78 FR 31121 n.1312. For the purpose of this analysis, the ISDA-recognized dealers are those identified by ISDA as belonging to the dealer group, including JP Morgan Chase, Morgan Stanley, Bank of America, Goldman Sachs, Deutsche Bank, Barclays, Citigroup, UBS, Credit Suisse, RBS Group, BNP Paribas, HSBC, Société Générale, Credit Agricole, Wells Fargo, and Nomura. *See, e.g., http://www2.isda.org/functional-areas/research/surveys/operations-benchmarking-surveys/*.

[43] *See* Cross-Border Adopting Release, 79 FR 30976.

Figure 1: The percentage of (1) new accounts with a domicile in the United States (referred to as "US"), (2) new accounts with a domicile outside the United States (referred to below as "Foreign"), and (3) new accounts outside the United States but managed by a U.S. person, account of a foreign branch of a U.S. person, and accounts of a foreign subsidiary of a U.S. person (collectively referred to below as "Foreign Managed by US").[44] Unique, new accounts are aggregated each quarter and percentages are computed on a quarterly basis, from January 2008 through December 2014.



As depicted in Figure 1, the domicile of new accounts participating in the market has shifted over time. A greater share of accounts entering the market either have a foreign domicile, or have a foreign domicile while being managed by a U.S. person. The increase in foreign accounts may reflect an increase in participation by foreign accountholders while the increase in foreign accounts managed by U.S. persons may reflect the flexibility with which market participants can restructure their market participation in response to regulatory intervention, competitive pressures, and other stimuli. Alternatively, the shifts in new account domicile that we observe in Figure 1 may be unrelated to restructuring or increased foreign participation. For example, changes in the domicile of new accounts over time may reflect improvements in reporting by market participants to TIW rather than a change in market participant structure.[45] Additionally, because the data include only accounts that are domiciled in the United States, that transact with U.S.-domiciled counterparties, or that transact in single-name CDS with U.S. reference entities, changes in the domicile of new accounts may reflect increased transaction activity between U.S. and non-U.S.-person counterparties or increased transactions in single-name CDS on U.S. reference entities by foreign persons.

(b) Market Centers

Participants in the security-based swap market may bear the financial risk of a security-based swap transaction in a location different from the location where the transaction is arranged, negotiated, or executed or the location where economic decisions are made by managers on behalf of beneficial owners. Similarly, a participant in the security-based swap market may be exposed to counterparty risk from a jurisdiction that is different from the market center or centers in which it primarily operates. These participants appear to be active in market centers across the globe.

The TIW transaction records include, in many cases, information on particular branches involved in transactions, which may provide limited insight as to where security-based swap activity is actually being carried out.[46] These data indicate branch locations located in New York, London, Tokyo, Hong Kong, Chicago, Sydney, Toronto, Frankfurt, Singapore, and the Cayman Islands. Because transaction records in the TIW data provided to us do not indicate explicitly the location in which particular transactions were arranged, negotiated, or executed, these locations

[44] Following publication of the Warehouse Trust Guidance on CDS data access, TIW surveyed market participants, asking for the physical address associated with each of their accounts (*i.e.,* where the account is organized as a legal entity). This is designated the registered office location by TIW. When an account does not report a registered office location, we have assumed that the settlement country reported by the investment adviser or parent entity to the fund or account is the place of domicile. This treatment assumes that the registered office location reflects the place of domicile for the fund or account.

[45] *See* note 44, *supra.*

[46] The value of this information is limited in part because some market participants may use business models that do not involve branches to carry out business in jurisdictions other than their home jurisdiction. For example, some market participants may use affiliated or unaffiliated agents to enter into security-based swap transactions in other jurisdictions on their behalf. The available data currently does not allow us to identify with certainty which type of structure is being used in any particular transaction.

may not represent the full set of locations in which activities relevant for these proposed rules take place. Moreover, because we cannot identify the location of transactions within TIW, we are unable to estimate the general distribution of transaction volume across market centers.

(c) Current Estimates of Number of Dealers

In the Regulation SBSR Adopting Release, we estimated, based on an analysis of TIW data, that out of more than 4,000 entities engaged in single-name CDS activity worldwide in 2013, 170 entities engaged in single-name CDS activity at a sufficiently high level that they would be expected to incur assessment costs to determine whether they meet the ''security-based swap dealer'' definition.[47] Approximately 45 of these entities are non-U.S. persons and are expected to incur assessment costs as a result of engaging in dealing activity with counterparties that are U.S. persons or engaging in dealing activity that involves recourse to U.S. persons.[48] Analysis of those data further indicated that potentially 50 entities may engage in dealing activity that would exceed the *de minimis* threshold and thus ultimately have to register as security-based swap dealers.[49]

Updated analysis of 2014 data leaves many of these estimates largely unchanged. We estimate that approximately 170 entities engaged in single-name CDS activity at a sufficiently high level that they would be expected to incur assessment costs to determine whether they meet the ''security-based swap dealer'' definition. Approximately 56 of these entities are non-U.S. persons. Of the approximately 50 entities that we estimate may potentially register as security-based swap dealers, we preliminarily believe it is reasonable to expect 22 to be non-U.S. persons.

2. Levels of Security-Based Swap Trading Activity

Single-name CDS contracts make up the vast majority of security-based swaps, and most are written on corporate issuers, corporate securities, sovereign countries, or sovereign debt (reference entities or securities). Figure 2 below describes the percentage of global, notional transaction volume in North American corporate single-name CDS reported to the TIW between January 2008 and December 2013, separated by whether transactions are between two ISDA-recognized dealers (inter-dealer transactions) or whether a transaction has at least one non-dealer counterparty.

Annual trading activity with respect to North American corporate single-name CDS in terms of notional volume has declined from more than $6 trillion in 2008 to less than $3 trillion in 2014.[50] While notional volume has declined over the past six years, the portion of the notional volume represented by inter-dealer transactions has remained fairly constant and inter-dealer transactions continue to represent a significant majority of trading activity, whether measured in terms of notional value or number of transactions (see Figure 2).

The high level of inter-dealer trading activity reflects the central position of a small number of dealers, each of which intermediates trades between many hundreds of counterparties. While we are unable to quantify the current level of trading costs for single-name CDS, those dealers appear to enjoy market power as a result of their small number and the large proportion of order flow they privately observe. This market power in turn appears to be a key determinant of trading costs in this market.

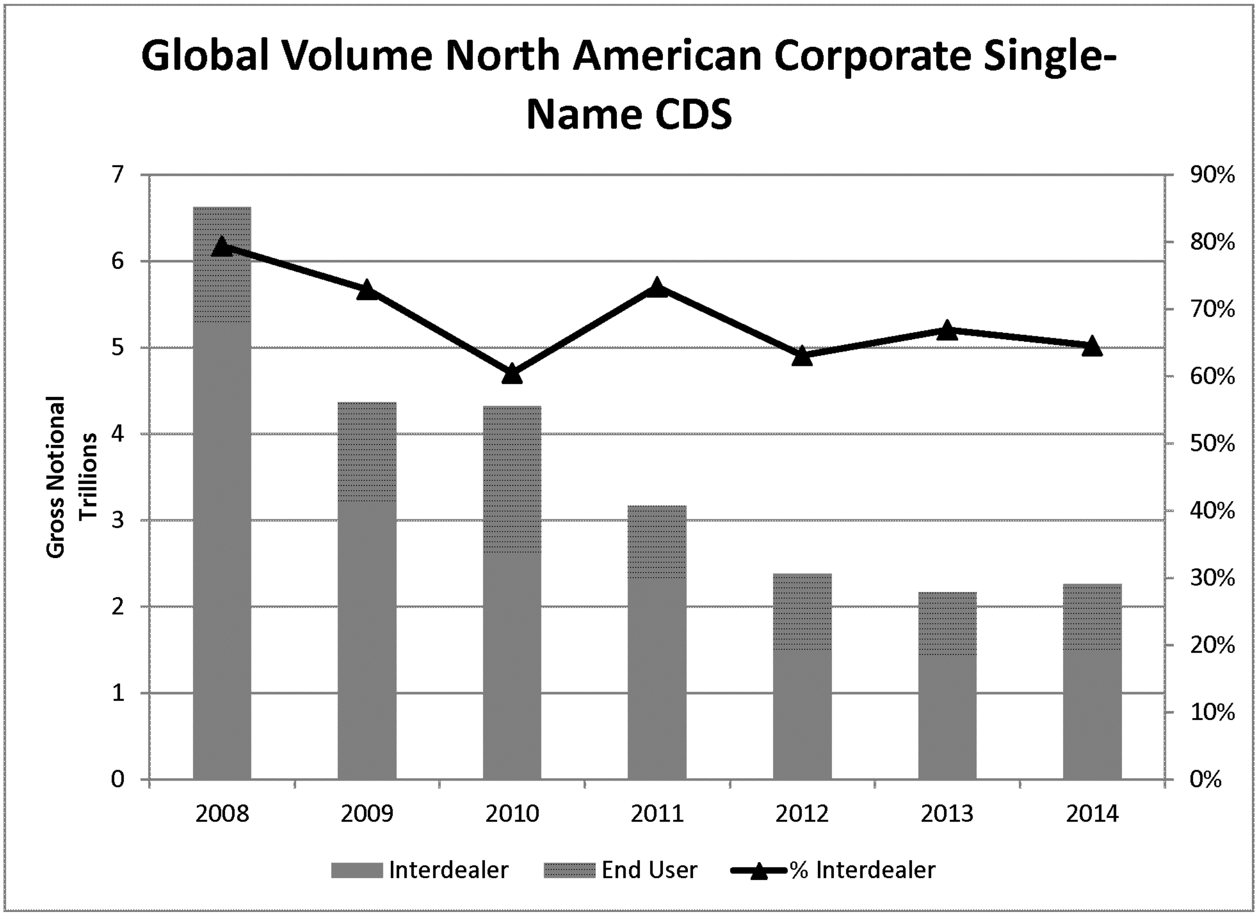
[47] *See* Regulation SBSR Adopting Release, 80 FR 14693.

[48] *See* Exchange Act rule 3a71–3(b).

[49] *See* Regulation SBSR Adopting Release, 80 FR 14693.

[50] The start of this decline predates the enactment of the Dodd-Frank Act and the proposal of rules thereunder, which is important to note for the purpose of understanding the economic baseline for this rulemaking. The timing of this decline seems to indicate that CDS market demand shrank prior to the enactment of the Dodd-Frank Act, and therefore the causes of this reduction in trading volume may be related to market dynamics and not directly related to the enactment of legislation and the development of security-based swap market regulation.

Figure 2: Global, notional trading volume in North American corporate single-name CDS by calendar year and the fraction of volume that is inter-dealer.



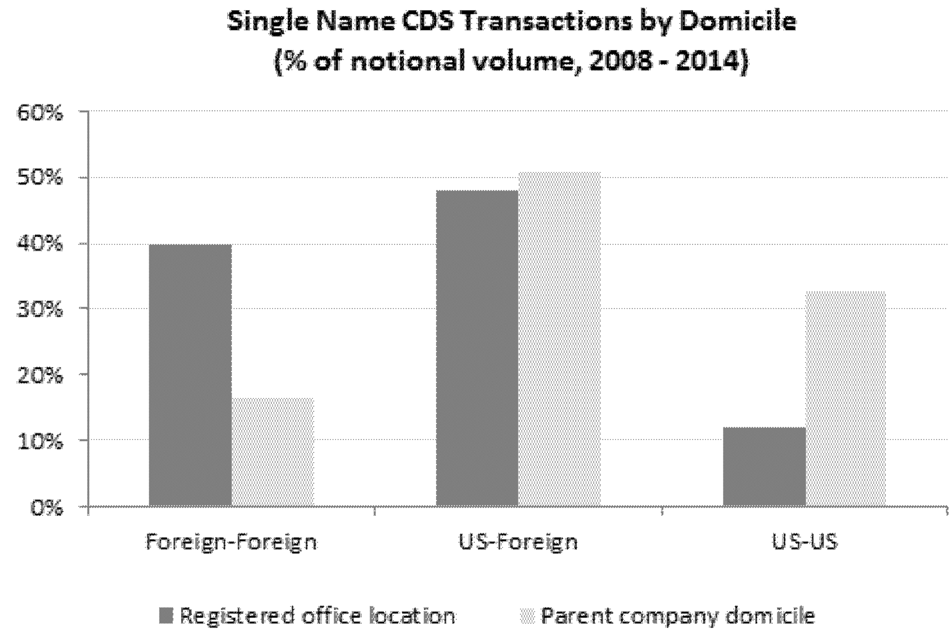
Against this backdrop of declining North American corporate single-name CDS activity, about half of the trading activity in North American corporate single-name CDS reflected in the set of data that we analyzed was between counterparties domiciled in the United States and counterparties domiciled abroad. Basing counterparty domicile on the self-reported registered office location of the TIW accounts, we estimate that only 12% of the global transaction volume by notional volume between 2008 and 2014 was between two U.S.-domiciled counterparties, compared to 48% entered into between one U.S.-domiciled counterparty and a foreign-domiciled counterparty and 40% entered into between two foreign-domiciled counterparties (see Figure 3).[51]

When the domicile of TIW accounts is instead defined according to the domicile of an account's ultimate parents, headquarters, or home office (*e.g.,* classifying a foreign bank branch or foreign subsidiary of a U.S. entity as domiciled in the United States), the fraction of transactions entered into between two U.S.-domiciled counterparties increases to 32%, and to 51% for transactions entered into between a U.S.-domiciled counterparty and a foreign-domiciled counterparty.

Differences in classifications across different definitions of domicile illustrate the effect of participant structures that operate across jurisdictions. Notably, the proportion of activity between two foreign-domiciled counterparties drops from 40% to 17% when domicile is defined as the ultimate parent's domicile. As noted earlier, foreign subsidiaries of U.S. parent companies and foreign branches of U.S. banks, and U.S. subsidiaries of foreign parent companies and U.S. branches of foreign banks may transact with U.S. and foreign counterparties. However, this change in respective shares based on different classifications suggests that the activity of foreign subsidiaries of U.S. firms and foreign branches of U.S. banks is generally higher than the activity of U.S. subsidiaries of foreign firms and U.S. branches of foreign banks.

[51] *See* note 44, *supra.* For purposes of this discussion, we have assumed that the registered office location reflects the place of domicile for the fund or account, but we note that this domicile does not necessarily correspond to the location of an entity's sales or trading desk.

Figure 3: The fraction of notional volume in North American corporate single-name CDS between (1) two U.S.-domiciled accounts, (2) one U.S.-domiciled account and one non-U.S.-domiciled account, and (3) two non-U.S.-domiciled accounts, computed from January 2008 through December 2014.



3. Regulatory Reporting, Clearing, and Trade Execution of Security-Based Swap Transactions

We have adopted final rules implementing regulatory reporting requirements for security-based swap transactions, although compliance with most aspects of this regime is not yet required.[52] Although counterparties are not yet required to comply with rules that require them to report transaction information, virtually all market participants voluntarily report their trades in single-name CDS to TIW, which maintains a record of these transactions, in some cases with the assistance of post-trade processors.[53] Among other things, this centralized record-keeping facilitates settlement of obligations between counterparties when a default event occurs as well as bulk transfers of positions between accounts at a single firm or between firms.

Clearing of security-based swaps, which is currently voluntary in the United States, is currently limited to CDS products, and a substantial proportion of single-name CDS accepted for clearing are already being cleared. Prior to the Dodd-Frank Act, ICE Clear Credit and ICE Clear Europe engaged in CDS clearing activities pursuant to exemptive orders issued by the Commission.[54] Pursuant to the Dodd-Frank Act, ICE Clear Credit and ICE Clear Europe were deemed to be registered with the Commission in July 2011 as clearing agencies for security-based swaps.[55] ICE Clear Credit began clearing corporate single-name CDS in December 2009,[56] and, as of March 17, 2015, had cleared a total of $3.06 trillion gross notional of single-name CDS on 368 North American and European instruments.[57] As of the beginning of this year, ICE Clear Credit accepted for clearing a total of 207 CDS products based on North American instruments, 168 CDS products based on European instruments, and fifteen CDS products based on individual sovereign (nation-state) reference entities.

Staff analysis of trade activity from July 2012 to December 2013 indicate that, out of $938 billion of notional traded in North American corporate single-name CDS contracts that have reference entities that are accepted for clearing during the 18 months ending December 2013, approximately 71%, or $666 billion, had characteristics making them suitable for clearing by ICE Clear Credit and represented trades between two ICE Clear Credit clearing members.

[52] *See* Regulation SBSR Adopting Release, 80 FR 14566.

[53] *See http://www.isdacdsmarketplace.com/exposures_and_activity* (last visited September 22, 2014).

[54] *See, e.g.,* Exchange Act Release No. 59527 (March 6, 2009), 74 FR 10791 (March 12, 2009) (''ICE Clear Credit Exemptive Order''); Exchange Act Release No. 60372 (July 23, 2009), 74 FR 37748 (July 29, 2009) (''ICE Clear Europe Exemptive Order''). In connection with those orders, Commission considered clearing practices of those central counterparties (''CCPs''), including, *inter alia,* their risk management methodologies.

[55] Section 17A(*l*) of the Exchange Act provides in relevant part that a derivative clearing organization registered with the CFTC that clears security-based swaps would be deemed to be registered as a clearing agency under section 17A if, prior to the enactment of the Dodd-Frank Act, it cleared swaps pursuant to an exemption from registration as a clearing agency. Both ICE Clear Credit and ICE Clear Europe also are registered with the CFTC as derivative clearing organizations.

[56] *See* Exchange Act Release No. 61662 (March 5, 2010), 75 FR 11589, 11591 (March 11, 2010) (discussing ICE Clear Credit's CDS clearing activities as of March 2010).

ICE Clear Credit (then known as ICE US Trust LLC) began clearing index CDS in March 2009. *See* Exchange Act Release No. 59527 (March. 6, 2009), 74 FR 10791 (March 12, 2009) (order granting temporary exemptions under the Exchange Act on behalf of ICE US Trust LLC).

[57] ICE Clear Credit also has cleared a total of $37.3 trillion gross notional on 137 index CDS as of March 20, 2015. *See* ICE Clear Credit, Volume of ICE CDS Clearing, available at: *https://www.theice.com/clear_credit.jhtml.*

In addition to clearing single-name CDS on North American corporate reference entities, ICE Clear Credit also clears CDS on certain non-U.S. sovereign entities, and on certain indices based on North American reference entities.

Approximately 79% of this notional value, or $525 billion, was cleared through ICE Clear Credit, or 56% of the $938 billion in new trade activity.

Figure 4 shows the proportion of new trades and assign-entries defined as clearable at ICE Clear Credit that were ultimately cleared.[58]

Evidence from the TIW data suggests that even single-name CDS written on reference entities that were initially accepted for clearing by ICE Clear Credit were traded infrequently. Figure 5 plots of the daily mean number of transactions per trading day for each of the 538 North American single-name corporate reference entities with at least one transaction per month on average during the period from January 2011 to December 2013.[59] Each vertical bar represents the mean number of transactions per day for a reference entity.[60] The 538 reference entities are presented in decreasing order of the mean number of transactions per trading day. Commission staff has identified the 68 reference entities in the sample that were cleared by ICE Clear Credit prior to the enactment of the Dodd-Frank Act (the ''deemed submitted'' reference entities). The 68 deemed submitted reference entities are marked by Xs forming a line near the horizontal axis. The remaining Xs (those not on the line of Xs near the horizontal axis) represent, for each reference entity, the fraction of days with no transactions. The evidence in Figure 5 suggests that within the sample period, the most traded entity of the 68 ''deemed submitted'' reference entities was traded approximately 15 times per day on average. Despite the low average number of transactions per day, these 68 reference entities generally have a lower proportion of days with no transactions relative to the rest of the single-name CDS market represented in the sample.

ICE Clear Europe began clearing CDS on single-name corporate reference entities in December 2009,[61] and, as of March 17, 2015, had cleared a total €2.48 trillion in gross notional of single-name CDS on 161 European corporate reference entities.[62] As of the beginning of 2015, ICE Clear Europe accepted for clearing a total of 161 CDS products based on European corporate reference entities.

Staff analysis of new trade activity from July 2012 to December 2013 indicate that out of €531 billion of notional traded in European corporate single-name CDS contracts that have reference entities that are accepted for clearing during the 18 months ending December 2013, approximately 70%, or €372 billion had characteristics making them suitable for clearing by ICE Clear Europe and represented trades between two ICE Clear Europe clearing members. Approximately 51% of this notional value, or €191 billion was cleared through ICE Clear Europe, representing 36% of the total volume of new trade activity.[63]

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[58] For the purposes of this analysis, ''clearable'' describes CDS contracts on North American single-name corporate reference entities between clearing members that reference the ISDA Standard North American Corporate (SNAC) documentation, are denominated in U.S. dollars, do not include restructuring as a credit event and have a standard coupon. If ICE Clear Credit accepts CDS on the reference entity for clearing, then a standard coupon is one that is accepted for clearing for that reference entity by ICE Clear Credit; otherwise, standard coupon means a coupon of either 100 or 500 basis points. *See* SEC Division of Economic and Risk Analysis, Single-Name Corporate Credit Default Swaps: Background Data Analysis on Voluntary Clearing Activity, 15 (April 2015), available at *http://www.sec.gov/dera/staff-papers/white-papers/voluntary-clearing-activity.pdf.*

[59] We analyze single-name corporate reference entities with at least one transaction per month on average from January 2011 to December 2013 to avoid including outliers that trade extremely infrequently. Of the 573 North American single-name corporate reference entities with at least 36 transactions included in Figure 5, only 538 had at least 36 new trades, implying that the other 35 had price forming transactions that were not associated with new trading activity, such as terminations or assignments. *See id.* at 41.

[60] Transaction types include all price forming transactions: New trades, amendments that change economic terms of the contract, assignments, and terminations.

[61] *See* Exchange Act Release No. 61973 (April 23, 2010), 75 FR 22656, 22657 (April 29, 2010) (discussing ICE Clear Europe's CDS clearing activity as of April 2010).

ICE Clear Europe commenced clearing index CDS in July 2009. *See* Exchange Act Release No. 60372 (July 23, 2009), 74 FR 37748 (July 29, 2009) (order granting temporary exemptions under the Exchange Act on behalf of ICE Clear Europe).

[62] ICE Clear Europe also has cleared a total of €14.4 trillion in gross notional on 64 index CDS as of March 20, 2015. *See* ICE Clear Europe, Volume of ICE CDS Clearing, available at: *https://www.theice.com/clear_credit.jhtml.*

Aside from clearing single-name CDS on European corporate reference entities, ICE Clear Europe also clears CDS on indices based on European reference entities, as well as futures and instruments on OTC energy and emissions markets.

[63] These numbers do not include transactions in European corporate single-name CDS that were cleared by ICE Clear Credit. However, during the sample period, there was only one day on which there were transactions that were cleared by ICE Clear Credit (December 20, 2013) and the traded notional of these transactions was minimal. For historical data, *see https://www.theice.com/marketdata/reports/99.*

Figure 4: The fraction of total gross notional amount of new trades and assign-entries in North American single-name CDS products that was clearable at ICE Clear Credit, and was cleared within 14 days of the initial transaction.[64]

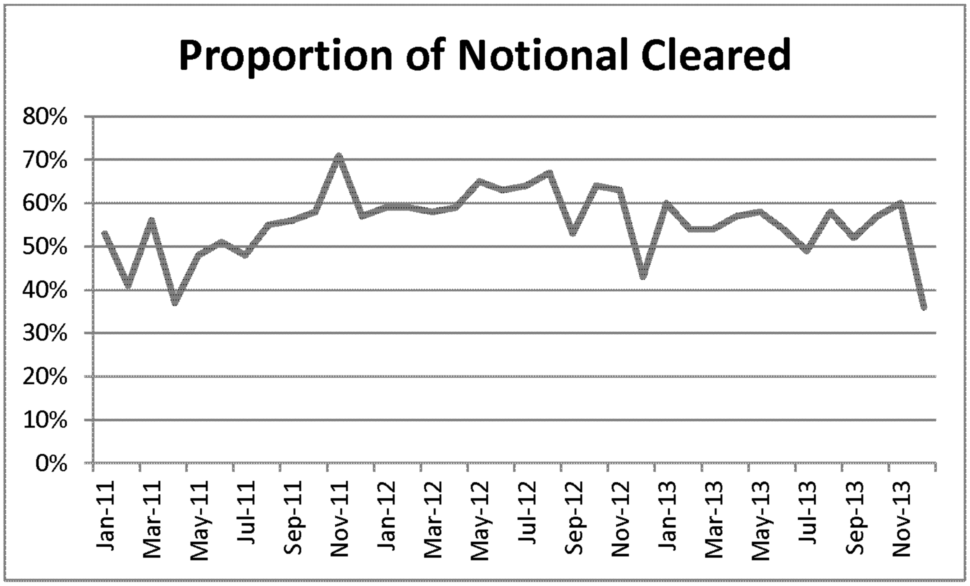
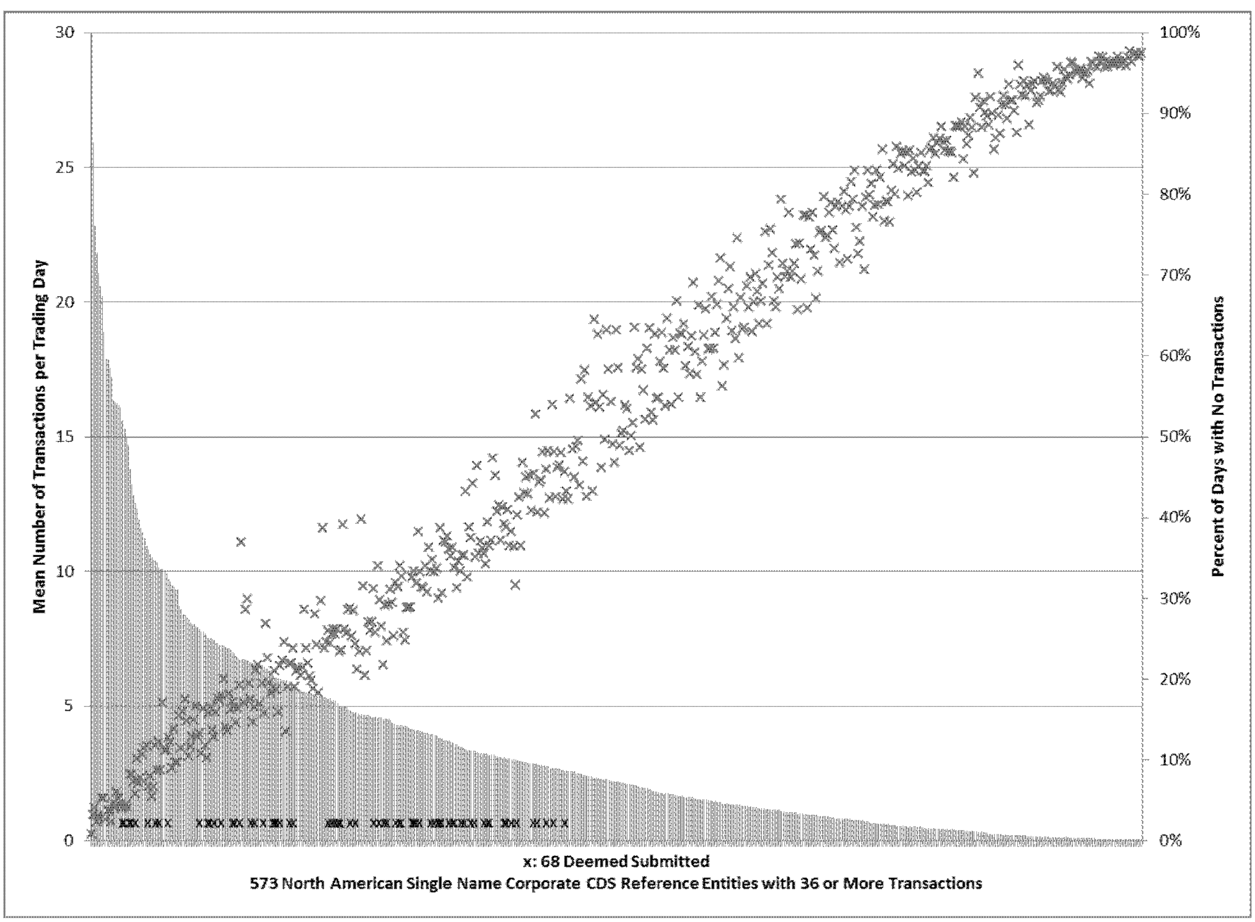


Figure 5. North American Single-Name Corporate CDS Transaction Activity: January 2011–December 2013



Unlike the markets for cash equity securities and listed options, the market for security-based swaps is characterized almost exclusively by bilateral OTC negotiation and is largely decentralized.[65] The lack of uniform rules concerning the trading of security-based swaps and the historical one-to-one nature of trade negotiation in security-based swaps has resulted in the formation of distinct types of trading venues and execution practices, ranging from bilateral negotiations carried out over the telephone,[66] single-dealer RFQ platforms,[67] multi-dealer RFQ platforms,[68] central limit order books,[69] and brokerage trading.[70] These various trading venues and execution practices provide different degrees of pre-trade transparency and afford market participants different levels of access. We currently do not have sufficient information with respect to the volume of security-based swap transactions executed across these different trading venues and using these various execution practices.

We have proposed, but have not yet adopted, rules establishing a registration regime and core principles for security-based swap execution facilities (''SB SEFs''). We have not proposed to implement the mandatory trade execution requirement contained in section 3C(h) of the Exchange Act. Currently, there are no SB SEFs registered with the Commission, and as a result, there is no registered SB SEF trading activity to report. There are, however, currently 25 trading platforms that either are temporarily registered with the CFTC as SEFs or have SEF temporary registration applications pending with the CFTC and currently are exempt from registration with the Commission.[71] As we discuss in Section II.B.5, the cash flows of security-based swaps and swaps are closely related and many participants in the security-based swap also participate in the swap market and so we preliminarily believe that many SEFs that currently serve as trading venues for swaps are likely also to register with the Commission as SB SEFs. However, owing to the smaller size of the security-based swap market, we currently expect that there will be fewer exchanges and SB SEFs that will eventually host transactions in security-based swaps than the 25 SEFs reported within the CFTC's jurisdiction.

4. Global Regulatory Efforts

Efforts to regulate the swaps market are underway not only in the United States but also abroad, and these efforts have received significant attention in international fora. For example, in 2009, leaders of the G20—whose membership includes the United States, 18 other countries, and the EU—addressed global improvements in the functioning, transparency, and regulatory oversight of OTC derivatives markets. They expressed their view on a variety of issues relating to OTC derivatives contracts, including trading on exchanges or electronic trading platforms, clearing through CCPs, and reporting to trade repositories.[72] In subsequent summits, the G20 leaders have returned to OTC derivatives regulatory reform and encouraged international consultation in developing standards for these markets.[73]

Jurisdictions with major OTC derivatives markets have taken steps toward substantive regulation of these markets, though the pace of regulation varies. Accordingly, many foreign participants likely will be required to comply with substantive regulation of their security-based swap activities apart from regulations that may apply to them pursuant to Title VII. The concerns foreign jurisdictions seek to address with their regulations may overlap or be similar to those addressed by the Title VII regulatory framework.

Foreign legislative and regulatory efforts have focused on five general areas: Requiring post-trade reporting of transactions data for regulatory purposes, moving OTC derivatives onto organized trading platforms, requiring central clearing of OTC derivatives, establishing or enhancing capital requirements, and establishing or enhancing margin requirements for OTC derivatives transactions. The first two areas of regulation should help improve transparency in OTC derivatives markets, both to regulators and market participants. Regulatory transaction reporting requirements are mandated in a number of jurisdictions including the

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[64] We preliminarily believe that it is reasonable to assume that, when clearing occurs within 14 days of execution, counterparties made the decision to clear at the time of execution and not as a result of information arriving after execution.

An ''assign-entry'' involves the substitution of one of the contract counterparties in an existing instrument for a new counterparty in exchange for cash consideration. It is economically equivalent to a termination of the initial contract between the ''old'' counterparty and the ''static'' counterparty and a new trade between the ''replacement'' counterparty and the ''static'' counterparty.

[65] *See* SB SEF Proposing Release, 76 FR 10951.

[66] ''Bilateral negotiation'' refers to the execution practice whereby one party uses telephone, email, or other communication methods to contact directly a potential counterparty to negotiate and execute a security-based swap. The bilateral negotiation and execution practice provides no pre-trade or post-trade transparency because only the two parties to the transaction are aware of the terms of the negotiation and the final terms of the agreement. *See* SB SEF Proposing Release, 76 FR 10951.

[67] A single-dealer RFQ platform refers to an electronic trading platform where a dealer may post indicative quotes for security-based swaps in various asset classes that the dealer is willing to trade. Only the dealer's approved customers would have access to the platform. When a customer wishes to transact in a security-based swap, the customer requests an executable quote, the dealer provides one, and if the customer accepts the dealer's quote, the transaction is executed electronically. This type of platform generally provides pre-trade transparency in the form of indicative quotes on a pricing screen, but only from one dealer to its customer. *See* SB SEF Proposing Release, 76 FR 10951.

[68] A multi-dealer RFQ electronic trading platform refers to a multi-dealer RFQ system whereby a requester can send an RFQ to solicit quotes on a certain security-based swap from multiple dealers at the same time. After the RFQ is submitted, the recipients have a prescribed amount of time in which to respond to the RFQ with a quote. Responses to the RFQ are firm. The requestor then has the opportunity to review the responses and accept the best quote. A multi-dealer RFQ platform provides a certain degree of pre-trade transparency, depending on its characteristics. *See* SB SEF Proposing Release, 76 FR 10952.

[69] A limit order book system or similar system refers to a trading system in which firm bids and offers are posted for all participants to see, with the identity of the parties withheld until a transaction occurs. Bids and offers are then matched based on price-time priority or other established parameters and trades are executed accordingly. The quotes on a limit order book system are firm. In general, a limit order book system provides greater pre-trade transparency than the three models described above because all participants can view bids and offers before placing their bids and offers. *See* SB SEF Proposing Release, 76 FR 10952. Currently, limit order books for the trading of security-based swaps in the United States are utilized by inter-dealer brokers for dealer-to-dealer transactions.

[70] ''Brokerage trading'' refers to an execution practice used by brokers to execute security-based swaps on behalf of customers, often in larger-sized or bespoke transactions. In such a system, a broker receives a request from a customer (which may be a dealer) that seeks to execute a specific type of security-based swap. The broker then interacts with other customers to fill the request and execute the transaction. This model often is used by dealers that seek to transact with other dealers through the use of an inter-dealer broker as an intermediary. In this model, there may be pre-trade transparency to the extent that participants are able to see bids and offers of other participants. *See* SB SEF Proposing Release, 76 FR 10952.

[71] *See* Effective Date Release, 76 FR at 36306 (exempting persons that operate a facility for the trading or processing of security-based swaps that is not currently registered as a national securities exchange, or that cannot yet register as an SB SEF because final rules for such registration have not yet been adopted, from the requirements of Section 3D(a)(1) of the Exchange Act until the earliest compliance date set forth in any of the final rules regarding registration of SB SEFs). A list of platforms that either are temporarily registered with the CFTC or have SEF temporary registration applications pending with the CFTC is available at: *http://sirt.cftc.gov/SIRT/SIRT.aspx?Topic=SwapExecutionFacilities* (last visited March 2, 2015).

[72] *See* G20 Leaders' *Statement,* Pittsburgh, United States, September 24–25, 2009, available at: *http://www.treasury.gov/resource-center/international/g7-g20/Documents/pittsburgh_summit_leaders_statement_250909.pdf.*

[73] *See* the G20 Leaders Communique (November 2014), para. 12, available at: *https://www.g20.org/sites/default/files/g20_resources/library/brisbane_g20_leaders_summit_communique.pdf.*

EU, Hong Kong SAR, Japan, and Singapore; other jurisdictions are in the process of proposing legislation and rules to implement these requirements.[74] The EU has adopted legislation for markets in financial instruments that addresses trading OTC derivatives on regulated trading platforms.[75] This legislation also should promote post-trade public transparency in OTC derivatives markets by requiring the price, volume, and time of derivatives transactions conducted on these regulated trading platforms to be made public in as close to real time as technically possible.[76]

Regulation of derivatives central clearing, capital requirements, and margin requirements aims, among other things, to improve management of financial risks in these markets.[77] Japan has rules in force mandating central clearing of certain OTC derivatives transactions.[78] The EU has its legislation in place but has not yet made any determinations of specific OTC derivatives transactions subject to mandatory central clearing. Most other jurisdictions are still in the process of formulating their legal frameworks that govern central clearing. A number of major foreign jurisdictions have initiated the process of drafting rules to implement margin requirements for OTC derivatives transactions.

5. Cross-Market Participation

Persons registered as security-based swap dealers or major security-based swap participants are likely also to engage in swap activity, which is subject to regulation by the CFTC. In the release proposing registration requirements for security-based swap dealers and major security-based swap participants, we estimated, based on our experience and understanding of the swap and security-based swap markets that of the 55 firms that might register as security-based swap dealers or major security-based swap participants, approximately 35 would also register with the CFTC as swap dealers or major swap participants.[79] Available data suggest that these numbers remain largely unchanged.[80]

This overlap reflects the relationship between single-name CDS contracts, which are security-based swaps, and index CDS contracts, which may be swaps or security-based swaps. A single-name CDS contract covers default events for a single reference entity or reference security. Index CDS contracts and related products make payouts that are contingent on the default of index components and allow participants in these instruments to gain exposure to the credit risk of the basket of reference entities that comprise the index, which is a function of the credit risk of the index components. A default event for a reference entity that is an index component will result in payoffs on both single-name CDS written on the reference entity and index CDS written on indices that contain the reference entity. Because of this relationship between the payoffs of single-name CDS and index CDS contracts, prices of these products depend upon one another,[81] creating hedging opportunities across these markets.

These hedging opportunities mean that participants that are active in one market are likely to be active in the other. Commission staff analysis of approximately 4,500 TIW accounts that participated in the market for single-name CDS in 2014 revealed that approximately 2,500 of those accounts, or 56%, also participated in the market for index CDS. Of the accounts that participated in both markets, data regarding transactions in 2014 suggest that, conditional on an account transacting in notional volume of index CDS in the top third of accounts, the probability of the same account landing in the top third of accounts in terms of single-name CDS notional volume is approximately 60%; by contrast, the probability of the same account landing in the bottom third of accounts in terms of single-name CDS notional volume is only 11%.

As discussed in more detail below,[82] the CFTC Staff Advisory issued in November 2013 stated the CFTC staff's belief that the CFTC has a strong supervisory interest in swap dealing activities that occur within the United States, regardless of the status of the counterparties. The CFTC Staff Advisory, which we understand to be under review at the CFTC,[83] also stated the CFTC staff's belief that a non-U.S. swap dealer ''regularly using personnel or agents located in the U.S. to arrange, negotiate, or execute a swap with a non-U.S. person generally would be required to comply with'' the CFTC's transaction-level requirements.[84] While CFTC staff has granted relief from certain aspects of the CFTC Staff Advisory,[85] at least one commenter has argued that the CFTC's approach to regulation of swap dealers taken in the CFTC Cross-Border Guidance has influenced the information that market participants collect and maintain about the swap transactions they enter into and the counterparties they face.[86] Although that commenter suggested that swap market participants have also adopted business practices consistent with the CFTC Cross-Border Guidance, the commenter did not supply particular details as to the scope of the changes to its operations.[87]

The proposed amendments and proposed rule may, to the extent that they are not in conflict with the approach taken in the CFTC Cross-Border Guidance, permit non-U.S. persons to use infrastructures developed to be consistent with the CFTC's approach, to comply with Commission requirements as well. Among those entities that participate in both markets, entities that are able to apply to security-based swap activity capabilities that are consistent with the CFTC Cross-Border Guidance may experience lower costs associated with assessing which

[74] Information regarding ongoing regulatory developments described in this section was primarily obtained from progress reports published by the Financial Stability Board. These are available at: *http://www.financialstabilityboard.org/list/fsb_publications/index.htm*.

[75] *See id.*

[76] See Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) no 648/2012), available at: *http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32014R0600&from=EN*.

[77] *See* note 74, *supra*.

[78] *See id.*

[79] *See* Registration of Security-Based Swap Dealers and Major Security-Based Swap Participants, Exchange Act Release No. 65543 (October 12, 2011), 76 FR 65784, 65808 (October 24, 2011).

[80] Based on its analysis of 2014 TIW data and the list of swap dealers provisionally-registered with the CFTC, and applying the methodology used in the Intermediary Definitions Adopting Release, we estimate that substantially all registered security-based swap dealers would also register as swap dealers with the CFTC. *See also* CFTC list of provisionally registered swap dealers, available at: *http://www.cftc.gov/LawRegulation/DoddFrankAct/registerswapdealer*.

[81] ''Correlation'' typically refers to linear relationships between variables; ''dependence'' captures a broader set of relationships that may be more appropriate for certain swaps and security-based swaps. *See, e.g.,* Casella, George and Roger L. Berger, Statistical Inference (2002), at 171.

[82] *See* Section III.B.3, *infra*.

[83] *See* CFTC Request for Comment.

[84] *See* CFTC Staff Advisory at 1–2.

[85] *See* note 25, *supra*.

[86] *See, e.g.,* Letter from Securities Industry and Financial Markets Association/Futures Industry Association/Financial Services Roundtable (''SIFMA/FIA/FSR'') to SEC, dated August 21, 2013 (''SIFMA/FIA/FSR Letter'') at 2–3.

[87] *Id.* at 2–4. The commenter notes the ''technological, operational, legal and compliance systems'' necessary for complying with our proposed rules, and taking account of the CFTC Cross-Border Guidance, outlining the general categories of changes to practice necessary for compliance. *Id.* The commenter further indicates a potential need to ''build[] separate systems for a small percentage of the combined swaps and SBS market instead of using the systems already built for compliance with the CFTC's cross-border approach,'' suggesting that market participants have adopted market practices consistent with the CFTC Cross-Border Guidance. *Id.*

cross-border security-based swap activity counts against the dealer *de minimis* exception or towards the major participant threshold, relative to those that are unable to redeploy such capabilities. We remain sensitive to the fact that in cases where our final rules differ from the CFTC approach, additional outlays related to information collection and storage may be required.

III. Application of the Dealer *De Minimis* Exception to U.S. Security-Based Swap Dealing Operations of Non-U.S. Persons

A. Overview

The Exchange Act excepts from designation as a ''security-based swap dealer'' an entity that engages in a ''*de minimis*'' quantity of security-based swap dealing activity with or on behalf of customers.[88] Under the final rules adopted in the Intermediary Definitions Adopting Release, a person may take advantage of that exception if, in connection with credit default swaps that constitute security-based swaps, the person's dealing activity over the preceding 12 months does not exceed a gross notional amount of $3 billion, subject to a phase-in level of $8 billion.[89] The phase-in level will remain in place until—following a study regarding the definitions of ''security-based swap dealer'' and ''major security-based swap participant''—we either terminate the phase-in period or establish an alternative threshold following rulemaking.[90]

The Cross-Border Adopting Release finalized rules specifying, among other things, when a non-U.S. person is required to include transactions arising from its dealing activity in its *de minimis* threshold calculations.[91] These final rules addressed the application of the security-based swap dealer *de minimis* exception to such person's dealing activity involving U.S.-person counterparties, as well as the dealing activity of a non-U.S. person that is a conduit affiliate[92] or whose counterparty has a right of recourse under the security-based swap against an affiliated U.S. person.[93] Although we had proposed requiring a non-U.S. person to include in this calculation any dealing activity involving another non-U.S.-person counterparty if it resulted in a ''transaction conducted within the United States'' as defined in the proposed rule,[94] we did not address this issue in our Cross-Border Adopting Release. As we noted in that adopting release, commenters raised a number of significant issues related to this element of the Cross-Border Proposing Release, including our authority to impose, and the costs of complying with, this requirement, and we determined that final resolution of this issue would benefit from further consideration and public comment.[95]

In light of those comments and further consideration of the concerns raised by such transactions and subsequent regulatory and market developments, the statutory objectives, and the practicability of our initially proposed approach, we have determined to propose an amendment to Exchange Act rules 3a71–3 and 3a71–5 that more closely focuses on certain dealing activity carried out, at least in part, by personnel located in the United States.[96] The proposed amendments would not require a non-U.S. person engaging in dealing activity to consider the location of its non-U.S.-person counterparty or that counterparty's agent in determining whether the transaction needs to be included in its own *de minimis* calculation. Instead, the proposed amendments would require a non-U.S. person to include in its *de minimis* calculation any transaction connected with its security-based swap dealing activity that it enters into with a non-U.S.-person counterparty only when the transaction is arranged, negotiated, or executed by personnel of the non-U.S. person located in a U.S. branch or office, or by personnel of such person's agent located in a U.S. branch of office.

As described in more detail below, we preliminarily believe that this proposed approach would mitigate many of the concerns raised by commenters in response to our initial proposal, while requiring persons that engage in dealing activity at levels that may raise the types of concerns that Title VII addresses to register as security-based swap dealers and comply with appropriate regulation. We also note that this approach would be generally consistent with the approach that we have followed with respect to the registration of brokers and dealers under the Exchange Act, which among other things requires that a broker-dealer physically operating in the United States register with the Commission and comply with relevant regulatory requirements, even if it directs its activities solely toward non-U.S. persons outside the United States.[97]

B. Proposed Application of De Minimis Exception to Non-U.S. Persons Arranging, Negotiating, or Executing Security-Based Swap Transactions Using Personnel Located in a U.S. Branch or Office

1. Overview of the Initially Proposed Approach

As we noted in the Cross-Border Proposing Release, dealing activity carried out by a non-U.S. person through a U.S. branch, office, or affiliate or by a non-U.S. person that otherwise engages in security-based swap dealing activity in the United States, particularly at levels exceeding the relevant *de minimis* thresholds, may raise concerns that Title VII addresses, even if a significant proportion—or all—of those transactions involve non-U.S.-person counterparties.[98] Accordingly, we initially proposed to require any non-U.S. person to include in its *de minimis* calculation any security-based swap transaction connected with its dealing activities that is a ''transaction conducted within the United States.''[99] We proposed to define ''transaction conducted within the United States'' as any ''security-based swap transaction that is solicited, negotiated, executed, or booked within the United States, by or on behalf of either counterparty to the transaction, regardless of the location, domicile, or residence status of either counterparty to the transaction.''[100]

[88] *See* Exchange Act section 3(a)(71)(D).

[89] *See* Exchange Act rule 3a71–2(a)(1)(i). Lower thresholds are set forth in connection with dealing activity involving other types of security-based swaps. *See* Exchange Act rule 3a71–2(a)(1)(ii).

[90] *See* Intermediary Definitions Adopting Release, 77 FR 30640–41. Exchange Act rule 3a71–2 establishes a phase-in period during which the *de minimis* threshold will be $8 billion and during which Commission staff will study the security-based swap market as it evolves under the new regulatory framework, resulting in a report that will consider the operation of the ''security-based swap dealer'' and ''major security-based swap participant'' definitions. In that release we explained that at the end of the phase-in period, we will take into account the report, as well as public comment on the report, in determining whether to terminate the phase-in period or propose any changes to the rule implementing the *de minimis* exception, including any increases or decreases to the $3 billion threshold. *See id.* at 30640.

[91] *See* Cross-Border Adopting Release, 79 FR 47319–322. *See also* Exchange Act rules 3a71–3(b), 3a71–4.

[92] *See* Exchange Act rule 3a71–3(a)(1); Cross-Border Adopting Release, 79 FR 47313.

[93] *See* Cross-Border Adopting Release, 79 FR 47316.

[94] *See* Cross-Border Proposing Release, 78 FR 30999–31001.

[95] *See, e.g.,* Cross-Border Adopting Release, 79 FR 47280.

[96] *See* proposed Exchange Act rule 3a71–3(b)(1)(iii)(C); proposed Exchange Act rule 3a71–5(c).

[97] *See* Registration Requirements for Foreign Broker-Dealers, Exchange Act Release No. 27017 (July 11, 1989), 54 FR 30013 (July 18, 1989).

[98] *See* Cross-Border Proposing Release, 78 FR 31000–01.

[99] *See* initially proposed 3a71–3(b)(1)(ii).

[100] *See* initially proposed Exchange Act rule 3a71–3(a)(5). *See also* Cross-Border Proposing

Continued

Thus, under this initially proposed definition, a non-U.S. person engaged in dealing activity would have been required to include in its *de minimis* calculation any transaction where either the dealer itself or its counterparty, or the agent of either the dealer or the counterparty, performed relevant security-based swap dealing activity within the United States.[101]

2. Commenters' Views on the Cross-Border Proposing Release

Our initially proposed definition of ''transaction conducted within the United States'' and our proposed use of that term to trigger various Title VII requirements generated a significant volume of comment addressing a wide range of issues. Although two commenters supported our proposal,[102] commenters generally criticized the proposed definition. These criticisms generally focused on four areas: the scope of activity potentially captured by the initially proposed defined term, the operational difficulties of implementing the defined term, the costs of implementation, and competitive concerns.

(a) Scope of the Initially Proposed Definition of ''Transaction Conducted Within the United States''

Several commenters took issue with the scope of the initially proposed defined term. Some commenters argued that the initially proposed definition was inappropriate in the context of Title VII because it would capture transactions between two non-U.S. persons that happened to involve conduct within the United States, even though such transactions are unlikely to create risk to the U.S. financial system.[103] Commenters also expressed concern that the initially proposed definition was overly broad because it would capture incidental or peripheral activity within the United States,[104] arguing that such overbreadth could lead to conflicting or duplicative application of regulations for certain market participants.[105]

(b) Operational Challenges

One commenter recognized the concerns that the initially proposed definition of ''transaction conducted within the United States'' was intended to address but expressed doubt as to whether funds would be able to monitor and confirm whether their dealing counterparties were engaging in dealing activity within the United States.[106] A number of commenters expressed concern that the defined term and its initially proposed application in the context of specific Title VII requirements, would present significant operational challenges for market participants more generally.[107] For

Release, 78 FR 30999–31000. To address anticipated operational challenges associated with determining whether a person's counterparty is engaging in dealing activity within the United States that would make the transaction a ''transaction conducted within the United States,'' we also proposed permitting reliance on a representation by a counterparty that the transaction was not solicited, negotiated, executed, or booked within the United States by or on behalf of that counterparty. *See id.* at 31001.

[101] As we noted in the Cross-Border Proposing Release, the term ''transaction conducted within the United States'' was intended to identify key aspects of a transaction that, if carried out within the United States by either counterparty, would trigger the need for a non-U.S. person acting in a dealing capacity to include transactions arising out of that activity in its *de minimis* calculation. *See id.* at 30999–31000. The initially proposed definition of ''transaction conducted within the United States'' did not include submitting a transaction for clearing in the United States, reporting a transaction to a security-based swap data repository in the United States, or performing collateral management activities (such as exchanging margin) within the United States. *See id.* at 31000.

[102] *See* note 26, *supra.*

[103] *See* SIFMA/FIA/FSR Letter at 4, A–3 (explaining that a transaction between two non-U.S. counterparties does not create risk in the United States, even where it is conducted within the United States); Letter from European Commission (''EC'') to SEC, dated August 21, 2013 (''EC Letter'') at 2 (suggesting that the Commission's rules should not apply to transactions when conduct within the United States involves two non-U.S. counterparties because no U.S. firms are at risk); Letter from European Securities and Markets Authority (''ESMA'') to SEC, dated August 21, 2013 (''ESMA Letter'') at 2 (requesting the Commission limit the definition of ''transaction conducted within the United States'' to transactions booked within the United States because that is the only activity that directly creates risk within the United States); Letter from Futures and Options Association (''FOA'') to SEC, dated August 21, 2013 (''FOA Letter'') at 7 (arguing that the test as initially proposed does not serve the goals of preserving the integrity of U.S. financial markets and protecting U.S. counterparties because it reaches transactions with minimal nexus to the United States).

Two of these commenters suggested that the initially proposed approach exceeded the Commission's authority under section 30(c) of the Exchange Act. *See* SIFMA/FIA/FSR Letter at 4 and A–4 to A–5 (suggesting that Exchange Act section 30(c) does not authorize the Commission to extend its authority through a conduct-based approach where no risk is imported to the United States); FOA Letter at 7 (stating that test goes beyond limits of Exchange Act section 30(c)). Another commenter stated that the initially proposed approach was inappropriate because it would have the effect of applying Title VII to transactions between two non-U.S. persons without having an international agreement regarding extraterritorial application of each jurisdiction's regulations. *See* Letter from Japan Securities Dealers Association (''JSDA'') to SEC, dated August 21, 2013 (''JSDA Letter'') at 3.

[104] *See* Letter from Managed Funds Assoc. and Alternative Investment Management Assoc. (''MFA/AIMA'') to SEC, dated August 19, 2013 (''MFA/AIMA Letter'') at 4 and n.18 (stating that the lack of a materiality threshold would inappropriately subject transactions to Commission regulation, including transactions negotiated during an employee's visit to the United States); SIFMA/FIA/FSR Letter at A–2 (explaining that ''transaction conducted within the United States'' may include incidental conduct, which includes, in this commenter's view, a decision by a non-U.S. counterparty to use a contact based in the United States to execute a transaction only because executing it in the non-U.S. counterparties' jurisdictions would be inconvenient or impossible due to the timing of the transaction); Letter from Pensions Europe to SEC, dated September 3, 2013 (''Pensions Europe Letter'') at 1 (stating that trades executed outside the United States by European pension fund managers should not be brought within Title VII only because the managers wish to ''benefit from the expertise and experience of U.S. operations''); Letter from Institute of International Bankers (''IIB'') to SEC, dated August 21, 2013 (''IIB Letter'') at 10 (noting that the initially proposed test could capture transactions where the U.S.-based conduct is only clerical or ministerial); Letter from Investment Adviser Association (''IAA'') to SEC, dated August 21, 2013 (''IAA Letter'') at 6–7 (stating that the initially proposed test may capture parties with minimal connection to the United States, such as a non-U.S. counterparty using a U.S. investment adviser to manage its assets); Letter from Investment Company Institute (''ICI'') to SEC, dated August 21, 2013 (''ICI Letter'') at 4, 8–9 (stating that exception from the definition should be broader for non-U.S. counterparties that use U.S.-based investment managers and that the retention of a U.S. asset manager should not cause transactions to be subject to various regulatory requirements because a non-U.S. entity would not expect to be subject to U.S. regulation based on its retention of a U.S. asset manager); Letter from Japan Financial Markets Council (''JFMC'') to SEC, dated August 15, 2013 (''JFMC Letter'') at 5 (stating that the transactions could be captured by the definition solely because they are executed through a U.S. trading facility).

[105] *See* IIB Letter at 8–9 (explaining that, because European regulations would apply to transactions between two U.S. branches of European firms, the initially proposed approach would cause duplicative and conflicting regulation); IIB letter at 10 (stating that a conduct-based test would subject U.S. agents already registered with the Commission or exempted from registration under broker-dealer or investment adviser regulations to additional regulation). *See also* EC Letter at 2 (suggesting that the Commission's rules should not apply to transactions when the legal counterparty to a transaction conducted within the United States is a non-U.S. entity because such persons are subject to regulation in their home jurisdiction); ESMA Letter at 2–3 (noting that the initially proposed approach could subject a transaction between two non-U.S. persons that is solicited in the United States to the regulations of multiple jurisdictions); FOA Letter at 7 (requesting that the Commission defer to regulatory oversight of counterparties' home country regulators).

[106] *See* MFA/AIMA Letter at 4 (acknowledging the Commission's interest in preventing evasion of Title VII but expressing concern that private funds that are not U.S. persons may not be able to determine whether dealer counterparties have engaged in relevant conduct within the United States and may not be able to obtain relevant representations from such counterparties).

[107] *See, e.g.,* IIB Letter at 11 (stating that the initially proposed definition is ill suited to the global nature of the derivatives markets where activity may involve multiple physical locations); JFMC Letter at 4–5 (noting that the initially proposed definition is impracticable and would subject participants to duplicative and conflicting rules); JSDA Letter at 3 (expressing concern about the activity-based approach because of the operational confusion it may cause by subjecting market participants to the two separate approaches of the Commission and CFTC); ABA Letter at 3 (identifying ambiguities in the initially proposed definition, including whether negotiations over

example, one commenter noted that the approach would require market participants to make determinations on a trade-by-trade basis as to whether a transaction was ''conducted within the United States'' and would create inefficiencies and uncertainty in the market.[108] This commenter stated that the initially proposed approach was vague, and would be difficult to enforce and easy to manipulate.[109] One commenter specifically argued that operational difficulties in tracking the location of conduct on a trade-by-trade basis might be impossible to overcome.[110]

(c) Cost Concerns

Some commenters stated that applying Title VII to transactions merely because they involve conduct within the United States could not be justified from a cost-benefit perspective. Some contended that the CFTC had not taken such an approach and that divergence from the CFTC on the treatment of such conduct would impose a significant additional cost on market participants.[111] One commenter also noted that, whereas the ''U.S. person'' definition would typically be applied only at the beginning of a trading relationship, market participants would potentially be required to perform a trade-by-trade analysis to determine whether it involved conduct within the United States, which could significantly increase costs.[112]

(d) Competitive Concerns

Some commenters expressed concern that focusing on ''transactions conducted within the United States'' would put brokers and investment managers located in the United States at a competitive disadvantage to their foreign counterparts, on the grounds that foreign clients would avoid doing business with them to avoid having their transactions become subject to Commission regulations.[113] Another commenter, although critical of our initially proposed definition as excessively costly to implement, urged that any alternative to the conduct-based test described in the Cross-Border Proposal Release be designed to ensure that market participants from the United States were not put at a competitive disadvantage.[114]

(e) Other concerns

A few commenters, including some who expressed the concerns outlined above, sought clarification or made suggestions related to limiting the scope of the initially proposed defined term.[115] One commenter expressed support for the SEC's position in the proposal that the location where a transaction is cleared should not factor into determining whether a non-U.S. person qualifies as a security-based swap dealer.[116] Another commenter requested that, if the Commission adopts the ''transaction conducted within the United States'' test, market participants should be permitted to rely on their counterparties' representations as to whether the transaction was conducted within the United States.[117]

3. The CFTC Staff Advisory and responses to the CFTC Request for Comment

As already noted, in November 2013, subsequent to the close of the comment period for our Cross-Border Proposing Release, CFTC staff issued the CFTC Staff Advisory, which addressed activity by registered swap dealers occurring within the United States.[118] The CFTC Staff Advisory stated the CFTC staff's belief that the CFTC ''has a strong supervisory interest in swap dealing activities that occur within the United States, regardless of the status of the counterparties'' and that a non-U.S. swap dealer ''regularly using personnel or agents located in the U.S. to arrange, negotiate, or execute a swap with a non-U.S. person generally would be required to comply with'' the CFTC's transaction-level requirements.[119]

As noted above, on January 8, 2014, the CFTC published the CFTC Request for Comment on various aspects of the CFTC Staff Advisory, including whether the CFTC ''should adopt the Staff Advisory as Commission policy, in whole or in part.'' [120] In response to this request, the CFTC received approximately 20 comment letters addressing various aspects of the CFTC Staff Advisory, including its relationship to the CFTC Cross-Border Guidance and its general workability given current market practices. CFTC staff subsequently extended no-action relief related to the CFTC Staff Advisory until the earlier of September 30, 2015, or the effective date of any CFTC action in response to the CFTC Request for Comment.[121] We understand that the CFTC Staff Advisory and the related comment letters are currently under review by the CFTC. Although the CFTC Staff Advisory raises issues that are, to a certain degree, distinct from those raised by our initially proposed definition and use of ''transaction conducted within the United States,'' the comments received by the CFTC in response to the CFTC Request for Comment in many cases elaborate on issues that commenters raised in response to our Cross-Border Proposing Release. Given similarities between the approach set forth in the CFTC Staff Advisory and our proposed amendments identifying relevant conduct within the United States, in this section we provide our own brief

(identifying ambiguities in the initially proposed definition, including whether negotiations over ISDA documentation are relevant conduct for purposes of the transaction).

[108] *See* Letter from Americans for Financial Reform (''AFR'') to SEC, dated August 22, 2013 (''AFR Letter'') at 3, A–2 to A–3.

[109] *See* AFR Letter at 3.

[110] *See* IIB Letter at 8.

[111] *See* SIFMA/FIA/FSR Letter at 3, A–3, A–6 (arguing that the Commission should harmonize its approach to cross-border security-based swap activity to the approach reflected in the commenter's view of the CFTC Cross-Border Guidance); Pensions Europe Letter at 2 (preferring its view of the CFTC approach in the CFTC Cross-Border Guidance, which the commenter argues focuses on the location of principal headquarters); IIB Letter at 8 (stating that market participants would incur costs and burdens to modify their existing systems in order to comply with two different tests); JFMC Letter at 4–5 (urging that the Commission not adopt the defined term ''transaction conducted within the United States'' because the CFTC did not discuss such an approach in the CFTC Cross-Border Guidance).

[112] *See* IIB Letter at 8 (stating that a conduct-based test would be costly and disruptive).

[113] *See* IIB Letter at 8–9.

[114] *See* SIFMA/FIA/FSR Letter at A–6.

[115] *See* IIB Letter at 9–11 (requesting clarification as to what degree of solicitation, negotiation, or execution activity would trigger the initially proposed definition); ESMA Letter at 2–3 (inviting the Commission to clarify which transactions between a U.S. branch of a foreign firm would be considered ''conducted within the United States'' and arguing that location of booking alone should be considered); FOA Letter at 7 (suggesting that, if a transaction has more than a *de minimis* connection to the United States as a result of solicitation or negotiation in the United States, the Commission should focus its regulatory authority on the intermediary performing those activities); JSDA Letter at 3 (suggesting that the Commission limit the application of Title VII to those transactions booked by non-U.S. persons with U.S. persons and requesting that certain activity related to ''operational activities'' be excluded from the activity covered by the initially proposed definition); ABA Letter at 3–4 (supporting the initially proposed definition but suggesting clarification that it excludes a firm's centralized risk management and legal and compliance functions).

[116] *See* Letter from CME Group (''CME'') to SEC, dated August 21, 2013 (''CME Letter'') at 2 (citing Cross-Border Proposing Release, 78 FR 31000).

[117] *See* JSDA Letter at 4. Another commenter, however, expressed concern about being able to obtain, and being able to confirm the accuracy of, such representations. *See* MFA/AIMA Letter at 4.

[118] *See* CFTC Staff Advisory.

[119] *Id.* at 2.

[120] *See* CFTC Request for Comment, 79 FR 1347.

[121] *See* note 25, *supra.*

summary of relevant comments received by the CFTC.[122]

A few commenters supported the CFTC Staff Advisory. One commenter urged the CFTC to formally adopt the approach in the CFTC Staff Advisory, arguing that any weakening of it would permit ''nominally foreign entities'' to do business within the United States in compliance with foreign laws and regulations, or potentially subject to no legal requirements, rather than with U.S. law.[123] Another commenter stated that formal adoption of the CFTC Staff Advisory was unnecessary but urged the CFTC to leave it undisturbed, arguing that without the CFTC Staff Advisory, a U.S. person would effectively be able to enter into transactions with non-U.S. persons through its foreign affiliates while using U.S.-based trading operations, ''thereby evading and gutting the key components of financial reform.'' [124]

Most commenters, however, opposed the approach taken in the CFTC Staff Advisory. These commenters expressed several concerns that may also be relevant to our own proposal to impose certain Title VII requirements on security-based swap activity that is carried out from a U.S. location, including the following: (1) the scope of the activity that would trigger application of Title VII, (2) the workability and costs of complying with such a test and resulting effects on competition and comity, and (3) the CFTC's transaction-level requirements that should be triggered by such a test. We will discuss the first two sets of concerns here and the third in Section V below.

(a) Scope of the CFTC Staff Advisory

Several commenters argued that the scope and types of activity by non-U.S. swap dealers captured by the CFTC Staff Advisory were unclear. The CFTC Staff Advisory notes that ''persons regularly arranging, negotiating, or executing swaps for or on behalf of [a swap dealer] are performing core, front-office activities of that [swap dealer's] dealing business.'' [125] Accordingly, it expresses the CFTC staff's view that the CFTC's transaction-level requirements apply to transactions of registered non-U.S. swap dealers with non-U.S.-person counterparties when they ''arrange, negotiate, or execute'' those transactions ''using personnel or agents located in the U.S.'' [126] Commenters argued that ''arrange'' and ''negotiate'' were overly broad and could encompass activity that occurred only incidentally in the United States.[127] Some commenters also noted that the apparent scope of the CFTC Staff Advisory was overly broad because non-U.S.-person counterparties may not typically know where the dealer engages in relevant conduct with respect to a particular swap transaction.[128]

Some commenters encouraged the CFTC to address these concerns by providing ''detailed definitions'' of the relevant terms or to focus only on execution or other discrete activities related to the transaction.[129] Several commenters urged the CFTC to abandon the CFTC Staff Advisory's approach altogether, or, if not, to revise the CFTC Staff Advisory's approach to focus on activities involving direct communication with the counterparty to the swap.[130]

(b) Workability, Costs, and Competitive Effects of the CFTC's Activity-Based Approach

Some commenters expressed concern that the CFTC Staff Advisory reflected a significant departure from the approach that these commenters understood to be the focus of the CFTC Cross-Border Guidance.[131] These commenters argued that developing systems consistent with the CFTC Staff Advisory would cause them to incur significant additional

[122] As reflected in our discussion throughout this release, we have carefully considered both the CFTC Staff Advisory and the comments submitted in response to the CFTC's request for comment on the CFTC Staff Advisory in developing this proposal. Moreover, in connection with our statutory obligation to consult with the CFTC in connection with Title VII rulemaking, our staff have engaged in extensive discussion with CFTC staff regarding our proposed rules. We note, however, that our discussion of both the CFTC Staff Advisory and the comments received by the CFTC about it reflects our understanding of these documents. Accordingly, neither our discussions of these documents nor any preliminary views expressed herein should be interpreted as necessarily reflecting the views of any other agency or regulator, including the CFTC.

[123] *See* Letter from American for Financial Reform (''AFR'') to CFTC, dated March 10, 2014 (''AFR Letter to CFTC'') at 3–4. *See also* Letter from Institute for Agriculture and Trade Policy (''IATP'') to CFTC, dated March 10, 2014 (''IATP Letter to CFTC'') at 1–2.

[124] Letter from Better Markets to CFTC, dated March 10, 2014 (''Better Markets Letter to CFTC'') at 6.

[125] CFTC Staff Advisory at 2.

[126] *Id.*

[127] *See, e.g.,* Letter from Investment Adviser Association to CFTC, dated March 10, 2014 (''IAA Letter to CFTC'') at 5; Société Générale Letter to CFTC at 7–8 (arguing that key terms of CFTC Staff Advisory are ambiguous and do not reflect how swap business is carried out). Some commenters also raised concerns regarding ambiguity in the CFTC Staff Advisory's use of the term ''regularly.'' *See, e.g.,* Letter from Securities Industry and Financial Markets Association/Futures Industry Association/Financial Services Roundtable to CFTC, dated March 10, 2014 (''SIFMA/FIA/FSR Letter to CFTC'') at 16.

[128] *See, e.g.,* Letter from Société Générale to CFTC, dated March 10, 2014 (''Société Générale Letter to CFTC'') at 8 (stating that ''[m]ost clients have no control or knowledge over where their swap is structured or designed, where the salesperson responsible for a particular product is located, where the booking of their swap is entered into a trading system, or where their swap is hedged'').

[129] *See, e.g.,* Letter from European Commission to CFTC, received March 10, 2014 (''EC Letter to CFTC'') at 3. *See also* SIFMA/FIA/FSR Letter to CFTC at A–8 to A–9; IAA Letter to CFTC at 5 (urging CFTC to focus on where the swap was executed or cleared).

[130] *See* Letter from ISDA to CFTC, dated March 7, 2014 (''ISDA Letter to CFTC'') at 8 n.16 (arguing that, if the CFTC determines to adopt the CFTC Staff Advisory, it should limit triggering conduct solely to ''direct communications by SD personnel located in the United States with counterparties, which communications commit the SD to the execution of a particular swap transaction''); Letter from Barclays to CFTC, dated March 10, 2014 (''Barclays Letter to CFTC'') at 4 (arguing that ''only direct communication with counterparties by non-U.S. swap dealers to the execution of the transaction should trigger application of the pre-trade disclosure requirements'' and that ''the [CFTC] should explicitly exclude electronic or screen-based execution'' as such conduct ''does not involve direct interaction'' and the ''non-U.S. person counterparty will not know who is responding on behalf of the non-U.S. swap dealer, let alone the responder's location,'' meaning that ''the non-U.S. counterparty will not have a reasonable expectation that the transaction may be subject to protection under U.S. law''); SIFMA/FIA/FSR Letter to CFTC at A–11 to A–12 (arguing that, if the CFTC decides to adopt the approach in the CFTC Staff Advisory, it should capture only ''direct communications by personnel in the United States with counterparties that commit the SD to the execution of the transaction'' because, absent direct communication, the counterparty has no reason to expect that U.S. law will apply to the transaction). *See also* Société Générale Letter to CFTC at 8 (stating that, if the CFTC does adopt the CFTC Staff Advisory, the CFTC should focus only on salespersons based in the United States that deal directly with clients).

[131] *See* Société Générale Letter to CFTC at 2 (explaining that market participants have already developed systems to reflect the status-based approach); Letter from Institute of International Bankers to CFTC, dated March 10, 2014 (''IIB Letter to CFTC'') at 2–3 (noting among other things that market participants have built policies and systems to reflect their view of the CFTC's approach in the CFTC Cross-Border Guidance and that they believe the approach taken in the CFTC Staff Advisory is fundamentally different); ISDA Letter to CFTC at 5 (arguing that systems are not configured to identify personnel that are involved in a transaction but rather to be consistent with the CFTC Cross-Border Guidance, and that the CFTC Staff Advisory raises complex questions about, *e.g.,* portfolio margining); SIFMA/FIA/FSR Letter to CFTC at A–2 (stating that the CFTC's approach in the CFTC Cross-Border Guidance is already overbroad, and applying the CFTC Staff Advisory on top of the entity-based approach is ''particularly flawed,'' ''compound[ing] the excessive breadth and burden of the existing, entity-based regulatory structure by approaching swaps regulation from an entirely different direction, layering even more requirements and burdens onto market participants, and doing so in the absence of any discernible risk to U.S. markets'').

costs.[132] In particular, commenters stated their belief that developing systems consistent with the CFTC Staff Advisory would require a trade-by-trade analysis, which would be impracticable.[133] One commenter argued that these costs would not be justified by corresponding benefits because market participants likely would already be subject to similar requirements in their home jurisdiction.[134]

One commenter criticized the CFTC Staff Advisory's focus on whether a registered non-U.S. swap dealer is arranging, negotiating, or executing a swap using personnel or agents in the United States as providing insufficient guidance to market participants, arguing that these activities do not reflect current business practices among swap dealers.[135] For example, this commenter stated that some personnel of a dealer may design swaps and hedging solutions but lack authority to book the resulting swaps and have no interaction with clients; these same personnel may book swaps that other employees have sold or negotiated for risk mitigation purposes.[136] The commenter further noted that personnel involved in a particular swap may be located in multiple jurisdictions.[137]

Several commenters argued that the costs and impracticability of the approach taken in the CFTC Staff Advisory would have competitive effects, although they disagreed whether it would enhance or degrade competition. One commenter supported the CFTC Staff Advisory in its current form, noting that without it, U.S. firms would be at a competitive disadvantage compared to non-U.S. firms operating in the United States.[138] Other commenters argued that the CFTC Staff Advisory, if adopted, would have adverse competitive effects on certain end users.[139]

Some commenters also suggested that, if adopted by the CFTC, the approach taken in the CFTC Staff Advisory could present difficulties for, and impose costs on, non-U.S.-person counterparties of dealers, as such counterparties may not currently have systems in place for complying with certain CFTC requirements, particularly if they are imposed only because the swap dealer (and not the counterparty) happens to have carried out certain activities using personnel or agents located in the United States.[140] As a result, commenters argued non-U.S. swap dealers may no longer service non-U.S.-person counterparties from U.S. locations.[141]

Commenters suggested that pressure from non-U.S.-person counterparties that do not want their transactions to be subject to Title VII would lead at least some non-U.S.-person dealers to exit the United States.[142] Commenters suggested that the adoption of the CFTC Staff Advisory would likely interfere with the ability of certain swap dealers to cover U.S. market hours for foreign counterparties with U.S.-based personnel, increasing costs to counterparties and end users.[143]

4. Dealing Activity of Non-U.S. Persons in the United States

We have carefully considered the views of commenters, as discussed above, that dealing activity carried out in the United States by a non-U.S. person with a counterparty that is also a non-U.S. person lacks a significant nexus to the United States and does not raise any significant regulatory concerns in the United States because the ongoing obligations associated with such transactions do not reside in the United States.[144] However, as we discuss below, we continue to believe that such activity falls squarely within our territorial approach to the application of Title VII[145] and that it raises regulatory concerns of the type that Title VII addresses.

(a) Overview of Common Business Structures for Firms Engaged in Security-Based Swap Dealing Activity

As we noted in our Cross-Border Proposing Release, financial groups engaged in security-based swap dealing activity use a variety of business models and legal structures to carry out such activity with counterparties around the world. Most such financial groups operate in multiple jurisdictions, and they will typically have one or more dealer affiliates in one or more jurisdictions that book the security-based swap transactions related to their security-based swap dealing business. An affiliate that initially books a transaction may retain the risk associated with that transaction, or it may lay off that risk to another affiliate via a back-to-back transaction or an assignment of the security-based swap.[146] These decisions generally reflect the financial group's consideration of, among other things, how it may most efficiently manage the risks associated with its security-based swap positions.

[132] *See, e.g.,* Société Générale Letter to CFTC at 2.

[133] *See, e.g.,* Société Générale Letter to CFTC at 8; SIFMA/FIA/FSR Letter to CFTC at A–4 (explaining that the approach taken in the CFTC Staff Advisory is impracticable in the swap market, as it would require a trade-by-trade analysis that is not feasible and that requiring such trades to be fully isolated from the United States would interfere with the operations of these markets and market participants).

[134] *See* IIB Letter to CFTC at 3.

[135] *See* Société Générale Letter to CFTC at 8.

[136] *See id.*

[137] *See id.*

[138] *See* AFR Letter to CFTC at 3 (explaining that ''any weakening of [the] advisory would open the door to regular and significant levels of swaps activities being performed within the U.S. by nominally foreign entities under foreign rules, or in some cases no rules at all,'' whereas U.S. firms operating in the United States would be subject to different rules for the same transactions operating in the same market).

[139] *See* Letter from Coalition for Derivatives End-Users (''CDEU'') to CFTC, dated March 10, 2014 (''CDEU Letter to CFTC'') at 2 (arguing that the CFTC Staff Advisory would lead to competitive disadvantages for certain non-U.S. end-user affiliates that had relied on trading with non-U.S. swap dealers compared to other non-U.S. end users in the same markets that currently hedge with unregistered counterparties).

[140] *See, e.g.,* SIFMA/FIA/FSR Letter to CFTC at A–4 (explaining that certain non-U.S.-person counterparties may not have a clearing relationship with a futures commission merchant (''FCM''), and requiring them to clear through an FCM simply because the dealer happens to use personnel within the United States in the transaction will be costly).

[141] *See* ISDA Letter to CFTC at 4.

[142] *See, e.g.,* Société Générale Letter to CFTC at 8 (stating that, if the CFTC adopts the CFTC Staff Advisory, or even an alternative suggested by the commenter, swap dealers ''will move personnel currently based in the United States offshore'').

[143] *See, e.g.,* Letter from Paul Hunter for the Japan Financial Markets Council to CFTC, dated March 4, 2014 (''JFMC Letter to CFTC'') at 1–2 (explaining that the approach in the CFTC Staff Advisory ''unfairly precludes options open to Asia-based Swap Dealers to cover U.S. market hours and service their non-U.S. based clients by using U.S.-based personnel or agents''); CDEU Letter to CFTC at 2–3 (arguing that the CFTC Staff Advisory's approach would ''force non-U.S. [swap dealers] that use personnel or agents to 'arrange, negotiate, or execute' swaps to exit certain markets or move personnel outside the U.S. in order to remain competitive in non-U.S. markets[,]'' and that the costs associated with such movements would ''undoubtedly be passed on to derivatives end-users and ultimately to customers . . . [which] would result in a loss of liquidity that will leave non-U.S. end-user affiliates scrambling to find counterparties to hedge their risks''). *See also* SIFMA/FIA/FSR Letter to CFTC at A–6 (explaining that the desire of counterparties to swap dealers to keep their transactions out of the reach of Dodd-Frank will lead them to pressure non-U.S.-person dealers and foreign branches to move personnel out of the United States); IAA Letter to CFTC at 3 (explaining that non-U.S.-person dealers may incur expenses associated with moving personnel out of the United States or hiring personnel in other jurisdictions, which may potentially lead to increased transaction costs and reduced services for advisers' non-U.S. clients, and that these higher costs may drive non-U.S. clients away from U.S. investment advisers).

[144] *See* note 103, *supra* (identifying comment letters arguing that such transactions pose no risk to the United States or that the Commission lacks a regulatory interest in such transactions).

[145] *See* Cross-Border Proposing Release, 78 FR 30986; Cross-Border Adopting Release, 79 FR 47290.

[146] *See* Cross-Border Proposing Release, 78 FR 30977–978.

The structure of the group's market-facing activities that generate the transactions booked in these affiliates often reflects different considerations. A dealing affiliate established in one jurisdiction may operate offices (which may serve sales or trading functions) in one or more other jurisdictions to deal with counterparties in that jurisdiction or in a specific geographic region, or to ensure that it is able to provide liquidity to counterparties in other jurisdictions, even when a counterparty's home financial markets are closed. A dealer also may choose to manage its trading book in particular reference entities or securities primarily from a trading desk that can take advantage of local expertise in such products or to gain access to better liquidity, which may permit it to more efficiently price such products or to otherwise compete more effectively in the security-based swap market. We understand that a financial group that engages in a dealing business may have business lines that are carried out in a number of affiliates located in different jurisdictions, and that personnel of an affiliate may operate under the direction of, or in some cases, report to personnel of another affiliate within the group; in some cases, such personnel work on behalf of, or under the supervision of, more than one affiliate in the group.

Moreover, a dealer may carry out these market-facing activities, whether in its home jurisdiction or in a foreign jurisdiction, using either its own personnel or the personnel of an affiliated or unaffiliated agent. For example, the dealer may determine that another affiliate in the financial group employs personnel who possess expertise in relevant products or that have established sales relationships with key counterparties in a foreign jurisdiction, making it more efficient to use the personnel of the affiliate to engage in security-based swap dealing activity on its behalf in that jurisdiction.

Alternatively, the dealer may in some circumstances determine to engage the services of an unaffiliated agent through which it can engage in dealing activity. For example, a dealer may determine that using an inter-dealer broker may provide an efficient means of participating in the inter-dealer market in its own, or in another, jurisdiction, particularly if it is seeking to do so anonymously or to take a position in products that trade relatively infrequently.[147] Dealers may also use unaffiliated agents that operate at the direction or request of the dealer to engage in dealing activity. Such arrangement may be particularly valuable in enabling the dealer to service clients or access liquidity in jurisdictions in which the dealer or its affiliates have no security-based swap operations of their own.

We understand that dealers established in foreign jurisdictions (whether affiliated with U.S.-based financial groups or not) may use any of these structures to engage in dealing activity in the United States, and that they may seek to engage in dealing activity in the United States to transact with both U.S. and non-U.S.-person counterparties. In transactions with non-U.S.-person counterparties, a foreign dealer may affirmatively seek to engage in dealing activity in the United States because the sales personnel of the foreign dealer (or of its agent) in the United States have existing relationships with counterparties in other locations (such as Canada or Latin America) or because the trading personnel of the foreign dealer (or of its agent) in the United States have the expertise to manage the trading books for security-based swaps on U.S. reference securities or entities. And we understand that some foreign dealers engage in dealing activity in the United States through their personnel (or personnel of their affiliates) in part to ensure that they are able to provide their own counterparties, or those of financial group affiliates in other jurisdictions, with access to liquidity (often in non-U.S. reference entities) during U.S. business hours, permitting them to meet client demand even when the home markets are closed. In some cases, such as when seeking to transact with other dealers through an inter-dealer broker, a foreign dealer may act, in a dealing capacity, in the United States through an unaffiliated, third-party agent.

(b) Statutory Scope and Policy Concerns Arising From Security-Based Swap Dealing Activity in the United States

As discussed above, some commenters have suggested that the Title VII statutory framework does not extend to transactions between two non-U.S. persons, even if security-based swap activity occurs in the United States, and have argued that section 30(c) of the Exchange Act limits our authority to reach this conduct.[148] We continue to believe, however, that it is consistent with the Exchange Act to impose specific Title VII requirements on non-U.S. persons that engage in activity within the United States that is regulated by the relevant statutory provision.[149]

In the Cross-Border Adopting release, we described how this approach applies in the specific context of the definition of ''security-based swap dealer.'' We rejected the view that ''the location of risk alone should . . . determine the scope of an appropriate territorial application of every Title VII requirement,'' including the application of the ''security-based swap dealer'' definition.[150] In doing so, we noted that ''neither the statutory definition of 'security-based swap dealer,' our subsequent further definition of the term pursuant to section 712(d) of the Dodd-Frank Act, nor the regulatory requirements applicable to security-based swap dealers focus solely on risk to the U.S. financial system.'' [151]

Instead, the statute identifies specific activities that bring a person within the definition of ''security-based swap dealer'': (1) Holding oneself out as a dealer in security-based swaps, (2) making a market in security-based swaps; (3) regularly entering into security-based swaps with counterparties as an ordinary course of business for one's own account; or (4) engaging in any activity causing oneself to be commonly known in the trade as a dealer in security-based swaps.[152] We have further interpreted this definition to apply to persons engaged in indicia of dealing activity, including, among other things, providing liquidity to market professionals, providing advice in connection with security-based swaps, having regular clientele and actively soliciting clients, and using inter-dealer brokers.[153] Neither the statutory definition of ''security-based

[147] We understand that inter-dealer brokers may provide voice or electronic trading services that, among other things, permit dealers to take positions or hedge risks in a manner that preserves their anonymity until the trade is executed. These inter-dealer brokers also may play a particularly important role in facilitating transactions in less-liquid security-based swaps.

[148] *See* note 103, *supra.*

[149] *See* Cross-Border Adopting Release, 79 FR 47287. As we noted in the Cross-Border Adopting Release, when the statutory text does not describe the relevant activity with specificity or provides for further Commission interpretation of statutory terms or requirements, our territorial analysis may require us to identify through interpretation of the statutory text the specific activity that is relevant under the statute or to incorporate prior interpretations of the relevant statutory text. *See id.*

[150] *Id.* at 47287–88.

[151] *Id.* at 47288. We have also noted that security-based swap dealer regulation may be warranted either to promote market stability and transparency in light of the role that these dealers occupy in the security-based swap market or to address concerns raised by the nature of the interactions between such dealers and their counterparties. *See* Intermediary Definitions Adopting Release, 77 FR 30617.

[152] *See* Exchange Act section 3(a)(71)(A), 15 U.S.C. 78c(a)(71)(A).

[153] *See* Intermediary Definitions Adopting Release, 77 FR 30617–18.

swap dealer'' nor our further definition of that term turns primarily on the presence of risk or on the purchase or sale of any security, including a security-based swap.[154]

Accordingly, the fact that the counterparty credit risk from a transaction between two non-U.S. persons, where neither counterparty has a right of recourse against a U.S. person under the security-based swap, exists largely outside the United States is not determinative under our territorial analysis. The appropriate analysis, in our view, is whether a non-U.S. person in such a transaction is engaged, in the United States, in any of the activities set forth in the statutory definition or in our further definition of ''security-based swap dealer.'' If it is so engaged, in our view, it is appropriate under a territorial approach to require the non-U.S. person to include such transaction in its security-based swap dealer *de minimis* threshold calculations and, if those security-based swaps (and any other security-based swaps it is required to include in its threshold calculations) exceed the *de minimis* threshold, to register as a security-based swap dealer.[155]

This analysis applies regardless of whether the non-U.S. person engages in dealing activity (as described in the statutory definition and in our further definition of ''security-based swap dealers'') in the United States using its own personnel or using the personnel of an agent acting on its behalf. As described above, persons engaged in security-based swap dealing activity routinely do so both directly and through their agents. Indeed, our further definition of ''security-based swap dealer'' specifically identifies the use of inter-dealer brokers as one of several indicia of security-based swap dealing activity,[156] and, in our preliminary view, engaging an inter-dealer broker as agent or sending a trade to such a broker generally would be dealing activity; to the extent that this activity is directed to a broker in the United States, we preliminarily believe that the non-U.S. person would be engaged in dealing activity in the United States.[157] Accordingly, a non-U.S. person that reaches into the United States by engaging an agent (including an inter-dealer broker) to perform dealing activity on its behalf is itself engaged, at least in part, in dealing activity in the United States. We preliminarily believe that it is appropriate under a territorial approach to require the non-U.S. person to include transactions arising out of those activities in its own *de minimis* threshold calculations.

Finally, in light of the foregoing analysis, we note that the statutory prohibition on application of Title VII requirements to persons that ''transact[] a business in security-based swaps without the jurisdiction of the United States'' has no bearing on these proposed rules.[158] Our proposed approach, as described in further detail below, would require transactions to be included in a non-U.S. person's dealer *de minimis* threshold calculations only when, in connection with its dealing activity, it arranges, negotiates, or executes a security-based swap using its personnel (or personnel of its agent) located in the United States.[159] Because we are focusing in this proposal solely on transactions in which the non-U.S. person is engaged, directly or indirectly, in dealing activity in the United States, the proposed rules would not impose requirements on non-U.S. persons that are ''transacting a business in security-based swaps without the jurisdiction of the United States'' for purposes of section 30(c).[160] Accordingly, because such activities occur within the United States, they, and any resulting transaction, are within the scope of Title VII.

Moreover, we preliminarily believe that requiring these transactions to be included in a non-U.S. person's dealer *de minimis* threshold calculations (and subjecting them to certain other Title VII requirements, as discussed below) is consistent with the regulatory objectives furthered by the relevant Title VII requirements. Under the rules we adopted in the Cross-Border Adopting Release, financial groups may seek to avoid application of Title VII requirements to their security-based swap dealing activity with non-U.S. persons (including with other dealers), even though they continue to carry out day-to-day sales and trading operations in the United States in a manner largely unchanged from what we understand to be current business practices.[161] For market participants, avoiding Title VII in such transactions in the absence of these proposed rules would require them only to book any such transactions in non-U.S. person dealers whose obligations under such swaps are not guaranteed by a U.S. person. Doing so would allow them to perform any other activities in connection with the transaction in the United States without complying with Title VII requirements.

[154] *See* Exchange Act section 3(a)(71)(A), 15 U.S.C. 78c(a)(71)(A); Intermediary Definitions Adopting Release, 77 FR 30617–18.

[155] *See* Cross-Border Adopting Release, 79 FR 47286–92 (describing the Commission's territorial approach). We note that another commenter argued that it was inappropriate to use activity in the United States to trigger application of Title VII absent an international agreement between regulators. *See* note 103, *supra.* As discussed above, we have continued to consult and coordinate with other regulators in the United States and abroad in connection with financial market reforms, *see* note 12 and accompanying discussion, but we do not believe that an international agreement is relevant as a legal or policy matter in determining whether to impose Title VII requirements on security-based swap activity, particularly given that we are proposing to do so with respect to activity that is being carried out in the United States.

[156] *See* Intermediary Definitions Adopting Release, 77 FR 30617–18 (further defining ''security-based swap dealer'').

[157] More generally, we note that the routine use by dealers of the structures described in this discussion suggest that a person may engage in dealing activity through an agent in a manner very similar to such activity carried out through its own branch or office. *Cf.* Exchange Act section 3(a)(71)(A) (defining ''security-based swap dealer''); Intermediary Definitions Adopting Release, 77 FR 30617–18 (further defining ''security-based swap dealer'').

[158] *See* Exchange Act section 30(c).

[159] *See* Exchange Act rule 3a71–3(a)(1).

[160] As noted above, we do not believe that our proposed approach applies Title VII to persons that are ''transact[ing] a business in security-based swaps without the jurisdiction of the United States,'' within the meaning of section 30(c) of the Exchange Act. An approach that, for example, treated a non-U.S. person dealer that used an agent, whether affiliated or unaffiliated, in the United States to carry out some or all of its dealing business with non-U.S. persons (for example, because using a U.S. agent allowed it to leverage higher liquidity and lower spreads in U.S. reference entities) as transacting a business in security-based swaps without the jurisdiction of the United States, would, in our view, reflect an understanding of what it means to conduct a security-based swaps business within the jurisdiction of the United States that is divorced both from Title VII's statutory objectives and from the various structures that non-U.S. persons use to engage in security-based swap dealing activity. But in any event we also preliminarily believe that this proposed rule is necessary or appropriate as a prophylactic measure to help prevent the evasion of the provisions of the Exchange Act that were added by the Dodd-Frank Act, and thus would help prevent the relevant purposes of the Dodd-Frank Act from being undermined. *See* Cross-Border Adopting Release, 79 FR 47291–92 (interpreting anti-evasion provisions of Exchange Act section 30(c)). Without this rule, non-U.S. persons could simply carry on a dealing business within the United States with other non-U.S. persons through agents and remain outside of the application of the dealer requirements of Title VII. Permitting this activity would allow these firms to retain full access to the benefits of operating in the United States while avoiding compliance with, for example, recordkeeping and reporting requirements and Regulation SBSR, which could reduce transparency in the U.S. market and make it considerably more difficult for the Commission to monitor the market for manipulation or other abusive practices.

[161] We understand that there may be significant advantages in continuing to carry out certain market-facing activities using personnel located in the United States, depending on the location of the counterparty and the nature of the reference security or entity. For example, market expertise in security-based swaps on U.S. reference entities may be located primarily in the United States, and relationships with counterparties in certain geographical regions may be managed out of a U.S. branch or office. *See* Section III.B.4(a), *supra.*

Such a reaction could result in a significant amount of security-based swap dealing activity continuing to be engaged in by personnel located in a U.S. branch or office,[162] but, because the financial group chooses to book the transactions in a non-U.S.-person affiliate whose obligations under a security-based swap are not guaranteed by a U.S. person, certain Title VII requirements may not apply to such dealing activity. A dealer could continue to transact security-based swaps with other dealers (and with non-U.S. persons that are not dealers) through a U.S. sales and trading desk that is staffed by its own personnel or the personnel of its agent, continuing to engage in market-facing activity in the United States without complying with any Title VII requirements.

Although such transactions may not give rise to counterparty-credit risk within the United States, they do raise other regulatory concerns, particularly when a firm is engaged in such activity at levels above the dealer *de minimis* thresholds. We note that significant levels of security-based swap dealing activity occurring within the United States without being subject to dealer regulation or Regulation SBSR may pose a risk to the integrity of the U.S. financial market, as the absence of regulation—and of access, for example, to the security-based swap dealer's books and records—may make it significantly more difficult for the Commission to monitor the market for abusive and manipulative practices connected with security-based swap activity in the United States. As we have noted elsewhere, Title VII recordkeeping requirements will likely be the Commission's primary tool in monitoring compliance with applicable securities laws, including the antifraud provisions of these laws.[163] To the extent that we do not have access to reports of such transactions available through registered SDRs or to the books and records of non-U.S.-person dealers using personnel located in a U.S. branch or office, manipulative or abusive trading practices within the United States are more likely to go undetected, which may undermine the integrity of the security-based swap market in the United States, and of the U.S. financial market more generally.[164] For example, a dealer using personnel located in a U.S. branch or office may employ a trader who engages in trading practices in connection with security-based swap transactions that render the dealing activity in the United States abusive or manipulative, but we may not be able to readily identify the abusive or manipulative nature of that dealing activity without access to the dealer's books and records.[165] Detecting misconduct may be particularly challenging if a significant proportion of transactions in the relevant security-based swaps are carried out in the United States by traders employed by unregistered dealers.

Moreover, these dealers could continue to trade—using U.S. sales and trading desks, and potentially the same sales and trading desks used by their registered security-based swap dealer affiliates—in the inter-dealer market in a manner that may be opaque to regulators and non-dealers alike. This risk, in our preliminary view, is particularly high given that, as we have noted, inter-dealer activity accounts for a significant proportion of all security-based swap activity. This activity, to the extent it is carried out by personnel located in the United States, should be subject to relevant regulatory requirements. Subjecting such transactions to Regulation SBSR and potentially requiring firms engaged in such activity to register as security-based swap dealers should bring additional transparency to what is likely to be a significant proportion of the security-based swap activity that occurs in the United States and provide market participants more confidence in the integrity of the market.

In light of these concerns, we preliminarily believe that it is appropriate to propose rules that would impose certain Title VII requirements on dealers using personnel located in the United States to engage in security-based swap dealing activity.

5. Proposed Amendments Regarding Application of the Dealer *de minimis* Exception to Non-U.S. Persons Using Personnel Located in a U.S. Branch or Office to Arrange, Negotiate, or Execute Security-Based Swap Transactions

We have carefully considered the proposed application of the dealer *de minimis* exception to ''transactions conducted within the United States'' in light of comments received on the proposal, subsequent regulatory and other developments in the security-based swap market, and the policy concerns described in the preceding section. As a result, we are proposing an amendment to Exchange Act rule 3a71–3 that should address the regulatory concerns raised by dealing activity carried out using personnel located in the United States while mitigating many of the concerns expressed by commenters. Under this modified approach, we focus on market-facing activity by personnel located in the United States that reflects, in our view, a dealer's determination to engage in dealing activity in the United States in a manner that warrants, if the dealer exceeds the security-based swap dealer *de minimis* thresholds, application of Title VII security-based swap dealer regulation.

Unlike the initial proposal, which included the defined term ''transaction conducted within the United States,'' the proposed amendment would not include a separate defined term identifying such activity. Rather, we propose to amend Exchange Act rule 3a71–3(b)(1)(iii) to require a non-U.S. person engaged in security-based swap dealing activity to include in its *de minimis* calculations any transactions connected with its security-based swap dealing activity that it arranges, negotiates, or executes using its personnel located in a U.S. branch or office, or using personnel of its agent

[162] This dealing activity likely would constitute inter-dealer activity, which, as noted above, accounts for a majority of activity in the security-based swap market. *See* Section II.B.2, *supra*. To the extent that there are advantages to trading U.S. reference entities from a U.S. location, activity by personnel located in the United States may account for a significant proportion of the inter-dealer business on those reference entities.

[163] *See* Requirements for Security-Based Swap Dealers, Major Security-Based Swap Participants, and Broker-Dealers; Capital Rule for Certain SBSDs; Proposed Rules, Exchange Act Release No. 71958 (April 17, 2014), 79 FR 25194, 25199 (May 2, 2014) (citing Commission Guidance to Broker-Dealers on the Use of Electronic Storage Media under the Electronic Signatures in Global and National Commerce Act of 2000 with Respect to Rule 17a–4(f), Exchange Act Release No. 44238 (May 1, 2001), 66 FR 22916 (May 7, 2001); Books and Records Requirements for Brokers and Dealers Under the Securities Exchange Act of 1934, Exchange Act Release No. 44992 (October 26, 2001), 66 FR 55818 (November 2, 2001)).

[164] These concerns may arise whether the dealer is using its own personnel or personnel of an affiliated or unaffiliated agent. For example, a security-based swap dealer may provide its agent's personnel located in a U.S. branch or office with false or misleading information concerning the transaction, which the agent's personnel then may deliver to the counterparty.

[165] A registered security-based swap dealer that is engaged in abusive or manipulative conduct with respect to a series of transactions may lay off risk from a transaction with a U.S. person counterparty to a foreign unregistered dealer via an affiliated foreign unregistered dealer, using personnel located in a U.S. branch or office. This conduct may not be apparent from the U.S. counterparty-facing leg or the inter-affiliate leg. Thus, even if the affiliated or unaffiliated agent has independent obligations arising from its role in the transaction, these obligations may not address potential abusive or manipulative practices in the transactions. Moreover, detecting such misconduct on the part of the affiliated foreign unregistered dealer, as discussed above, may be difficult absent access to regulatory reports of the relevant transactions and to the books and records of such dealer.

located in a U.S. branch or office.[166] To the extent that a non-U.S. person, in connection with its dealing activity, engages in market-facing activity using personnel located in the United States, we preliminarily believe that it is reasonable to conclude that the person is performing activities that fall within the statutory definition of ''security-based swap dealer'' or our further definition of that term, as described above, at least in part in the United States.[167]

This proposed amendment reflects our reconsideration of the issues raised by security-based swap dealing activity involving two non-U.S. persons in which one or both parties, or the agents of one or both parties, using personnel located in the United States, engage in some dealing activity.[168] We preliminarily believe that requiring non-U.S. persons to include such transactions in their *de minimis* threshold calculations will help to ensure that all persons that engage in significant relevant dealing activity, including activity engaged in by personnel located in a U.S. branch or office, are required to register as security-based swap dealers and to comply with relevant Title VII requirements applicable to security-based swap dealers.[169]

At the same time, this proposed approach is intended to avoid unnecessary costs and complexity that may make it difficult for market participants to comply with such requirements. We recognize commenters' concerns that our initially proposed approach to ''transactions conducted within the United States'' potentially could have imposed significant costs on, and presented compliance challenges to, market participants. As some commenters noted, the initially proposed definition of ''transaction conducted within the United States'' was sufficiently broad that it might have encompassed conduct within the United States by either counterparty to the transaction that could be characterized as ''incidental.'' [170] In addition, market participants may have incurred costs associated with monitoring the location of relevant personnel acting on behalf of their counterparty and/or obtaining relevant representations from their counterparty on a transaction-by-transaction basis, potentially increasing compliance costs significantly.[171] We preliminarily believe that our proposed approach of focusing solely on whether the non-U.S. person engaged in dealing activity is using personnel located in the United States to arrange, negotiate, or execute the security-based swap would address these concerns in a more workable manner. Consistent with this focus on the location of activity carried out by the personnel of the dealer or of its agent, the non-U.S. person engaged in dealing activity would not be required to consider the location of its *counterparty's* operations (or that of the counterparty's agent) in determining whether the transaction should be included in its own *de minimis* calculation.

In the following subsections, we describe key elements of the proposed amendment to Exchange Act rule 3a71–3(b)(1)(iii), and address comments of particular relevance with respect to each element.

(a) ''Arranging, Negotiating, or Executing'' a Security-Based Swap Transaction

Proposed rule 3a71–3(b)(1)(iii)(C) would apply only to transactions connected with a non-U.S. person's security-based swap dealing activity that its personnel (or the personnel of an agent) located in the United States *arrange, negotiate, or execute.* The proposed approach, accordingly, would reach a narrower range of activity than did the initially proposed rules that included the term ''transaction conducted within the United States,'' which would have included any transaction solicited, negotiated, executed, or booked, by either party, within the United States.[172]

Consistent with our explanation for initially proposing the term ''transaction conducted within the United States,'' we intend, for purposes of the proposed rule, ''arrange'' and ''negotiate'' to indicate market-facing activity of sales or trading personnel in connection with a particular transaction, including interactions with counterparties or their agents.[173] Also for purposes of the

[166] *See* proposed Exchange Act rule 3a71–3(b)(1)(iii)(C). Because, as a threshold matter, a person would be required to include in its *de minimis* calculations only security-based swaps that are arranged, negotiated, or executed in connection with its *dealing activity,* a non-U.S. person would not be required to include in this calculation transactions solely on the basis that they were submitted for clearing in the United States or because activities related to collateral management of the transaction, such as the exchange of margin, occurred within the United States. *See* Cross-Border Proposing Release, 78 FR 31000.

[167] Non-U.S. persons engaged in security-based swap dealing activity may include persons whose counterparties have legal recourse against a U.S. person arising out of the security-based swap transactions of the non-U.S. person or persons that are conduit affiliates. As noted above, our Cross-Border Adopting Release finalized rules providing that a non-U.S. person must include in its dealer *de minimis* calculation transactions arising out of its dealing activity with counterparties that are U.S. persons, or such transactions with non-U.S. persons if it is a conduit affiliate or if its counterparty has a right of recourse against a U.S. person under the security-based swap, even if it is not engaging in dealing activity using personnel located in the United States to arrange, negotiate, or execute the transaction. *See* Exchange Act rules 3a71–3(a)(1), (b)(1)(ii), and (b)(1)(iii)(B). Nothing in the proposed amendment to Exchange Act rule 3a71–3 should be construed to affect any person's obligations created by any of these previously adopted rules.

[168] As noted above, some commenters argued that transactions between two non-U.S. persons do not create risk within the United States and should therefore not be subject to Title VII. *See* note 103, *supra.* As we have discussed above, however, even if such transactions do not raise counterparty credit risk in the United States, such transactions raise concerns about the integrity and transparency of the U.S. financial market. *See* discussion in Section III.B.4, *supra* (citing and responding to comment letters making this argument).

[169] We note that some commenters urged us to abandon an activity-based approach entirely because, in their view, the CFTC had not adopted such an approach and, diverging from the CFTC by imposing such an approach on security-based swap transactions would result in significant additional costs for market participants. *See* note 111, *supra.* As noted above, however, although the CFTC has not finalized its view on such an approach, the CFTC Staff Advisory provided the CFTC staff view that non-U.S. swap dealers should comply with certain requirements with respect to swap transactions arranged, negotiated, or executed in the United States. *See* note 21, *supra,* and accompanying discussion. Although the CFTC Staff Advisory does not appear to address inclusion of swaps arranged, negotiated, or executed in the United States in the dealer *de minimis* calculations of non-U.S. persons, the test set forth in proposed Exchange Act rule 3a71–3(b)(1)(iii)(C) is similar to the approach suggested by the CFTC Staff Advisory for determining the applicability of certain transaction-level requirements. *See* Section III.B.3, *supra.*

[170] *See* note 104, *supra* (citing comments expressing concern that the initially proposed definition of ''transaction conducted within the United States'' would capture incidental conduct within the United States).

[171] *See* notes 108–110, *supra.*

[172] As noted above, the initially proposed rule would have required non-U.S. persons to include in their *de minimis* calculation any ''transaction conducted within the United States'' related to their dealing activity. *See* Cross-Border Proposing Release, 78 FR 30999–00.

[173] *See* Cross-Border Proposing Release, 78 FR 31000 (noting that ''dealing activity is normally carried out through interactions with counterparties or potential counterparties that include solicitation, negotiation, execution, or booking of a security-based swap'').

Consistent with the approach taken to the final definition of ''transaction conducted through a foreign branch'' adopted in the Cross-Border Adopting Release, the proposed amendment includes ''arrange'' instead of ''solicit'' in recognition of the fact that a dealer, by virtue of being commonly known in the trade as a dealer, may respond to requests by counterparties to enter into dealing transactions, in addition to actively seeking out such counterparties. *See* Cross-Border Adopting Release, 79 FR 47322 n.381; 15 U.S.C. 78c(a)(71)(A)(iv). Similarly, the proposed amendment omits reference to where a transaction is booked because, in determining whether dealing activity involving two non-U.S.-person counterparties occurs within the United States, we preliminarily believe it is appropriate to focus on

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proposed rule, we intend ''execute'' to refer to the market-facing act that, in connection with a particular transaction, causes the person to become irrevocably bound under the security-based swap under applicable law. ''Arranging,'' ''negotiating,'' and ''executing'' also include directing other personnel to arrange, negotiate, or execute a particular security-based swap.[174]

We recognize that several commenters expressed concern about the terms used in our proposed definition of ''transaction conducted within the United States'' [175] and criticized the use of the terms ''arrange, negotiate, or execute'' in the CFTC Staff Advisory,[176] objecting to those terms both as ambiguous and as not reflective of how swap dealing activity is actually carried out by market participants, and therefore as unworkable on a trade-by-trade basis.[177] In response, we clarify that under this proposed amendment, we do not intend market participants to look beyond those personnel who are involved in, or directing, market-facing activity in connection with a particular security-based swap. This should enable market participants to identify the location of relevant activity more efficiently than a test that would require market participants to categorize personnel according to their functions. The proposed amendment would require such market participants to focus on whether sales or trading personnel located in the United States engage in this market-facing activity in connection with a particular transaction, *not* on where these or other personnel perform internal functions (such as the processing of trades or other back-office activities) in connection with that transaction.[178]

Accordingly, the involvement of personnel located in a U.S. branch or office in a transaction, where such personnel do not engage in market-facing activities with respect to a specific transaction (such as a person who designs the security-based swap but does not communicate with the counterparty regarding the contract in connection with a specific transaction and does not execute trades in the contract) would not fall within the scope of the proposed amendment.[179] Accordingly, preparing underlying documentation for the transaction, including negotiation of a master agreement and related documentation, or performing ministerial or clerical tasks in connection with the transaction as opposed to negotiating with the counterparty the specific economic terms of a particular security-based swap transaction, also would not be encompassed by the proposed approach. We preliminarily believe that activities in the United States that do not involve the arrangement or negotiation of the economic terms of a specific transaction are unlikely to raise the types of concerns addressed by the Title VII requirements that we are proposing to apply to such transactions.[180]

Consistent with customary Commission practice, we expect that Commission staff will monitor the practices of market participants as they develop under any final rules that we adopt and, if necessary and appropriate, make recommendations to address such developments.

We preliminarily believe that our proposed amendment should considerably mitigate concerns raised by commenters regarding the scope and workability of an activity-based test for application of Title VII requirements.[181] Because the proposed amendment requires a non-U.S. person to include a security-based swap in its *de minimis* calculation based solely on where it (and not its counterparty) arranges, negotiates, or executes the security-based swap, a non-U.S. person that is acting in a dealing capacity in a particular transaction would need to identify the location of its personnel (or that of its agent's personnel) involved in market-facing activity with respect to the transaction, but not the location of its counterparty.[182]

Some commenters urged that an activity-based test, if implemented, should look only to where the relevant transaction was executed, or where the dealer's personnel committed the dealer to the trade.[183] Although we recognize that focusing solely on where a security-based swap was executed (and not where it was arranged or negotiated) may meaningfully reduce certain costs associated with the proposed

the location of the market-facing activity of personnel arranging, negotiating, or executing the security-based swap on behalf of a non-U.S. person in connection with its security-based swap dealing activity, as it is the market-facing activity that raises the types of concerns described above. *Cf.* note 115, *supra.* If the transaction is booked in a U.S. person, of course, that U.S. person is a counterparty to the security-based swap and is required to include the security-based swap in its own *de minimis* calculation if the transaction is in connection with its dealing activity. *See* Exchange Act rule 3a71–3(b)(1)(i).

[174] In other words, sales and trading personnel of a non-U.S. person who are located in the United States cannot simply direct other personnel in carrying out dealing activity that those personnel would otherwise carry out were those personnel not attempting to avoid application of this rule.

[175] *See* note 115, *supra.*

[176] *See, e.g.,* notes 127 and 129, *supra.*

[177] *See* notes 127 and 129, *supra. See also* notes 107, 112, and 135, *supra.*

[178] One commenter urged the CFTC to exclude from Title VII requirements any transaction executed electronically. *See* note 130, *supra* (citing Barclays Letter to CFTC). However, we do not think that such an exclusion would be appropriate under our proposed approach given its focus on, among other things, the location of personnel executing the transaction on behalf of the non-U.S. person. To the extent that a non-U.S. person is using personnel located in the United States to execute a security-based swap transaction, that transaction raises regulatory concerns that, at sufficient volumes, warrant regulation under Title VII. In particular, we note that electronic execution does not eliminate concerns about abusive or manipulative conduct. *See also* Section III.C, *infra* (discussing proposal to make exception for cleared anonymous transactions unavailable for security-based swaps arranged, negotiated, or executed by personnel located in the United States).

[179] *See* note 104, *supra* (citing IIB Letter arguing that ministerial or clerical activity in the United States should not trigger application of Title VII). On the other hand, to the extent that personnel located in a U.S. branch or office engages in market-facing activity normally associated with sales and trading, the location of that personnel would be relevant, even if the personnel are not formally designated as sales persons or traders.

[180] Similarly, a transaction would not be captured under the proposed amendment merely because a U.S.-based attorney is involved in negotiations regarding the terms of the transaction.

We also are not proposing to include either submitting a transaction for clearing in the United States or reporting a transaction to an SDR in the United States as activity that would cause a transaction to be arranged, negotiated, or executed by personnel located in the United States under the proposed rule, nor are we proposing to treat activities related to collateral management (*e.g.,* exchange of margin payments) that may occur in the United States or involve U.S. banks or custodians as activity conducted within the United States for these purposes. We recognize that submission of a transaction for clearing to a CCP located in the United States poses risk to the U.S. financial system, and collateral management plays a vital role in an entity's financial responsibility program and risk management. However, we preliminarily believe that none of these activities, by themselves, would raise the types of concerns associated with dealing activity. *See* Cross-Border Proposing Release, 78 FR 31000. *Cf.* note 116, *supra* (citing comment letter urging that application of Title VII not be triggered by the location at which a transaction is cleared).

[181] *See, e.g.,* notes 108–110 and 115, *supra.*

[182] One commenter supported the initially proposed term ''transaction conducted within the United States'' in part because the commenter believed that it would help capture offshore funds with a ''U.S. nexus,'' given that it would have encompassed all security-based swap trading activity carried out by investment managers within the United States. *See* note 26, *supra* (citing Citadel Letter). Under the narrower scope of activity captured in our proposed amendment, such activity of a person not engaged in dealing activity would not require the transaction to be included in the *de minimis* threshold calculation of its dealer counterparty. We note, however, that our rule defining ''principal place of business in the United States'' as applied to externally managed investment vehicles should help ensure that those funds whose security-based swap activities may pose risks to U.S. financial institutions, even when transacting with non-U.S. dealers, are treated as U.S. persons. *See* Exchange Act rule 3a71–3(a)(4)(ii); Cross-Border Adopting Release, 79 FR 47310.

[183] *See* notes 129–130, *supra.*

amendment, we preliminarily believe that looking solely to the location of execution could permit non-U.S. persons engaged in security-based swap dealing activity using personnel located in a U.S. branch or office to avoid falling within the definition of ''security-based swap dealer'' simply by ensuring that execution is performed by personnel located outside the United States, even if the non-U.S. person uses personnel located in a U.S. branch or office to perform all other key aspects of its dealing activity. We also note that the ''security-based swap dealer'' definition encompasses a number of activities, including holding oneself out as a dealer or market-making,[184] which suggests that it is appropriate to focus on the location of a wider range of market-facing activity.

(b) ''Located in a U.S. Branch or Office''

Proposed rule 3a71–3(b)(1)(iii)(C) would apply only to transactions connected with a non-U.S. person's security-based swap dealing activity that are arranged, negotiated, or executed by personnel *located in a U.S. branch or office.*[185] This element of the proposed amendment should mitigate the likelihood, noted by several commenters,[186] that a non-U.S.-person dealer would be required to include in its *de minimis* calculations transactions that involve activity by personnel of the non-U.S. person or personnel of its agent who are not assigned to a U.S. branch or office, but instead are only incidentally present in the United States when they arrange, negotiate, or execute the transaction. The proposed amendment generally would not require a non-U.S. person to consider activity of personnel who are not located in a U.S. branch or office, such as participation in negotiations of the terms of a security-based swap by an employee of the dealer assigned to a foreign office who happens to be traveling within the United States.[187] We preliminarily believe that this type of activity is incidental and therefore not likely to raise the concerns that the proposed approach is intended to address to the same degree as dealing activity carried out by personnel who are located in a U.S. branch or office.[188]

The proposed amendment would, however, not exclude security-based swap transactions that the non-U.S. person, in connection with its dealing activity, arranges, negotiates, or executes, using personnel located in a U.S. branch or office to respond to inquiries from a non-U.S.-person counterparty outside business hours in the counterparty's jurisdiction. We preliminarily believe that a non-U.S. person that uses sales or trading personnel located in a U.S. branch or office to engage in market-facing activity in connection with its dealing activity is likely to raise Title VII concerns, regardless of either counterparty's motivations for entering into the transaction.[189] Accordingly, we preliminarily do not believe that it would be appropriate to exclude from the *de minimis* calculation transactions arising from such activity by personnel located in a U.S. branch or office because their assignment to a U.S. branch or office suggests that the presence of such personnel in the United States is not ''incidental.''

We preliminarily believe that this element of the proposed amendment also should mitigate the burdens associated with determining whether a particular transaction needs to be included in a non-U.S. person's *de minimis* calculation.[190] We acknowledge that the proposed amendment potentially would lead a market participant to perform a trade-by-trade analysis to determine the location of relevant personnel performing market-facing activity in connection with the transaction. However, because the proposed amendment encompasses a person's dealing activity only when its personnel or personnel of its agent located in a U.S. branch or office have arranged, negotiated, or executed the transaction, a non-U.S. person performing this analysis should be able to identify for purposes of ongoing compliance the specific sales and trading personnel whose involvement in market-facing activity would require a transaction to be included in its *de minimis* calculation.[191] Alternatively, such non-U.S. person may establish policies and procedures that would facilitate compliance with this proposed amendment by requiring transactions connected with its dealing activity to be arranged, negotiated, and executed by personnel located outside the United States.[192]

(c) ''Personnel of Such Non-U.S. Person'' or ''Personnel of an Agent''

Proposed rule 3a71–3(b)(1)(iii)(C) would apply to transactions connected with a non-U.S. person's security-based swap dealing activity that are arranged, negotiated, or executed by personnel located in a U.S. branch or office, *whether the non-U.S. person arranges, negotiates, or executes the transaction directly using its own personnel* located in a U.S. branch or office, *or does so using personnel of an agent of such non-U.S. person,* located in a U.S. branch or office.

As noted above, a non-U.S. person engaged in security-based swap dealing activity with other non-U.S. persons, if it wishes to avail itself of the expertise of sales, trading, and other personnel located in the United States, may carry out that activity using its own personnel located in a U.S. branch or office, or using the personnel of its agent, located in a U.S. branch or office.[193] We

[184] *See* Exchange Act section 3(a)(71)(A)(ii); Intermediary Definitions Adopting Release, 77 FR 30617–18.

[185] As noted above, however, if personnel located in a non-U.S. branch or office are arranging, negotiating, or executing a particular security-based swap at the specific direction (*i.e.,* engaging in dealing activity of the U.S. person that the U.S. person would carry out itself were it not attempting to avoid Title VII) of personnel located in a U.S. branch or office, we would view that transaction as having been arranged, negotiated, or executed by the personnel located in the United States. *See* note 174 and accompanying text, *supra.*

[186] *See* note 104, *supra* (citing comments expressing concern that the initially proposed definition of ''transaction conducted within the United States'' would capture incidental conduct within the United States).

[187] Because proposed Exchange Act rule 3a71–3(b)(1)(iii)(C) applies only to the security-based swap dealing activity, it does not limit, alter, or address any guidance regarding our views or interpretation of any similar provisions of the federal securities laws, including those applicable to brokers or dealers under the Exchange Act, or investment advisers under the Investment Advisers Act of 1940, Commission rules, regulations, interpretations, or guidance.

[188] *See* Section III.B.4, *supra.*

[189] One commenter described these transactions as being carried out on an ''exception basis.'' *See* IIB Letter to CFTC at 12. *See also* note 143, *supra.* Other commenters urged us not to use ''incidental'' activity in the United States to trigger application of Title VII or suggested that we establish a materiality threshold. *See* note 104, *supra* (citing MFA/AIMA Letter and SIFMA/FIA/FSR Letter).

[190] *See* notes 108–110, and 133–134, *supra.*

[191] We preliminarily believe that persons engaged in dealing activity may already identify personnel involved in market-facing activity with respect to specific transactions in connection with regulatory compliance policies and procedures and to facilitate compensation.

[192] In addition, we note that some market participants engaged in both swap dealing and security-based swap dealing activity may perform a similar analysis consistent with CFTC Staff Advisory, which clarifies the CFTC staff's view that Title VII requirements apply to transactions arranged, negotiated, or executed in the United States by, or on behalf of, swap dealers. *See* notes 21 and 169, *supra,* and accompanying discussion.

[193] For purposes of proposed rule 3a71–3(b)(1)(iii)(C), we would interpret the term ''personnel'' in a manner consistent with the definition of ''associated person of a security-based swap dealer'' contained in section 3(a)(70) of the Exchange Act, 15 U.S.C. 78c(a)(70), regardless of whether such non-U.S. person or such non-U.S. person's agent is itself a security-based swap dealer. This definition is, in turn, substantially similar to the definition of ''associated person of a broker or dealer'' in section 3(a)(18) of the Exchange Act, 15 U.S.C. 78c(a)(18). The definition in section 3(a)(18) is intended to encompass a broad range of

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preliminarily believe that dealing activity carried out within the United States by a non-U.S. person is likely to raise the concerns that the proposed approach is intended to address,[194] whether that dealing activity is carried out by the non-U.S. person's personnel located in a U.S. branch or office or on its behalf by the personnel of its agent, located in a U.S. branch or office.[195] Accordingly, we are proposing to require non-U.S. persons to include in their *de minimis* calculations any transactions in connection with their security-based swap dealing activity that are arranged, negotiated, or executed by personnel of such persons located in a U.S. branch or office, or by personnel of its agent located in a U.S. branch or office.[196]

We considered the view of at least one commenter that our existing broker-dealer regime would be sufficient to address any concerns raised by personnel of its agent in the United States acting on behalf of a non-U.S. person engaged in security-based swap dealing activity.[197] Because the Exchange Act defines security-based swaps as securities, an agent acting on behalf of a non-U.S. person that is engaged in security-based swap dealing activity generally would be required to register as a broker and, with respect to the transactions that it intermediates, could be required to comply with relevant Exchange Act requirements with respect to those transactions.[198] The commenter suggested that direct regulation of this agent would address ''most of the . . . objectives to be served by [security-based swap dealer] registration, as well as the external business conduct standards.'' [199]

After careful consideration of this alternative approach, we have preliminarily concluded that broker-dealer regulation would not, on its own, adequately address the concerns raised by agents located in the United States acting on behalf of non-U.S. persons to facilitate the security-based swap dealing activity of such non-U.S. persons. Given the range of regulatory concerns such activity raises,[200] we preliminarily believe that, irrespective of any other regulatory framework that may apply to the agent, the non-U.S. person engaged in security-based swap dealing activity through the agent, if it exceeds the *de minimis* threshold, should also be subject to security-based swap dealer regulation.[201]

First, as that commenter acknowledged, an agent using personnel located in a U.S. branch or office would not be required to register as a broker-dealer if it could avail itself of certain exceptions under the Exchange Act and the rules or regulations thereunder.[202]

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relationships that can be used by firms to engage in and effect securities transactions, and is not dependent solely on whether a natural person is technically an ''employee'' of the entity in question. *See* Alexander C. Dill, *Broker-Dealer Regulation Under the Securities Exchange Act of 1934: The Case of Independent Contracting,* 1994 Colum. Bus. L. Rev. 189, 211–213 (1994) (noting that the Securities Act Amendments of 1964, which amended section 3(a)(18) of the Exchange Act, ''rationalized and refined the concept of 'control' by firms over their sales force by introducing the concept of an 'associated person' of a broker-dealer.''). Accordingly, we would expect to examine whether a particular entity is able to control or supervise the actions of an individual when determining whether such person is considered to be ''personnel'' of a U.S. branch, office, or agent of a security-based swap dealer. This is particularly relevant in the context of a financial group that engages in a security-based swap dealing business, where personnel of one affiliate may operate under the direction of, or in some cases, report to personnel of another affiliate within the group. *See also* Prohibitions and Restrictions on Proprietary Trading and Certain Interests in, and Relationships with, Hedge Funds and Private Equity Funds, BHCA–1 (Dec. 10, 2013), 59 FR 5535, 5591 (Jan. 31, 2014) (explaining, in the context of adopting certain provisions of what is commonly referred to as the Volcker Rule, that the relevant ''trading desk'' of a banking entity ''may manage a financial exposure that includes positions in different affiliated legal entities'' and similarly ''may include employees working on behalf of multiple affiliated legal entities or booking trades in multiple affiliated entities'') (internal citations omitted).

[194] *See* Section III.B.4, *supra.*

[195] We preliminarily believe that it is appropriate for the proposed amendment to take into account where personnel of the non-U.S. person's agent are arranging, negotiating, or executing the transaction on behalf of the non-U.S. person, regardless of whether the agent is affiliated with the non-U.S. person, as security-based swap dealing activity carried out through an unaffiliated agent may raise the same concerns as such activity carried out through an affiliated agent. *See* note 164, *supra.*

[196] Two commenters raised concerns that our initially proposed rule could put U.S. brokers and investment managers at a competitive disadvantage by subjecting all security-based swap transactions in which they are involved, including those in which they are performing services on behalf of non-U.S. persons, to the relevant provisions of Title VII under the initially proposed definition of ''transaction conducted within the United States.'' *See* note 113, supra (citing IIB Letter and SIFMA/FIA/FSR Letter); note 104, *supra* (citing Pensions Europe Letter, IAA Letter, and ICI Letter). The re-proposed approach should mitigate this concern on the part of investment managers, as proposed Exchange Act rule 3a71–3(b)(1)(iii)(C) would look only to the location of the dealing counterparty's activity, meaning that the location of the investment adviser will be immaterial to its dealing counterparty's *de minimis* calculation under the proposed amendment. This approach would also address concerns expressed by one commenter that private funds may have difficulty identifying whether their dealer counterparties are engaged in dealing activity in the United States. *See* note 106, *supra.*

However, under the proposed approach a non-U.S. person that uses a broker as its agent to arrange, negotiate, or execute security-based swap transactions in connection with that non-U.S. person's dealing activity would be required to include those transactions in its own *de minimis* calculations. We recognize that this approach may make certain brokers less able to compete for the business of non-U.S.-person dealers that would otherwise not be arranging, negotiating, or executing transactions using personnel located in a U.S. branch or office, but given the regulatory concerns such transactions may raise, we think it is appropriate to require such transactions to be included in the non-U.S. person's *de minimis* threshold calculations. *See* Section III.B.4, *supra.*

[197] *See* IIB Letter at 10.

[198] Title VII of the Dodd-Frank Act amended the Exchange Act definition of ''security'' to encompass security-based swaps. *See* Exchange Act section 3(a)(10), 15 U.S.C. 78c(a)(10), as revised by section 761(a)(2) of the Dodd-Frank Act. *See also* Exchange Act section 3(a)(4) (defining ''broker''). We previously granted temporary exemptive relief from compliance with certain provisions of the Exchange Act in connection with this revision of the statutory requirements in order generally to maintain the *status quo* during the implementation process for the Dodd-Frank Act. *See* Order Granting Temporary Exemptions under the Securities Exchange Act of 1934 in Connection with the Pending Revisions of the Definition of ''Security'' to Encompass Security-Based Swaps, Exchange Act Release No. 64795 (Jul. 1, 2011), 76 FR 39927 (Jul. 7, 2011) (''Exchange Act Exemptive Order''). Among other things, this relief granted temporary exemptions specific to security-based swap activities by registered brokers and dealers. *See id.* at 39–44. In February 2014, we extended the expiration dates (1) for exemptions that are generally not directly related to specific security-based swap rulemakings until the earlier of such time that we issue an order or rule determining whether any continuing exemptive relief is appropriate for security-based swap activities with respect to any of the Exchange Act provisions or until three years following the effective date of that order; and (2) for exemptions that are directly related to specific security-based swap rulemakings, until the compliance date for the relevant security-based swap rulemaking. *See* Order Extending Temporary Exemptions under the Securities Exchange Act of 1934 in Connection with the Revision of the Definition of ''Security'' to Encompass Security-Based Swaps, and Request for Comment, Exchange Act Release No. 71485 (February 5, 2014), 79 FR 7731 (February 10, 2014).

[199] IIB Letter at 10.

[200] *See* Section III.B.4, *supra.*

[201] Consistent with our views expressed in prior releases, if a financial group used one entity to perform the sales and trading functions of its dealing business and another to book the resulting transactions, we would ''view the booking entity, and not the intermediary that acts as an agent on behalf of the booking entity to originate the transaction, as the dealing entity.'' Cross-Border Proposing Release, 78 FR 30976. *See also* Intermediary Definitions Adopting Release, 77 FR 30617 n.264 (''A sales force, however, is not a prerequisite to a person being a security-based swap dealer. For example, a person that engages in dealing activity can fall within the dealer definition even if it uses an affiliated entity to market and/or negotiate those security-based swaps connected with its dealing activity (*e.g.,* the person is a booking entity).''). To the extent that the activities performed by the first person involve arrangement, negotiation, or execution of security-based swaps as agent for the booking entity engaged in dealing activity, our proposed amendment would treat the booking entity's transmission of an order and instructions to the agent as part of the dealing activity of the booking entity itself. As already noted, a person engaged in these activities on behalf of the security-based swap dealer may itself be subject to regulation as a broker under the Exchange Act. *See* note 198, *supra.*

[202] *See* note 105, *supra* (citing IIB Letter). For example, Exchange Act section 3(a)(4)(B) excepts banks from the definition of ''broker'' with respect to certain activity.

Given these exceptions, reliance on the broker-dealer regime to address the regulatory concerns raised by security-based swap dealing activity that a non-U.S. person carries out in the United States through an agent could result in significant non-U.S. person security-based swap dealing activity being carried out using an agent that, because, for example, it is a bank, is not in fact subject to the broker-dealer regulatory framework. We preliminarily believe that this result would not be appropriate, particularly given that, in Title VII, Congress established a new, separate regulatory framework for security-based swap dealers that was designed specifically to encompass the security-based swap dealing activities of banks.[203]

Second, even absent the bank exception to the definition of ''broker,'' we are not persuaded that broker-dealer regulation of the agent operating in the United States would address the concerns raised by this security-based swap dealing activity. For example, although regulation of the agent acting as a broker would provide the Commission with access to the books and records of the *agent* relating to a particular transaction, it would not provide us access to the relevant books and records of the *non-U.S.-person dealer* on whose behalf the agent is acting, which likely would reduce our ability to monitor that non-U.S. person engaging in the dealing activity for compliance with the securities laws, including with the anti-fraud provisions of those laws.[204]

As noted above, access to books and records is the primary tool for oversight of the financial entity and for conducting market surveillance. But the broker's books and records are likely to be insufficient for this purpose, given that foreign dealers may allocate different duties in connection with a particular security-based swap to their own personnel and other functions to their agents, both in and outside the United States. The records of the agents would not be sufficient to document other market-facing activity of the foreign dealer that is not carried out through the agent, but that may be relevant to identifying activity in the United States both within the security-based swap market as well as in markets for related underlying assets, such as corporate bonds, that, in light of the other security-based swap activity of the foreign dealer, may be abusive or manipulative. We would have access to these books and records necessary to identify fraudulent or abusive conduct on the part of the foreign dealer only if the foreign dealer is required to register as a security-based swap dealer. In addition, identifying certain manipulative or abusive market practices may require information about security-based swap transactions of the non-U.S.-person dealer that are not arranged, negotiated, or executed in the United States. To effectively monitor for fraud and manipulation in a market where a significant proportion of transactions are likely to be carried out by (and between) dealers using these types of business structures, we preliminarily believe that the non-U.S.-person dealers that are the counterparties to these transactions should be required to include these transactions in their *de minimis* calculations. To the extent that they exceed the relevant thresholds, these dealers would be subject to security-based swap dealer regulation, which would enable the Commission to obtain access to the dealer's books and records.

6. Other Commenter Concerns and Alternatives

(a) Potential Duplication and Comity Concerns

Some commenters expressed concern that an activity-based approach to the *de minimis* exception and other Title VII requirements could lead to regulatory conflicts and overlaps,[205] or that it does not adequately take into account the actions and interests of other regulators.[206] As we noted above, Commission staff has participated in numerous bilateral and multilateral discussions with foreign regulatory authorities addressing the regulation of OTC derivatives, and, through these discussions, we have gathered information about foreign regulatory reform efforts and their impact on and relationship with the U.S. regulatory regime.[207]

We recognize that some non-U.S. persons that may be required to register as security-based swap dealers as a result of proposed Exchange Act rule 3a71–3(b)(1)(iii)(C) may already be subject to regulation similar to our security-based swap dealer regulatory framework in other jurisdictions. At the same time, we preliminarily believe that it is appropriate to regulate dealing activity that occurs within the United States, including by subjecting to security-based swap dealer registration non-U.S. persons that exceed the relevant *de minimis* threshold by virtue of security-based swap dealing activity involving the arrangement, negotiation, or execution of security-based swaps on behalf of such person by personnel located in a U.S. branch or office.[208] We previously have proposed to provide the opportunity for substituted compliance with respect to certain security-based swap dealer requirements as set forth in our Cross-Border Proposing Release.[209] We received comments on this proposal, which we continue to consider, and we continue preliminarily to believe that the appropriate means of addressing potential overlap or duplication is through substituted compliance rather than by forgoing regulation entirely.[210]

(b) Reliance on Representations

At least one commenter specifically requested that we retain the provision in the proposal permitting reliance on a representation concerning whether a counterparty was engaging in activity within the United States.[211] The proposed amendment does not incorporate such a provision, as the more limited scope of the re-proposed rule appears to make it unnecessary in this context. The proposed rule would focus solely on the conduct of a non-U.S. person acting in a dealing capacity, and only that person is required to account for such activity in its *de*

[203] *See* Exchange Act section 15F. Notably, the definition of ''security-based swap dealer,'' unlike the definitions of ''broker'' and ''dealer'' under the Exchange Act, does not include any exceptions for banks or banking activities. *See* Exchange Act section 3(a)(71) (defining ''security-based swap dealer'').

[204] *See* Section III.B.4, *supra.*

[205] *See* note 105, *supra.*

[206] *See* note 295, *infra.*

[207] *See* Section I.B, *supra.*

[208] As noted above, one commenter specifically argued that the initially proposed approach would subject U.S. branches of EU banks to duplicative regulations because EU regulations also apply to the transactions of such branches. *See* note 105, *supra.* We do not believe the possibility that a person may be subject to similar regulation by a foreign regulatory authority can be determinative of the scope of our regulatory framework, given the specific authority Congress provided us to regulate, among other things, security-based swap dealing activity in the United States and given the potential for differences in regulatory interests and in supervisory and enforcement priorities among different regulatory jurisdictions. We also note that EU regulations similarly apply to transactions between two EU branches of U.S. banks. *See* Commission Delegated Regulation supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 with regard to regulatory technical standards on direct, substantial and foreseeable effect of contracts within the Union and to prevent the evasion of rules and obligations, Article 2(1).

[209] *See* Cross-Border Proposing Release, 78 FR 31088–90 (discussing proposed substituted compliance framework for security-based swap dealers); *id.* at 31024–25 (same).

[210] *See* Cross-Border Proposing Release, 78 FR 31088–90 (describing proposed substituted compliance framework for foreign security-based swap dealers); initially proposed Exchange Act rule 3a71–5 (providing for substituted compliance with respect to security-based swap dealer requirements).

[211] *See* note 117, *supra.*

minimis calculations. Accordingly, whether one counterparty's dealing activity occurs within or outside the United States has no legal effect on the obligations of the other counterparty under the proposed rule, and the location of the other counterparty has no effect on whether the transaction falls within the scope of the proposed rule.[212]

7. Request for Comment

We request comment on all aspects of the discussion and analysis above, including the following:

• Is our understanding of the global nature of the security-based swap market accurate? If not, why not?

• Is our understanding of the dealing structures used by U.S. and non-U.S. persons accurate? If not, why not? Are there other dealing structures used by market participants?

• Is our understanding of the use of affiliated or unaffiliated persons, such as registered broker-dealers in the United States (including inter-dealer brokers) accurate? If not, why not?

• Should a non-U.S. person that engages in dealing activity with other non-U.S. persons be required to consider, for purposes of counting a transaction towards its *de minimis* calculation, the location of its counterparty's dealing activity in addition to the location of its own or its agent's dealing activity? Would the proposed amendment requiring such a non-U.S. person to consider only the location of its own dealing activity appropriately mitigate commenters' concerns while also ensuring that a non-U.S. person that engages in significant levels of dealing activity using personnel located in the United States would be subject to regulation as a security-based swap dealer?

• Does proposed rule 3a71–3(b)(1)(iii)(C), which would apply only to transactions connected with a non-U.S. person's security-based swap dealing activity that it (or its agent) arranges, negotiates, or executes using personnel located in a U.S. branch or office, appropriately focus on activity that is likely to raise the types of concern addressed by Title VII? Is it appropriate to generally focus on market-facing activities? Is the scope of activities too narrow or too broad? Why? Will the approach be workable for market participants? Why or why not?

• Is the use of the terms ''arrange,'' ''negotiate,'' and ''execute'' in the release and rule text sufficiently clear? How could the terms be further clarified if necessary?

• Is the focus on market-facing activities of the sales and trading desks appropriate in identifying transactions between two non-U.S. persons that should be subject to Title VII requirements?

• Does the change to proposed rule 3a71–3(b)(1)(iii)(C) that would require transactions to be included in a person's *de minimis* calculation only if personnel arranging, negotiating, or executing the security-based swap are ''located in a U.S. branch or office'' address the type of activity within the United States that is likely to raise concerns under Title VII? Is the approach too narrow or too broad? Why?

• Should the proposed amendment incorporate an exception from security-based swap dealer regulation for a non-U.S. person that arranges, negotiates, or executes transactions using personnel of its agent located in a U.S. branch or office to the extent that the agent is a registered broker-dealer? If so, how should this dealing activity be regulated? Specifically, to the extent that security-based swap brokering activity is carried out by personnel of the non-U.S. person engaged in dealing activity who are located in a U.S. branch or office, how should we address it? To the extent that security-based swap brokering activity is carried out by a bank, how should we regulate it? How would we obtain access to the books and records for transactions outside the United States of an unregistered dealer also doing business in the United States through a broker to monitor for market manipulation or other abusive practices?

• Do you agree with proposed rule 3a71–3(b)(1)(iii)(C), which requires a non-U.S. person to include in its *de minimis* calculation, transactions that it arranges, negotiates, or executes using personnel of an affiliated agent of such non-U.S. person located in a U.S. branch or office?

• Do you agree with proposed rule 3a71–3(b)(1)(iii)(C), which requires a non-U.S. person to include in its *de minimis* calculation, transactions that it arranges, negotiates, or executes using personnel of an unaffiliated agent of such non-U.S. person located in a U.S. branch or office?

• What types of controls would be necessary to ensure that a non-U.S. person engaged in dealing activity counts transactions that it is required to include in its dealer *de minimis* calculations under proposed rule 3a71–3(b)(1)(iii)(C)? How would this work as an operational matter?

• Is this proposed approach to applying Title VII to transactions connected with a non-U.S. person's security-based swap dealing activity that it (or its agent) arranges, negotiates, or executed using personnel located in a U.S. office workable in light of the approach set forth in the CFTC Staff Advisory? Why or why not?

C. Availability of the Exception for Cleared Anonymous Transactions

1. Proposed Rule

Under Exchange Act rule 3a71–5, a non-U.S. person, other than a conduit affiliate, is not required to include in its *de minimis* calculation ''transactions that are entered into anonymously on an execution facility or national securities exchange and are cleared through a clearing agency.'' [213] As we noted in the Cross-Border Adopting Release, this rule is intended to avoid putting market participants in a position where they are required to determine the treatment of the transaction under the *de minimis* exception in circumstances where the information necessary to that determination (*e.g.,* the U.S.-person status of the counterparty) is unavailable to them.[214] We also noted that, absent such an exception, execution facilities outside the United States might determine to exclude U.S. market participants to prevent a non-U.S. market participant from potentially being required to register as a security-based swap dealer based on information unavailable to the non-U.S. market participant at the time of the transaction.[215]

We are proposing to amend rule 3a71–5 by adding new paragraph (c) to make this exception unavailable to transactions that non-U.S. persons would be required to count under proposed Exchange Act rule 3a71–3(b)(1)(iii)(C). We preliminarily believe that excepting such transactions would be inconsistent with the purposes underlying the requirement that a non-U.S. person include transactions arranged, negotiated, or executed by personnel located in a U.S. branch or office in connection with its dealing activity in its *de minimis* calculations. To the extent that a non-U.S. person is, in connection with its dealing activity, arranging, negotiating, or executing security-based swap transactions using personnel located in a U.S. branch or

[212] Also for this reason, the re-proposed approach addresses comments regarding potential difficulties private funds may have in obtaining such representations from their dealer counterparties. *See id.* (citing MFA/AIMA Letter). *See also* note 106, *supra.*

[213] Exchange Act rule 3a71–5.

[214] *See* Cross-Border Adopting Release, 79 FR 47325 n.412.

[215] *See* Cross-Border Adopting Release, 79 FR 47325.

office, it raises the concerns described above,[216] regardless of whether such transactions are entered into over-the-counter or on an SB SEF or national securities exchange. Requiring a non-U.S. person to include these transactions in its dealer *de minimis* calculations does not appear to raise the concerns that led us to adopt Exchange Act rule 3a71–5, given that proposed Exchange Act rule 3a71–3(b)(1)(iii)(C) requires the non-U.S. person to look only to the location of its own security-based swap dealing activity in determining whether it is required to count the trade against its *de minimis* threshold. Finally, as with disparities in the application of Title VII to transactions arranged, negotiated, or executed in the United States more generally,[217] we note that, if a non-U.S. person could avail itself of this exception even when arranging, negotiating, or executing a transaction in connection with its dealing activity using personnel located in a U.S. branch or office, it could have a significant competitive advantage over U.S. persons, even with respect to transactions that are executed on an SB SEF or national securities exchange and cleared on a clearing agency located in the United States.

2. Request for Comment

We request comment on all aspects of the proposed amendment regarding availability of the exception for cleared, anonymous transactions with respect to identifying security-based swap transactions that do not need to be included in the *de minimis* threshold calculations of non-U.S. persons, including the following:

• With respect to transactions that a non-U.S. person would be required to count under proposed rule 3a71–3(b)(1)(iii)(C), should there be an exception from counting such transactions if they are entered into anonymously on an SB SEF or national securities exchange and are cleared through a clearing agency? Why or why not?

• Do security-based swap transactions entered into anonymously on an SB SEF or national securities exchange and cleared through a clearing agency mitigate the risk of fraud or market abuse or other concerns with respect to transactions between two non-U.S. persons that are arranged, negotiated, or executed by personnel located in a U.S. branch or office? Why or why not?

IV. Application of the External Business Conduct Requirements to the Foreign Business and U.S. Business of Registered Security-Based Swap Dealers

A. Overview

In the Cross-Border Proposing Release, we proposed an approach to the application of the security-based swap dealer requirements set forth in section 15F of the Exchange Act that would classify each of these requirements either as entity-level requirements, which apply to the dealing entity as a whole, or as transaction-level requirements, which apply to specific transactions. In this taxonomy, entity-level requirements include requirements relating to capital and margin, risk management procedures, recordkeeping and reporting, supervision, and designation of a chief compliance officer.[218] Transaction-level requirements include, among others, requirements relating to external business conduct and segregation, which are intended primarily to protect counterparties by requiring registered security-based swap dealers to, among other things, provide certain disclosures to counterparties, adhere to certain standards of business conduct, and segregate customer funds, securities, and other assets.[219]

We proposed generally to apply all requirements in section 15F of the Exchange Act, and the rules and regulations thereunder, to both registered U.S. and foreign security-based swap dealers.[220] We also proposed to establish a policy and procedural framework under which we would consider permitting substituted compliance for registered foreign security-based swap dealers under certain circumstances (but not for registered U.S. security-based swap dealers).[221] We proposed, however, to except the foreign business of registered security-based swap dealers from the external business conduct requirements.[222]

We are re-proposing this exception, which, as originally proposed, incorporated the term ''transaction conducted within the United States,'' to reflect the re-proposed approach to identifying relevant security-based swap activity of registered foreign security-based swap dealers that they carry out using personnel located in the United States. We continue to believe that the foreign business of registered security-based swap dealers should be excepted from the external business conduct requirements of Title VII. We also preliminarily believe that it is desirable that the types of activities in the United States that trigger application of the external business conduct requirements to transactions of a registered foreign security-based swap dealer with another non-U.S. person should be identical to those that require a transaction to be included in a non-U.S. person's *de minimis* threshold calculations, as a consistent test should be more workable for market participants to implement and we preliminarily believe that the proposed test captures the activity that is likely to raise concerns about business conduct in the United States. Accordingly, we are re-proposing initially proposed Exchange Act rule 3a71–3(c) and related definitions solely to conform to the proposed amendments to the *de minimis* exception.[223]

B. Statutory Framework for External Business Conduct

Section 15F(h) of the Exchange Act requires the Commission to adopt rules specifying external business conduct standards for registered security-based swap dealers in their dealings with counterparties,[224] including counterparties that are ''special entities.''[225] Congress granted the Commission broad authority to promulgate business conduct standards

[216] *See* Section III.B.4, *supra.*

[217] *See* Section II.A, *supra* (discussing competitive effects of disparate regulatory treatment of activity in the United States); notes 114 and 138, *supra* (citing comment letters expressing concern about potential competitive disparities).

[218] *See* Cross-Border Proposing Release, 78 FR 31009.

[219] *See id.*

[220] *See id.*

[221] *See id.* at 31088.

[222] *See id.* at 31016.

[223] This proposal does not address application of any of the other elements of the Title VII security-based swap dealer requirements described in the Cross-Border Proposing Release, including those related to the application of entity-level requirements to security-based swap dealers; the application of segregation requirements under Exchange Act section 3E, and the rules and regulations thereunder; and the availability of the opportunity for substituted compliance (including initially proposed Exchange Act rule 3a71–5, which set forth, among other things, the process for submitting substituted compliance determination requests and the standard we would use in evaluating those requests). We anticipate addressing the comments on these elements of that proposal in the context of our consideration of final rules regarding each of the respective security-based swap dealer requirements.

[224] Exchange Act section 15F(h)(6), 15 U.S.C. 78o–10(h)(6), directs the Commission to prescribe rules governing external business conduct standards for security-based swap dealers.

[225] Exchange Act section 15F(h)(2)(C), 15 U.S.C. 78o–10(h)(2)(C) (defining ''special entities''). As discussed below, we have previously proposed business conduct rules and continue to consider comments received on that proposal. *See* IV.C.1, *infra.* We intend to address these comments in a subsequent adopting release finalizing rules establishing external business conduct standards, including provisions applicable in transactions with ''special entities.''

that the Commission determines to be appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Exchange Act.[226]

These standards, as described in section 15F(h)(3) of the Exchange Act, must require security-based swap dealers to: (i) Verify that a counterparty meets the eligibility standards for an eligible contract participant; (ii) disclose to the counterparty material information about the security-based swap, including material risks and characteristics of the security-based swap, and material incentives and conflicts of interest of the security-based swap dealer in connection with the security-based swap; and (iii) provide the counterparty with information concerning the daily mark for the security-based swap. Section 15F(h)(3) also directs the Commission to establish a duty for security-based swap dealers to communicate information in a fair and balanced manner based on principles of fair dealing and good faith and to establish other standards as the Commission determines are in furtherance of the purposes of the Exchange Act.

In addition, section 15F(h)(4) of the Exchange Act requires that a security-based swap dealer that ''acts as an advisor to a special entity'' must act in the ''best interests'' of the special entity and undertake ''reasonable efforts to obtain such information as is necessary to make a reasonable determination'' that a recommended security-based swap is in the best interests of the special entity.[227] Section 15F(h)(5) requires that a security-based swap dealer that enters into, or offers to enter into, security-based swaps with a special entity comply with any duty established by the Commission that requires the security-based swap dealer to have a ''reasonable basis'' for believing that the special entity has an ''independent representative'' that meets certain criteria and undertakes a duty to act in the ''best interests'' of the special entity.

C. Prior Proposals

2. Business Conduct Proposal

We have proposed rules 15Fh–1 through 15Fh–6 under the Exchange Act to implement the business conduct requirements described above.[228] In addition to external business conduct standards expressly addressed by Title VII, we have proposed certain other business conduct requirements for security-based swap dealers that we preliminarily believed would further the principles that underlie the Dodd-Frank Act. These rules would, among other things, impose certain ''know your counterparty'' and suitability obligations on security-based swap dealers, as well as restrict security-based swap dealers from engaging in certain ''pay to play'' activities and provide certain protections for ''special entities.''[229]

2. Cross-Border Proposing Release

In the Cross-Border Proposing Release, we proposed a rule that would have provided that a registered foreign security-based swap dealer and a foreign branch of a registered U.S. security-based swap dealer, with respect to their foreign business, shall not be subject to the requirements relating to external business conduct standards described in section 15F(h) of the Exchange Act,[230] and the rules and regulations thereunder, other than the rules and regulations prescribed by the Commission pursuant to section 15F(h)(1)(B).[231]

As described more fully in the Cross-Border Proposing Release, the proposed rule would have defined ''U.S. business'' and ''foreign business'' with respect to both foreign and U.S. security-based swap dealers. For a foreign security-based swap dealer, ''U.S. business'' would have been defined to mean (i) any transaction entered into, or offered to be entered into, by or on behalf of such foreign security-based swap dealer, with a U.S. person (other than with a foreign branch), or (ii) any transaction conducted within the United States.[232] For a U.S. security-based swap dealer, ''U.S. business'' would have been defined to mean any transaction by or on behalf of such U.S. security-based swap dealer, wherever entered into or offered to be entered into, other than a transaction conducted through a foreign branch with a non-U.S. person or another foreign branch of a U.S. person.[233] With respect to both a foreign security-based swap dealer and a U.S. security-based swap dealer, ''foreign business'' would have been defined to mean any security-based swap transactions entered into, or offered to be entered into, by or on behalf of the foreign security-based swap dealer or the U.S. security-based swap dealer that do not include its U.S. business.[234]

D. Comments

We received relatively few comments specifically addressing our initially proposed approach to application of the external business conduct requirements to security-based swap dealers. One commenter disagreed with our proposed approach with respect to U.S. security-based swap dealers, arguing that all transactions of such persons must always be subject to external business conduct standards, including those conducted through their foreign branches with non-U.S. persons and foreign branches of U.S. banks.[235]

Two commenters generally agreed with the initially proposed approach but suggested certain modifications to address specific concerns. One commenter generally agreed with the proposed approach that would not have imposed external business conduct

[226] *See* Exchange Act section 15F(h)(3)(D), 15 U.S.C. 78o–10(h)(3)(D) (''[b]usiness conduct requirements adopted by the Commission shall establish such other standards and requirements as the Commission may determine are appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this Act''). *See also* Exchange Act section 15F(h)(1)(D) (requiring security-based swap dealers to comply with ''such business conduct standards . . . as may be prescribed by the Commission by rule or regulation that relate to . . . such other matters as the Commission determines to be appropriate'').

[227] *See* Business Conduct Standards for Security-Based Swap Dealers and Major Security-Based Swap Participants (''Business Conduct Proposal''), Exchange Act Release No. 64766 (June 29, 2011), 76 FR 42423–25 (July 18, 2011).

[228] *See* Business Conduct Proposal, 76 FR 42396.

[229] *See* Business Conduct Proposal, 76 FR 42399–400; proposed Exchange Act rules 15Fh-3(e) (''know your counterparty''), 15Fh–3(f) (''suitability''), and 15Fh–6 (''pay to play'').

[230] 15 U.S.C. 78o–10(h).

[231] *See* Cross-Border Proposing Release, 78 FR 31016. Section 15F(h)(1)(B) requires registered security-based swap dealers to conform with such business conduct standards relating to diligent supervision as the Commission shall prescribe. *See* 15 U.S.C. 78o–10(h)(1)(B). All other requirements in section 15F of the Exchange Act, and the rules and regulations thereunder, would apply to both U.S. and registered foreign security-based swap dealers, although we proposed to establish a framework under which we would consider permitting substituted compliance for foreign security-based swap dealers under certain circumstances (but not for U.S. security-based swap dealers, even when they conduct dealing activity through foreign branches). *See id.* The approach under the initially proposed rule would not have affected applicability of the general antifraud provisions of the federal securities laws to the activity of a foreign security-based swap dealer. *See* Cross-Border Proposing Release, 78 FR 31016 n.476.

[232] *See id.* at 31016. Whether the activity in a transaction involving a registered foreign security-based swap dealer occurred within the United States or with a U.S. person for purposes of identifying whether security-based swap transactions are part of U.S. business would have turned on the same factors used in that proposal to determine whether a foreign security-based swap dealer is engaging in dealing activity within the United States or with U.S. persons and whether a U.S. person was conducting a transaction through a foreign branch, as set forth in that proposal. *See id.*

[233] *See id.*

[234] *See id.*

[235] *See* Letter from Better Markets to SEC, dated August 21, 2013 (''Better Markets Letter'') at 28.

requirements with respect to the ''foreign business'' of a foreign security-based swap dealer but argued that these requirements also should not apply to transactions with non-U.S. regulated funds whose security-based swap activity is managed by a U.S. asset manager.[236] This commenter argued that such funds would not expect to receive the protections of Title VII's business conduct standards merely because they use a U.S. asset manager and expressed concern that such requirements would disadvantage these entities because foreign security-based swap dealers might prefer to transact with non-U.S. funds managed by non-U.S. asset managers to avoid compliance with the requirements.[237]

Another commenter argued that the definition of ''U.S. business'' should be limited to transactions with counterparties that are U.S. persons, and that this definition should apply to the business of U.S. and foreign security-based swap dealers.[238] This commenter argued that adopting a uniform definition of ''U.S. business'' and eliminating ''transaction conducted within the United States'' from that definition would better accord with the purpose of the requirements, with counterparty expectations, and with international comity concerns.[239] This commenter further stated that there was insufficient ''jurisdictional nexus'' to warrant applying the external business conduct requirements to all transactions conducted within the United States, regardless of the U.S.-person status of the counterparties.[240]

E. Discussion

We are re-proposing Exchange Act rule 3a71–3(c) regarding application of the external business conduct requirements, and proposing amendments to Exchange Act rule 3a71–3(a) to define certain terms to conform to the proposed amendments to Exchange Act rule 3a71–3(b)(1)(iii)(C), which identifies relevant security-based swap activity of registered foreign security-based swap dealers in which they engage using personnel located in the United States for purposes of the *de minimis* exception. Our general approach, however, remains unchanged: The re-proposed rule would distinguish between ''U.S. business'' and ''foreign business'' and except the foreign business of a registered foreign security-based swap dealer and a registered U.S. security-based swap dealer from the external business conduct standards in section 15F(h) and the rules and regulations thereunder (other than rules and requirements prescribed by the Commission pursuant to section 15F(h)(1)(B)) of the Exchange Act, and proposed amendments to Exchange Act rule 3a71–3(a) would incorporate these defined terms in the rule.[241]

Specifically, our re-proposed amendment to Exchange Act rule 3a71–3(a) would modify the initially proposed definition of ''U.S. business'' with respect to foreign security-based swap dealers to refer to any security-based swap transaction arranged, negotiated, or executed by personnel of the foreign security-based swap dealer located in a U.S. branch or office, or by personnel of its agent located in a U.S. branch or office.[242] The definition of ''U.S. business'' for foreign security-based swap dealers and U.S. security-based swap dealers would continue to exclude certain transactions involving the foreign branches of U.S. persons.[243] The definitions of ''U.S. security-based swap dealer,'' [244] ''foreign security-based swap dealer,'' [245] and ''foreign business'' [246] would remain unchanged from the initial proposal, as would the text of re-proposed rule 3a71–3(c), which would create the exception to the external business conduct requirements (other than rules and requirements prescribed by the Commission pursuant to section 15F(h)(1)(B)) for the foreign business of registered security-based swap dealers.

We continue to believe that a registered security-based swap dealer should be required to comply with the external business conduct requirements with respect to its U.S. business. The proposed external business conduct standards are intended to bring professional standards of conduct to, and increase transparency in, the security-based swap market and to require registered security-based swap dealers to treat parties to these transactions fairly. As noted above, the proposed rules would require, among other things, that registered security-based swap dealers communicate in a fair and balanced manner with potential counterparties and that they disclose conflicts of interest and material incentives to potential counterparties.

[236] *See* ICI Letter at 11.

[237] *See id.* This commenter suggested that we modify the proposed definition of ''U.S. business'' for foreign security-based swap dealers by removing prong (ii) of the initially proposed rule, which includes ''any transactions conducted within the U.S.'' in the definition of ''U.S. business.'' In this commenter's view, this change would help ensure that the transactions of such funds with registered foreign security-based swap dealers are not subject to the external business conduct requirements. *See* ICI Letter at 11 n.28 and accompanying text.

[238] *See* SIFMA/FIA/FSR Letter at A–24.

[239] *See id.* at A–24 to A–25.

[240] *See id.* at A–25.

[241] *See* proposed Exchange Act rules 3a71–3(a)(6), (7), (8), and (9) (defining, respectively, ''U.S. security-based swap dealer,'' ''foreign security-based swap dealer,'' ''U.S. business,'' and ''foreign business''); re-proposed Exchange Act rule 3a71–3(c) (setting forth exceptions from certain external business conduct requirements with respect to the ''foreign business'' of registered foreign security-based swap dealers and registered U.S. security-based swap dealers).

This proposed approach to external business conduct standards would not except registered security-based swap dealers from the rules and requirements prescribed by the Commission pursuant to section 15F(h)(1)(B) of the Exchange Act with respect to their foreign business. As already noted, section 15F(h)(1)(B) requires registered security-based swap dealers to conform with such business conduct standards relating to diligent supervision as the Commission shall prescribe. *See* 15 U.S.C. 78o–10(h)(1)(B). We preliminarily believe that it is not appropriate to except registered security-based swap dealers from compliance with such requirements. Because registered security-based swap dealers would be subject to a number of obligations under the federal securities laws with respect to their security-based swap business, we preliminarily believe that having systems in place reasonably designed to ensure diligent supervision would be an important aspect of their compliance with the federal securities laws. Under our Cross-Border Proposing Release, these entity-level requirements would apply to a security-based swap dealer on a firm-wide basis to address risks to the security-based swap dealer as a whole. *See* Cross-Border Proposing Release, 78 FR 31011.

[242] Proposed Exchange Act rule 3a71–3(a)(8)(i)(B). We intend the proposed rule to indicate the same type of activity by personnel located in the United States as described in Section III.B.5, *supra.* Moreover, for purposes of proposed Exchange Act rule 3a71–3(a)(8)(i)(B), we would interpret the term ''personnel'' in a manner consistent with the definition of ''associated person of a security-based swap dealer'' contained in section 3(a)(70) of the Exchange Act, 15 U.S.C. 78c(a)(70), regardless of whether such non-U.S. person or such non-U.S. person's agent is itself a security-based swap dealer. *See* note 193, *supra* (discussing the Commission's proposed interpretation of the term ''personnel'' for purposes of proposed rule 3a71–3(b)(1)(iii)(C)).

[243] Initially proposed Exchange Act rule 3a71–3(a)(6)(i)(A) provided that the U.S. business of a foreign security-based swap dealer included any transaction with a U.S. person, ''other than with a foreign branch.'' The proposed amendment replaces this language with ''other than a transaction conducted through a foreign branch of that person.'' Similarly, initially proposed Exchange Act rule 3a71–3(a)(6)(ii) provided that the U.S. business of a U.S. security-based swap dealer included any transaction of such dealer, other than transactions conducted through a foreign branch with a non-U.S. person ''or another foreign branch.'' Proposed Exchange Act rule 3a71–3(a)(8)(ii) replaces this language with ''or a transaction with a U.S. person counterparty that constitutes a transaction conducted through a foreign branch of the counterparty.''

These changes are intended to clarify that the counterparty's activity in each such transaction must meet the definition of ''transaction conducted through a foreign branch'' set forth in Exchange Act rule 3a71–3(a)(3). These proposed changes are consistent with Exchange Act rule 3a71–3(b)(1)(iii)(A), which permits non-U.S. persons to exclude from the de minimis calculation transactions with U.S. persons, to the extent that such U.S. persons are engaging in transactions conducted through a foreign branch.

[244] *See* proposed Exchange Act rule 3a71–3(a)(6).

[245] *See* proposed Exchange Act rule 3a71–3(a)(7).

[246] *See* proposed Exchange Act rule 3a71–3(a)(9).

Imposing these requirements on the U.S. business of registered security-based swap dealers should help protect the integrity of U.S. financial markets for all market participants.

We recognize that, depending on the particular structure used by a registered foreign security-based swap dealer to do business in the United States, its personnel (or personnel of its agent acting on its behalf) in the United States may be subject to other business conduct requirements under U.S. law (such as broker-dealer regulation) that govern the professional interactions of such personnel or agents with counterparties to a security-based swap.[247] We also recognize that these other requirements may afford security-based swap counterparties protections that may appear to be similar in many respects to the Title VII external business conduct standards. We preliminarily believe, however, that, notwithstanding any requirements that may apply to such intermediaries, it is appropriate to impose these Title VII requirements directly on registered foreign security-based swap dealers when they use personnel located in the United States to arrange, negotiate, or execute security-based swaps, even with counterparties that are also non-U.S. persons.

We note that, in Title VII, Congress has established a comprehensive framework of business conduct standards that applies to registered security-based swap dealers, and we preliminarily believe that this framework should govern their transactions with counterparties when such transactions raise transparency and market integrity concerns that are addressed by these requirements. Although other business conduct frameworks (such as broker-dealer regulation) may achieve similar regulatory goals, the availability of exceptions may mean that alternative frameworks may not apply to certain business structures used by registered security-based swap dealers to carry out their business in the United States.[248] In our preliminary view, it is appropriate to subject all registered security-based swap dealers engaged in U.S. business to the same external business conduct framework, rather than encouraging a patchwork of business conduct protections under U.S. law that may offer counterparties varying levels of protection with respect to their transactions with different registered security-based swap dealers depending on the business model (or models) that each registered security-based swap dealer has chosen to use in its U.S. business.[249]

We also note that imposing these external business conduct requirements on a registered foreign security-based swap dealer when it uses personnel located in a U.S. branch or office to arrange, negotiate, or execute security-based swaps with another non-U.S. person should mitigate competitive disparities between different categories of security-based swap dealers operating in the United States.[250] This concern is particularly acute given the ease with which U.S. security-based swap dealers may seek to avoid such competitive disparities by booking in non-U.S.-person affiliates any transactions arranged, negotiated, or executed by personnel located in the United States. As noted above, this restructuring would allow these dealers to continue using U.S. sales and trading personnel to carry on their security-based swap dealing business in a manner largely unchanged from what we understand to be current business practices while avoiding the external business conduct requirements of Title VII.[251]

We have considered the views of the commenters that opposed imposing external business conduct requirements on transactions between a registered foreign security-based swap dealer and a non-U.S.-person counterparty,[252] but we do not believe that the issues raised by commenters warrant refraining from imposing these requirements on all such transactions. The re-proposed approach, which focuses on a transaction of a registered foreign security-based swap dealer with another non-U.S. person only when the registered foreign security-based swap dealer is using personnel located in the United States to arrange, negotiate, or execute the security-based swap, should mitigate the concerns raised by one commenter regarding the potential effect of the initially proposed rule on U.S. fund managers that manage offshore funds, because, to the extent an offshore fund is not a U.S. person by virtue of having its principal place of business in the United States, only the location of personnel of the registered foreign security-based swap dealer or the location of personnel of its agent, and not that of persons acting on behalf of a non-U.S.-person fund in the transaction, would be relevant to whether the transaction is U.S. business or foreign business of the registered foreign security-based swap dealer.[253]

We also disagree with the commenter that suggested that such transactions have an insufficient nexus to the United States to warrant application of the external business conduct requirements and that the external business conduct requirement should apply only to transactions with U.S.-person counterparties.[254] As we discussed in the context of the *de minimis* exception above, a foreign security-based swap dealer arranging, negotiating, or executing a security-based swap transaction using personnel located in a U.S. branch or office is not solely ‘‘transacting a business in security-

[247] *See* note 198, *supra* (discussing the Exchange Act Exemptive Order). The Financial Industry Regulatory Authority (‘‘FINRA’’) also adopted a rule, FINRA Rule 0180 (Application of Rules to Security-Based Swaps), which temporary limits the application of certain FINRA rules with respect to security-based swaps. On January 14, 2015, FINRA filed a proposed rule change, which was effective upon receipt by the Commission, extending the expiration date of FINRA Rule 0180 to February 11, 2016. *See* Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Extend the Expiration Date of FINRA Rule 0180 (Application of Rules to Security-Based Swaps), Exchange Act Release No. 74049 (Jan. 14, 2015).

[248] *See* note 202, *supra* (noting exception from broker-dealer definition for banks).

[249] Consistent with the view we expressed in the Cross-Border Proposing Release, to the extent that a registered foreign security-based swap dealer uses personnel of an agent to arrange, negotiate, or execute security-based swap transactions from a U.S. branch or office, the dealer and its agent may choose to allocate between themselves specific responsibilities in connection with these external business conduct requirements. *See* Cross-Border Proposing Release, 78 FR 31026–27. However, we note that the registered foreign security-based swap dealer would remain responsible for ensuring that all relevant Title VII requirements applicable to a given security-based swap transaction are fulfilled. *See id.* at 31026. As noted above, the agent may also be required to register as a broker (or, potentially, as a security-based swap dealer), or as another regulated entity, depending on the nature of its security-based swap or other activity. *See* note 198 and accompanying text, *supra;* Cross-Border Proposing Release, 78 FR 31027 n.574. An agent may, accordingly, be subject to independent business conduct or other requirements with respect to its interactions with the registered foreign security-based swap dealer's counterparties that occur in the course of its intermediation of such transactions.

[250] *See* Section II.A, *supra* (discussing competitive effects of disparate regulatory treatment of activity in the United States).

[251] *See* Section III.B.4, *supra.*

[252] *See, e.g.,* ICI Letter at 11.

[253] *See* notes 236–237, *supra.* To the extent that a non-U.S. regulated fund is a U.S. person (including because it has its principal place of business in the United States), a foreign security-based swap dealer would be required to comply with external business conduct requirements in any transaction with that fund because the counterparty is a U.S. person. *See* proposed Exchange Act rule 3a71–3(a)(8). *Cf.* Exchange Act rule 3a71–3(b)(1)(iii)(A) (requiring non-U.S. persons to include in their *de minimis* threshold calculations security-based swap transactions with U.S. persons in connection with their dealing activity); Cross-Border Adopting Release, 79 FR 47320 (describing Exchange Act rule 3a71–3(b)(1)(iii)(A)).

[254] *See* notes 238–240, *supra.*

based swaps without the jurisdiction of the United States.''[255] If the Commission adopts a rule that makes substituted compliance available for external business conduct requirements and, pursuant to further Commission action, makes a substituted compliance determination, substituted compliance may be permitted in such transactions.[256]

Our re-proposed rule maintains our initially proposed approach to the foreign business of registered U.S. security-based swap dealers. We recognize that at least one commenter suggested that all transactions of a registered U.S. security-based swap dealer should be subject to the external business conduct requirements of Exchange Act section 15F,[257] but we continue to believe it is appropriate to provide this exception for the foreign business of such persons. As we noted in our initial proposal, the Dodd-Frank Act generally is concerned with the protection of U.S. markets and participants in those markets.[258] We continue to believe that subjecting U.S. security-based swap dealers to the Title VII customer protection requirements with respect to their security-based swap transactions conducted through their foreign branches outside the United States with non-U.S. persons would not appreciably further the goal of protecting the U.S. market or U.S. market participants.

F. Request for Comment

We request comment on all aspects of the re-proposed rule regarding application of the external business conduct requirements to registered security-based swap dealers, including the following:

• The re-proposed rule would apply the external business conduct standards to transactions that a registered foreign security-based swap dealer arranges, negotiates, or executes using personnel located in a U.S. branch or office, even if the counterparty is also a non-U.S. person. Are the external business conduct rules appropriately applied in this release? Should the external business conduct rules be expanded to cover other transactions discussed in this release? Should some or all of the external business conduct standards not apply to these activities? Why or why not? Please be specific in identifying why the concerns addressed by the external business conduct requirements do not arise in this context.

• The re-proposed rule would not apply the external business conduct standards to the foreign business of any registered security-based swap dealer. Should some or all of the external business conduct standards apply to the foreign business of these registered entities? Why or why not? Please be specific as to what policy objectives would be advanced by subjecting transactions resulting from the foreign business of a registered security-based swap dealer to the external business conduct requirement.

• The re-proposed rule would not apply the external business conduct standards to a transaction of a registered U.S. security-based swap dealer that is a transaction conducted through a foreign branch (assuming that the counterparty is a non-U.S. person or is a U.S. person for whom the transaction is also a transaction conducted through a foreign branch). Should some or all of the external business conduct standards apply to these transactions? Why or why not?

• What types of controls would be necessary to identify foreign business and U.S. business and ensure that the registered security-based swap dealer complies with the external business conduct standards with respect to its U.S. business? How would this work as an operational matter? Should U.S. business be generally defined with reference to the type of activity that, if performed in a dealing capacity, triggers the registration requirement?

• Should some or all of the external business conduct rules apply in transactions between a registered foreign security-based swap dealer and a foreign branch of a U.S. bank? Why or why not?

• Should some or all of the external business conduct rules apply in transactions between a registered non-U.S. security-based swap dealer and a non-U.S. person whose obligations under a security-based swap are guaranteed by a U.S. person that is conducted outside the United States? Why or why not?

• What would be the market impact of the re-proposed approach to application of the customer protection requirements? Would non-U.S. persons that engage in dealing activities seek to relocate to locations outside the United States personnel who currently arrange, negotiate, and execute transactions from locations within the United States? Would the potential benefits of applying external business conduct requirements to transactions that are arranged, negotiated, or executed by a registered foreign security-based swap dealer in the United States reduce any incentives to relocate to locations outside the United States? What are the costs of such relocation? What factors would weigh against relocation in spite of those costs?

• How would the proposed application of the requirements affect the competitiveness of U.S. entities in the global marketplace (both in the United States as well as in foreign jurisdictions)? Would the proposed approach place any market participants at a competitive disadvantage or advantage? Why or why not? What other measures should we consider to implement the transaction-level requirements?

V. Application of Other Requirements to Cross-Border Security-Based Swap Activity

A. Overview

In light of our proposed amendment to Exchange Act rule 3a71–3(b), which would apply the *de minimis* exception to transactions of a non-U.S. person that are arranged, negotiated, or executed by personnel located in a U.S. branch or office in connection with the non-U.S. person's dealing activity, we have determined also to propose certain

[255] Exchange Act section 30(c). *See also* Section III.B.4(b), *supra.*

As noted above, we do not believe that our proposed approach applies Title VII to persons that are ''transact[ing] a business in security-based swaps without the jurisdiction of the United States,'' within the meaning of section 30(c) of the Exchange Act. An approach that did not treat security-based swaps that a registered foreign security-based swap dealer has arranged, negotiated, or executed using its personnel or personnel of its agent located in the United States as the ''U.S. business'' of that dealer for purposes of proposed Exchange Act rule 3a71–3(c) would, in our view, reflect an understanding of what it means to conduct a security-based swaps business within the jurisdiction of the United States that is divorced both from Title VII's statutory objectives and from the various structures that non-U.S. persons use to engage in security-based swap dealing activity. But in any event we also preliminarily believe that this proposed rule is necessary or appropriate as a prophylactic measure to help prevent the evasion of the provisions of the Exchange Act that were added by the Dodd-Frank Act, and thus help prevent the relevant purposes of the Dodd-Frank Act from being undermined. *See* Cross-Border Adopting Release, 79 FR 47291–92 (interpreting anti-evasion provisions of Exchange Act section 30(c)). Without this rule, non-U.S. persons could simply carry on a dealing business within the United States with non-U.S. persons. Permitting this activity could allow these firms to retain full access to the benefits of operating in the United States while avoiding compliance with external business conduct requirements, which could increase the risk of misconduct. *See* Section III.B.4, *supra.*

[256] As noted above, in the Cross-Border Proposing Release, we proposed an approach to substituted compliance with respect to the external business conduct requirements. *See* note 223, *supra.* We received comments on this proposed rule that we continue to consider, and we anticipate addressing those comments in the context of our consideration of final rules regarding the external business conduct requirement.

[257] *See* note 235, *supra.*

[258] *See* Cross-Border Proposing Release, 78 FR 31018.

amendments to Regulation SBSR to address the applicability of the regulatory reporting and public dissemination requirements to such transactions.[259] However, we are not proposing to subject transactions between two non-U.S. persons that are arranged, negotiated, or executed in the United States to mandatory clearing or trade execution.

B. Previously Proposed and Adopted Rules Relating to Application of Clearing, Trade Execution, Regulatory Reporting, and Public Dissemination Requirements

1. Mandatory Clearing and Trade Execution

In the Cross-Border Proposing Release, we proposed to impose both mandatory clearing and trade execution on ''transactions conducted within the United States,'' subject to certain exceptions. Proposed rules 3Ca–3 and 3Ch–1 would have subjected such transactions to mandatory clearing (provided that we had issued a mandatory clearing determination with respect to the security-based swap) and mandatory trade execution (provided that the transaction had been made available to trade) if a person engaged in a security-based swap transaction that is a ''transaction conducted within the United States,'' as defined in initially proposed Exchange Act rule 3a71–3(a)(5).[260] We also proposed an exception to this general requirement, under which a ''transaction conducted within the United States'' would not have been subject to the clearing or trade execution requirements if (i) neither counterparty to the transaction was a U.S. person; (ii) neither counterparty's performance under the security-based swap was guaranteed by a U.S. person; and (iii) neither counterparty to the transaction was a foreign security-based swap dealer. We proposed that the clearing and trade execution requirements would not apply to transactions that did not involve any of these three types of counterparties due to our preliminary view that, although such transactions conducted within the United States may give rise to operational risks in the United States, the financial risk of such transactions would reside outside the United States.[261]

2. Regulatory Reporting and Public Dissemination

In the Cross-Border Proposing Release, we re-proposed the entirety of Regulation SBSR, including rule 908(a) thereof, which, among other things, would have specified when a security-based swap was subject to the regulatory reporting and public dissemination requirements of Regulation SBSR.[262] Security-based swaps that fell within the proposed definition of ''transaction conducted within the United States'' would have been among the security-based swaps subjected both to regulatory reporting and to public dissemination under rule 908(a), as re-proposed in the Cross-Border Proposing Release.[263]

We recently adopted rule 908(a)(1), which requires regulatory reporting and public dissemination of security-based swap transactions that (i) have a direct or indirect counterparty[264] that is a U.S. person on either or both sides of the transaction, or (ii) are accepted for clearing by a clearing agency having its principal place of business in the United States. In addition, rule 908(a)(2), as adopted, requires regulatory reporting but not public dissemination of transactions that have a direct or indirect counterparty that is a registered security-based swap dealer or registered major security-based swap participant on either or both sides of the transaction but do not otherwise fall within rule 908(a)(1).[265] We did not, however, include in that final rule a provision addressing a security-based swap transaction that is a ''transaction conducted within the United States,'' noting that commenters had expressed divergent views on this particular element of the re-proposed rule. We also noted that we anticipated seeking additional public comment on whether and, if so, how regulatory reporting and public dissemination requirements should be applied to transactions involving non-U.S. persons when they carry out relevant activities in the United States.[266]

We also previously proposed rule 908(b), which would have provided that, notwithstanding any other provision of Regulation SBSR, a person would not incur any obligation under Regulation SBSR unless the person is:

(1) a U.S. person;

(2) a security-based swap dealer or major security-based swap participant; or

(3) a counterparty to a transaction conducted within the United States.[267] Our recently adopted rule 908(b) included only the first two of these prongs, and the Regulation SBSR Adopting Release clarified that a security-based swap dealer or major security-based swap participant that is not a U.S. person would incur an obligation under Regulation SBSR only if it is registered.[268] We noted that we anticipated soliciting additional public comment on whether regulatory reporting and/or public dissemination

[259] We also are soliciting comment on whether certain transactions of non-U.S. persons whose obligations under a security-based swap are guaranteed by a U.S. person should be exempt from the public dissemination requirement. *See* Section V.E.3, *infra.*

[260] In addition, the proposed rules generally would have imposed these requirements on a security-based swap transaction if a counterparty to the transaction is a U.S. person or a non-U.S. person whose counterparty has a right of recourse against a U.S. person. *See* Cross-Border Proposing Release, 78 FR 31078, 31083. We also proposed an approach to substituted compliance with respect to each requirement. *See id.* at 31098, 31099–100. Although these provisions of the initial proposal are outside the scope of this release, we received comments on these provisions of the proposed rules, which we continue to consider and anticipate addressing in the context of our consideration of final rules regarding each requirement.

[261] *See* Cross-Border Proposing Release, 78 FR 31080, 31084.

[262] Rule 908(a), as initially proposed, would have required regulatory reporting of any security-based swap that is ''executed in the United States or through any means of interstate commerce.'' *See* Regulation SBSR Proposing Release, 75 FR 75287. When we re-proposed rule 908(a)(1)(i) in the Cross-Border Proposing Release, we expressed concern that the language in the Regulation SBSR Proposing Release could have unduly required a security-based swap to be reported if it had only the slightest connection with the United States. *See* Cross-Border Proposing Release, 78 FR 31061.

[263] Rule 900(ii), as re-proposed in the Cross-Border Proposing Release, would have defined ''transaction conducted within the United States'' to have the meaning as given in the definition of the term under previously proposed Exchange Act rule 3a71–3(a)(5)(i).

[264] Rule 900(hh) of Regulation SBSR defines ''side'' to mean ''a direct counterparty and any guarantor of that direct counterparty's performance who meets the definition of indirect counterparty in connection with the security-based swap.'' Rule 900(p) of Regulation SBSR defines ''indirect counterparty'' to mean ''a guarantor of a direct counterparty's performance of any obligation under a security-based swap such that the direct counterparty on the other side can exercise a right of recourse against the indirect counterparty in connection with the security-based swap; for these purposes a direct counterparty has a right of recourse against a guarantor on the other side if the direct counterparty has a conditional or unconditional legally enforceable right, in whole or in part, to receive payments from, or otherwise collect from, the guarantor in connection with the security-based swap.'' A ''direct counterparty'' is a person that is a primary obligor on a security-based swap. *See* Exchange Act rule 900(k) (defining ''direct counterparty'').

[265] *See* rule 908(a). We also simultaneously proposed certain amendments to Regulation SBSR. *See* Regulation SBSR—Reporting and Dissemination of Security-Based Swap Information; Proposed Rule (''Regulation SBSR Proposed Amendments Release''), Exchange Act Release No. 74245 (February 11, 2015), 80 FR 14739 (March 19, 2015). These proposed amendments generally address issues separate from those being addressed in this release.

[266] *See* Regulation SBSR Adopting Release, 80 FR 14655.

[267] *See* Cross-Border Proposing Release, 78 FR 31065.

[268] *See* rule 908(b); Regulation SBSR Adopting Release, 80 FR 14656.

requirements should be extended to transactions occurring within the United States between non-U.S. persons and, if so, which non-U.S. persons should incur reporting duties under Regulation SBSR.[269]

Finally, in the Cross-Border Proposing Release, we re-proposed rule 901(a), which set forth a reporting hierarchy for identifying which side has a duty to report in a variety of transactions. This rule would have provided, among other things, that, in a transaction in which neither side included a security-based swap dealer or major security-based swap participant, if one side included a U.S. person while the other side did not, the side with the U.S. person would have been the reporting side; if both sides in such transaction included a U.S. person or neither side included a U.S. person, the sides would have been required to select the reporting side.[270] In the Regulation SBSR Adopting Release, we adopted rules establishing the reporting hierarchy for a range of transactions, including a provision that, in a transaction in which neither side includes a registered security-based swap dealer or registered major security-based swap participant but both sides include a U.S. person, the sides shall select the reporting side.[271] We noted in that release that we anticipated soliciting additional comment about how to apply Regulation SBSR, including which side should incur the reporting duty, in transactions between two unregistered non-U.S. persons and transactions between an unregistered U.S. person and an unregistered non-U.S. person.[272]

C. Commenters' Views

1. General Comments on Application of Clearing, Trade Execution, Regulatory Reporting, and Public Dissemination Requirements

One commenter generally supported our proposed territorial approach to applying these requirements, noting that the requirements ''would encompass any transaction with a U.S. person or within the U.S.'' [273] Similarly, another market participant agreed with our proposed application of these requirements to security-based swaps entered into by offshore funds that have a U.S. nexus, arguing that a failure to apply such requirements would undermine central objectives of the Dodd-Frank Act, create opportunities for regulatory arbitrage, and risk fragmenting the security-based swap market.[274]

At the same time, other commenters raised concerns about our proposed approach.[275] Some commenters explained that applying mandatory clearing, mandatory trading, regulatory reporting, and public dissemination requirements to transactions between non-U.S. branches of two U.S. persons would lead to duplication of, and conflicts with, foreign requirements.[276] Another commenter criticized the proposed approach to categorization of these requirements, stating that the proposal did not classify regulatory reporting, public dissemination, mandatory clearing, or mandatory trade execution as either entity-level requirements or transaction-level requirements but as a distinct category of ''transactional requirements'' that apply to persons regardless of their registration status.[277] This commenter argued that multiple categories of requirements make it more difficult for market participants to determine which requirements apply and whether substituted compliance is available.[278] The commenter contended that it would be simpler and more rational to apply the clearing, trade execution, regulatory reporting, and public dissemination requirements in the same way that we proposed to apply the external business conduct requirements.[279]

2. Comments on Mandatory Clearing and Mandatory Trade Execution

Market participants expressed a range of views regarding the application of mandatory clearing and mandatory trade execution to transactions of non-U.S. persons conducted within the United States. One commenter supported our proposed definition of ''transaction conducted within the United States'' together with our proposal to impose the clearing requirement on such transactions because this approach would help ensure that the security-based swap activity of offshore funds managed by U.S.-based investment managers is subject to our clearing requirements.[280] Two commenters specifically argued that the proposed exceptions from the application of mandatory clearing should be eliminated,[281] and one commenter urged the same with respect to mandatory trade execution.[282] One of these commenters suggested that, at most, we should permit substituted compliance for the transactions rather than excepting them from any application of the clearing requirement.[283]

Other commenters opposed an activity-based application of mandatory clearing or trade execution. One market participant argued that conduct in the United States should not trigger the application of the clearing requirement because the test ''is impractical, cannot be justified by cost-benefit analysis and exceeds the Commission's SBS authority under the Exchange Act.'' [284] Another commenter opposed applying regulatory requirements, including clearing and trade execution, to transactions between two unguaranteed non-U.S. persons that involve activity in the United States, regardless of their status as registered security-based swap dealers.[285]

3. Comments on Regulatory Reporting and Public Dissemination

Commenters expressed divergent views regarding application of Regulation SBSR to transactions

[269] *See* Regulation SBSR Adopting Release, 80 FR 14655.

[270] *See* Regulation SBSR Adopting Release, 80 FR 14597.

[271] *See* rule 901(a)(2)(ii)(E)(1).

[272] *See* Regulation SBSR Adopting Release, 80 FR 14598.

[273] Better Markets Letter at 19–20.

[274] *See* Citadel Letter at 1.

[275] *See, e.g.,* IIB Letter at 6–7, 23 (stating that the registration requirement, external business conduct standards, clearing, trade execution, regulatory reporting, and public dissemination requirements should not apply to transactions of non-U.S. persons with foreign security-based swap dealers based on conduct in the United States when neither counterparty's obligations under the security-based swap are guaranteed by a U.S. person, because such an application would create ''serious operational, legal and economic difficulties for foreign security-based swap market participants'').

[276] *See* IIB Letter at 9; EC Letter at 2.

[277] *See* SIFMA/FIA/FSR Letter at A–38 to A–39.

[278] *See id.*

[279] *See id.*

[280] *See* Citadel Letter at 3.

[281] *See* AFR Letter at 10 (arguing that the exceptions were unreasonable because ''no provision of Dodd-Frank justifies exempting security-based swaps that occur within our borders from U.S. regulatory requirements''); Better Markets Letter at 22 (arguing that the exception for the clearing requirement conflicts with the Commission's territorial approach). *Cf.* Letter from AFR to CFTC and SEC, dated November 25, 2014 (arguing that foreign subsidiaries of U.S. firms without guarantees may present risk to the United States).

[282] *See* Better Markets Letter at 22.

[283] *See* AFR Letter at 10.

[284] *See* SIFMA/FIA/FSR Letter A–48. *See also* FOA Letter at 8 (stating that a transaction conducted within the United States that involves one non-U.S. person security-based swap dealer is insufficiently connected to the United States to require mandatory clearing and mandatory trade execution).

[285] *See* ICI Letter at 8–10 n.23 (explaining that the risk in such transactions is outside the United States, that the counterparties would have no expectation that the requirements would apply, and that U.S. persons and non-U.S. persons that use U.S. asset managers would be placed at a competitive disadvantage); EC Letter at 2 (submitting that the Commission's rules should not apply to a transaction where the legal counterparty is a non-U.S. person, on the basis that there is no counterparty risk to a U.S. person in such a transaction).

involving the conduct of non-U.S. persons within the United States.[286] Noting its general opposition to the proposed ''transaction conducted within the United States'' concept, one commenter argued that the regulatory reporting and public dissemination requirements should not apply to transactions conducted within the United States between two non-U.S.-person counterparties because the proposed requirement would likely result in ''duplicative reporting requirements.'' [287] Another commenter argued that it would be ''unnecessary and unworkable'' to require transactions that are between non-U.S. persons and are executed but not cleared in the United States to be reported, noting that such transactions would generally be subject to reporting in the counterparties' jurisdictions and additional reporting to a U.S. SDR would impose additional significant costs.[288] Another commenter argued that applying Regulation SBSR on the basis of conduct in the United States would not be workable because it would require a trade-by-trade analysis rather than ''party level static data,'' for which system architecture does not currently exist.[289] This commenter also stated that market participants do not have the capability to determine whether their counterparty's activities trigger the proposed conduct test.[290]

4. The CFTC Staff Advisory and Responses to the CFTC Request for Comment

As noted above, in response to the solicitation of comment on the CFTC Staff Advisory, commenters raised concerns specifically with respect to the application of the approach in that document to the CFTC's transaction-level requirements.

Some commenters suggested that only those CFTC transaction-level requirements directly relevant to the specific activities that the swap dealer carries out from a U.S. location should apply to the transaction, generally taking the view that the CFTC's regulatory interest extends only to counterparty-facing activities and not, for example, to the risk-mitigation aspects of Title VII.[291] One commenter suggested, however, that certain counterparty-facing communications raise no concerns relevant to Title VII and therefore should not trigger application of transaction-level requirements, even if a swap dealer engages in such communications within the United States.[292] Another commenter noted that this approach would help ensure that costs and benefits of such an approach were commensurate.[293]

Commenters also noted that a non-U.S.-person swap dealer using personnel or agents located in the United States to arrange, negotiate, or execute swap transactions generally would already be subject to regulation in its home jurisdiction.[294] In their view, adoption of the CFTC Staff Advisory would raise the possibility of conflicting and duplicative regulation of such non-U.S.-person swap dealers and reflected a lack of comity on the CFTC's part toward regulators in other jurisdictions.[295]

Some commenters suggested that adoption of the CFTC Staff Advisory could present difficulties for, and impose costs on, non-U.S.-person counterparties of dealers, as such counterparties may not currently have systems in place for complying with certain CFTC requirements, particularly if they are imposed only because the swap dealer (and not the counterparty) happens to have carried out certain activities using personnel or agents

[286] *See* Citadel Letter at 1–2; ABA Letter at 3 (noting that the initially proposed activity-based approach is consistent with longstanding Commission practice but also noting potential ambiguities); IAA Letter at 6 (explaining that the proposed term may capture parties with minimal connection to the United States); IIB Letter at 8–9 (explaining that application of the term may result in duplicative and conflicting regulation); EC Letter at 2 (explaining that the Commission's rules should not apply because no U.S. firms are subject to counterparty credit risk in such transactions); FOA Letter at 7–8 (explaining that the test would reach transactions with minimal nexus to the United States); JFMC Letter at 4–5 (requesting that the Commission not apply its rules to such transactions based on its belief that such an approach would conflict with the CFTC approach).

[287] SIFMA/FIA/FSR Letter at A–42.

[288] Letter from Cleary Gottlieb Steen & Hamilton LLP to CFTC, SEC, Board of Governors of the Federal Reserve System, Office of the Comptroller of the Currency, Federal Deposit Insurance Corporation, Federal Housing Finance Agency, and Farm Credit Administration (''Cleary Letter''), dated September 20, 2011 at 28 (suggesting that the Commission adopt accommodations for the use of non-U.S. SDRs in appropriate cases).

[289] *See* Letter from ISDA to SEC dated November 14, 2014 (''ISDA Letter'') at 18 (urging us not to apply Regulation SBSR on the basis of conduct within the United States as it would not be practicable). This commenter also argued that counterparties to a transaction executed on an SB SEF, and not the SB SEF itself, should be required to report such transactions. *See id.* at 7. *See also* Regulation SBSR Proposed Amendments Release, 80 FR 14748–49 (citing additional comment letters addressing this issue).

[290] *See* ISDA Letter at 18. This commenter also argued that, because in its view a security-based swap involving only non-U.S. persons that are not registered as a security-based swap dealer or as a major security-based swap participant should not be required to be reported, the reporting hierarchy need not address the reporting obligations arising from such security-based swap transactions. *See id.* at 19.

[291] *See* IIB Letter to CFTC at 8–10 (arguing that, if the CFTC adopts the CFTC Staff Advisory, it should apply only the transaction-level requirements relevant to the activity that occurs within the United States); SIFMA/FIA/FSR Letter to CFTC at A–9 to A–11 (any approach adopted by the CFTC that is based on the use of personnel located in the United States should trigger only requirements that relate to concerns raised by the conduct that triggered the requirements); Barclays Letter to CFTC at 3 (arguing that the only transaction-level requirements whose objectives are implicated by activity in which the ''sole nexus to the U.S. is the participation of U.S.-based personnel of a non-U.S. swap dealer'' are requirements related to ''sales practices'' and that, therefore, the only relevant transaction-level requirements that should apply to such transactions, should the CFTC adopt an approach that is based on the use of personnel located in the United States, are pre-trade disclosure requirements); ISDA Letter to CFTC at 9 (suggesting that, should the CFTC adopt the approach in the CFTC Staff Advisory, only those transaction-level requirements that are transaction-specific and that relate to the triggering communication—transaction specific disclosure and communications—should apply to the transaction).

[292] *See* SIFMA/FIA/FSR Letter at A–11 to A–12 (stating that ''arranging and negotiating trading relationships and legal documentation and providing legal advice as well as providing credit terms and technical terms, market color, market research or a general discussion of the swap transaction'' have no relation to any concerns of the Dodd-Frank Act in transactions between two non-U.S. persons).

[293] *See* Barclays Letter to CFTC at 3.

[294] *See* CDEU Letter to CFTC at 2, 3 (arguing that the approach in the CFTC Staff Advisory represents a departure from the CFTC Cross-Border Guidance in that a transaction between two entities organized under German law would be subject to the Title VII requirements and the EMIR requirements, which would be duplicative and unnecessary, without any ability for substituted compliance); IIB Letter to CFTC at 5 (explaining that ''[i]t would stand international comity on its head for the [CFTC]'' to adopt the CFTC Staff Advisory's approach of imposing regulatory requirements on non-U.S. firms on the basis of ''limited activities'' of their U.S. personnel or agents when the foreign jurisdiction has strong supervisory interests in the risks arising from the transactions); JFMC Letter to CFTC at 1 (explaining that the CFTC Staff Advisory's approach to applying transaction-level requirements does not account for the application of foreign regimes to the transaction).

[295] *See* SIFMA/FIA/FSR Letter to CFTC at A–6 (explaining that the CFTC Staff Advisory fails to respect comity principles because it would not ''give due recognition to the compelling supervisory interests of home regulators in the jurisdictions in which these transactions occur''). *See also* IIB Letter to CFTC at 6 (arguing that Dodd-Frank incorporates mechanism for addressing competition concerns: a ''mandate'' for international harmonization). Accordingly, they urged the CFTC to make substituted compliance available in such transactions. *See* CDEU Letter to CFTC at 5 (urging the CFTC to make substituted compliance determinations with respect to the transaction-level requirements and to defer to foreign regulators to regulate entities that are organized under the laws of their jurisdiction); ISDA Letter to CFTC at 4 (arguing that substituted compliance should be available for transactions between a non-U.S. swap dealer and a non-U.S. counterparty if the CFTC adopts the approach in the CFTC Staff Advisory); SIFMA/FIA/FSR Letter to CFTC at A–13 (suggesting that substituted compliance be available for the transaction-level requirements).

located in the United States.[296] As a result, commenters argued that non-U.S. swap dealers may no longer be able to service non-U.S.-person counterparties from U.S. locations.[297] Some commenters noted possible competitive effects of imposing, or not imposing, transaction-level requirements on such transactions. One commenter supported the CFTC Staff Advisory, arguing that without it, U.S. firms would be at a competitive disadvantage compared to non-U.S. firms operating in the United States, because U.S. firms would be subject to different rules for the same transactions.[298]

Some commenters indicated that adoption of the CFTC Staff Advisory would also disadvantage non-dealing counterparties. For example, one commenter argued that, were the CFTC Staff Advisory adopted, end users that trade with non-U.S. swap dealers might face competitive disadvantages.[299] Other commenters noted that the application of transaction-level requirements to such transactions could put foreign swap dealers at a competitive disadvantage because it would be overly burdensome for them to use U.S.-based personnel or agents to perform certain function in connection with their dealing activity, particularly with respect to transactions with foreign counterparties that may oppose being subject to transaction-level requirements, and that the adoption of the CFTC Staff Advisory would therefore encourage dealers not to use their U.S.-based personnel.[300]

D. Mandatory Clearing and Trade Execution

After careful consideration of concerns raised by commenters and our further consideration of policy concerns relevant to the security-based swap market, we are not proposing to subject transactions between two non-U.S. persons to the clearing requirement (and, by extension, to the trade execution requirement [301]) on the basis of dealing activity in the United States, including transactions that are arranged, negotiated, or executed by personnel located in a U.S. branch or office.

As we noted in the Cross-Border Proposing Release, because the financial risks of such a transaction reside outside the United States, ''it is not necessary to apply the mandatory clearing requirement to a transaction between two non-U.S. persons solely'' because the transaction involves activity in the United States.[302] However, the proposed approach would have subjected a ''transaction conducted within the United States'' involving at least one registered foreign security-based swap dealer to the clearing requirement (and, as noted, to the trade execution requirement). We proposed this approach because we preliminarily believed that registered foreign security-based swap dealers would have a more significant connection to the United States and to minimize potential competitive disparities between U.S. persons and non-U.S. persons.[303]

On further consideration, however, we now preliminarily believe that we should not impose the clearing requirement on a security-based swap transaction between two non-U.S. persons where neither counterparty's obligations under the security-based swap are guaranteed by a U.S. person, even if the transaction involves one or more registered foreign security-based swap dealers. In our view, a key objective of the clearing requirement is to mitigate systemic and operational risk in the United States, but the counterparty credit risk and operational risk of such transactions reside primarily outside the United States.[304] Accordingly, we preliminarily believe that subjecting such security-based swaps to the clearing requirement would not significantly advance what we view as a key policy objective of the clearing requirement applicable to security-based swaps under the Dodd-Frank Act.[305]

[296] *See, e.g.,* SIFMA/FIA/FSR Letter to CFTC at A–4 (explaining that certain non-U.S.-person counterparties may not have clearing relationships with FCMs, and requiring them to clear through an FCM simply because the dealer happens to use personnel within the United States in the transaction would be costly).

[297] *See, e.g.,* ISDA Letter to CFTC at 4.

[298] *See* AFR Letter to CFTC at 3 (explaining that ''any weakening of [the] advisory would open the door to regular and significant levels of swaps activities being performed within the U.S. by nominally foreign entities under foreign rules, or in some cases no rules at all,'' whereas U.S. firms operating in the United States would be subject to different rules for the same transactions operating in the same market).

[299] *See* CDEU Letter to CFTC at 2 (urging the CFTC not to adopt the Staff Advisory because it would lead to competitive disadvantages for certain non-U.S. end-user affiliates that had relied on trading with non-U.S. swap dealers compared to other non-U.S. end users in the same markets that currently hedge with unregistered counterparties). This commenter also expressed concern that applying the transaction-level requirements to such transactions would disadvantage non-U.S.-person non-dealers that choose to hedge with non-U.S. swap dealers using personnel or agents in the United States, as compared to non-U.S. persons that choose to hedge with unregistered counterparties or dealers that do not use personnel or agents in the United States. *See* CDEU Letter to CFTC at 1–2.

[300] *See* ISDA Letter to CFTC at 4 (noting that non-U.S. counterparties have insisted that a swap dealer not use its U.S.-based personnel so as to avoid being subject to transaction-level requirements). *See also* JFMC Letter to CFTC at 1 (explaining that adoption of the CFTC Staff Advisory would create regulatory uncertainty and disrupt the planning of firms' systems and put Asia-based swap dealers at a disadvantage if they want to use U.S.-based personnel or agents).

[301] We continue to believe that, under the statutory framework, a security-based swap transaction is potentially subject to the trade execution requirement only if it is first subject to the clearing requirement. *See* Cross-Border Proposing Release, 78 FR 31082. Accordingly, to the extent that the clearing requirement does not apply to a particular security-based swap transaction, the trade execution requirement also would not apply. *See id.* (noting that, to the extent that we are proposing not to apply the clearing requirement to a particular transaction, the trade execution requirement would not apply to such transaction).

[302] Cross-Border Proposing Release, 78 FR 31080.

[303] *See id.* at 31080.

[304] *See id.* at 31077; note 285, *supra* (citing EC Letter arguing that activity between two non-U.S. persons in the United States does not create counterparty credit risk in the United States). We recognize that even if a transaction involving one or more registered foreign security-based swap dealers that is arranged, negotiated, or executed by personnel located in the United States does not create financial or counterparty credit risk that resides in the United States, it may create operational risks associated, for example, with the processing of the transaction. *See id.* However, such risks are borne primarily by the counterparties to the transaction, both of whom are by definition—in the transactions being addressed in this release—non-U.S. persons (because they are incorporated outside the United States and do not have their principal place of business in the United States). Accordingly, any reduction of operational risks in the U.S. financial market that would be produced by requiring these transactions to be cleared by a U.S.-registered clearing agency would likely be insignificant. On the other hand, imposing the clearing requirement on a transaction between two non-U.S. persons involving at least one registered foreign security-based swap dealer because the transaction was arranged, negotiated, or executed in the United States to be cleared by a U.S.-registered clearing agency would directly expose that clearing agency and, through it, the U.S. financial system to the counterparty credit risk of the transaction.

[305] For these reasons, we disagree with commenters that characterized any exception from the clearing requirement as ''indefensible'' or ''unreasonable.'' *See* note 281, *supra.*

We recognize that another commenter suggested that our initially proposed approach, which would have required a ''transaction conducted within the United States'' to be cleared, subject to certain exceptions, would help ensure that transactions of non-U.S.-person funds that are managed by U.S.-based investment managers are subject to the Title VII clearing requirement. *See* note 280, *supra* (citing Citadel Letter). Under the approach set forth in this release, the transactions of such funds may not be subject to the clearing requirement when the counterparty is not a U.S. person, but, as already noted, the risks of such transactions reside primarily outside the United States, and we preliminarily do not believe that requiring such transactions to be cleared would further the purposes of the clearing requirement. To the extent that the fund has its principal place of business in the United States, of course, it would be a U.S. person and, under the approach set forth in our Cross-Border Proposing Release, would be subject to the clearing requirement. *See* Exchange Act rule 3a71–3(a)(4)(B) (defining ''U.S. person'' to include, among other things, an investment vehicle ''having

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We recognize that, to the extent that a non-U.S. person using personnel located in a U.S. branch or office to arrange, negotiate, or execute security-based swap transactions in connection with its dealing activity is affiliated with a U.S. financial firm, the non-U.S. person's security-based swap exposures may pose risk to its U.S. affiliates in the United States, as U.S. entities that are affiliated with non-U.S. persons may determine for reputational reasons that they must support their non-U.S. affiliates at times of crisis.[306] However, as we noted in the Cross-Border Adopting Release, Congress has established other regulatory tools that are specifically intended, and better suited, to address risks to bank holding companies and financial holding companies, arising from the financial services activities of a foreign affiliate of those holding companies where the foreign affiliate does not engage in security-based swap activity in the United States,[307] and we preliminarily believe the same principle applies here. Moreover, we note that it is likely that such a non-U.S. person engaged in significant security-based swap dealing activity would be a registered security-based swap dealer under our proposed approach and subject to Title VII capital and margin requirements, which we preliminarily believe would be a more narrowly tailored and appropriate way of mitigating any such risk in this context.[308] Under proposed rule 3a71–3(b)(1)(iii)(C), the non-U.S. person would be required to include in its dealer *de minimis* threshold calculations any security-based swap transaction that it arranged, negotiated, or executed in connection with its dealing activity using personnel located in a U.S. branch or office. Any non-U.S. person engaged in significant activity in the United States, including a non-U.S.-person affiliate of a U.S. financial firm whose obligations under a security-based swap are not guaranteed by its U.S. parent, would be required to register as a security-based swap dealer and comply with Title VII capital and margin requirements (along with other entity-level requirements). Whereas the clearing requirement would have applied only to certain transactions of registered foreign security-based swap dealers, capital and margin requirements would apply to all of their security-based swap transactions, including those that do not involve personnel located in a U.S. branch or office.[309]

We also preliminarily believe that requiring such security-based swap transactions to be cleared (and executed on a platform) would impose a significant burden on certain market participants. Some non-U.S. person counterparties may not currently have a direct or indirect relationship with a U.S.-registered clearing agency, and the burdens of establishing such a relationship may deter these non-U.S. persons—particularly those not engaged in dealing activity—from entering into security-based swap transactions with non-U.S. persons that, in connection with their dealing activity arrange, negotiate, or execute such transactions using personnel located in a U.S. branch or office.[310] Given that, under our proposed approach, a non-U.S. person that engages in significant security-based swap activity using personnel located in a U.S. branch or office is likely to be required to register and be subject to Title VII capital and margin requirements with respect to all of its transactions, we preliminarily do not believe that subjecting a subset of these persons' activities to the clearing requirement is likely to provide a significant additional reduction in counterparty credit risk in the United States. Consistent with customary Commission practice, we expect that Commission staff will monitor developments in the security-based swap market, including changes in liquidity or market fragmentation, that may warrant reconsideration of this proposed approach and, if necessary and appropriate, make recommendations to address such developments.

Because such security-based swap transactions would not be subject to the clearing requirement, under our proposed approach they would also not be subject to mandatory trade execution. While we acknowledge that trading between two non-U.S. persons in the OTC market may indirectly affect liquidity available to market participants subject to mandatory trade execution,[311] we preliminarily do not believe that it is appropriate to require such non-U.S. persons to shift their non-U.S. business to trading platforms merely because one of the counterparties to the transaction uses personnel located in a U.S. branch or office to arrange, negotiate, or execute the transaction.[312] As with the clearing requirement, and consistent with customary Commission practice, we expect that Commission staff will monitor developments in the security-based swap market, including changes in liquidity or market fragmentation, that may warrant reconsideration of this proposed approach and, if necessary and appropriate, make recommendations to address such developments.

E. Regulation SBSR

We are proposing amendments to Regulation SBSR to address the application of the regulatory reporting and public dissemination requirements to certain transactions not addressed in the Regulation SBSR Adopting Release or the Regulation SBSR Proposed Amendments Release.

1. Statutory Framework

Section 13A(a)(1) of the Exchange Act [313] provides that ''[e]ach security-based swap that is not accepted for clearing by any clearing agency or derivatives clearing organization shall be reported to—(A) a registered security-based swap data repository described in section 13(n); or (B) in the case in which there is no security-based swap data repository that would accept the security-based swap, to the Commission.'' Section 13(m)(1)(G) of the Exchange Act [314] provides that ''[e]ach security-based swap (whether cleared or uncleared) shall be reported to a registered security-based swap data repository.''

its principal place of business in the United States''); Cross-Border Proposing Release, 78 FR 31078 (describing applicability of clearing requirement to U.S. persons under that proposal). *Cf.* note 285, *supra* (citing ICI Letter noting that mere presence of an investment manager in the United States does not necessarily create risk in the United States).

[306] *See* Cross-Border Adopting Release, 79 FR 47318. As we noted in the Cross-Border Adopting Release, however, any U.S. person that is subject to the reporting requirements of section 13(a) or section 15(d) of the Exchange Act, 15 U.S.C. 78m(a) or 15 U.S.C. 78o(d) respectively, regardless of whether that person provides a recourse guarantee relating to its non-U.S. affiliates' obligations, must consider whether there are disclosures that must be made in its periodic reports regarding any of its obligations. *See* Cross-Border Adopting Release, 79 FR 47318 n.348.

[307] *See id.* at 47318–19.

[308] We also note in this regard the relatively low liquidity of the security-based swap market in general, even for the most liquid products. *See* Section II.B.3, *supra.*

[309] *See, e.g.,* Cross-Border Proposing Release, 78 FR 31011–12 (proposing to treat margin as an entity-level requirement).

[310] *See* notes 296–297, *supra.* Establishing a direct relationship with a clearing agency may entail upfront costs that include, among other things, meeting minimum capital requirements and making minimum clearing fund contributions. *See, e.g.,* ICE Clear Credit Clearing Rules at 12 and 90 (available at: *https://www.theice.com/publicdocs/clear_credit/ICE_Clear_Credit_Rules.pdf*, last visited April 15, 2015).

[311] *See* Section VI.C.4, *infra.*

[312] *See* note 308, *supra.*

[313] 15 U.S.C. 78m–1(a)(1).

[314] 15 U.S.C. 78m(m)(1)(G). *See also* 15 U.S.C. 78q(a)(1).

Section 13(m)(1)(B) of the Exchange Act [315] directs the Commission ''to make security-based swap transaction and pricing data available to the public in such form and at such times as the Commission determines appropriate to enhance price discovery.'' Section 13(m)(1)(C) of the Exchange Act [316] authorizes the Commission to provide by rule for the public availability of security-based swap transaction, volume, and pricing data. Furthermore, section 13(m)(1)(D) of the Exchange Act [317] authorizes the Commission to require registered entities (such as registered SDRs) to publicly disseminate the security-based swap transaction and pricing data required to be reported under section 13(m) of the Exchange Act. Finally, section 13(n)(5)(D)(ii) of the Exchange Act [318] requires SDRs to provide security-based swap information ''in such form and at such frequency as the Commission may require to comply with the public reporting requirements.''

In the Regulation SBSR Adopting Release, we interpreted the regulatory reporting and public dissemination requirements to apply to security-based swaps that ''exist, at least in part, within the United States'' [319] and noted that a security-based swap with a direct or indirect counterparty that is a U.S. person necessarily would exist within the United States.[320] This view is consistent with a territorial approach to the statutory language requiring the reporting of ''[e]ach security-based swap,'' and with the statutory requirement that security-based swaps that are reported must be publicly disseminated, unless an exception applies.[321] In our view, it is also consistent with a territorial approach to these statutory provisions to require each security-based swap that is otherwise subject to regulatory requirements under Title VII (as implemented under our territorial approach to implementing those requirements) to be reported and publicly disseminated pursuant to Regulation SBSR.

[315] 15 U.S.C. 78m(m)(1)(B). *See also* 15 U.S.C. 78q(a)(1).

[316] 15 U.S.C. 78m(m)(1)(C).

[317] 15 U.S.C. 78m(m)(1)(D).

[318] 15 U.S.C. 78m(n)(5)(D)(ii).

[319] *See, e.g.,* Regulation SBSR Adopting Release, 80 FR 14651.

[320] *See* Regulation SBSR Adopting Release, 80 FR 14650.

[321] *See* Regulation SBSR Adopting Release, 80 FR 14649–50.

2. Proposed Amendments Regarding Application of Regulation SBSR to Certain Security-Based Swap Transactions

(a) Security-Based Swap Transactions That a Non-U.S. Person, in Connection With its Dealing Activity, Arranges, Negotiates, or Executes Using Personnel Located in a U.S. Branch or Office

We propose to amend rule 908(a)(1) of Regulation SBSR to include a provision that would require any security-based swap transaction connected with a person's security-based swap dealing activity that is arranged, negotiated, or executed by personnel of such non-U.S. person located in a U.S. branch or office—or by personnel of its agent located in a U.S. branch or office—to be reported to a registered SDR and publicly disseminated pursuant to Regulation SBSR.[322] This proposed amendment generally reflects the approach described in our Cross-Border Proposing Release, which would have subjected ''transactions conducted within the United States'' to both regulatory reporting and public dissemination requirements.[323]

[322] *See* proposed rule 908(a)(1)(v). We intend the proposed rule to indicate the same type of activity by personnel located in the United States as described in Section III.B.5, *supra*. Moreover, for purposes of proposed rule 908(a)(1)(v), we would interpret the term ''personnel'' in a manner consistent with the definition of ''associated person of a security-based swap dealer'' contained in section 3(a)(70) of the Exchange Act, 15 U.S.C. 78c(a)(70), regardless of whether such non-U.S. person or such non-U.S. person's agent is itself a security-based swap dealer. *See* note 193, *supra* (discussing the Commission's proposed interpretation of the term ''personnel'' for purposes of proposed rule 3a71–3(b)(1)(iii)(C)).

[323] We preliminarily believe that the approach reflected in this release, which focuses only on whether a counterparty in connection with its dealing activity has arranged, negotiated, or executed the security-based swap transaction using personnel located in the United States, should mitigate many of the concerns raised by commenters. *See* note 286, *supra* (citing several comment letters arguing, among other things, that requirements, including Regulation SBSR, should not apply to transactions with only a minimal connection to the United States). *See also* notes 289–290, *supra* (citing comment letters arguing that looking to activity in the United States as a trigger for Regulation SBSR would not be practicable); note 292, *supra* (citing SIFMA/FIA/FSR Letter).

We recognize that some commenters suggested that certain Title VII requirements, including the regulatory reporting and public dissemination requirements implemented by Regulation SBSR, should not apply to transactions between two non-U.S. persons even if they involve activity in the United States because of operational complications or potential regulatory overlap or duplication. *See* note 275–276, 286–287, and 294–295, *supra*. We do not believe, however, that reporting a security-based swap to a registered SDR is likely to pose significant challenges, as the burden is borne under our rules only by one side of the transaction, and at least one counterparty to any transaction arranged, negotiated, or executed by a non-U.S. person, in connection with its dealing activity, using personnel located in a U.S. branch or office is already likely to have infrastructure in place to report transactions to a registered SDR.

Consistent with that approach, it would expand the scope of Regulation SBSR in two ways. First, it would require the security-based swaps that a registered foreign security-based swap dealer arranges, negotiates, or executes using personnel located in a U.S. branch or office to be publicly disseminated, even if the counterparty to such transaction is another non-U.S. person whose obligations under the security-based swap are not guaranteed by a U.S. person.[324] Second, it would require that a transaction of a non-U.S. person that is not a registered security-based swap dealer be subject to both regulatory reporting and public dissemination under Regulation SBSR if that non-U.S. person would be required to include the transaction in its *de minimis* threshold calculations under proposed Exchange Act rule 3a71–3(b)(1)(iii)(C), as described above.

Requiring these transactions to be reported to a registered SDR should enhance our ability to oversee relevant activity related to security-based swap dealing occurring within the United States as well as to monitor market participants for compliance with specific Title VII requirements (including the requirement that a person register with the Commission as a security-based swap dealer if it exceeds the *de minimis* threshold). We preliminarily believe it would also likely enhance our ability to monitor for manipulative and abusive practices involving security-based swap transactions or transactions in related underlying assets, such as corporate bonds or other securities transactions that result from dealing activity, or other relevant activity, in the U.S. market.

Subjecting these transactions to the public dissemination requirements of Regulation SBSR should enhance the level of transparency in the U.S. security-based swap market, potentially reducing implicit transaction costs [325]

[324] Under Exchange Act rule 3a71–1(c), absent a limitation by the Commission, a security-based swap dealer is deemed to be a security-based swap dealer with respect to each security-based swap it enters into, regardless of the type, class, or category of the security-based swap or the person's activities in connection with the security-based swap. Accordingly, for purposes of this proposed amendment, any transaction that a registered security-based swap dealer arranged, negotiated, or executed using personnel located in a U.S. branch or office would be ''in connection with its dealing activity'' and subject to both regulatory reporting and public dissemination.

[325] As discussed in the Regulation SBSR Adopting Release, dealing activity in the single-name CDS market is concentrated among a small number of firms that each enjoy informational

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and promoting greater price efficiency. As we noted in the Regulation SBSR Adopting Release, the current market for security-based swaps is opaque.[326] Dealers can observe order flow submitted to them by customers and other potential counterparties and know about their own executions, and may know about other dealers' transactions in certain instances, but information about executed transactions is not widespread. Market participants—particularly non-dealers—have to arrive at a price at which they would be willing to assume risk with little or no knowledge of how other market participants would or have arrived at prices at which they have assumed or would be willing to assume risk. We preliminarily believe that, by reducing information asymmetries between non-dealers and persons acting in a dealing capacity and providing more equal access to post-trade information in the security-based swap market, implicit transaction costs could be reduced, which could in turn promote greater price efficiency.[327] Ensuring that post-trade information encompasses transactions involving a non-U.S. person that arranged, negotiated, or executed the security-based swap in connection with its dealing activity using personnel located in a U.S. branch or office could increase price competition and price efficiency in the security-based swap market and should enable all market participants to have more comprehensive information with which to make trading and valuation determinations.[328]

(b) Security-Based Swaps Executed on a Platform Having Its Principal Place of Business in the United States

We also are proposing to amend rule 908(a)(1) of Regulation SBSR by adding a provision that would require any security-based swap transaction that is executed on a platform[329] having its principal place of business in the United States both to be reported to a registered SDR and to be publicly disseminated pursuant to Regulation SBSR.[330] Under our previously re-proposed rule, such transactions generally would have been subjected to Regulation SBSR as ''transactions conducted within the United States'' under the proposed definition of that term.

As noted above, our proposed amendments to Regulation SBSR focus on transactions that a non-U.S. person, in connection with its dealing activity, arranges, negotiates, or executes using personnel located in a U.S. branch or office rather than on the broader range of activity reflected in our proposed definition of ''transaction conducted in the United States.'' We preliminarily continue to believe, however, that a transaction executed on a platform that has its principal place of business in the United States also should be subject to Regulation SBSR, even when the transaction involves two non-U.S. persons that are not engaged in dealing activity in connection with the transaction. Transactions executed on a platform having its principal place of business in the United States are consummated within the United States and therefore exist, at least in part, in the United States.[331] Requiring these security-based swaps to be reported to a registered SDR will permit the Commission and other relevant authorities to observe, in a registered SDR, all transactions executed on such a platform and to carry out oversight of such security-based swaps. Furthermore, we preliminarily believe that public dissemination of such transactions would have value to participants in the U.S. security-based swap market, who are likely to trade the same or similar products, as these products will have been listed by a platform having its principal place of business in the United States.

(c) Security-Based Swaps Effected by or Through a Registered Broker-Dealer

We are also proposing to amend rule 901(a) of Regulation SBSR by adding a provision that would require the reporting and public dissemination of any security-based swap transaction that is effected by or through a registered broker-dealer (including a registered SB SEF).[332] As noted above, existing rule 908(a)(1) already provides that any transaction involving a U.S. person, either directly or indirectly, on one or both sides of the transaction subjects that transaction to both regulatory reporting and public dissemination; proposed rule 908(a)(1)(v) would impose the same requirements with respect to any transaction that a non-U.S. person in connection with its dealing activity arranges, negotiates, or executes using its personnel or the personnel of its agent located in a U.S. branch or office. Given the limitation on reporting duties set forth in rule 908(b) and in the proposed amendments to that rule, we expect that most, if not all, registered broker-dealers required to report under this proposed amendment would be U.S. persons intermediating security-based swap transactions between non-U.S. person counterparties and that such persons would be effecting transactions in security-based swaps from their offices in the United States. Moreover, under the proposed amendments to the reporting hierarchy described below, a registered broker-dealer (including a registered SB SEF) would be required to report transactions effected by or through it only when neither side of that transaction includes a U.S. person, neither side is a

advantages as a result of the large quantity of order flow they privately observe. Implicit transaction costs are the difference between the transaction price and the fundamental value, which could reflect adverse selection or could reflect compensation for inventory risk. In addition to these implicit transaction costs, security-based swap market participants may face explicit transaction costs such as commissions and other fees that dealers might charge non-dealers for access to the market. *See* Regulation SBSR Adopting Release, 80 FR 14704 n.1254.

[326] *See* Regulation SBSR Adopting Release, 80 FR 14605.

[327] Security-based swaps are complex derivative products, and there is no single accepted way to model a security-based swap for pricing purposes. As we noted in the Regulation SBSR Adopting Release, making post-trade pricing and volume information publicly available should allow valuation models to be adjusted to reflect how other market participants have valued a security-based swap product at a specific moment in time. Public dissemination of last-sale information also should aid persons engaged in dealing activity in deriving better quotations, because they will know the prices at which other market participants have traded. Last-sale information also should aid end users and other non-dealing entities in evaluating current quotations, by allowing them to question why a dealer's quote differs from the prices of the most recent transactions. Furthermore, smaller market participants that view last-sale information should be able to test whether quotations offered by dealers before the last sale were close to the price at which the last sale was executed. In this manner, post-trade transparency should promote price competition and more efficient price discovery in the security-based swap market. *See* Regulation SBSR Adopting Release, 80 FR 14606.

[328] *See id.*

[329] Regulation SBSR defines ''platform'' to mean ''a national securities exchange or security-based swap execution facility that is registered or exempt from registration.'' Rule 900(v).

[330] *See* proposed rule 908(a)(1)(iii).

[331] *Cf.* Regulation SBSR Adopting Release, 80 FR 14654 (noting that a security-based swap that is accepted for clearing by a clearing agency having its principal place of business in the United States also exists, at least in part, within the United States).

Requiring these transactions to be reported should enable registered SDRs to have a complete record of all security-based swaps that are executed on platforms that have their principal place of business in the United States, which should enhance our ability to monitor these platforms, and activity in the security-based swap market more generally, for manipulation and other abusive practices. *Cf.* Cross-Border Proposing Release, 78 FR 31040 (noting importance of having a complete record of security-based swaps). Requiring these transactions to be reported should also enhance our ability to monitor activity on these platforms for compliance with recordkeeping and reporting and other requirements. *See* Cross-Border Proposing Release, 78 FR 31183 (discussing the market-wide benefits of enhanced transparency).

[332] *See* proposed rule 908(a)(1)(iv).

registered security-based swap dealer or registered major security-based swap participant, and neither side of that transaction involves a non-U.S. person that has, in connection with its dealing activity, arranged, negotiated, or executed the security-based swap using its personnel or the personnel of its agent located in a U.S. branch or office.[333]

To the extent that a registered broker-dealer intermediates a security-based swap transaction, we preliminarily believe that the transaction should be both reported to a registered SDR and publicly disseminated. Registered broker-dealers play a key role as intermediaries in the U.S. financial markets. To improve integrity and transparency in those markets, we believe that it is important that the Commission, and other relevant authorities, have ready access to detailed information about the security-based swap transactions that such persons intermediate. Furthermore, we preliminarily believe that public dissemination of such transactions will have value to participants in the U.S. security-based swap market, who are likely to trade the same or similar products.

3. Application of the Public Dissemination Requirement to Certain Transactions

In the Regulation SBSR Adopting Release, we adopted rule 908(a)(1)(i), which requires, among other things, public dissemination of all security-based swap transactions having a U.S.-person guarantor, including transactions in which the other side includes no counterparty that is a U.S. person, registered security-based swap dealer, or registered major security-based swap participant (a ''covered cross-border transaction'').[334] This represented a departure from the re-proposed approach described in the Cross-Border Proposing Release, which would have excepted covered cross-border transactions from the public dissemination requirement.[335] We noted, however, that we had determined to continue considering whether to except covered cross-border transactions from the public dissemination requirement and that we would solicit additional comment regarding whether such an exception would be appropriate. We solicit comment on this approach in the request for comments below.

In light of our determination to require all security-based swap transactions of U.S. persons, including all transactions conducted through a foreign branch, to be publicly disseminated, we preliminarily do not think that it would be appropriate to exempt covered cross-border transactions from the public dissemination requirement. As we have noted elsewhere, the transactions of a guaranteed non-U.S. person exist, at least in part, within the United States, and the economic reality of these transactions is substantially identical to transactions entered into directly by a U.S. person (including through a foreign branch).[336] Failure to require such transactions to be publicly disseminated would treat these economically substantially identical transactions differently, potentially creating competitive disparities between U.S. persons, depending on how they have structured their business, as a guaranteed non-U.S. person would be able to carry out an unlimited volume of covered cross-border transactions without being subject to the public dissemination requirement.[337]

4. Proposed Amendments Regarding Limitations on Reporting Obligations of Certain Persons Engaged in Security-Based Swaps Subject to Regulation SBSR

Rule 908(b) of Regulation SBSR provides that, notwithstanding any other provision of Regulation SBSR, a person shall not incur any obligation under Regulation SBSR unless it is a U.S. person, a registered security-based swap dealer, or a registered major security-based swap participant.[338] We noted that rule 908(b) is designed to specify the types of persons that will incur duties under Regulation SBSR. If a person does not come within any of the categories enumerated by rule 908(b), it would not incur any duties under Regulation SBSR.[339] Rule 908(b) was designed to reduce assessment costs and provide greater legal certainty to counterparties engaging in cross-border security-based swaps, and we explained that we anticipated soliciting additional public comment regarding whether regulatory reporting and/or public dissemination requirements should be extended to transactions between non-U.S. persons occurring within the United States and, if so, which non-U.S. persons should incur reporting duties under Regulation SBSR.[340]

Consistent with the proposed amendments described above, and so that at least one counterparty to a transaction that is subject to Regulation SBSR has an obligation to report the transaction to a registered SDR, we are proposing to add subparagraph (5) to rule 908(b) to include a non-U.S. person that, in connection with such person's security-based swap dealing activity, arranged, negotiated, or executed the security-based swap using its personnel located in a U.S. branch or office, or using personnel of its agent located in a U.S. branch or office.[341] Because

[333] We acknowledge that some commenters urged us not to require SB SEFs to report transactions under Regulation SBSR. *See* note 289, *supra.* We preliminarily believe, however, that a registered broker-dealer (including a registered SB SEF) is likely to be better positioned to report than either counterparty to a transaction described in proposed rule 901(a)(2)(ii)(E)(4). We note that proposed rule 901(a)(2)(ii)(E)(4) applies only when two non-U.S. persons who are not registered security-based swap dealers, registered major security-based swap participants, or non-U.S. persons that fall within proposed rule 908(b)(5) effect a security-based swap through a registered broker-dealer. In the Regulation SBSR Adopting Release, we observed that non-registered persons are less likely than Commission registrants to have systems in place to support the reporting required by Regulation SBSR, and we preliminarily believe that the same applies here. *See* Regulation SBSR Adopting Release, 80 FR 14600.

[334] *See* rule 908(a)(1)(i); Regulation SBSR Adopting Release, 80 FR 14652–53. As in the Regulation SBSR Adopting Release, a ''covered cross-border transaction'' refers to a transaction that meets the description above and will not be submitted to clearing at a registered clearing agency having its principal place of business in the United States. *See* Regulation SBSR Adopting Release, 80 FR 14653.

[335] *See* Cross-Border Proposing Release, 78 FR 31062; initially re-proposed rule 908(a)(2) (requiring that security-based swaps be publicly disseminated if there is a direct or indirect counterparty that is a U.S. person on *each* side of the transaction).

[336] *See* note 319, *supra.*

[337] However, if the transactions of a guaranteed non-U.S. person are subject to regulatory reporting and public dissemination requirements in a foreign jurisdiction that are comparable to those imposed by Regulation SBSR, such transactions could be eligible for substituted compliance. *See* rule 908(c).

[338] *See* rule 908(b). In the Regulation SBSR Proposed Amendments Release, we proposed to amend rule 908(b) by adding platforms and registered clearing agencies to the list of persons that might incur obligations under Regulation SBSR. *See* Regulation SBSR Proposed Amendments Release, 80 FR 14759.

[339] *See* Regulation SBSR Adopting Release, 80 FR 14656.

[340] *See id.*

[341] *See* proposed rule 908(b)(5). We intend the proposed rule to indicate the same type of activity by personnel located in the United States as described in Section III.B.5, *supra.* Moreover, for purposes of proposed rule 908(b)(5), we would interpret the term ''personnel'' in a manner consistent with the definition of ''associated person of a security-based swap dealer'' contained in section 3(a)(70) of the Exchange Act, 15 U.S.C. 78c(a)(70), regardless of whether such non-U.S. person or such non-U.S. person's agent is itself a security-based swap dealer. *See* note 193, *supra*

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existing rule 908(b)(2) already covers a non-U.S. person that is registered as a security-based swap dealer, the effect of proposed rule 908(b)(5) would be to cover a non-U.S. person that engages in dealing activity in the United States but that does not meet the *de minimis* threshold and thus would not be registered as a security-based swap dealer.

5. Proposed Amendment Regarding Reporting Duties of Certain Persons That are not Registered Security-Based Swap Dealers or Registered Major Security-Based Swap Participants

Rule 901(a)(2)(ii) of Regulation SBSR establishes a reporting hierarchy that specifies the side that has the duty to report a security-based swap, taking into account the types of entities present on each side of the transaction.[342] The reporting side, as determined by the reporting hierarchy, is required to submit the information required by rule 901 of Regulation SBSR to a registered SDR.[343] The reporting side may select the registered SDR to which it makes the required report.

Rule 901(a)(2) of Regulation SBSR does not assign reporting obligations for certain transactions having only unregistered entities on both sides of the transaction. In the Regulation SBSR Adopting Release, we specifically noted that we anticipated soliciting further comment regarding the duty to report a security-based swap where neither side includes a registered security-based swap dealer or a registered major security-based swap participant and neither side includes a U.S. person or only one side includes a U.S. person.[344] In this release we are proposing additional provisions setting forth which sides would have the duty to report such transactions.

As noted above, and as discussed in the Regulation SBSR Adopting Release, one commenter raised concerns about burdens that the previously re-proposed reporting hierarchy might place on U.S. persons in transactions with certain non-U.S.-person counterparties.[345] Under that approach, in a transaction between a non-U.S. person and a U.S. person, where neither side included a security-based swap dealer or major security-based swap participant, the U.S. person would have had the duty to report. The commenter noted that in such transactions the non-U.S.-person counterparty might be engaged in dealing activity but at levels below the security-based swap dealer *de minimis* threshold and the U.S. person may not be acting in a dealing capacity in any of its security-based swap transactions. The commenter argued that, in such cases, the non-U.S. person may be better equipped to report the transaction and accordingly that, when two non-registered persons enter into a security-based swap, the counterparties should be permitted to select which counterparty would report, even if one counterparty is a U.S. person.[346]

Proposed rule 901(a)(2)(ii)(E)(2) is intended in part to address this concern when the non-U.S. person is engaged in dealing activity using personnel located in the United States. Under the proposed rule, in a transaction between such a non-U.S. person and a U.S. person, where neither side includes a registered security-based swap dealer or a registered major security-based swap participant, the sides would be permitted to select which side has the duty to report the transaction.[347] We preliminarily believe that this approach should facilitate efficient allocation of reporting duties between the sides by permitting the counterparties to select the reporting side.

For similar reasons, proposed rule 901(a)(2)(ii)(E)(2) also provides that, in a transaction between two non-U.S. persons in which both sides include a non-U.S. person that is carrying out relevant security-based swap dealing activity using personnel located in a U.S. branch or office, as described in proposed rule 908(b)(5), the sides would be permitted to select which side has the duty to report the transaction. We preliminarily believe that, because both sides of such a transaction are engaging in dealing activity in the United States but both fall beneath the *de minimis* thresholds, both sides are likely to have approximately equivalent levels of infrastructure to support their U.S. business, including the infrastructure for reporting transactions to a registered SDR. In such cases, we preliminarily believe that it would be reasonable and appropriate to permit them to select which side will have the duty to report.[348]

With respect to transactions in which one side includes only unregistered non-U.S. persons that do not fall within proposed rule 908(b)(5) and the other side includes at least one unregistered non-U.S. person that does fall within proposed rule 908(b)(5) or one unregistered U.S. person, we preliminarily believe that it is appropriate to place the reporting duty on the side that includes the unregistered non-U.S. person that falls within proposed rule 908(b)(5) or the unregistered U.S. person.[349] We preliminarily believe that, in such a transaction, the U.S. person or the non-U.S. person engaged in a security-based swap transaction, in connection with its dealing activity, using personnel located in a U.S. branch or office may generally be more likely than its counterparty to have the ability to report the transaction to a registered SDR given that it has operations in the United States. We also note that, in a transaction where neither side includes a registered security-based swap dealer or a registered major security-based swap participant, placing the duty on the side that has a presence in the United States should better enable us to monitor and enforce compliance with the reporting requirement.

Finally, we are proposing a rule that would provide that a registered broker-dealer (including a registered SB SEF) shall report the information required by rules 901(c) and 901(d) for any transaction in which neither side includes a U.S. person and neither side includes a non-U.S. person that falls within proposed rule 908(b)(5) but the security-based swap is effected by or through the registered broker-dealer (including a registered SB SEF).[350] We preliminarily believe that, in such a transaction, the registered broker-dealer (including a registered SB SEF) may generally be more likely than the counterparties to the transaction (neither of which may have any operations or presence in the United States) to have the ability to report the transaction to a registered SDR given its

(discussing the Commission's proposed interpretation of the term ''personnel'' for purposes of proposed rule 3a71–3(b)(1)(iii)(C)).

[342] *See* rule 901(a).

[343] Rule 900(gg) defines ''reporting side'' to mean ''the side of a security-based swap identified by § 242.901(a)(2).'' As noted above, rule 901(a)(2) identifies the person that will be obligated to report a security-based swap under various circumstances.

[344] *See* Regulation SBSR Adopting Release, 80 FR 14600, 14655.

[345] *See* IIB Letter at 26; Regulation SBSR Adopting Release, 80 FR 14600.

[346] *See* IIB Letter at 26 (stating that, in such transactions, ''it would be more efficient and fair for the Commission to modify its rules to allow a De Minimis SBSD to agree with its counterparty to be the reporting party when facing a U.S. non-registrant counterparty'').

[347] *See* proposed rule 901(a)(2)(ii)(E)(2).

[348] Similar considerations have informed our proposal to permit counterparties to a transaction where both sides include only non-U.S. persons that do not fall within proposed rule 908(b)(5) to select the reporting side. *See* proposed rule 901(a)(2)(ii)(E)(4). Such a transaction would be subject to Regulation SBSR because it has been accepted for clearing by a clearing agency that has its principal place of business in the United States or because it has been executed on a platform that has its principal place of business in the United States. *See* proposed rules 908(a)(ii) and (iii).

[349] *See* proposed rule 901(a)(2)(ii)(E)(3).

[350] *See* proposed rule 901(a)(2)(ii)(E)(4).

presence in the United States and its familiarity with the Commission's regulatory requirements.[351]

6. Proposed Amendments to Rules 900(u), 901(d)(9), 906(b), 906(c), and 907(a) of Regulation SBSR To Accommodate Proposed Rule 901(a)(2)(ii)(E)(4).

(a) Proposed Amendment to Rule 900(u)

Rule 900(u) defines a ''participant'' of a registered SDR as ''a counterparty, that meets the criteria of [rule 908(b) of Regulation SBSR], of a security-based swap that is reported to that [registered SDR] to satisfy an obligation under [rule 901(a) of Regulation SBSR].'' In the Regulation SBSR Proposed Amendments Release, we proposed to expand the definition of ''participant'' to include registered clearing agencies and platforms.[352] This proposed definition would not include a registered broker-dealer that incurs reporting obligations solely because it effects a transaction between unregistered non-U.S. persons that do not fall within proposed rule 908(b)(5). We believe that such registered broker-dealers should be participants of any registered SDR to which they are required to report security-based swap transaction information. Imposing participant status on such registered broker-dealers would explicitly require those entities to report security-based swap transaction information to a registered SDR in a format required by that registered SDR under rule 901(h). If such registered broker-dealers were not participants of the registered SDR and were permitted to report data in a format of their own choosing, it could be difficult or impossible for the registered SDR to understand individual transaction reports or aggregate them with other reports in a meaningful way. This could adversely affect the ability of the Commission and other relevant authorities to carry out their oversight responsibilities and could interfere with the ability of a registered SDR to publicly disseminate security-based swap transaction information as required by rule 902 of Regulation SBSR. Therefore, we are proposing to amend the definition of ''participant'' in rule 900(u) to include a registered broker-dealer that is required to report a security-based swap by rule 901(a)(2)(ii)(E)(4).

If we ultimately adopt both this amendment to rule 900(u) and the amendment proposed in the Regulation SBSR Proposed Amendments Release, ''participant'' would mean: ''with respect to a registered security-based swap data repository, [ ] (1) A counterparty, that meets the criteria of § 242.908(b), of a security-based swap that is reported to that registered security-based swap data repository to satisfy an obligation under § 242.901(a); (2) a platform that reports a security-based swap to that registered security-based swap data repository to satisfy an obligation under § 242.901(a); (3) a registered clearing agency that is required to report to that registered security-based swap data repository whether or not it has accepted a security-based swap for clearing pursuant to § 242.901(e)(1)(ii); or (4) a registered broker-dealer (including a registered security-based swap execution facility) that is required to report a security-based swap to that registered security-based swap data repository by § 242.901(a).''

(b) Proposed Amendment to Rule 901(d)(9)

In the Regulation SBSR Adopting Release, we noted the importance of identifying whether a broker is involved in the execution of a security-based swap. Identifying the broker for a security-based swap will provide regulators with a more complete understanding of the transaction and could provide useful information for market surveillance purposes.[353] To obtain information about brokers that facilitate security-based swap transactions—as well as other persons involved in a security-based swap—existing rule 901(d)(2) requires the reporting side to report, as applicable, the branch ID, broker ID, execution agent ID, trade ID, and trading desk ID of the direct counterparty on the reporting side. In the Regulation SBSR Adopting Release, we also recognized the importance of identifying the venue on which a security-based swap is executed, because this information should enhance the ability of relevant authorities to conduct surveillance in the security-based swap market and understand developments in the security-based swap market generally.[354] Therefore, we adopted rule 901(d)(9), which requires reporting of the platform ID, if applicable.

As described above, proposed rule 901(a)(2)(ii)(E)(4) would require a registered broker-dealer to report the information in rules 901(c) and 901(d) for any transaction between two unregistered non-U.S. persons that do not fall within rule 908(b)(5) where the transaction is effected by or through the registered broker-dealer. Because a security-based swap reported under rule 901(a)(2)(ii)(E)(4) will not have a reporting side, no one would have the obligation to report the information required by existing rule 901(d)(2). We preliminarily believe, however, that being able to identify any registered broker-dealer that effects a security-based swap transaction in the manner described in rule 901(a)(2)(ii)(E)(4) would enhance our understanding of the security-based swap market and would improve our ability, and the ability of other relevant authorities, to conduct surveillance of security-based swap market activities. We therefore propose to amend rule 901(d)(9) to assure that the identity of any such registered broker-dealer is included in the report of a security-based swap transaction reported pursuant to rule 901(a)(2)(ii)(E)(4). As proposed to be amended, rule 901(d)(9) would require reporting of ''[t]he platform ID, if applicable, or if a registered broker-dealer (including a registered security-based swap execution facility) is required to report the security based swap by § 242.901(a)(2)(ii)(E)(4), the broker ID of that registered broker-dealer (including a registered security-based swap execution facility).''

(c) Proposed Amendments to Rules 906 and 907

Under the proposed amendment to rule 900(u) described above,[355] the definition of ''participant'' would be expanded to include a registered broker-dealer that incurs reporting obligations solely because it effects a transaction between two unregistered non-U.S. persons that do not fall within proposed rule 908(b)(5). Rule 906(b) of Regulation SBSR generally requires a participant of a registered SDR to provide the identity of its ultimate parent and any affiliates that also are participants of that registered SDR. In the Regulation SBSR Proposed Amendments Release, we proposed to except platforms and registered clearing agencies from rule

[351] *Cf.* Letter from ISDA to SEC, dated January 18, 2011 (''ISDA/SIFMA Letter'') at 17 (noting that market participants, including brokers, may provide reporting services on behalf of their customers).

[352] *See* Regulation SBSR Adopting Release, 80 FR 14751. As proposed to be amended, rule 900(u) would define ''participant'' to mean: (1) A person that is a counterparty to a security-based swap, provided that the security-based swap is subject to regulatory reporting under Regulation SBSR and is reported to a registered SDR pursuant to Regulation SBSR; (2) a platform that is required to report a security-based swap pursuant to Rule 901(a)(1); or (3) a registered clearing agency that is required to report a life cycle event pursuant to Rule 901(e).

[353] *See* Regulation SBSR Adopting Release, 80 FR 14583.

[354] *See* Regulation SBSR Adopting Release, 80 FR 14589.

[355] *See* Section V.E.6, *supra.*

906(b).[356] We preliminarily believe that the purposes of rule 906(b)—namely, facilitating our ability to measure derivatives exposure within the same ownership group—would not be advanced by applying the requirement to a registered broker-dealer that incurs reporting obligations solely because it effects a transaction between two unregistered non-U.S. persons that do not fall within proposed rule 908(b)(5) to report parent and affiliate information to a registered SDR. A registered broker-dealer acting solely as a broker with respect to a security-based swap is not taking a principal position in the security-based swap. To the extent that such a registered broker-dealer has an affiliate that transacts in security-based swaps, such positions could be derived from other transaction reports indicating that affiliate as a counterparty. Accordingly, we propose to amend rule 906(b) to state that reporting obligations under rule 906(b) do not apply to a registered broker-dealer that becomes a participant solely as a result of making a report to satisfy an obligation under rule 901(a)(2)(ii)(E)(4).

We propose to make a similar amendment to rule 907(a)(6). In the Regulation SBSR Proposed Amendments Release, we proposed to amend this rule to require a registered SDR to have policies and ''[f]or periodically obtaining from each participant other than a platform or a registered clearing agency information that identifies the participant's ultimate parent(s) and any participant(s) with which the participant is affiliated, using ultimate parent IDs and counterparty IDs.'' [357] We now propose to further amend rule 907(a)(6) and except from this requirement a registered broker-dealer that incurs reporting obligations solely because it effects a transaction between two unregistered non-U.S. persons that do not fall within proposed rule 908(b)(5). Thus, if we ultimately adopt both this amendment to rule 907(a)(6) and the amendment to rule 907(a)(6) proposed in the Regulation SBSR Proposed Amendments Release, rule 907(a)(6) would require a registered SDR to have policies and procedures ''[f]or periodically obtaining from each participant other than a platform, a registered clearing agency, or a registered broker-dealer (including a registered security-based swap execution facility) that becomes a participant solely as a result of making a report to satisfy an obligation under § 242.901(a)(2)(ii)(E)(4) information that identifies the participant's ultimate parent(s) and any participant(s) with which the participant is affiliated, using ultimate parent IDs and counterparty IDs.''

(d) Extending the Applicability of Rule 906(c)

Rule 906(c) requires certain participants of a registered SDR to establish, maintain, and enforce written policies and procedures that are reasonably designed to ensure that the participant complies with any obligations to report information to a registered SDR in a manner consistent with Regulation SBSR. Rule 906(c) also requires participants covered by the rule to review and update their policies and procedures at least annually. In the Regulation SBSR Adopting Release, we stated that the policies and procedures required by rule 906(c) are intended to promote complete and accurate reporting of security-based swap information by SDR participants that are registered security-based swap dealers or registered major security-based swap participants.[358]

In the Regulation SBSR Proposed Amendments Release, we proposed to amend rule 906(c) by extending the requirement to have such policies and procedures to platforms and registered clearing agencies.[359] In light of the proposed amendments to rule 901(a) relating to registered broker-dealers, described above, we now preliminarily believe that a registered broker-dealer that incurs reporting obligations solely because it effects transactions between two unregistered non-U.S. persons that do not fall within proposed rule 908(b)(5) also should be required to establish, maintain, and enforce the policies and procedures required by rule 906(c).[360]

We preliminarily believe that the proposed amendment to rule 906(c) should result in greater accuracy and completeness of the security-based swap transaction data reported to registered SDRs. Without written policies and procedures, compliance with reporting obligations of such a registered broker-dealer might depend too heavily on key individuals or unreliable processes. For example, if knowledge of the reporting function was not reflected in written policies and procedures but existed solely in the memories of one or a few individuals, compliance with applicable reporting requirements by the firm might suffer if these key individuals depart the firm. We preliminarily believe, therefore, that requiring participants that are registered broker-dealers that incur reporting obligations solely because they effect a transaction between two non-U.S. persons that do not fall within proposed rule 908(b)(5) to establish, maintain, and enforce written policies and procedures should promote clear, reliable reporting that can continue independent of any specific individuals. We further believe that requiring such a participant to establish, maintain, and enforce written policies and procedures relevant to its reporting responsibilities, as would be required by the proposed amendment to rule 906(c), would help to improve the degree and quality of overall compliance with the reporting requirements of Regulation SBSR.

7. Availability of Substituted Compliance

Rule 908(c)(1) of Regulation SBSR describes the security-based swap transactions that potentially would be eligible for substituted compliance with respect to regulatory reporting and public dissemination of security-based swap transactions. Accordingly, substituted compliance would potentially be available for transactions that would become subject to Regulation SBSR pursuant to the proposed amendments described above, as the location of relevant dealing activity or of execution of the transaction would continue to be irrelevant for purposes of rule 908(c).[361]

Rule 908(c)(1) does not condition substituted compliance eligibility on where a particular transaction was arranged, negotiated, or executed.[362] Under rule 908(c)(1), a security-based swap is eligible for substituted

[356] *See* Regulation SBSR Adopting Release, 80 FR 14645–46.

[357] Once a participant reports parent and affiliate information to a registered SDR, rule 906(b) requires the participant to ''promptly notify the registered [SDR] of any changes'' to its parent and affiliate information.

[358] *See* Regulation SBSR Adopting Release, 80 FR 14648.

[359] *See id.* at 14758–59.

[360] We are also proposing to revise the title of the rule. As adopted, the title of rule 906(c) was: ''Policies and procedures of registered security-based swap dealers and registered major security-based swap participants.'' In the Regulation SBSR Proposed Amendments Release, we proposed to add registered clearing agencies and platforms to the rule's title. Rather than adding registered broker-dealers to the entities delineated in the title to 906(c), we are proposing to revise the title to ''Policies and procedures to support reporting compliance.''

[361] *See* note 295, *supra.*

[362] Rule 908(c)(1) provides: ''Compliance with the regulatory reporting and public dissemination requirements in sections 13(m) and 13A of the Act (15 U.S.C. 78m(m) and 78m–1), and the rules and regulations thereunder, may be satisfied by compliance with the rules of a foreign jurisdiction that is the subject of a Commission order described in paragraph (c)(2) of this section, provided that at least one of the direct counterparties to the security-based swap is either a non-U.S. person or a foreign branch.''

compliance with respect to regulatory reporting and public dissemination, provided that at least one of the direct counterparties to the security-based swap is either a non-U.S. person or a foreign branch. Thus, rule 908(c)(1) permits a security-based swap between a U.S. person and the New York branch of a foreign bank (*i.e.,* a non-U.S. person with operations inside the United States) to be eligible for substituted compliance, provided that such compliance is with the rules of a foreign jurisdiction that is the subject of a Commission substituted compliance order.

In adopting rule 908(c)(1), we noted that the final rule was consistent with our decision to solicit additional comments regarding whether to impose reporting or public dissemination requirements based solely on whether a transaction is conducted within the United States.[363] Although we are now proposing an amendment that would impose these requirements on certain transactions that a non-U.S. person arranges, negotiates, or executes using personnel located in a U.S. branch or office, we are not proposing an amendment that would limit the availability of substituted compliance for such transactions based on the location of this relevant activity. Accordingly, under our proposed approach, and consistent with our final rule, counterparties to a transaction that is required to be reported because a non-U.S.-person counterparty to the transaction, in connection with its dealing activity, arranged, negotiated, or executed the transaction using personnel located in a U.S. branch or office or because it was executed on a platform or effected by or through a registered broker-dealer would be eligible for substituted compliance, provided that such compliance is with the rules of a foreign jurisdiction that is the subject of a Commission order.[364]

This approach would subject transactions that are arranged, negotiated, or executed by personnel located in a U.S. branch or office, in connection with a non-U.S. person's dealing activity, to regulatory reporting and public dissemination requirements in a manner consistent with Title VII, while mitigating the potential to duplicate compliance burdens. The proposed approach is also consistent with the determination in our final rule that certain transactions involving U.S.-person counterparties are eligible for substituted compliance (*i.e.,* when the transaction is through the foreign branch of the U.S. person) even if the non-U.S.-person counterparty has engaged in dealing activity in connection with the transaction in the United States.[365]

F. Request for Comment

We invite comment regarding all aspects of the proposed approach to clearing, trade execution, regulatory reporting, and public dissemination described here, as well as potential alternative approaches. Data and comment from market participants and other interested parties regarding the likely effect of the proposed approach and of potential alternative approaches will be particularly useful to us in evaluating potential modifications to the re-proposal.

In addition, we specifically request comment with respect to each of the requirements discussed above, as follows.

1. Mandatory Clearing and Trade Execution

We seek comment on the re-proposed rule regarding application of mandatory clearing and trade execution in all aspects, including the following:

- Is it appropriate not to apply the clearing and trade execution requirements to transactions that a non-U.S. person, in connection with its dealing activity, arranges, negotiates, or executes using personnel located in a U.S. branch or office? Why or why not?
- What would be the likely market impact of our proposal not to subject such transactions to the clearing and trade execution requirements? How would this proposed approach affect the competitiveness of U.S. persons and other market participants in the global marketplace (both in the United States as well as in foreign jurisdictions)? How do you believe any competitive disparity that may result under our proposed approach should be addressed by our rules?
- Would there be any potential effect from our proposal on U.S. financial stability? If so, how should any such effect be addressed?
- Would there be any potential effect from our proposal on the liquidity available on any SB SEFs? If so, how should any such effect be addressed?
- To what extent do non-U.S. persons that are not engaged in security-based swap dealing but do enter into security-based swaps with dealers that use personnel located in the United States already have clearing relationships with clearing agencies located in the United States or with entities that may qualify for a substituted compliance determination? For such persons that do not already have such relationships, what costs and other burdens would be involved with establishing such relationships? To what extent would permitting substituted compliance as proposed in the Cross-Border Proposing Release address these concerns?

2. Regulation SBSR

We request comment on all aspects of the proposed amendments to Regulation SBSR, including the following:

- Do you agree with the approach taken in the proposed amendments to rule 908(a) that a security-based swap should be subject to regulatory reporting and public dissemination regardless of the nationality or place of domicile of the counterparties if it is a transaction connected with a person's security-based swap dealing activity that is arranged, negotiated, or executed by personnel located in the United States? Why or why not?
- Do you agree with the approach taken in the proposed amendments to rule 908(a) that a security-based swap executed on a platform having its principal place of business in the United States should be subject to the regulatory reporting and public dissemination requirements? Why or why not?
- Do you agree with the approach taken in the proposed amendments to rule 908(a) that would subject a security-based swap effected by or through a registered broker-dealer (including a registered security-based swap execution facility) to the regulatory reporting and public dissemination requirements? Why or why not? Should transactions that would be required to be reported under the proposed amendments to rule 908(a) solely because they were effected by or through a registered broker-dealer (including a registered security-based swap execution facility) be required to be reported by a counterparty to the transaction, rather than by a registered broker-dealer (including a registered security-based swap execution facility), as proposed?
- Do you agree with the proposed amendment to the hierarchy of reporting obligations in rule 901(a)? Why or why

[363] *See* Regulation SBSR Adopting Release, 80 FR 14658.

[364] A non-U.S. person engaged in relevant dealing activity using personnel located in a U.S. branch or office may incur the duty to report a transaction under Exchange Act rules 901(a)(2)(ii)(A), (B), (C), or (D), or under proposed rules 901(a)(2)(ii)(E)(2), (3), or (4) of Regulation SBSR.

[365] *See* Exchange Act rule 908(c)(1) (permitting compliance with the regulatory reporting and public dissemination requirements by complying with the rules of a foreign jurisdiction if at least one of the direct counterparties to the security-based swap transaction is either a non-U.S. person or a foreign branch).

not? Are there any prongs where you believe the result should be different? If so, which prong(s) and why?

• Should we provide an exemption from Regulation SBSR's public dissemination requirement for transactions having a U.S. person guarantor in which the other side includes no counterparty (direct or indirect) that is a U.S. person, registered security-based swap dealer, or registered major security-based swap participant? Why or why not?

• What types of controls would be necessary to identify transactions required to be reported under rule 908(a)(1)(v)? How would this work as an operational matter? What are the costs and benefits associated with developing and maintaining such controls?

• As noted above, given the limitation on reporting duties set forth in rule 908(b) and in the proposed amendments to that rule, we expect that most, if not all, registered broker-dealers required to report under this proposed amendment would be U.S. persons intermediating security-based swap transactions between non-U.S. person counterparties and that such persons would be effecting transactions in security-based swaps from their offices in the United States. Is this expectation consistent with market practices by registered broker-dealers?

• Should a registered broker-dealer that is required to report transactions pursuant to rule 901(a)(2)(ii)(E)(4) be a participant of the registered SDRs to which they report? If not, how would a registered SDR ensure that such persons provide data in a format required by the registered SDR? Would a registered broker-dealer likely be required to be a participant of a registered SDR under existing rule 901(d) by virtue of its other security-based swap activity?

• Do you agree that the Commission should require reporting of the identity of any registered broker-dealer that effects a security-based swap for two non-U.S. person that do not fall within rule 908(b)(5)? Why or why not? If so, do you believe that the proposed amendment to rule 901(d)(9) is the appropriate way to accomplish that goal? Why or why not?

• Do you agree with the Commission's proposal to exclude registered broker-dealers that incur reporting obligations solely because they effect a transaction between two non-U.S. persons that do not fall within proposed rule 908(b)(5) from rule 906(b)? Why or why not?

• Do you believe that rule 906(c) should be expanded to include registered broker-dealers that incur reporting obligations solely because they effect a transaction between two non-U.S. persons that do not fall within proposed rule 908(b)(5)? Why or why not?

• What would be the costs to registered broker-dealers that would be subject to rule 901(a)(2)(ii)(E)(4) for establishing and maintaining policies and procedures under rule 906(c) to support compliance with Regulation SBSR? Are these registered broker-dealers likely to have affiliates that will become registered security-based swap dealers, which are already subject to rule 906(c)? If so, would these registered broker-dealers be able to reduce implementation burdens under rule 906(c) by adapting the policies and procedures of their affiliates for their own usage?

VI. Economic Analysis of the Proposed Rules

The proposed amendments and proposed rule would determine when a non-U.S. person whose obligations under a security-based swap are not guaranteed by a U.S. person and that is not a conduit affiliate is required to include in its dealer *de minimis* calculation transactions with another non-U.S. person and when transactions of a non-U.S. person whose obligations under a security-based swap are not guaranteed by a U.S. person are subject to the external business conduct requirements and to Regulation SBSR.

We are sensitive to the economic consequences and effects, including costs and benefits, of our rules. The following economic analysis identifies and considers the costs and benefits—including the effects on efficiency, competition, and capital formation—that may result from the rules being proposed today. These costs and benefits are discussed below and have informed the policy choices described throughout this release. Because of the attributes of the security-based swap market, the market's global nature, the concentration of dealing activity, and the ease with which dealers can relocate their operations to different jurisdictions, we preliminarily believe that the territorial approach to transactions proposed in these rules is consistent with the statutory focus of the Title VII framework for security-based swaps. Below, we discuss the likely economic effects of the proposed rules, including the assessment and programmatic costs and benefits. We also discuss the potential economic effects of certain alternatives to the approach taken by the proposed rules.

A. Assessment Costs

1. Discussion

Under the proposed rules we preliminarily believe that non-U.S. persons would incur costs to assess whether their activities must be counted against *de minimis* thresholds and subjected to Title VII requirements.[366] This section begins by considering the effect on assessment costs of increasing the scope of transactions required to be counted towards *de minimis* thresholds and proceeds to consider the effect on assessment costs of identifying security-based swap activity that, under the proposed rules, would count towards *de minimis* thresholds or become subject to external business conduct, regulatory reporting, and public dissemination requirements.

Because the proposed amendment would expand the scope of security-based swap transactions that non-U.S. persons would need to include in their *de minimis* calculations, we preliminarily believe that the proposed amendment may result in an increase in the number of non-U.S. persons exceeding $2 billion in transaction notional in a given year and incurring assessment costs as a result of counting transactions against the *de minimis* threshold.[367]

Estimating the number of additional non-U.S. persons that we expect to incur assessment costs as a result of the proposed amendment would require adding transactions arranged, negotiated, or executed by personnel located in the United States, including cleared anonymous transactions subject to proposed rule 3a71–5(c), to the set of transactions that these non-U.S. persons are currently required to count as a result of rule 3a71–3(b)(1)(iii) and computing the total notional value of these transactions. We cannot determine, based on the TIW transactions data, whether particular transactions were arranged, negotiated, or executed by personnel located in the United States. If we assume that all observable transactions of non-U.S.

[366] We refer to these costs as "Assessment Costs." *See* Intermediary Definitions Adopting Release, 77 FR 30722.

[367] We preliminarily believe that it is likely that entities that exceed $2 billion in transaction notional in a 12 month period are likely to incur assessment costs to determine whether they exceed the *de minimis* threshold. Because the proposed rules add to the set of transactions that must be counted towards the *de minimis* threshold, non-U.S. persons are more likely to exceed $2 billion in transaction notional and incur these assessment costs. These non-U.S. persons would have to assess not only transactions scoped in by the proposed rule, but also transactions with U.S. persons against their *de minimis* threshold. *See* Cross-Border Adopting Release, 79 FR 47331–33.

persons on U.S. reference entities that are not already required to be applied towards the *de minimis* threshold as a result of proposed rule 3a71–3(b)(1)(iii) are arranged, negotiated, or executed by personnel located in a U.S. branch or office, we estimate that a total of approximately 15 non-U.S. persons likely would incur assessment costs as a result of the proposed amendment based on 2014 TIW transactions data. However, we note that this estimate may be overinclusive, as we do not believe that all such transactions are likely to be arranged, negotiated, or executed by personnel located in a U.S. branch or office, and at the same time it may also be underinclusive because our TIW data does not include single-name CDS transactions between two non-U.S. entities written on non-U.S. underliers.[368]

The additional 15 non-U.S. persons that are likely to incur assessment costs associated with *de minimis* counting would join the 56 non-U.S. persons identified in the TIW 2014 transactions data as having relevant activity under rule 3a–71–3(b),[369] for a total of 71 persons who would likely incur assessment costs under the proposed rules based on 2014 data. We preliminarily believe it is reasonable to increase these estimates by a factor of two, to account for any potential growth in the security-based swap market and to account for the fact that we are limited to observing transaction records for activity between non-U.S. persons that reference U.S. underliers.[370] As a result, we preliminarily believe that the assessment costs discussed below apply to 142 entities.

Although foreign security-based swap dealers that are required to register under existing Exchange Act rule 3a71–3 would not be likely to incur assessment costs as a result of 3a71–3(b)(1)(iii), as this proposed rule would not affect their need to register as security-based swap dealers, they are included in our total estimate of 142 entities above. We have included them because they likely would incur identical assessment costs in order to identify transactions subject to those requirements under proposed Exchange Act rule 3a71–5(c), which imposes external business conduct requirements on the U.S. business of registered security-based swap dealers, and the proposed amendments to Regulation SBSR.

As noted above, we preliminarily believe that, as a result of the proposed rules, non-U.S. persons would incur costs to identify transaction activity that is relevant for *de minimis* counting and subject to external business conduct, regulatory reporting, and public dissemination requirements. We preliminarily believe that the business structures employed by non-U.S. persons may determine the magnitude of these assessment costs, and that non-U.S. persons will generally choose a business structure that considers its regulatory costs for both compliance and assessment. The following section discusses the approaches that these market participants may use to determine which transactions are subject to Title VII regulation under our proposed approach and, to the extent possible, presents estimates of assessment costs on a per-entity basis.

First, non-U.S. persons may perform assessments on a per-transaction basis, which some commenters have suggested could lead market participants to incur significant costs.[371] We recognize that performing these assessments could involve one-time costs associated with developing computer systems to capture information about the location of personnel involved with each transaction in addition to ongoing costs of analyzing these data and modifying classification of transaction activity as personnel or offices change locations over time. However, we preliminarily believe that the approach we are proposing in this release should considerably mitigate these costs. This proposed approach should be considerably easier than the initially proposed approach for market participants to integrate into existing transaction monitoring systems or order management systems given its focus on market-facing activity of personnel of the entity (or personnel of the agent of the entity) engaged in dealing activity that is located in the United States.

Accordingly, based on staff understanding regarding the development and modification of information technology (IT) systems that track the location of firm inputs, we preliminarily estimate the start-up costs associated with developing and modifying these systems to track the location of persons with dealing activity will be $410,000 for the average non-U.S. entity. To the extent that non-U.S. persons already employ such systems, the costs of modifying such IT systems may be lower than our estimate.

In addition to the development or modification of IT systems, we preliminarily believe that entities would incur the cost of $6500 per year on an ongoing basis for training, compliance, and verification costs.[372]

Second, non-U.S. firms might additionally restrict personnel located in the United States from arranging, negotiating, or executing security-based swaps in connection with the non-U.S. firm's dealing activity with non-U.S.-person counterparties. Such restrictions on communication and staffing for the purposes of avoiding certain Title VII requirements would reduce the costs of assessing the territorial status of each trade, and may entirely remove the need for a system that assesses the location of personnel on a trade-by-trade basis. However, this reduction in assessment costs may be offset by the additional costs of duplicating personnel in foreign and U.S. locations.

While we do not currently have data necessary to precisely estimate these costs in total, we can estimate the costs of establishing policies and procedures to restrict communication between personnel located in the United States employed by non-U.S. persons (or their agents,) and other personnel involved in dealing activity. Based on staff experience, we preliminarily estimate that establishing policies would take a non-U.S. person approximately 100 hours and would cost approximately $28,300 for each entity that chooses this approach.[373] Further, we preliminarily

[368] We note that TIW's definitions of U.S. and non-U.S. entities do not necessarily correspond to the definition of U.S. person under Rule 3a71–3(a)(4).

[369] *See* Section II.B.1(c).

[370] *See* Intermediary Definitions Adopting Release, 77 FR 30725 n.1457.

[371] *See* note 289, *supra* (citing ISDA Letter); note 108, *supra* (citing SIFMA/FIA/FSR Letter); note 109, *supra* (citing AFR Letter); notes 110 and 112, *supra* (citing IIB Letter). Other commenters noted the additional cost burden that market participants would face if the definition diverged from that of the CFTC. See note 111 (citing SIFMA/FIA/FSR Letter, Pensions Europe Letter, IIB Letter, and JFMC Letter). Comments on the CFTC Cross-Border Guidance also identified the issue of costs associated with an activity-based approach. See notes 131 and 133–134, *supra* (citing letters raising this concern).

[372] Calculated as Internal Cost, 90 hours × $50 per hour = $4,500 plus Consulting Costs, 10 hours × $200 per hour = $2,000, for a total cost of $6,500.

[373] Calculated as Compliance Manager, 100 hours × $283 per hour = $28,300. We use salary figures from SIFMA's Management & Professional Earnings in the Securities Industry 2013, modified by SEC staff to account for an 1,800-hour work-week and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead.

The costs of policies and procedures are based on burden estimates in the recent Nationally Recognized Statistical Rating Organizations; Final Rule, Exchange Act Release No. 72936 (August 27, 2014), 79 FR 55078 (September 15, 2015) (''NRSRO Adopting Release''). Specifically, we assume that the policies and procedures required to restrict communication between U.S. and non-U.S. personnel are similar to policies and procedures required to eliminate conflicts of interest under Rule 17g–5(c)(8). *See* NRSRO Adopting Release, 79 FR 55239, 55249.

believe that the total costs incurred by entities that choose to restrict communication between personnel would be determined by the number of entities that choose such an approach as well as the number of additional personnel that these entities must hire as a result of restricted communication.

We preliminarily believe that non-U.S. persons that primarily trade with non-U.S. persons on non-U.S. reference entities may be most likely to undertake this approach. However, because our access to TIW transactions data is limited to transactions in which at least one counterparty is U.S.-domiciled or the reference entity is a U.S. entity, we cannot at this time estimate the size of this set of participants.

Third, a dealer may choose to comply with applicable Title VII requirements, regardless of whether they in fact apply, to avoid assessing the locations of personnel involved with each transaction. This strategy may be preferred by a non-U.S. person engaged in dealing activity that expects few transactions involving other non-U.S. persons to be arranged, negotiated, and executed by personnel located outside the United States, such as a non-U.S. person that primarily trades in U.S. reference entities and generally relies on personnel located in the United States to perform market-facing activities. For these participants, the savings from not following policies and procedures developed for Title VII compliance purposes for the few transactions that do not involve dealing activity by personnel from a location in the United States might be less costly than the costs of implementing a system to track the locations of personnel on a trade-by-trade basis. Similarly, registered foreign security-based swap dealers may also prefer this approach, as they would only be required to comply with Title VII external business conduct requirements, and their security-based swap transactions, which would already be required to be reported under Regulation SBSR, also would be publicly disseminated.

We preliminarily believe that the same principles apply to non-U.S. persons that rely on agents to arrange, negotiate, or execute security-based swaps on their behalf. We anticipate that these agents of non-U.S. persons may employ any of the strategies above to comply with the proposed rules. Non-U.S. persons may rely on representations from their agents about whether transactions conducted on its behalf contained dealing activity by personnel from a location in the United States. This may occur on a transaction-by-transaction basis, or, if the agent complies with Title VII requirements by default, via a representation about the entirety of the agent's business.

We preliminarily believe that all the methods described above are likely to involve an initial one-time review of security-based swap business lines to help each entity determine which of the business structures outlined above is optimal. This review would encompass both employees of potential registrants as well as employees of agents used by potential registrants and would identify whether these personnel are involved in arranging, negotiating, or executing security-based swaps. The information gathered as a result of this review would allow a foreign security-based swap dealer to assess the revenues it expects to flow from transaction activity performed by personnel located in the United States. This information would also help these market participants form preliminary estimates about the costs associated with various alternative structures, including the trade-by-trade analysis outlined below. This initial review may be followed with reassessment at regular intervals or subsequent to major changes in the market participant's security-based swap business, such as acquisition or divestiture of business units. We preliminarily believe that this type of review of business lines would be similar in nature to the analysis needed to produce financial statements for a large financial institution. However, we acknowledge that evaluating alternative structures to determine costs associated with assessment and compliance may require additional legal analysis. We preliminarily estimate that the per-entity initial costs of a review of business lines would be approximately $102,000.[374] Further, we preliminarily believe that periodic reassessment of business lines would cost, on average, $52,000 per year, per entity.[375]

Additionally, we preliminarily believe that our proposed approach may impose certain costs on U.S. security-based swap dealers conducting business through a foreign branch, and registered broker-dealers (including registered SB SEFs) that intermediate trade in the security-based swap market. First, under the proposed approach, U.S. security-based swap dealers conducting business through a foreign branch will also need to classify their counterparties and transactions in order to determine what activity constitutes their foreign business. Based on analysis of 2014 TIW transactions data, we continue to estimate that no more than five security-based swap dealers will conduct dealing activity through foreign branches. Assuming that all such entities elect to establish a system to identify their foreign business, we preliminarily estimate the total assessment costs associated with the proposed approach to be approximately $75,000, with ongoing, annual costs of approximately $84,000.[376]

Second, registered broker-dealers (including registered SB SEFs) may incur assessment costs in connection with proposed rule 901(a)(2)(ii)(E)(4). Under the proposed rule, these entities would be required to report security-based swap transactions that they intermediate if neither side includes a U.S. person; a registered security-based swap dealer or major security-based swap participant; or a non-U.S. person that arranged, negotiated, or executed the security-based swap using its personnel, or using personnel of its agent, in a U.S. branch or office. As a result, we preliminarily believe that these entities would be required to assess the nature of transactions they intermediate.

We preliminarily believe that assessment by registered broker-dealers (including registered SB SEFs) would require an analysis of their clients (in the case of registered-broker dealers that are not registered SB SEFs) and members (in the case of registered SB SEFs). We preliminarily believe that registered broker-dealers and SB SEFs are likely to collect information about the counterparties they serve and maintain these records as part of their existing business. On the basis of these existing data, registered broker-dealers and SB SEFs would be able to determine the U.S. person status, registration status, and the location of personnel of their clients and members (or the personnel of agents of their clients and members) that submit orders.

Further, we preliminarily believe that registered broker-dealers and SB SEFs may be able to determine, on the basis of their own business models or on the basis of activity they support, whether

[374] Calculated as (Senior Accountant, 500 hours × $198 per hour) + (Compliance Attorney, 2 hours × $334 per hour) + (Compliance Manager, 8 hours × $283 per hour) = $101,932.

[375] Calculated as (Senior Accountant, 250 hours × $198 per hour) + (Compliance Attorney, 4 hours × $334 per hour) + (Compliance Manager, 4 hours × $283 per hour) = $51,968. We use salary figures from SIFMA's Management & Professional Earnings in the Securities Industry 2013, modified by SEC staff to account for a 1,800-hour work-week and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead.

[376] These figures correspond to estimates provided initially in the Cross-Border Proposing Release and updated in the Cross-Border Adopting Release. *See* Cross-Border Proposing Release, 78 FR 31153. *See also* Cross-Border Adopting Release, 79 FR 47332.

their unregistered non-U.S. clients' and members' transactions are a result of dealing activity, and so would be able to identify which transactions of unregistered non-U.S. persons would need to be reported. For example, a registered broker-dealer that operates as an interdealer broker can likely expect that unregistered non-U.S. person clients are engaging in dealing activity.

As a result, we preliminarily believe that the assessment costs incurred by registered broker-dealer (including registered SB SEFs) are likely limited to an analysis of clients and members to identify the subset of clients and members whose trades they are obligated to report under the proposed rules, supported by systems that would record and maintain this information over time. We preliminarily believe that these costs are similar in nature to legal costs related to systems and analysis, as well as the direct costs of systems and analysis, discussed in the Cross-Border Proposing Release. We estimate that, as a result of the proposed rules imposing reporting obligations on registered broker-dealers (including SB SEFs), each of these entities would incur upfront costs of $45,304,[377] and ongoing costs of $16,612 per year.[378] We note that registered broker-dealers and SB SEFs may, like counterparties, choose alternative business structures to mitigate these costs, as discussed above. For example, they may offer transaction reporting services to their clients for a fee and report all transactions they intermediate, thus precluding the need to assess their clients' and members' activity.

Finally, we preliminarily believe that this proposed approach mitigates the concerns of some commenters regarding the costs associated with the use of the defined term ''transactions conducted within the United States'' as originally proposed in the Cross-Border Proposing Release.[379] In particular, by focusing on dealing activity, the proposed approach should eliminate the need for non-U.S. persons that do not engage in dealing activity to assess whether they or their counterparties engage in relevant activity in the United States.[380]

2. Request for Comment

We request comment on all aspects of the re-proposed rule regarding its economic analysis of the application of the *de minimis* exception to non-U.S. persons arranging, negotiating, or executing security-based swaps using personnel located in the United States, as well as the application of external business conduct requirements for registered security-based swap dealers, associated with such transactions, including the following:

- We have preliminarily estimated assessment costs associated with determining whether transaction activity is arranged, negotiated, or executed using personnel, or the personnel of agents, located in a U.S. branch or office on a transaction-by-transaction basis, by identifying market-facing personnel involved in each transaction. Are these estimates reasonable with respect to both the use of a non-U.S. person's personnel and of its agent's personnel? Please provide data that would assist us in making more accurate estimates of these assessment costs.
- We have preliminarily suggested that some non-U.S. persons might comply with Title VII by default to reduce assessment costs. Is this suggestion reasonable? Please provide data that would assist us in making more accurate estimates of the assessment costs in these situations.
- We have preliminarily suggested that non-U.S. market participants would review business lines to determine which compliance and assessment program is optimal. Are non-U.S. market participants likely to carry out such reviews under the proposed rules? Please provide data that would assist us in computing estimates of the costs of these reviews on an ongoing basis.
- Are there alternative methods that market participants may use to comply with the proposed rules other than those described above? If so, please describe the method and the costs of such method.
- Under the proposed rules, registered brokers-dealers (including registered SB SEFs) would be required to report certain transactions to a registered SDR. Please provide any additional information or data that would assist us in estimating the assessment costs such registered broker-dealers (including registered SB SEFs) may incur in determining their obligation to report.
- We have preliminarily suggested that registered broker-dealers (including registered SB SEFs) would require an analysis of their clients (in the case of registered broker-dealers) and members (in the case of registered SB SEFs), for purposes of reporting transactions pursuant to proposed rule 901(a)(2)(ii)(E)(4). We stated that we preliminarily believe that registered broker-dealers and SB SEFs are likely to collect information about the counterparties they serve and maintain these records as part of their existing business and that registered broker-dealers and SB SEFs would be able to determine the U.S.-person status, registration status, and the location of personnel of their clients and members (or the personnel of agents of their clients and members) that submit orders. Please provide comments as to whether registered broker-dealers and SB SEFs will be able to determine the U.S.-person status, registration status, and location of personnel of their clients and members (or the personnel of agents of their clients and members) that submit orders. Please explain why or why not.
- We have stated that we preliminarily believe that registered broker-dealers and SB SEFs may be able to determine, on the basis of their own business models or on the basis of activity they support, whether their unregistered non-U.S. clients' and members' transactions are a result of dealing activity, enabling them to identify which transactions of unregistered non-U.S. persons are connected with that non-U.S. person's dealing activity and should be reported. Please provide comments as to whether registered broker-dealers and SB SEFs may be able to make this determination. Please explain why or why not.

B. Programmatic Costs and Benefits

Programmatic costs and benefits arise from applying substantive regulation to those transactions and entities that fall within the scope of the Title VII regulatory regime.[381] In the following sections, we discuss the costs and benefits of each of the Title VII requirements that the proposed rule would apply to transactions with dealing activity by personnel from a location in the United States.

1. *De minimis* Exception

Under our proposed amendment, a non-U.S. person that, in connection

[377] This estimate is calculated as the sum of (Attorney at $380 per hour × 80 hours) = $30,400, and the upfront costs of systems as calculated in the Cross-Border Adopting Release. *See* Cross-Border Adopting Release, 79 FR 47332. We use salary figures from SIFMA's Management & Professional Earnings in the Securities Industry 2013, modified by SEC staff to account for an 1800-hour work-week and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead.

[378] *See* Cross-Border Adopting Release, 79 FR 47332.

[379] *See, e.g.,* Section III.B.2(c), *supra* (discussing letters raising cost concerns about initially proposed approach).

[380] *See, e.g.,* note 104, *supra* (citing MFA/AIMA Letter).

[381] *See* Intermediary Definitions Adopting Release, 77 FR 30722.

with its dealing activity, enters into a transaction with another non-U.S. person would be required to include the transaction in its *de minimis* calculation if it arranges, negotiates, or executes the transaction using personnel located in a U.S. branch or office. This requirement would also apply to cleared anonymous transactions that are currently exempt from application of the *de minimis* thresholds under rule 3a71–5. We are proposing rules that require the dealing counterparty to look only at the location of dealing activity of its own personnel or of its agent's personnel rather than require the dealer to look at the location of both its own activity and that of its counterparty in connection with the transaction, as was originally proposed.[382] This approach is designed to address concerns expressed by some commenters that they would, under the test proposed in the Cross-Border Proposing Release, need to track, on a trade-by-trade basis, where their counterparties are carrying out activities with respect to each transaction.[383]

Because the set of market participants that are subject to dealer regulation, including entity-level requirements under Title VII, will determine the allocation and flow of programmatic costs and benefits arising from these Title VII requirements, the inclusion of these transactions would affect the ultimate costs and benefits of our transaction-level and entity-level rules. At this time, we are unable to precisely estimate the number of potential new dealers that would be required to register because we cannot observe in the data the location of entities' dealing activity. If we assume that all security-based swap dealing activity takes place in the United States, then we currently estimate that no additional entities would be required to register as a result of this proposed rule.[384] However, we believe it is important to acknowledge the potential for additional registrants as a result of the proposed rules as the market evolves.

If these proposed rules regarding the *de minimis* exception result in an increased number of non-U.S. persons that eventually register as security-based swap dealers, a larger number of dealers would become subject to requirements applicable to registered dealers under Title VII, including, among others, capital requirements, recordkeeping requirements, and designation of a chief compliance officer. Additionally, an increase in the number of registered dealers would also mean that external business conduct requirements and Regulation SBSR also apply to larger number of transactions, as well as a larger notional volume of transactions.[385] If the proposed rules and amendments result in an increased volume of transaction activity carried out by registered security-based swap dealers, then U.S. financial markets should benefit from more consistent application of Title VII rules designed to mitigate the risk of financial contagion and enhance transparency and counterparty protections, as addressed by regulatory reporting and external business conduct requirements. Our proposed approach to determining which transactions are counted toward a non-U.S. person's *de minimis* threshold would also bring persons engaged in significant levels of dealing activity using personnel located in in the United States within the Title VII regulatory framework.

Furthermore, status as a security-based swap dealer brings with it specific responsibilities that are categorized as programmatic costs with respect to certain other Title VII requirements. For example, Regulation SBSR places registered security-based swap dealers at the top of the reporting hierarchy for uncleared transactions.[386] Within this hierarchy, if a registered dealer transacts with an unregistered person, the registered dealer is obligated to report.[387] Thus, as a result of being classified as a dealer, a market participant that may have previously negotiated to place regulatory reporting responsibilities on its counterparties might incur the obligation to report instead.

Finally, certain elements of the Title VII regulatory regime may apply to the existing business of entities that are regulated as security-based swap dealers because they apply not only to transaction activity that cause an entity to meet the definition of a security-based swap dealer, but also to other transaction activity in which the entity participates. Entities that are required to register as security-based swap dealers under rule 3a71–3(b) incur, for example, not only the programmatic costs of external business conduct requirements for their transactions arranged, negotiated, or executed by personnel located in the United States in connection with their dealing activity, but would also be required to comply with external business conduct requirements with respect to all transactions that would be ''U.S. business'' under the proposed rules. As a result, they may need to develop systems or personnel, such as the designation of a chief compliance officer or the development of recordkeeping and reporting systems, for compliance purposes with respect to their U.S. business.

2. External Business Conduct Requirements

Registered security-based swap dealers must comply with external business conduct requirements. Proposed rule 3a71–3(c) would limit application of these external business conduct requirements to the U.S. business both of registered foreign security-based swap dealers and of registered U.S. security-based swap dealers, rather than applying the requirements to all transactions of such dealers.[388]

Requiring registered security-based swap dealers to comply with external business conduct requirements with respect to their U.S. business would have two major benefits. First, this requirement would apply to all transactions that constitute U.S. business, as defined under the proposed amendment, requirements that would reduce information asymmetries

[382] *See* initially proposed Exchange Act rules 3a71–3(b)(1)(ii) and 3a71–3(a)(5); Cross-Border Proposing Release, 78 FR 30999.

[383] *See* note 110, *supra*.

[384] In Section VI.A.1, *supra*, we estimate that 15 entities would exceeded the $2 billion threshold in 2014 as a result of this rule and thus would assess their transactions to determine whether they are required to register as a dealer. Of these 15 entities, we preliminarily believe that none would exceed the $3 billion dealer de minimis threshold and thus be required to register as security-based swap dealers.

[385] Under rule 901(a)(2)(ii), all transactions that include a registered security-based swap dealer on a transaction side are subject to regulatory reporting requirements. We note that our conclusion that the proposed approach will result in these requirements being applied to a larger number of transaction and notional volume of transactions requires the assumption that the demand for liquidity from security-based dealers is not very sensitive to price. Put another way, so long as market participants' demand for risk sharing opportunities provided by security-based swap transactions is relatively inelastic, any reduction in transaction volume due to the costs of Title VII regulation is unlikely to fully offset the increase in the scope of security-based swap transactions subject to Title VII regulation under the proposed rules. If, on the other hand, demand for liquidity is elastic, then the effects of higher costs may dominate any increase in the scope of external business conduct and regulatory reporting requirements, resulting in these requirements applied to a smaller number and lower notional value of transactions.

[386] *See* Exchange Act rule 901(a)(2)(ii)(A); Regulation SBSR Adopting Release, 80 FR 14596.

[387] *See* Exchange Act rules 901(a)(2)(ii)(A) and 901(a)(2)(ii)(B); Regulation SBSR Adopting Release, 80 FR 14596.

[388] The proposed rules address only the scope of transactions that are subject to the external business conduct requirements; they would not change the substance of those requirements.

between security-based swap entities and their counterparties in the security-based swap market in the United States, which should reduce the incidence of fraudulent or misleading representations.[389]

Second, requiring registered foreign security-based swap dealers to comply with external business conduct requirements with respect to their U.S. business should facilitate more uniform regulatory treatment of the security-based swap activity of registered security-based swap dealers operating in the United States.[390] As we discussed above, although other business conduct frameworks (such as broker-dealer regulation) may achieve similar regulatory goals, the availability of exceptions may mean that alternative frameworks may not apply to certain business structures used by registered security-based swap dealers to carry out their business in the United States.[391] Our proposed rules would subject all registered security-based swap dealers engaged in U.S. business to the same external business conduct framework, rather than encouraging a patchwork of business conduct protections under U.S. law that may offer counterparties varying levels of protection with respect to their transactions with different registered security-based swap dealers depending on the business model (or models) that each registered security-based swap dealer has chosen to use in its U.S. business.

We recognize that adjusting the scope of transactions subject to external business conduct requirements may affect the programmatic costs incurred by participants in the security-based swap market. For entities already required to register as security-based swap dealers under current rules, the proposed rules adjust the set of transactions and counterparties to which they must apply external business conduct requirements. To the extent that the proposed rules add counterparties and their transactions to this set, registered security-based swap dealers will incur additional costs for each additional transaction.[392] However, we preliminarily believe that the approach taken in this proposal mitigates some of the commenter concerns with the originally proposed definition of ''transactions conducted within the United States'' by focusing only on the location of the non-U.S. dealer's market-facing personnel and the personnel of the non-U.S. dealer's agents, and not the location of its counterparties' activity.

3. Regulatory Reporting and Public Dissemination

Proposed amendments to Regulation SBSR would require certain transactions in connection with a person's dealing activity, where that person arranged, negotiated, or executed the transaction using personnel located in a U.S. branch or office, to be reported to a registered SDR and publicly disseminated. The proposed amendments would also assign reporting duties in certain transactions and further delineate limitations on reporting obligations of non-registered persons engaged in security-based swaps subject to Regulation SBSR. Additionally, the proposed amendments add provisions that would require any security-based swap transaction that is either executed on a platform having its principal place of business in the United States or effected by or through a registered broker-dealer both to be reported to a registered SDR and to be publicly disseminated pursuant to Regulation SBSR.[393]

Public dissemination of security-based swap transaction data may result in several programmatic benefits for the security-based swap market, such as improvements to liquidity and risk allocation by reducing the information asymmetries in a security-based swap market where activity is concentrated among a small number of dealers.[394] Additionally, as noted in the Regulation SBSR Adopting Release, participants in the security-based swap market with better information about the risk characteristics of their security-based swaps will be able to make more efficient investment decisions.[395] To the extent that the provision of security-based swap trade information enables participants in the security-based swap market to make privately optimal decisions, the transaction-level reporting and dissemination requirements will provide programmatic benefits in the form of improved liquidity and risk allocation.[396] We preliminarily believe that the proposed amendments would extend these effects by applying post-trade transparency to additional transactions and transaction notional.

Regulatory reporting of transaction data to registered SDRs should enable us to gain a better understanding of the security-based swap market, including the size and scope of that market. This data should enable us to identify exposure to risks undertaken by individual market participants or at various levels of aggregation, as well as credit exposures that arise between counterparties. Additionally, regulatory reporting will help the Commission in the valuation of security-based swaps. Taken together, regulatory data will enable us to conduct robust monitoring of the security-based swap market for potential risks to financial stability.

Regulatory reporting of security-based swap transactions should also improve our ability to oversee the security-based swap market and to detect and deter market abuse. We will be able, for example, to observe trading activity at the level of both trading desk and individual trader, using trading desk IDs and trader IDs, respectively. This ability to aggregate the information contained in registered SDRs using Unique Identification Codes facilitates our ability to examine for noncompliance and pursue enforcement actions as appropriate.

On the other hand, as discussed in the Regulation SBSR Adopting Release, other jurisdictions continue to develop rules related to post-trade transparency of security-based swaps at a different pace, and we are aware that the rules of these other regimes may result in increasing incentives for non-U.S. market participants to avoid contact with U.S. counterparties to avoid effecting transactions by or through

[389] *See* Business Conduct Proposal, 76 FR 42452.

[390] As discussed above, we recgnize that, depending on the business structure that a registered U.S. or foreign security-based swap dealer employs, an intermediary (such as an agent that is a registered broker-dealer) may already be subject to certain business conduct requirements with respect to the registered security-based swap dealer's counterparty in the transaction. *See* Section IV.E, *supra.* However, as we also noted above, we think it important that the registered security-based swap dealer itself be subject to Title VII external business conduct requirements with respect to security-based swap transactions that are part of its U.S. business. *See id.* Because the security-based swap dealer and its agent may allocate between themselves specific responsibilities in connection with these external business conduct requirements, to the extent that these requirements overlap with requirements applicable directly to the agent (for example, in its capacity as a broker), and the dealer allocates responsibility for complying with relevant requirements to its agent, we expect any increase in costs arising from the proposed rules to be mitigated.

[391] *See* note 202, *supra* (noting exception from broker-dealer definition for banks).

[392] *See* note 275, *supra* (citing IIB Letter stating that the application of certain Title VII requirements, including external business conduct standards on the transactions of non-U.S. persons with foreign security-based swap dealers based on activity in the United States when neither counterparty is guaranteed would create ''serious operational, legal, and economic difficulties for foreign security-based swap market participants.'').

[393] *See* proposed rule 908(a)(1).

[394] *See* Regulation SBSR Adopting Release, 80 FR 14704.

[395] *See id.*

[396] Public transaction data can improve the efficiency of private decisions but there may still remain financial network externalities as discussed in the Cross-Border Adopting Release. *See* Cross-Border Adopting Release, 79 FR 47284.

registered broker-dealers in an effort to avoid public dissemination.[397] Responses to these incentives could reduce liquidity for U.S. market participants.[398] We cannot readily quantify the costs that might result from reduced market access for U.S. persons.[399] Moreover, we do not know definitively what rules other jurisdictions may implement or at which time they may implement their rules. In light of these limitations, we have analyzed them qualitatively, and this analysis has informed our formulation of the proposed rules and amendments contained in this release.[400]

Application of regulatory reporting requirements under the proposed amendments to rules 901 and 908 would likely impose costs on non-U.S. persons while providing benefits to the security-based swap market more generally. We preliminarily believe that the approach proposed in this release is responsive to the views of commenters.[401] Under the proposed approach, and in contrast to the original proposal based on ''transactions conducted within the United States,'' non-U.S. persons would not be required to understand or capture whether their non-U.S.-person counterparties use personnel located in the United States, or agents with personnel located in the United States, to determine whether regulatory reporting and public dissemination requirements are applicable to transaction activity. This modified approach focuses on the location of a non-U.S. dealer's market-facing personnel in determining whether regulatory reporting requirements apply to transaction activity.

Nevertheless, we acknowledge that under the proposed rules and amendments, non-U.S. persons would bear costs of reporting insofar as they are allocated reporting responsibilities within the hierarchy laid out in proposed rule 901(a)(2)(ii)(E), and if they fall within the set of non-U.S. persons whose transactions are required to be reported under rule 908(a). Additionally, registered broker-dealers would incur reporting costs when they are involved in transactions between non-U.S. persons that do not fall within proposed rule 908(b)(5). In the Regulation SBSR Adopting Release, we estimated that 300 parties would incur costs associated with reporting transactions to registered SDRs.[402]

As noted above, we currently lack data necessary to estimate with precision the number of non-U.S. persons that, in connection with their dealing activity, arrange, negotiate, or execute security-based swaps using personnel located in the United States or execute security-based swaps on a platform with its principal place of business in the United States, or the number of registered broker-dealers that intermediate security-based swap transactions, and, as a result, cannot precisely estimate the number of additional non-U.S. persons that might incur reporting obligations under this proposal. However, assuming that all observable transaction activity is arranged, negotiated, or executed using personnel located in the United States, we estimate that 90 persons would become subject to regulatory reporting requirements under the proposed rules, involving approximately 2,700 transactions and $18.5 billion in notional value.[403] Additionally, we preliminarily estimate approximately 30 registered-broker dealers may be involved in effecting transactions between non-U.S. persons that would not incur any reporting duties under Regulation SBSR.

We preliminarily believe that regulatory reporting of transactions that are arranged, negotiated, or executed using personnel located in a U.S. branch or office or effected through a registered broker-dealer would have benefits for the security-based swap market. Increasing the scope of security-based swap transactions subject to regulatory reporting would likely extend the programmatic benefits of regulatory reporting discussed in the Regulation SBSR Adopting Release by giving us a more complete view of transactions activity within the United States.[404] Moreover, in the context of market surveillance, regulatory reporting of these transactions may be particularly valuable. For example, these regulatory data would allow us to sequence all security-based swap transaction activity involving U.S. personnel. This potentially allows detection of cases in which U.S. personnel could exploit their private information about the order flow of their clients by placing proprietary orders ahead of clients' orders as an employee of a non-U.S. affiliate, avoiding regulatory reporting requirements under Regulation SBSR. Such a strategy could involve front-running orders in an opaque part of the security-based swap market at the expense of participants in a more transparent market. Monitoring for these types of activities would be more difficult in the absence of the proposed amendments to Rule 908. Finally, by

[397] *See* Regulation SBSR Adopting Release, 80 FR 14714.

[398] *See id.*

[399] We noted in the Regulation SBSR Adopting Release that lack of robust data and lack of experimental conditions make the costs associated with market exit or reduced liquidity that might result from post-trade transparency unquantifiable. The same limitations make the costs of reduced access to liquidity by U.S. persons as a result of public dissemination requirements under the proposed rules and amendments unquantifiable. *See* Regulation SBSR Adopting Release, 80 FR 14706.

[400] *See* Section II.B.4, *supra.*

[401] *See* note 275, *supra* (citing IIB Letter stating that the application of certain Title VII requirements, including the regulatory reporting and public dissemination requirements, on the transactions of non-U.S. persons with foreign security-based swap dealers based on activity in the United States when neither counterparty is guaranteed would create ''serious operational, legal, and economic difficulties for foreign security-based swap market participants''); note 288, *supra* (citing Cleary Letter). *See also* note 289, *supra* (citing ISDA Letter, urging us to not apply Regulation SBSR on the basis of conduct within the United States as it would be impracticable).

[402] *See* Regulation SBSR Adopting Release, 80 FR 14701.

[403] Commission staff arrived at these estimates by constructing a sample of TIW transaction records for activity between two counterparties in 2014, removing those records that involve counterparties that appear likely to register as security-based swap dealers, to isolate activity that would likely fall within the scope of proposed rule 901(a)(2)(ii)(E)(3). Staff arrived at numerical estimates by counting unique TIW accounts, transaction counts, and transaction notional represented in this sample. This revealed approximately 45 accounts and approximately 1,650 transactions, involving $8.3 billion in notional value. As in prior releases, we preliminarily believe it is appropriate to take a conservative approach and estimate an upper bound of 90 affected persons to account for growth in security-based swap participation. *See* Intermediary Definitions Adopting Release, 77 FR 30725 n.1457.

Further, we preliminarily believe it is reasonable to increase our estimates of transaction counts and notional volume by a factor of 1.6 to account for data limitations. First, our access to single-name CDS data is limited to activity involving one U.S. counterparty or involving CDS written on U.S. reference entities. We estimated that this limitation prevents us from observing approximately 23% of transactions. *See* Regulation SBSR Adopting Release, 80 FR 14689 n.1183. Second, as we note in Section II.B.1, when measured in terms of notional outstanding, the single-name CDS market accounts for approximately 80% of the overall security-based swap market. As a result, we scale up the number of observed transactions first by 1/(1–0.23) and then by 1/0.80, or to approximately $1650 \times 1/0.77 \times 1/0.80 = 2679$ transactions, and our estimate of notional volume to approximately $8.3 billion $\times 1/0.77 \times 1/0.80 =$ $13.5 billion. We acknowledge that this scaling rests on an implicit assumption that transactions we do not observe are similar in nature to the single-name CDS transaction we do observe.

Further we assume that 20% of these transactions would be reported by registered-broker dealers pursuant to 901(a)(2)(ii)(E)(4) and so no reporting of life-cycle events would be required. We use data in the Regulation SBSR Adopting Release to develop our estimate of the number of events that are not life-cycle events. *See* Regulation SBSR Adopting Release, 80 FR 14702.

[404] *See* Regulation SBSR Adopting Release, 80 FR 14700.

requiring registered broker-dealers to report transactions in which they are involved, we preliminarily believe that our proposed approach to regulatory reporting would enable us to improve oversight of registered broker-dealers.

Regulatory reporting and public dissemination of transaction data may entail two types of costs for security-based swap market participants. First, as detailed below, requiring non-U.S. persons with dealing activity in the United States to comply with the Title VII reporting requirements even if they are not registered security-based swap dealers may entail additional costs for recordkeeping, supervision, and compliance. As some portion of these costs may be fixed, security-based swap market participants with smaller volume may be more adversely affected than larger ones. A second type of cost may fall on non-U.S. persons, including registered foreign security-based swap dealers, that wish to execute large orders or execute orders in particularly illiquid contracts. Public dissemination of these types of transactions, either because they involve security-based swap dealing activity in the United States or because they are effected through a registered broker-dealer, may increase the costs of hedging the inventory risk generated by such transactions because it may signal the direction of future order flow to potential counterparties to hedging transactions. As we noted in the Regulation SBSR Adopting Release, staff analysis of recent transactions in single-name CDS suggests that the impact of public dissemination on large transactions may be limited in light of the interim approach to public dissemination that allows up to a 24-hour delay before transactions data is made public.[405]

The proposed amendments to Rule 901 would assign reporting duties in certain transactions and we preliminarily believe that these duties would result in costs for U.S. and non-U.S. persons and registered broker-dealers (including registered SB SEFs) that incur a duty to report. We estimated the costs of reporting on a per-entity basis in the Regulation SBSR Adopting Release and we preliminarily believe that these proposed rules would not affect these costs. We preliminarily believe that additional persons required to report by the proposed amendments would incur costs associated with establishing internal order management systems of approximately $102,000. These entities with reporting duties would also have to establish and maintain connectivity to a registered SDR at a cost (initial and ongoing) of approximately $200,000. We preliminarily believe that these persons would incur costs associated with establishing a reporting mechanism for security-based swaps of approximately $49,000. We preliminarily estimate that the ongoing costs of internal order management would be $77,000 per year, per reporting side, and the annual and ongoing costs of storage of $1,000 per year, per reporting side. The Commission preliminarily believes that under the proposed amendments, entities with reporting duties would incur costs of approximately $54,000 per reporting side to establish an appropriate compliance and support program for regulatory reporting. We further estimate that such a program would require approximately $38,500 per year in annual spending by each reporting side. In aggregate, the costs of rule 901 for persons required to report under the proposed amendments in the first year would be approximately $521,500 and the annual ongoing costs would be approximately $316,500.[406] In aggregate, this suggests first-year costs of approximately $62.5 million and ongoing costs of approximately $38 million.[407]

As discussed in the Regulation SBSR Adopting Release, we preliminarily estimated and continue to believe that the burden of reporting additional transactions once a respondent's reporting infrastructure and compliance systems are in place would be minimal when compared to the costs of putting those systems in place and maintaining them over time.[408] If firms have order management systems in place and currently utilize them, the costs of reporting an additional individual transaction would be entering the required data elements into the firm's order management system, which could subsequently determine whether regulatory reporting requirements apply to the transaction, and deliver the required transaction information to a registered SDR if required.[409]

Besides incurring costs in connection with reporting responsibilities under rule 901, we preliminarily believe that the proposed rules would also require certain non-U.S. persons and registered broker-dealers to incur costs associated with error reporting under rule 905. As we noted in the Regulation SBSR Adopting Release, requiring participants to promptly correct erroneous transaction information should help ensure that the Commission and other relevant authorities have an accurate view of the risks in the security-based swap market. We preliminarily believe that non-U.S. persons that incur reporting obligations under the proposed amendments would incur an initial cost of $11,825 per reporting side and an ongoing cost of $4,000 per reporting side.[410]

These figures suggest aggregate initial costs of $1,419,000 and ongoing costs of $480,000.[411] As with rule 901, as adopted, we do not believe that the additional amendments made to rule 901 in this release would have any measurable impact on the costs previously discussed in both the Regulation SBSR Proposing Release and the Cross-Border Proposing Release.[412]

We preliminarily believe that, in addition, the 540 additional transactions effected by or through registered broker-dealers may impose costs on participants that are associated with notifying registered broker-dealers after discovery of an error as required under rule 905(a)(1). We preliminarily estimate an annual cost associated with this obligation of approximately $17,280, which corresponds to roughly $576 per participant.[413]

[405] *See* Regulation SBSR Adopting Release, 80 FR 14709. *See also* ''Inventory risk management by dealers in the single-name credit default swap market'' (October 17, 2014, available at: *http://www.sec.gov/comments/s7-34-10/s73410-184.pdf*).

[406] *See* Regulation SBSR Adopting Release, 80 FR 14702.

[407] First-year costs of $521,500 × 120 entities with reporting duties = $61,580,000; ongoing costs of $316,500 × 120 entities with reporting duties = $37,980,000. These costs may be mitigated to the extent that a registered broker-dealer may use the infrastructure separately established by an affiliate that already incurs reporting obligations under Regulation SBSR.

[408] *See* Regulation SBSR Adopting Release, 80 FR 14702.

[409] *See id.*

[410] *See id.* at 14778. Note that we preliminarily believe that this proposal does not alter the number of participants that are not reporting sides who, under rule 905(a)(1), are required to notify the relevant reporting side after discovery of an error.

[411] Initial costs of $11,825 × 120 entities with reporting duties = $1,419,000; ongoing costs of $4,000 × 120 entities with reporting duties = $480,000.

[412] *See* Regulation SBSR Adopting Release, 80 FR 14702. *See also* Regulation SBSR Proposing Release, 75 FR 75261; Cross-Border Proposing Release, 78 FR 31192.

[413] These figures are based on the assumption that approximately 540 additional trades per year would have to be reported by registered broker-dealers pursuant to proposed rule 901(a)(2)(ii)(E)(4) and that these trades involve 30 entities with reporting duties. Using cost estimated provided in the Regulation SBSR Adopting Release, if each trade is reported in error, then the aggregate annual cost of error notification is 540 errors × Compliance Clerk at $64 per hour × 0.5 hours per report = $17,280, or $576 per participant. *See* Regulation SBSR Adopting Release, 80 FR 14714. We use salary figures from SIFMA's Management & Professional Earnings in the Securities Industry 2013, modified by SEC staff to account for a 1800-hour work-week and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead.

Finally, the proposed amendments to rule 906 may impose costs on registered broker-dealers that must report transactions to satisfy an obligation under proposed rule 901(a)(2)(ii)(E)(4). Under proposed amendments to rule 906(c), these registered broker-dealers would be required to establish, maintain, and enforce policies and procedures that are reasonably designed to ensure that it complies with any obligations to report information to a registered SDR in a manner consistent with Regulation SBSR. Further, these registered broker-dealers would be required to review these policies and procedures at least annually. We preliminarily estimate that the cost associated with establishing such policies and procedures would be approximately $58,000 and the cost associated with annual updates would be approximately $34,000, for each registered broker-dealer that incurs an obligation to report transactions under our proposed approach.[414]

4. Efficiency, Competition, and Capital Formation

Our analysis of the proposed rules' potential impacts on efficiency, competition, and capital formation begins by considering the effects the proposed rules may have on the scope of participants subject to dealer requirements under Title VII. Following this discussion, we examine potential effects of the proposed rules related to their effect on the application of Regulation SBSR.

We note that the proposed rules and amendments would, if adopted, affect the security-based swap market in a number of ways, many of which are difficult to quantify, if not unquantifiable. In particular, a number of the potential effects that we discuss below are related to price efficiency, liquidity and risk sharing. These effects are difficult to quantify for a number of reasons. First, in many cases the effects are contingent upon strategic responses of market participants. For instance, we note in Section VI.B.4(b)i, *infra,* that, under our proposed approach, non-U.S. persons may choose to relocate personnel making it difficult for U.S. counterparties to access liquidity in security-based swaps. The magnitude of these effects on liquidity and on risk sharing depend upon a number of factors that we cannot estimate, including the likelihood of relocation, the availability of substitute liquidity suppliers and the availability of substitute hedging assets. Therefore, much of the discussion below is qualitative in nature, although we try to describe, where possible, the direction of these effects.

Not only can some of these effects be difficult to quantify, but there are many cases where a rule will have two opposing effects, making it difficult to estimate a net impact on efficiency, competition, or capital formation. For example, in our discussion of the net effect of the proposed application of Regulation SBSR requirements on efficiency, we expect that post-trade transparency may have a positive effect on price efficiency, while it may negatively affect liquidity by providing incentives for non-U.S. persons to avoid contact with U.S. persons. The magnitude of these two opposing effects will depend on factors such as the sensitivity of traders to information about order flow, the impact of public dissemination of transaction information on the execution costs of large orders, and the ease with which non-U.S. persons can find substitutes that avoid contact with U.S. personnel. Each of these factors is difficult to quantify individually, which makes the net impact on efficiency equally difficult to quantify.

(a) De minimis Calculations

The proposed rules and amendments related to the treatment of transactions arranged, negotiated, or executed by personnel located in the United States for the purposes of *de minimis* calculations likely broadens the scope of security-based swap transactions and entities to which the Title VII regulatory regime for security-based swap dealers applies. As a result, the proposal may increase the effects on efficiency, competition, and capital formation of rules already adopted as well as of future substantive rulemakings that place responsibilities on registered security-based swap dealers to carry out entity- or transaction-level requirements applicable to security-based swap dealers under Title VII.[415]

The proposed rules and amendments may directly affect efficiency, competition, and capital formation because the requirement that non-U.S. persons include in their *de minimis* threshold calculations security-based swaps in connection with their dealing activity that they arrange, negotiate, or execute using personnel located in a U.S. branch or office may increase the likelihood that certain non-U.S. dealers would exceed *de minimis* levels of dealing activity and be required to register with the Commission. Registration would cause these dealers to incur registration costs as well as the costs of dealer requirements under the Title VII regulatory regime.

These costs may represent barriers to entry for non-U.S. persons that contemplate engaging in dealing activity using their own personnel or personnel of their agents located in a U.S. branch or office or provide incentives for non-U.S. persons that currently engage in relevant activity using personnel located in a U.S. branch or office to restructure their business and move operations abroad or use agents with personnel outside of the U.S.[416] These costs may additionally provide direct incentives for non-U.S. persons to avoid using personnel of agents located in a U.S. branch or office (or agents with such personnel) to arrange, negotiate or execute security-based swaps on their behalf. By reducing the ability of these agents to compete for business from non-U.S. persons, the proposed rules may reduce entry by potential agents because of this competitive disadvantage, or cause existing agents to relocate or restructure their business to minimize contact with the United States.[417]

We acknowledge that, to the extent that it occurs solely for the purposes of avoiding Title VII regulation, reduced market entry or restructuring by non-U.S. persons responding to our proposed approach, or by agents unable to compete for business from non-U.S. persons, may be inefficient, raise costs to market participants and reduce the level of participation by personnel of non-U.S. persons located in the United States, or personnel of their agents located in the United States.[418] Our proposed approach reflects consideration of the potentially inefficient restructuring and reduced access to the security-based swap market by U.S. persons on the one hand, and addressing the concerns of Title VII on the other. In particular, this proposed approach potentially reduces the risk of financial contagion and fraudulent or manipulative conduct by ensuring that security-based swap dealer regulation is

[414] *See* Regulation SBSR Adopting Release, 80 FR 14716.

[415] *See* Cross-Border Adopting Release, 79 FR 47361.

[416] *See id.* at 47362.

[417] We also note that, under the proposed rules, non-U.S. persons may be willing to pay higher prices for higher quality services provided by non-U.S.-person counterparties that use personnel or agents located in the United States because the ability of these counterparties to meet the standards set by Title VII may be a credible signal of high quality. *See id.* at 47362 n.762.

[418] *See id.* at 47364.

applied to the appropriate set of entities whose activities raise these concerns.

We also preliminarily believe that the proposed rules and amendments would affect competition among security-based swap dealers. Under proposed Exchange Act rule 3a71–3(b)(iii)(C), U.S. persons would have to count their dealing activity towards their *de minimis* thresholds while their non-U.S. competitors would not. As noted in Section II.A, *supra,* in the absence of the proposal, a U.S. person engaged in dealing activity and facing a non-U.S.-person counterparty or its agent would face different regulatory treatment from a non-U.S. person engaged in the same activity with the same counterparty or its agent, even if both are arranging, negotiating, or executing the security-based swap using personnel located in a U.S. branch or office. As a result, and as noted by commenters,[419] current rules may introduce different costs for U.S. security-based swap dealers and foreign security-based swap dealers and their agents that seek to supply liquidity to non-U.S. persons as a result of Title VII regulation, introducing competitive disparities even if the U.S. person and the non-U.S. person or their agents are both, in connection with their dealing activity, using personnel located in the United States. Under the current rules, non-U.S. persons seeking or supplying liquidity may also be reluctant to transact with a U.S. person because of the additional expected costs of dealer regulation and of future substantive regulations under Title VII that rest on the U.S.-person status of counterparties. We preliminarily believe that many of the costs of these frictions would be borne by U.S. security-based swap dealers. The proposed rules and amendments may mitigate these competitive frictions because non-U.S. persons would be required to count transactions arranged, negotiated, or executed by personnel located in a U.S. branch or office towards their *de minimis* thresholds in a way that is identical to their U.S.-person competitors.[420]

As with the proposed amendment that would require non-U.S. persons to count transactions arranged, negotiated, or executed by personnel located in a U.S. branch or office towards *de minimis* thresholds, the proposal does not retain an exception for cleared, anonymous transactions and thus should reduce the competitive frictions that would exist if the proposal retained the exception. Such an exception would provide non-U.S.-person dealers that arrange, negotiate, or execute cleared, anonymous transactions using personnel located in a U.S. branch or office or using agents with personnel in a U.S. branch or office a potential competitive advantage relative to U.S. persons, as the non-U.S. persons would be able to avoid including these transactions in their *de minimis* calculations, while U.S. persons would be required to count all such transactions towards their *de minimis* thresholds. However, we also note that, to the extent that non-U.S. persons otherwise would have relied upon this exception to engage in cleared, anonymous transactions, our proposed approach may impair efficiency and capital formation by reducing liquidity in anonymous markets, increasing transaction costs, and reducing opportunities for risk-sharing among security-based swap market participants.[421]

Alternatively, the proposed rule may result in inefficient restructuring to move the arrangement, negotiation, and execution of cleared, anonymous transactions abroad, in order to avoid activities that would require counting towards *de minimis* thresholds. This may have adverse consequences for the availability of liquidity and the amount of transaction costs for U.S. persons seeking to hedge risk using security-based swaps. If non-U.S. persons relocate their dealing activity abroad in ways that make it difficult for U.S. persons to find liquidity in the United States, those U.S. persons that might otherwise use security-based swaps to hedge financial and commercial risks may reduce their hedging activity and assume an inefficient amount of risk, or engage in precautionary savings that inhibits capital formation.[422] To the extent that non-U.S. persons use U.S. personnel to engage in dealing activity only in a subset of security-based swaps, such as those involving certain reference entities, we preliminarily believe that the potential consequences of relocation on liquidity and risk sharing would be most concentrated in this subset.

(b) Other Title VII Requirements

The proposed rules regarding the regulatory reporting, public dissemination and external business conduct requirements for transactions arranged, negotiated, or executed by personnel located in a U.S. branch or office would have several effects on efficiency, competition, and capital formation in the U.S. financial market. These effects implicate common economic themes and warrant a consolidated discussion.

i. Efficiency

The application of public dissemination as set forth in the proposed rule may improve the efficiency of the price discovery process and improve the liquidity of traded security-based swaps. Market participants with more information about the history of prices due to enhanced post-trade transparency will be better able to price security-based swaps, and as a result make better trading decisions. Market observers will be able to incorporate information from the security-based swap market to derive valuations for other assets that are more accurate.[423]

We preliminarily believe that the magnitude of these efficiency improvements is related to the number of transactions subject to public dissemination. Data from more transactions may allow market participants and observers to derive more precise estimates of fundamental value. As a result, to the extent that the proposed rules increase the scope of security-based swap transactions subject to public dissemination, they may result in more efficient pricing and valuation within and without the security-based swap market.[424]

At the same time, we recognize that particular Title VII requirements may affect efficiency through their effects on the ability of security-based swap

[419] *See* note 196, *supra* (citing IIB Letter and SIFMA/FIA/FSR Letter raising concerns that the proposed rule could put U.S. brokers and investment managers at a competitive disadvantage). *See also* note 138, *supra* (citing AFR Letter to CFTC); notes 139 and 299, *supra* (citing CDEU Letter to CFTC); note 131, *supra* (citing ISDA Letter to CFTC and SIFMA/FIA/FSR Letter to CFTC); note 142, *supra* (citing Société Générale Letter to CFTC); note 143, *supra* (citing JFMC Letter to CFTC, CDEU Letter to CFTC, SIFMA/FIA/FSR Letter to CFTC, and IAA Letter to CFTC); note 300, *supra* (citing ISDA Letter to CFTC). *See also* note 101, *supra.*

[420] *See* Cross-Border Proposing Release, 78 FR 31127; Cross-Border Adopting Release, 79 FR 39152.

[421] *See* Cross-Border Adopting Release, 79 FR 47363.

[422] *See* note 143, *supra* (citing CDEU Letter to CFTC).

[423] *See* Regulation SBSR Adopting Release, 80 FR 14720.

[424] *See* Gjergji Cici, Scott Gibson, and John J. Merrick, Jr., ''Missing the Marks? Dispersion in Corporate Bond Valuations Across Mutual Funds,'' Journal of Financial Economics, Volume 101, Issue 1 (July 2011), at 206–26 (providing evidence that the implementation of post-trade transparency in the corporate bond market could have contributed to a reduction in the dispersion of mutual fund valuations during the study's sample period). *See also* Sugato Chakravarty, Huseyin Gulen, and Stewart Mayhew, ''Informed Trading in Stock and Option Markets,'' Journal of Finance, Vol. 59, No. 3 (2004) (estimating that the proportion of information about underlying stocks revealed first in option markets ranges from 10% to 20%).

market participants to access liquidity. We preliminarily believe that certain aspects of our proposal should reduce the likelihood of market fragmentation. For example, the proposed rules and amendments, by reducing the likelihood that transactions arranged, negotiated, or executed within the United States are subject to disparate levels of regulation under Title VII depending on counterparty identity, the proposed rules may allow U.S. persons to more freely access liquidity made available through dealing activity within the United States and may discourage the formation of a two-tier market in which U.S. persons and non-U.S. persons are offered liquidity on very different terms.

However, we also acknowledge that the proposed rules may provide incentives for non-U.S. persons to move their operations and personnel abroad to avoid external business conduct, regulatory reporting, and public dissemination requirements. If, under the proposed rules, non-U.S. security-based swap market participants relocate their sales forces and trading desks to other jurisdictions, less liquidity may be available within the United States, reducing the efficiency of prices and risk sharing. U.S. counterparties may find it difficult to take desired positions in security-based swaps if their access to non-U.S. liquidity providers is limited or more costly. For example, if U.S. persons seeking to hedge risk using security-based swaps have difficulty obtaining liquidity solely from U.S. providers, they may reduce their hedging activity in the security-based swap market, seek substitutes in other asset markets, or assume an inefficient amount of risk.[425] We note that the incentive to relocate personnel may grow to the extent that there is a substantial disparity in regulatory requirements applicable to those transactions that are arranged, negotiated, or executed by personnel from a location within the United States and those transactions that are not.

As an alternative to relocating personnel, we acknowledge that participants may implement or adapt existing controls or conventions that restrict communication between non-U.S. trading personnel and persons located in the United States to avoid triggering certain Title VII requirements. For example, firms may adopt policies restricting personnel located outside the United States from communicating with personnel located in the United States when engaging in dealing activity with non-U.S.-person counterparties. Non-U.S. firms might additionally restrict personnel located in the United States from arranging, negotiating, or executing security-based swaps in connection with the non-U.S. firm's dealing activity with non-U.S.-person counterparties.

Although non-U.S. persons may voluntarily impose internal conventions and controls on their own personnel to avoid triggering certain Title VII requirements, these conventions and controls may result in inefficient duplication of personnel or expertise in foreign and U.S. locations. Non-U.S. persons may choose to impose controls on personnel if the costs of duplication are below the costs of applying Title VII to relevant activity,[426] but we preliminarily believe that such a strategic choice may not take into account the programmatic benefits of Title VII regulation. For example, public dissemination requirements under Title VII improve the transparency of the security-based swap market while causing market participants and SDRs to incur costs. Other portions of the Title VII regulatory framework, such as capital and margin requirements yield programmatic benefits by reducing the risk of sequential counterparty default, but security-based swap dealers may consider the impact of such requirements on their own costs, without considering impacts on aggregate financial sector risk.[427] Thus, although internal personnel controls may be privately optimal for firms that choose to implement them, their net impact on efficiency will depend on how the costs of personnel duplication compare to the overall costs and benefits of the Title VII dealer regulation, external business conduct, regulatory reporting, and public dissemination requirements.

Similarly, we preliminarily believe that our proposed approach more consistently applies regulatory reporting and public dissemination requirements to transactions effected by or through trading platforms and registered broker-dealers, including registered SB SEFs. Both trading platforms and registered broker-dealers may intermediate transactions in the security-based swap market. By ensuring that both types of intermediation are subject to regulatory reporting and public dissemination requirements, the proposed approach reduces the risk that, as a result of disparate treatment, liquidity migrates from trading platforms to registered broker-dealers or from registered broker-dealers to trading platforms. However, at the same time, we acknowledge the risk that, in response to the proposed rules and amendments, trading platforms may choose to move their principal place of business offshore and registered broker-dealers may move their security-based swap businesses into unregistered entities to avoid regulatory reporting requirements.

Attempts to restructure by counterparties, trading platforms and registered broker-dealers could have an adverse effect on the efficiency of the security-based swap market by fragmenting liquidity between a U.S. security-based swap market, occupied by U.S. persons and non-U.S. persons willing to participate within the Title VII regulatory framework, with intermediation services provided by registered broker-dealers and U.S.-based trading platforms, and an offshore market whose participants seek to avoid any activity that could trigger application of Title VII to their security-based swap activity.[428] Such market fragmentation could reduce the amount of liquidity available to market participants whose activity is regulated by Title VII and significantly erode any gains in price efficiency and allocative efficiency that might result from pre- and post-trade transparency.

ii. Competition

We preliminarily believe that our proposed approach would have implications for competition among market participants that intermediate transactions in security-based swaps as well as counterparties to security-based swaps. First, the proposed rules and amendments to rules 901 and 908 would apply consistent regulatory reporting and public dissemination requirements to transactions between non-U.S. persons that are platform-

[425] *See* note 143, *supra* (citing CDEU Letter to CFTC).

[426] *See* Section VI.A (discussing the estimated per-entity costs of these controls).

[427] *See e.g.* Daron Acemoglu, Asuman Ozdaglar & Alireza Tahbaz-Salehi, Systemic Risk and Stability in Financial Networks (NBER Working Paper No. 18727, Jan. 2013), available at: *http://www.nber.org/papers/w18727* (showing the emergence of financial network externalities in a theoretical model of banks, in which banks may take into account the effect of their own risk taking on their creditors, but may fail to internalize the effects of their own risk taking on their creditors' creditors).

See also Viral V. Acharya, Lasse H. Pedersen, Thomas Philippon, and Matthew Richardson, ''Measuring Systemic Risk'' (May 2010), available at: *http://vlab.stern.nyu.edu/public/static/SR-v3.pdf.* (using a theoretical model of the banking sector to show that, unless the external costs of their trades are considered, financial institutions will have an incentive to take risks that are borne by the aggregate financial sector). Under this theory, in the context of Title VII, the relevant external cost is the potential for risk spillovers and sequential counterparty failure, leading to an aggregate capital shortfall and breakdown of financial intermediation in the financial sector.

[428] *See* Cross-Border Adopting Release, 79 FR 47364.

executed or effected through registered broker-dealers. We preliminarily believe that our proposed application of regulatory requirements is unlikely to generate competitive frictions between these different types of providers of intermediation services. At the same time, we acknowledge that proposed rule 908(a)(1)(iv) may make it difficult for suppliers of intermediation services (*i.e.,* trading platforms and broker-dealers) effecting or executing transactions within the United States, to compete to serve non-U.S. persons. Nonetheless, we preliminarily believe that our proposed approach would appropriately reflect the transparency focus of Title VII and would promote a robust regulatory regime for registered broker-dealers.

Applying external business conduct requirements and Regulation SBSR to transactions in connection with a non-U.S. person's dealing activity that the non-U.S. person arranges, negotiates, or executes using personnel located in the United States would mitigate competitive frictions between U.S. and non-U.S. persons [429] by providing for a generally consistent application of these requirements to U.S.-person dealers and non-U.S.-person dealers or their agents to the extent that the latter arrange, negotiate, or execute a security-based swap transaction in connection with their dealing activity using personnel located in a U.S. branch or office.[430] If only U.S. dealers and their agents were subject to disclosure requirements with respect to their security-based swap transactions, the costs of such disclosures would primarily affect U.S. dealers, their agents, and their counterparties. In contrast, non-U.S. dealers and their agents, who may not necessarily be subject to comparable disclosure requirements, could have a competitive advantage over U.S. dealers in serving non-U.S.-person counterparties using personnel located in a U.S. branch or office, were their activities not subject to the same requirements.[431] Furthermore, we preliminarily believe the ability to meet certain Title VII regulatory requirements under the proposed rules may allow non-U.S. persons who use personnel or personnel of agents located in the United States to engage in dealing activity to credibly signal high quality and better counterparty protection relative to other non-U.S. persons that compete for the same order flow from weaker regulatory environments.[432] Non-U.S. persons that choose to use personnel or personnel of agents for dealing activity from a location within the United States may find fraud or abusive behavior more costly and difficult to conduct, which may signal to other non-U.S. persons that such fraud or abusive behavior is unlikely to occur.

We are not proposing, however, to apply the clearing and trade execution requirements to security-based swap transactions that a non-U.S. person, in connection with its dealing activity, arranges, negotiates, or executes using personnel located in a U.S. branch or office. This aspect of our proposal may contribute to a disparity in the regulatory treatment of U.S. persons and non-U.S. persons in the security-based swap market, as non-U.S. persons that engage in dealing activity using personnel located in the United States would only be subject to Title VII dealer regulation and Regulation SBSR, while U.S. persons would also be required to comply with the clearing and trade execution requirements. If clearing and trade execution requirements comprise a large portion of the Title VII compliance costs, then a competitive disparity between U.S. and non-U.S. participants in the security-based swap market may remain, even with the addition of the proposed rules. However, to the extent that U.S. persons and non-U.S. persons whose obligations under a security-based swap are guaranteed by U.S. persons must increase the price of the liquidity they supply in response to this disparity in regulatory treatment, we preliminarily believe that these higher prices reflect an efficient allocation of the costs their activity may impose on the U.S. financial system, given that the counterparty credit risk of such security-based swap transactions resides primarily in the United States.

iii. Capital Formation

The proposed rules may affect capital formation in the security-based swap and securities market by affecting the transparency, liquidity, and stability of the market. Requiring transactions by non-U.S. persons, in connection with their dealing activity, with relevant activity in the United States to be reported and publicly disseminated should facilitate monitoring of the security-based swap market and improve the price discovery process and the liquidity of security-based swaps.[433] These improvements may lead to more efficient allocation of capital by market participants and market observers, facilitating capital formation.

We recognize that the effects of the proposed rule on market fragmentation may affect capital formation. If the proposed rules reduce the likelihood of fragmentation of the security-based swap market, then they may promote capital formation. Under a regulatory environment that facilitates U.S. persons' access to the global security-based swap market, U.S. market participants will be able to more efficiently hedge financial and commercial risks, reducing the level of precautionary savings they choose to hold and instead investing resources in more productive assets. However, if the proposed rules cause non-U.S. persons to move personnel and operations abroad or use agents operating outside the United States, the costs of the move represent resources that could have been invested in productive assets. Furthermore, to the extent that such restructuring results in a fragmented market with reduced liquidity for security-based swaps and related assets within the United States, the result could be less risk sharing and impaired capital formation.[434]

5. Request for Comment

The Commission requests comment on all aspects of our discussion and analysis concerning programmatic costs and benefits, and potential impacts, of the proposed rule on efficiency, competition, and capital formation, including the following:

• Does our discussion above accurately characterize, qualitatively and quantitatively, the incentives for entities to restructure in the absence of, or as a result of, the proposed rules? Please explain and provide information that would be helpful in performing further analysis.

• Does our discussion above accurately characterize, qualitatively and quantitatively, the benefits and

[429] Competitive effects would flow from each of the relevant Title VII requirements. For instance, post-trade transparency may increase competition between dealers by reducing the level of private information that large dealers have relative to smaller dealers and by improving the ability of non-dealers to negotiate with dealers on prices. *See* Regulation SBSR Adopting Release, 80 FR 14704.

[430] *See* Cross-Border Proposing Release, 78 FR 31127; Cross-Border Adopting Release, 79 FR 47327 (providing earlier discussions of these issues).

[431] *See, e.g.,* Arnoud W.A. Boot, Silva Dezelan, and Todd T. Milbourn, "Regulatory Distortions in a Competitive Financial Services Industry," Journal of Financial Services Research, Vol. 17, No. 1 (2000) (showing that, in a simple industrial organization model of bank lending, a change in the cost of capital resulting from regulation results in a greater loss of profits when regulated banks face competition from unregulated banks than when regulations apply equally to all competitors).

[432] *See* Cross-Border Adopting Release, 77 FR 47362 n.762.

[433] *See* Regulation SBSR Adopting Release, 80 FR 14719–722.

[434] *See* Cross-Border Adopting Release, 79 FR 47365.

costs of application of external business conduct requirements to transactions with dealing activity by personnel from a location within the United States? Please explain and provide information that would be helpful in performing further analysis.

• Our proposal does not retain an exception for cleared, anonymous transactions that would exclude these from the *de minimis* calculations for non-U.S. persons. Please provide information that would be helpful in estimating any effects of this approach on liquidity on platforms that support anonymous trading.

• Does our discussion above accurately characterize, qualitatively and quantitatively, the benefits and costs of application of Title VII requirements to transactions between two non-U.S. persons in which at least one of the non-U.S. persons, in connection with its security-based swap dealer activity, arranges, negotiates, or executes the security-based swap using personnel located in the United States? Please explain and provide information that would be helpful in performing further analysis.

C. Alternatives Considered

In developing these proposed rules and amendments we considered a number of alternative approaches. This section outlines these alternatives and discusses the potential economic effects of each.

1. Retention of the Definition of ''Transaction Conducted Within the United States''

In the Cross-Border Proposing Release, we originally proposed the definition ''transaction conducted within the United States'' and used it to identify (i) transactions that should be included in an entity's *de minimis* threshold calculations, and (ii) transactions that, subject to certain exceptions, would be subject to the set of Title VII requirements for business conduct, clearing, trade execution, regulatory reporting, and public dissemination. The original objective of the initial definition was identical to this proposed rule—to capture relevant dealing activity within the United States in order to mitigate competitive frictions and prevent a non-U.S. person from shifting its security-based swap dealing activity to a non-U.S. person and continue to carry out this dealing activity in the United States while avoiding application of the Title VII requirements by using personnel of the non-U.S. person located in the United States or personnel of its agent located in the United States.

We have determined to propose a different approach in part because we preliminarily agree with commenters that the initial approach likely would have increased assessment costs significantly.[435] That initial approach would have looked to whether dealing activity involved a ''transaction conducted within the United States,'' which, as defined in that proposal, turned on the location of personnel on both sides of the transaction. Accordingly, under the rule as initially proposed, an entity would have been required to include a transaction in its *de minimis* threshold calculations based on the location of its counterparty's personnel. Gathering such information, communicating it to relevant counterparties, and keeping records of this information on a per-transaction basis could be costly. We preliminarily believe that our re-proposed approach, which focuses only on whether the non-U.S. person is arranging, negotiating, or executing a security-based swap, in connection with its dealing activity, using personnel located in a U.S. branch or office, achieves many of the same programmatic benefits, while resulting in in lower assessment costs.[436]

2. Limited Exception From Title VII Requirements for Transactions Arranged, Negotiated, and Executed by Associated Persons of Broker-Dealers

We also considered not requiring a non-U.S. person to include a transaction in its *de minimis* threshold calculations if the security-based swap dealing activity was arranged, negotiated, or executed in the United States solely by personnel of a registered broker-dealer that were acting in their capacity as associated persons of that broker-dealer. One commenter suggested such an approach.[437] Although this approach could reduce costs associated with engaging in customer-facing activity in connection with dealing activity in security-based swaps in the United States, it would, as described in more detail above,[438] create potentially significant compliance gaps in our Title VII framework, potentially impeding our effective enforcement of Title VII and other federal securities laws by reducing the number of transactions carried out by registered security-based swap dealers and thus limiting our access to the books and records that are necessary for effective enforcement.

[435] *See, e.g.,* note 289, *supra* (citing ISDA Letter).

[436] As we noted in Section III.B.2, *supra,* some commenters urged that an activity-based test should look only to where the relevant transaction was executed or where the dealer's personnel committed the dealer to that trade. Although we acknowledge that such an alternative may result in costs that are meaningfully lower than the costs of our proposed approach, because we do not believe that such an alternative would adequately capture the range of market-facing activities that appear likely to raise the types of concerns addressed by security-based swap dealer regulation, we do not believe that this approach reflects a reasonable alternative to the proposed approach.

[437] *See* note 197, *supra* (citing IIB Letter).

[438] *See* Section III.B.5(c), *supra.*

3. Exclusion of Security-Based Swap Transactions That Do Not Involve a U.S.-Person Counterparty, a Counterparty Whose Obligations Under the Security-Based Swap Are Guaranteed by a U.S. Person, or a Conduit Affiliate From the *de minimis* Threshold Requirements

Although the Cross-Border Adopting Release stated that we contemplated considering whether to subject certain security-based swap transactions involving activity in the United States to certain Title VII requirements, one alternative to the proposed rules would be not to require any transactions other than those required in rule 3a71–3 to be counted toward a person's dealer *de minimis* threshold. However, in our preliminary view, in the absence of some form of activity-based test, the current scope of rules may not adequately address fraud and competitive fragmentation concerns. Further, personnel located in a U.S. branch or office may be employed by both U.S. and non-U.S. persons. Absent an activity-based test, our ability to enforce relevant regulations may be hindered by our inability to monitor the activity of such personnel carried out in their role as employee of the non-U.S. person.

The absence of an activity-based test may also adversely affect competition between U.S. and non-U.S. persons. Under current rules, the disparity in regulatory treatment means U.S. and non-U.S. persons will face disparate regulatory costs even if both engage in dealing activity using personnel located in a U.S. office. Non-U.S. persons or their agents transacting with other non-U.S. persons or their agents in the United States would potentially be able to provide liquidity at lower cost than U.S. persons because of differing regulatory treatment in other jurisdictions. As a result, non-U.S. persons could prefer to transact with non-U.S. persons or their agents, and a substantial portion of liquidity from non-U.S. persons may become unavailable to U.S. persons.

4. Extension of the Activity-Based Test to the Clearing and Execution Requirements

As we discuss above in Section V.D, we are not proposing to require mandatory clearing or mandatory trade execution for security-based swap transactions that are arranged, negotiated, or executed using personnel located in a U.S. branch or office.[439] Under this alternative, we would subject all transactions arranged, negotiated, or executed by personnel located in a U.S. branch or office to the clearing and trade execution requirements. Non-U.S. entities that are required to determine whether a transaction must be included in their dealer *de minimis* threshold calculations, or whether they are subject to the external business conduct rules or Regulation SBSR would be able to use the same assessment in determining whether such a transaction would be subject to the clearing and trade execution requirements. Further, transactions that were arranged, negotiated, or executed by non-U.S. persons using personnel located in a U.S. branch or office would be subject to clearing and trade execution requirements identical to those faced by U.S. persons and counterparties to U.S. persons. Such consistency in regulatory treatment could reduce competitive disparities between U.S. persons and non-U.S. persons that operate in the United States. This alternative may reduce the likelihood that a two-tier security-based swap market emerges as a result of differences in regulatory requirements across jurisdictions.

However, we preliminarily believe that this policy choice would adversely affect efficiency and increase the risk of market fragmentation. We preliminarily believe that imposing the clearing and execution requirements may impose unnecessary costs on certain non-U.S. market participants in relation to the risks posed by their activity to the United States. For example, these requirements may require non-U.S. persons and their agents to form new relationships with clearing agencies and trading platforms in the United States. Given that the risk to the U.S. financial system in the security-based swap transactions at issue in this release resides with non-U.S. persons with no recourse guarantee against U.S. persons, we preliminarily believe that any potential risk posed to the U.S. financial system does not warrant imposing clearing and trade execution requirements on these security-based swap transactions. In particular, we preliminarily believe that the margin requirements for foreign security-based swap dealers, which we have proposed to apply on an entity-level basis, would be sufficient to address the risk to the U.S. from non-U.S. persons with no recourse guarantee against U.S. persons and that the costs of the margin requirement would be commensurate to the risks involved.

VII. Paperwork Reduction Act

A. Introduction

Certain provisions of our proposal contain ''collection of information'' [440] requirements within the meaning of the Paperwork Reduction Act of 1955 (''PRA'') and we are submitting the proposed collections of information to the Office of Management and Budget (''OMB'') for review in accordance with 44 U.S.C. 3507 and 5 CFR 1320.11. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

We are proposing amendments to previously adopted Regulation SBSR, which contained 12 collections of information.[441] The proposed amendments amend the ''reporting hierarchy'' adopted in Regulation SBSR that specifies the side that has the duty to report a security-based swap that is a ''covered transaction'' [442] and provides for public dissemination of security-based swap transaction information (except as provided in rule 902(c)) for certain transactions.[443] As provided in the Regulation SBSR Adopting Release, registered SDRs are required to establish and maintain certain policies and procedures regarding how transaction data are reported and disseminated, and participants of registered SDRs that are registered security-based swap dealers or registered major security-based swap participants are required to establish and maintain policies and procedures that are reasonably designed to ensure that they comply with applicable reporting obligations.

The hours and costs associated with complying with Regulation SBSR constitute reporting and cost burdens imposed by each collection of information. We preliminarily believe that the methodology used for calculating the paperwork burdens set forth in the Regulation SBSR Adopting Release is appropriate for calculating the paperwork burdens associated with the amendments proposed here.

The proposed amendments containing these specific collections of information are discussed further below.

B. Reporting Obligations—Rule 901

Rule 901 sets forth various requirements relating to the reporting of covered transactions. The title of this collection is ''Rule 901—Reporting Obligations.''

1. Summary of Collection of Information

Title VII of the Dodd-Frank Act amended the Exchange Act to require the reporting of security-based swap transactions. Accordingly, we adopted rule 901 of Regulation SBSR under the Exchange Act to implement this requirement. Rule 901 specifies, with respect to each reportable event pertaining to covered transactions, who is required to report, what data must be reported, when it must be reported, where it must be reported, and how it must be reported. Rule 901(a), as adopted, established a ''reporting hierarchy'' that specifies the side that has the duty to report a security-based swap that is a covered transaction.[444] The reporting side, as determined by the reporting hierarchy, is required to submit the information required by Regulation SBSR to a registered SDR. The reporting side may select the registered SDR to which it makes the required report. Pursuant to rule 901(b), as adopted, if there is no registered SDR that will accept the report required by rule 901(a), the person required to make the report must report the transaction to the Commission. Rule 901(c) sets forth the primary trade information and rule 901(d) sets forth the secondary trade information that must be reported. Under the final rules, covered transactions—regardless of their notional amount—must be reported to a registered SDR at any point up to 24 hours after the time of execution, or, in the case of a security-based swap that is subject to regulatory reporting and public dissemination solely by operation of rule 908(a)(1)(ii), within 24 hours after the time of acceptance for clearing.[445] Except as required by rule

[439] Because we have not yet issued any clearing determinations, no security-based swaps are currently subject to mandatory clearing. *See* Section II.B.3, *supra.*

[440] 44 U.S.C. 3502(3).

[441] *See* SBSR Adopting Release, 80 FR 14673.

[442] *See* Regulation SBSR Adopting Release, 14567, (describing ''covered transaction'' as ''all security-based swaps except: (1) clearing transactions; (2) security-based swaps that are executed on a platform and that will be submitted to clearing; (3) transactions where there is no U.S. person, registered security-based swap dealer, or registered major security-based swap participant on either side; and (4) transactions where there is no registered security-based swap dealer or registered major security-based swap participant on either side and there is a U.S. person on only one side'').

[443] *See* proposed rules 908(a)(1)(iii), (iv) and (v).

[444] *See* Regulation SBSR Adopting Release, 80 FR 14674 (citing notes 11–12).

[445] *See* Regulation SBSR Adopting Release, Section VII(B)(1) (discussing rule 901(j) and the rationale for 24-hour reporting timeframe). Rule 901(j) provides that, if 24 hours after the time of execution would fall on a non-business day (*i.e.,* a

Continued

902(c), the information reported pursuant to rule 901(c) must be publicly disseminated. Information reported pursuant to rule 901(d) is for regulatory purposes only and will not be publicly disseminated.

Rule 901(e) requires the reporting of life cycle events, and adjustments due to life cycle events, within 24 hours of the time of occurrence, to the entity to which the original transaction was reported. Reports of life cycle events must contain the transaction ID of the original transaction.

In addition to assigning reporting duties, rule 901 also imposes certain duties on a registered SDR that receives security-based swap transaction data. Rule 901(f) requires a registered SDR to timestamp, to the second, any information submitted to it pursuant to rule 901, and rule 901(g) requires a registered SDR to assign a transaction ID to each security-based swap, or establish or endorse a methodology for transaction IDs to be assigned by third parties. Rule 901(h) requires that all information required by rule 901 be transmitted electronically in a format required by the registered SDR.

Rule 901(i) requires reporting of pre-enactment security-based swaps and transitional security-based swaps to the extent that information about such transactions is available.

2. Use of Information

The security-based swap transaction information required to be reported pursuant to rule 901 will be used by registered SDRs, market participants, the Commission, and other relevant authorities. The information reported pursuant to rule 901 will be used by registered SDRs to publicly disseminate reports of security-based swap transactions, as well as to offer a resource for us and other relevant authorities to obtain detailed information about the security-based swap market. Market participants will use the public market data feed, among other things, to assess the current market for security-based swaps and to assist in the valuation of their own positions. We and other relevant authorities will use information about security-based swap transactions reported to and held by registered SDRs to monitor and assess systemic risks, as well as for market surveillance purposes.

3. Respondents

Rule 901(a) assigns reporting duties for covered transactions. In the Regulation SBSR Adopting Release we maintained our preliminary estimate of 300 respondents.[446] Based on an analysis of the TIW data, we estimate that the proposed amendments set forth in this release would result in an additional 120 respondents that would be required to report transactions under the proposed amendments to Regulation SBSR that are not already required to report under the Regulation SBSR as adopted. Per estimates discussed above regarding the programmatic costs and benefits of regulatory reporting and public dissemination, we estimated that these 120 new respondents will be made up of 90 persons and approximately 30 other persons that are registered broker-dealers (including registered SB SEFs).[447]

4. Total Initial and Annual Reporting and Recordkeeping Burdens of Rule 901 of Regulation SBSR

Pursuant to rule 901, covered transactions must be reported to a registered SDR or to the Commission. Together, sections (a), (b), (c), (d), (e), (h), and (j) of rule 901 set forth the parameters that govern how covered transactions are reported. Rule 901(i) addresses the reporting of pre-enactment and transitional security-based swaps. These reporting requirements impose initial and ongoing burdens on respondents. We preliminarily believe that these burdens would be a function of, among other things, the number of reportable events and the data elements required to be reported for each such event. Rule 901(f) requires a registered SDR to time stamp, to the second, all reported information, and rule 901(g) requires a registered SDR to assign a transaction ID to each security-based swap, or establish or endorse a methodology for transaction IDs to be assigned by third parties. These requirements impose initial and ongoing burdens on registered SDRs. We preliminarily believe that the proposed amendments addressed in this release would not impact the cost burdens resulting from rules 901(f) and 901(g) on registered SDRs because the number of respondents does not impact our calculation of these costs.[448] Therefore we do not address the costs associated with these provisions.

For Respondents. The reporting hierarchy set forth in rule 901(a) is designed to place the duty to report covered transactions on counterparties who are most likely to have the resources and who are best able to support the reporting function.

Respondents that fall under the reporting hierarchy in rule 901(a)(2)(ii) incur certain burdens as a result thereof with respect to their reporting of covered transactions. As stated above, we preliminarily believe that an estimate of 120 additional respondents that would incur the duty to report under Regulation SBSR is reasonable for estimating collection of information burdens. This estimate includes all persons that would incur a reporting duty under proposed amendments to Regulation SBSR, that are not already subject to burdens under current rule 901.

In the Regulation SBSR Adopting Release, we estimated that there were likely to be approximately 3 million reportable events per year under rule 901.[449] We further estimated that approximately 2 million of these reportable events would consist of uncleared transactions. We estimated that 2 million of the 3 million total reportable events would consist of the initial reporting of security-based swaps as well as the reporting of any life cycle events. We also estimated that of the 2 million reportable events, approximately 900,000 would involve the reporting of new security-based swap transactions, and approximately 1,100,000 would involve the reporting of life cycle events under rule 901(e).

Based on our assessment of the effect of the proposed amendments to Regulation SBSR, we estimate that they would result in approximately 2,700 additional reportable events per year under rule 901. Taking a similar approach to the Regulation SBSR Adopting Release but also accounting for security-based swaps that would be reported by a registered broker-dealer, we estimate that, of the 2,700 new reportable events, 1,512 would involve the reporting of new security-based swap transactions, and approximately 1,188 would involve the reporting of life cycle events under rule 901(e).[450] Based

Saturday, Sunday, or U.S. federal holiday), reporting is required by the same time on the next business day. Rule 908(a)(1)(ii), as adopted, provides that a security-based swap that is subject to regulatory reporting and public dissemination solely by operation of rule 908(a)(1)(ii)—*i.e.,* because the security-based swap has been accepted for clearing by a clearing agency having its principal place of business in the United States—must be reported within 24 hours of acceptance for clearing.

[446] *See* Regulation SBSR Adopting Release, 80 FR 14674; Cross-Border Proposing Release, 78 FR 31113 (lowering estimate of respondents from 1,000 to 300).

[447] *See* section VI.B.3 and n.403, *supra.*

[448] *See* Regulation SBSR Adopting Release, 80 FR 14676–77.

[449] *See* Regulation SBSR Adopting Release, 80 FR 14675.

[450] As noted above, we expect that 20% of the new reportable events would be reported by registered broker-dealers pursuant to 901(a)(2)(ii)(E)(4) and thus would involve the

on these estimates, we preliminarily believe that rule 901(a) would result in respondents having a total burden of 7.6 hours attributable to the initial reporting of security-based swaps by respondents to registered SDRs under rules 901(c) and 901(d) over the course of a year.[451] We further estimate that respondents would have a total burden of 5.9 hours attributable to the reporting of life cycle events under rule 901(e) over the course of a year.[452] Therefore, we preliminarily believe that the proposed amendments to Regulation SBSR would result in a total reporting burden for respondents under rules 901(c) and 901(d) along with the reporting of life cycle events under rule 901(e) of 13.5 burden hours per year. We continue to believe that many reportable events would be reported through electronic means and that the ratio of electronic reporting to manual reporting is likely to increase over time. We continue to believe that the bulk of the burden hours estimated above would be attributable to manually reported transactions.[453] Thus, respondents that capture and report transactions electronically would likely incur fewer burden hours than those respondents that capture and report transactions manually.

Based on the foregoing and applying the same calculation methods used in the Regulation SBSR Adopting Release, we estimate that rule 901, as proposed in this release, would impose an estimated total first-year burden of approximately 1,361 hours [454] per respondent for a total first-year burden of 163,320 hours for all respondents that would incur the duty to report under the proposed amendments to rule 901(a)(2)(ii)(E).[455] We estimate that rule 901, when applied to new respondents resulting from the proposed amendments to rule 901(a), would impose ongoing annualized aggregate burdens of approximately 654 hours [456] per respondent for a total aggregate annualized burden of 78,480 hours for all new respondents.[457] We further estimate that rule 901 would impose initial and ongoing annualized dollar cost burdens of $201,000 per respondent, for total aggregate initial and ongoing annualized dollar cost burdens of $24,120,000.[458]

C. Correction of Errors in Security-Based Swap Information—Rule 905

Rule 905, as adopted, establishes procedures for correcting errors in reported and disseminated security-based swap information. The title of this collection is ''Rule 905—Correction of Errors in Security-Based Swap Information.''

1. Summary of Collection of Information

Rule 905 establishes duties for security-based swap counterparties and registered SDRs to correct errors in information that previously has been reported.

Counterparty Reporting Error. Under rule 905(a)(1), where a side that was not the respondent for a security-based swap transaction discovers an error in the information reported with respect to such security-based swap, the counterparty must promptly notify the respondent of the error. Under rule 905(a)(2), where a respondent for a security-based swap transaction discovers an error in the information reported with respect to a security-based swap, or receives notification from its counterparty of an error, the respondent must promptly submit to the entity to which the security-based swap was originally reported an amended report pertaining to the original transaction. The amended report must be submitted to the registered SDR in a manner consistent with the policies and procedures of the registered SDR required pursuant to rule 907(a)(3).

Duty of Registered SDR to Correct. Rule 905(b) sets forth the duties of a registered SDR relating to corrections. If the registered SDR either discovers an error in a transaction on its system or receives notice of an error from a respondent, rule 905(b)(1) requires the registered SDR to verify the accuracy of the terms of the security-based swap and, following such verification, promptly correct the erroneous information contained in its system. Rule 905(b)(2) further requires that, if such erroneous information relates to a security-based swap that the registered SDR previously disseminated and falls into any of the categories of information enumerated in rule 901(c), the registered SDR must publicly disseminate a corrected transaction report of the security-based swap promptly following verification of the trade by the counterparties to the security-based swap, with an indication that the report relates to a previously disseminated transaction.

2. Use of Information

The security-based swap transaction information required to be reported pursuant to rule 905 will be used by registered SDRs, participants of those SDRs, the Commission, and other relevant authorities. Participants will be able to use such information to evaluate and manage their own risk positions and satisfy their duties to report corrected information to a registered SDR. A registered SDR will need the required information to correct security-based swap transaction records, in order to maintain an accurate record of a participant's positions as well as to disseminate corrected information. The Commission and other relevant authorities will need the corrected information to have an accurate understanding of the market for surveillance and oversight purposes.

3. Respondents

Rule 905 applies to all participants of registered SDRs. As noted above, we estimated that there would be approximately 300 respondents that

reporting only of new security-based swap transactions and not of life-cycle events. *See* note 403, *supra.* Under this assumption, we would expect 540 reportable events (2,700 * 0.2) to be new security-based swap transactions reported by registered broker-dealers, and 972 reportable events to be other new security-based swap transactions that would be required to be reported under the proposed rule ((2,700—540) * 0.45), for a total of 1,512 reportable events that are new security-based swap transactions. The remaining 1,188 reportable events ((2,700—540) * 0.55) would be life-cycle events reportable under rule 901(e). *Cf.* Regulation SBSR Adopting Release, 80 FR 14676.

[451] In the Regulation SBSR Proposing Release, we estimated that it would take approximately 0.005 hours for each security-based swap transaction to be reported. *See* 75 FR at 75249 n.195. We calculate the following: ((1,512* 0.005)/(120 respondents)) = 0.06 burden hours per respondent or 7.6 total burden hours attributable to the initial reporting of security-based swaps.

[452] In the Regulation SBSR Proposing Release, we estimated that it would take approximately 0.005 hours for each security-based swap transaction to be reported. *See* 75 FR at 75249 n.195. We calculate the following: ((1,188 * 0.005)/(120 respondents)) = 0.05 burden hours per reporting side or 5.9 total burden hours attributable to the reporting of life cycle events under rule 901(e).

[453] *See* Regulation SBSR Adopting Release, 80 FR 14676.

[454] We derived our estimate from the following: (355 hours (one-time hourly burden for establishing an OMS) + 172 hours (one-time hourly burden for establishing security-based swap reporting mechanisms) + 180 hours (one-time hourly burden for compliance and ongoing support) = 707 hours (one-time total hourly burden). *See* Regulation SBSR Proposing Release, 75 FR 75248–50 nn.186, 194, and 201. (436 hours (annual-ongoing hourly burden for internal order management) + 0.11 hours (revised annual-ongoing hourly burden for security-based swap reporting mechanisms) + 218 hours (annual-ongoing hourly burden for compliance and ongoing support) = 654 hours (one-time total hourly burden. *See id.* 75248–50 nn.187 and 201 (707 one-time hourly burden + 654 revised annual-ongoing hourly burden = 1,361 total first-year hourly burden).

[455] We derived our estimate from the following: (1,361 hours per respondent * 120 respondents) = 163,320 hours.

[456] *See* Regulation SBSR Adopting Release, 80 FR 14676 (citing Cross-Border Adopting Release, 78 FR 31112–15).

[457] We derived our estimate from the following: (654 hours per respondent * 120 respondents) = 78,480 hours.

[458] *See* Regulation SBSR Adopting Release, 80 FR 14676 nn.1066 and 1078. We derived our estimate from the following: ($201,000 per respondent * 120 respondents) = $24,120,000.

incur the duty to report security-based swap transactions pursuant to current rule 901. As noted above, we preliminarily estimate that an additional 120 respondents would incur the duty to report under the proposed amendments to Regulation SBSR. Because any of these additional participants could become aware of errors in their reported transaction data, we estimate that there may be 120 respondents for purposes of the proposed amendments.

4. Total Initial and Annual Reporting and Recordkeeping Burdens

The duty to promptly submit amended transaction reports to the appropriate registered SDR after discovery of an error, as required under rule 905(a)(2), will impose burdens on respondents. The duty to promptly notify the relevant respondent after discovery of an error, as required under rule 905(a)(1), will impose burdens on non-reporting participants.

With respect to respondents, we preliminarily believe that rule 905(a) will impose an initial, one-time burden associated with designing and building the respondent's reporting system to be capable of submitting amended security-based swap transactions to a registered SDR. We continue to believe that designing and building appropriate reporting system functionality to comply with rule 905(a)(2) would be a component of, and represent an incremental ''add-on'' to, the cost to build a reporting system and develop a compliance function as required under existing rule 901. Based on discussions with industry participants, we previously estimated this incremental burden to be equal to 5% of the one-time and annual burdens associated with designing and building a reporting system that is in compliance with rule 901, plus 10% of the corresponding one-time and annual burdens associated with developing the respondent's overall compliance program required under rule 901.[459] This estimate was based on similar calculations contained in the Regulation SBSR Proposing Release,[460] updated to reflect new estimates relating to the number of reportable events and the number of entities with reporting duties. Taking a similar approach with respect to the proposed amendments to Regulation SBSR, we estimate that the new respondents would incur, as a result of rule 905(a), an initial (first-year) aggregate burden of 5,808.7 hours, which is 48.4 burden hours per respondent,[461] and an ongoing aggregate annualized burden of 2,616.7 hours, which is 21.8 burden hours per respondent.[462]

We preliminarily believe that the actual submission of amended transaction reports required under rule 905(a)(2) would not result in a material burden because this would be done electronically though the reporting system that the respondent must develop and maintain to comply with rule 901. The overall burdens associated with such a reporting system are addressed in our analysis of rule 901.[463]

D. Policies and Procedures for Registered Broker-Dealers—Rule 906(c)

1. Summary of Collection of Information

The proposed amendments to rule 906(c) would require each participant that is a registered broker-dealer that becomes a participant solely as a result of making a report to satisfy an obligation under proposed rule 901(a)(2)(ii)(E)(4) to establish, maintain, and enforce written policies and procedures that are reasonably designed to ensure compliance with applicable security-based swap transaction reporting obligations. Each such participant also would be required to review and update its policies and procedures at least annually.

2. Use of Information

The policies and procedures required under the proposed amendments to rule 906(c) would be used by participants to aid in their compliance with Regulation SBSR, and also used by the Commission as part of its ongoing efforts to monitor and enforce compliance with the federal securities laws, including Regulation SBSR, through, among other things, examinations and inspections.

3. Respondents

The proposed amendments to rule 906(c) would result in the rule applying to registered broker-dealers that are likely to become participants solely as a result of making a report to satisfy an obligation under proposed rule 901(a)(2)(ii)(E)(4). The Commission estimates that there would be 30 such registered broker-dealers.

4. Total Initial and Annual Reporting and Recordkeeping Burdens

The proposed amendment to rule 906(c) would require each registered broker-dealer that is likely to become a participant solely as a result of making a report to satisfy an obligation under proposed rule 901(a)(2)(ii)(E)(4) to establish, maintain, and enforce written policies and procedures that are reasonably designed to ensure compliance with applicable security-based swap transaction reporting obligations. The proposed amendment to rule 906(c) also would require each such registered broker-dealer to review and update such policies and procedures at least annually. We estimate that the one-time, initial burden for each such registered broker-dealer to adopt written policies and procedures as required under the proposed amendments to rule 906(c) would be similar to the rule 906(c) burdens discussed in the Regulation SBSR Adopting Release for covered participants, and would be approximately 216 burden hours per registered broker-dealer.[464] As discussed in the Regulation SBSR Adopting Release,[465] this figure is based on the estimated number of hours to develop a set of written policies and procedures, program systems, implement controls and oversight, train relevant employees, and perform necessary testing. In addition, we estimate the burden of maintaining such policies and procedures, including a full review at least annually would be approximately 120 burden hours for each registered broker-dealer that is likely to become a participant solely as a result of making a report to satisfy an obligation under proposed rule 901(a)(2)(ii)(E)(4).[466] This figure includes an estimate of hours related to

[459] *See* Regulation SBSR Adopting Release, 80 FR 14682.

[460] *See* Regulation SBSR Proposing Release, 75 FR 75254.

[461] This figure is calculated as follows: [(((172 burden hours for one-time development of reporting system) × (0.05)) + ((0.11 burden hours annual maintenance of reporting system) × (0.05)) + ((180 burden hours one-time compliance program development) × (0.1)) + ((218 burden hours annual support of compliance program) × (0.1))) × (120 respondents)] = 5,808.7 burden hours, which is 48.4 burden hours per respondent.

[462] This figure is calculated as follows: [(((0.11 burden hours annual maintenance of reporting system) × (0.05)) + ((218 burden hours annual support of compliance program) × (0.1))) × (120 respondents)] = 2,616.7 burden hours, which is 21.8 burden hours per respondent.

[463] *See* Section VII.B, *supra.*

[464] *See* Regulation SBSR Adopting Release, 80 FR 14684. This figure is based on the following: [(Sr. Programmer at 40 hours) + (Compliance Manager at 40 hours) + (Compliance Attorney at 40 hours) + (Compliance Clerk at 40 hours) + (Sr. Systems Analyst at 32 hours) + (Director of Compliance at 24 hours)] = 216 burden hours per registered broker-dealer that is likely to become a participant solely as a result of making a report to satisfy an obligation under proposed rule 901(a)(2)(ii)(E)(4).

[465] *See id.*

[466] *See id.* This figure is based on the following: [(Sr. Programmer at 8 hours) + (Compliance Manager at 24 hours) + (Compliance Attorney at 24 hours) + (Compliance Clerk at 24 hours) + (Sr. Systems Analyst at 16 hours) + (Director of Compliance at 24 hours)] = 120 burden hours per registered clearing agency or platform.

reviewing existing policies and procedures, making necessary updates, conducting ongoing training, maintaining controls systems, and performing necessary testing. Accordingly, the Commission estimates that the initial aggregate annualized burden associated with the proposed amendments to rule 906(c) would be 10,080 burden hours, which corresponds to 336 burden hours per registered broker-dealer that is likely to become a participant solely as a result of making a report to satisfy an obligation under proposed rule 901(a)(2)(ii)(E)(4).[467] The Commission estimates that the ongoing aggregate annualized burden associated with the proposed amendments to rule 906(c) would be 3,600 burden hours, which corresponds to 120 burden hours per registered broker-dealer that is likely to become a participant solely as a result of making a report to satisfy an obligation under proposed rule 901(a)(2)(ii)(E)(4).[468]

E. Collection of Information Is Mandatory

Each collection of information discussed above is mandatory.

F. Confidentiality of Responses to Collection of Information

Information collected pursuant to rule 905 would be widely available to the extent that it corrects information previously reported pursuant to rule 901(c) and incorporated into security-based swap transaction reports that are publicly disseminated by a registered SDR pursuant to rule 902. Most of the information required under rule 902 would be widely available to the public to the extent it is incorporated into security-based swap transaction reports that are publicly disseminated by a registered SDR pursuant to rule 902. However, rule 902(c) prohibits public dissemination of certain kinds of transactions and certain kinds of transaction information. An SDR, pursuant to section 13(n)(5) of the Exchange Act and rules 13n–4(b)(8) and 13n–9 thereunder is required to maintain the privacy of this security-based swap information. To the extent that we receive confidential information pursuant to this collection of information, we anticipate that we will keep such information confidential, subject to the provisions of applicable law. The proposed amendments to rule 906(c) would require certain registered broker-dealers to establish, maintain, and enforce certain written policies and procedures. The collection of information required by rule 906(c) would not be widely available. To the extent that the Commission receives confidential information pursuant to this collection of information, we anticipate that we would keep such information confidential, subject to applicable law.

G. Request for Comment

Pursuant to 44 U.S.C. 3506(c)(2)(B), the Commission solicits comment to:

• Evaluate whether the proposed collection of information is necessary for the proper performance of our functions, including whether the information shall have practical utility;

• Evaluate the accuracy of our estimate of the burden of the proposed collection of information;

Determine whether there are ways to enhance the quality, utility, and clarity of the information to be collected; and

• Evaluate whether there are ways to minimize the burden of collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

Persons submitting comments on the collection of information requirements should direct them to the Office of Management and Budget, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Washington, DC 20503, and should also send a copy of their comments to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090, with reference to File Number S7–06–15. Requests for materials submitted to OMB by the Commission with regard to this collection of information should be in writing, with reference to File Number S7–06–15 and be submitted to the Securities and Exchange Commission, Office of FOIA/PA Services, 100 F Street NE., Washington, DC 20549–2736. As OMB is required to make a decision concerning the collections of information between 30 and 60 days after publication, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

VIII. Consideration of Impact on the Economy

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996 (''SBREFA'') [469] the Commission requests comment on the potential effect of these proposed amendments on the United States economy on an annual basis. The Commission also requests comment on any potential increases in costs or prices for consumers or individual industries, and any potential effect on competition, investment, or innovation. Commenters are requested to provide empirical data and other factual support for their views to the extent possible.

IX. Regulatory Flexibility Act Certification

A. Certification for Proposed Rule and Proposed Amendments to Exchange Act Rules 3a71–3 and 3a71–5

Section 3(a) of the Regulatory Flexibility Act of 1980 (''RFA'') [470] requires the Commission to undertake an initial regulatory flexibility analysis of the impact of the proposed rule amendments on small entities unless the Commission certifies that the rule, if adopted, would not have a significant impact on a substantial number of ''small entities.'' [471]

For purposes of Commission rulemaking in connection with the RFA,[472] a small entity includes: (1) When used with reference to an ''issuer'' or a ''person,'' other than an investment company, an ''issuer'' or ''person'' that, on the last day of its most recent fiscal year, had total assets of $5 million or less; [473] or (2) a broker-dealer with total capital (net worth plus subordinated liabilities) of less than $500,000 on the date in the prior fiscal year as of which its audited financial statements were prepared pursuant to Rule 17a–5(d) under the Exchange Act,[474] or, if not required to file such statements, a broker-dealer with total capital (net worth plus subordinated liabilities) of less than $500,000 on the

[467] This figure is based on the following: [(216 + 120 burden hours) × (30 registered broker-dealers that are likely to become a participant solely as a result of making a report to satisfy an obligation under proposed rule 901(a)(2)(ii)(E)(4))] = 10,080 burden hours.

[468] This figure is based on the following: [(120 burden hours) × (30 registered broker-dealers that are likely to become a participant solely as a result of making a report to satisfy an obligation under proposed rule 901(a)(2)(ii)(E)(4))] = 3,600 burden hours.

[469] Public Law 104–121, Title II, 110 Stat. 857 (1996) (codified in various sections of 5 U.S.C., 15 U.S.C. and as a note to 5 U.S.C. 601).

[470] 5 U.S.C. 603(a).

[471] 5 U.S.C. 605(b)

[472] Although section 601(b) of the RFA defines the term ''small entity,'' the statute permits agencies to formulate their own definitions. The Commission has adopted definitions for the term ''small entity'' for the purposes of Commission rulemaking in accordance with the RFA. Those definitions, as relevant to this proposed rulemaking, are set forth in Rule 0–10 under the Exchange Act, 17 CFR 240.0–10. *See* Exchange Act Release No. 18451 (January, 28, 1982), 47 FR 5215 (February, 4, 1982) (File No. AS–305).

[473] *See* 17 CFR 240.0–10(a).

[474] *See* 17 CFR 240.17a–5(d).

last day of the preceding fiscal year (or in the time that it has been in business, if shorter); and is not affiliated with any person (other than a natural person) that is not a small business or small organization.[475] Under the standards adopted by the Small Business Administration, small entities in the finance and insurance industry include the following: (i) For entities engaged in credit intermediation and related activities, entities with $175 million or less in assets;[476] (ii) for entities engaged in non-depository credit intermediation and certain other activities, entities with $7 million or less in annual receipts;[477] (iii) for entities engaged in financial investments and related activities, entities with $7 million or less in annual receipts;[478] (iv) for insurance carriers and entities engaged in related activities, entities with $7 million or less in annual receipts;[479] and (v) for funds, trusts, and other financial vehicles, entities with $7 million or less in annual receipts.[480]

As we stated in the Cross-Border Adopting Release, we continue to believe that the types of entities that would engage in more than a *de minimis* amount of dealing activity involving security-based swaps would not be ''small entities'' for purposes of the RFA.[481] Based on feedback from market participants and our information about the security-based swap markets, we believe that firms that are likely to engage in security-based swap dealing activity at levels that may lead them to perform *de minimis* calculations under the ''security-based swap dealer'' definition are large financial institutions that exceed the thresholds defining ''small entities'' as set forth above. Accordingly, the Commission preliminarily believes that it is unlikely that the proposed amendments regarding the registration of security-based swap dealers would have a significant economic impact on a substantial number of small entities.

For the foregoing reasons, the Commission certifies that the proposed rule and amendments to Exchange Act 3a71–3 and 3a71–5 would not have a significant economic impact on a substantial number of small entities for purposes of the RFA. We encourage written comments regarding this certification. We request that commenters describe the nature of any impact on small entities and provide empirical data to illustrate the extent of the impact.

B. Initial Regulatory Flexibility Analysis for Proposed Amendments to Regulation SBSR

The Commission has prepared this Initial Regulatory Flexibility Act Analysis in accordance with 5 U.S.C. 603. This initial Regulatory Flexibility Act Analysis relates to the proposed amendments to Regulation SBSR under the Exchange Act, specifically rules 900, 901, 906, 907, and 908 under the Exchange Act.

1. Reasons for, and Objectives of, the Proposed Action and Legal Basis

The primary reason for, and objective of, the proposed amendments to Regulation SBSR is to address the application of the regulatory reporting and public dissemination requirements to certain transactions not addressed in the Regulation SBSR Adopting Release or the Regulation SBSR Proposed Amendments Release and to incorporate our revised approach to transactions of non-U.S. persons who are engaged in dealing activity from a location in the United States into Regulation SBSR. Pursuant to Exchange Act sections 13A(a)(1), 13(m)(1)(G), 13(m)(1)(B)–(D), and 13(n)(5)(D)(ii), the Commission is proposing amendments to Regulation SBSR regarding the reporting and public dissemination of certain security-based swap transactions.[482]

Proposed rule 908(a)(1)(v) would require a security-based swap transaction connected with a non-U.S. person's security-based swap dealing activity that is arranged, negotiated, or executed by personnel of such non-U.S. person located in a U.S. branch or office, or by personnel of such non-U.S. person's agent located in a U.S. branch or office, to be reported to a registered SDR and publicly disseminated. Requiring these transactions to be reported to a registered SDR should enhance our ability to oversee relevant activity related to security-based swap dealing occurring within the United States as well as our ability to monitor market participants for compliance with specific Title VII requirements.[483] It should also improve our ability to monitor for manipulative and abusive practices involving security-based swap transactions or transactions in related underlying assets, such as corporate bonds or other securities transactions that result from dealing activity, or other relevant activity, in the U.S. market.[484] Subjecting these transactions to the public dissemination requirements of Regulation SBSR should enhance the level of transparency in the U.S. security-based swap market, potentially reducing implicit transaction costs and promoting greater price efficiency.[485] Ensuring that post-trade information encompasses transactions involving a non-U.S. person that arranged, negotiated, or executed the security-based swap in connection with its dealing activity using personnel (personnel of an agent) located in a U.S. branch or office, could increase price competition and price efficiency in the security-based swap market and should enable all market participants to have more comprehensive information with which to make trading and valuation determinations.[486]

Proposed rule 908(a)(1)(iii) would require a security-based swap transaction that is executed on a platform having its principal place of business in the United States to be reported to a registered SDR and publicly disseminated pursuant to Regulation SBSR. Requiring these security-based swaps to be reported to a registered SDR would permit the Commission and other relevant authorities to observe, in a registered SDR, all transactions executed on such a platform and to carry out oversight of such security-based swaps. Furthermore, we preliminarily believe that public dissemination of such transactions would have value to participants in the U.S. security-based swap market, who are likely to trade the same or similar products, as these products would have been listed by a platform having its principal place of business in the United States.[487]

Proposed rule 908(a)(1)(iv) would require a security-based swap transaction that is effected by or through a registered broker-dealer (including a registered SB SEF) to be reported to a registered SDR and publicly disseminated pursuant to Regulation SBSR. Under proposed rule 908(a)(2)(ii)(E)(4), the registered broker-dealer would be required to report the transaction if neither side includes a U.S. person, a registered security-based swap dealer, a registered major security-based swap participant, or a non-U.S. person who arranged, negotiated, or executed the security-based swap from a location in the United States. Registered broker-dealers play a key role

[475] *See* 17 CFR 240.0–10(c).

[476] *See* 13 CFR 121.201 (Subsector 522).

[477] *See id.* at Subsector 522.

[478] *See id.* at Subsector 523.

[479] *See id.* at Subsector 524.

[480] *See id.* at Subsector 525.

[481] *See* Cross-Border Adopting Release, 79 FR 47368.

[482] *See* Section V.E, *supra.*

[483] *See* section V.E.2(a), *supra.*

[484] *Id.*

[485] *See id.* and note 325, *supra.*

[486] *See* section V.E.2(a), *supra.*

[487] *See* section V.E.2(b), *supra.*

as intermediaries in the U.S. financial markets. To improve integrity and transparency in those markets, we believe that it is important that the Commission, and other relevant authorities, have ready access to detailed information about the security-based swap transactions that such persons intermediate. Furthermore, we preliminarily believe that public dissemination of such transactions would have value to participants in the U.S. security-based swap market, who are likely to trade the same or similar products.[488]

2. Small Entities Subject to the Proposed Rules

For purposes of Commission rulemaking in connection with the RFA, a small entity includes: (1) When used with reference to an ''issuer'' or a ''person,'' other than an investment company, an ''issuer'' or ''person'' that, on the last day of its most recent fiscal year, had total assets of $5 million or less;[489] or (2) a broker-dealer with total capital (net worth plus subordinated liabilities) of less than $500,000 on the date in the prior fiscal year as of which its audited financial statements were prepared pursuant to Exchange Act rule 17a–5(d),[490] or, if not required to file such statements, a broker-dealer with total capital (net worth plus subordinated liabilities) of less than $500,000 on the last day of the preceding fiscal year (or in the time that it has been in business, if shorter); and is not affiliated with any person (other than a natural person) that is not a small business or small organization.[491] Under the standards adopted by the Small Business Administration, small entities in the finance and insurance industry include the following: (i) For entities engaged in credit intermediation and related activities, entities with $175 million or less in assets;[492] (ii) for entities engaged in non-depository credit intermediation and certain other activities, entities with $7 million or less in annual receipts;[493] (iii) for entities engaged in financial investments and related activities, entities with $7 million or less in annual receipts;[494] (iv) for insurance carriers and entities engaged in related activities, entities with $7 million or less in annual receipts;[495] and (v) for funds, trusts, and other financial vehicles, entities with $7 million or less in annual receipts.[496]

As noted in the Regulation SBSR Proposed Amendments Release, we believe, based on input from security-based swap market participants, that the majority of security-based swap transactions have at least one counterparty that is either a security-based swap dealer or major security-based swap participant, and that these entities—whether registered broker-dealers or not—would exceed the thresholds defining ''small entities'' set out above.[497] For this reason, we continue to believe that the majority of proposed amendments to Regulation SBSR would not have a significant economic impact on a substantial number of small entities for purposes of the RFA. However, the proposed amendments would require registered broker-dealers (including a registered SB SEF) to report a security-based swap transaction that is effected by or through it. As noted above, we estimate that 30 registered broker-dealers (including registered SB SEFs) may be required to report such transactions,[498] though we are not able to estimate the number of these registered broker-dealers that would be ''small entities.'' Given the nature of the security-based swap market, we preliminarily believe that it is unlikely that these registered broker-dealers would be small entities, though we request comment on the number of registered broker-dealers that are small entities that would be impacted by our proposed amendments, including any available empirical data.

3. Projected Reporting, Recordkeeping and Other Compliance Requirements

As discussed above, the proposed amendments to Regulation SBSR would require a security-based swap transaction that is effected by or through a registered broker-dealer (including a registered SB SEF) to be reported to a registered SDR by the registered broker-dealer if neither side of the security-based swap transaction includes a U.S. person, a registered security-based swap dealer, a registered major security-based swap participant, or a non-U.S. person who arranged, negotiated, or executed the security-based swap from a location in the United States. We preliminarily believe, as discussed above, that registered broker-dealers (including registered SB SEFs) would incur certain assessment costs associated with performing an analysis of their clients (in the case of registered-broker dealers) and members (in the case of registered SB SEFs)[499] to determine whose trades they are obligated to report under the proposed rules, which would be supported by systems that would record and maintain this information over time.[500]

Additionally, under the proposed amendments to rule 906(c), these registered broker-dealers would be required to establish, maintain, and enforce policies and procedures that are reasonably designed to ensure that the registered broker-dealer complies with any obligations to report information to a registered security-based swap data repository in a manner consistent with Regulation SBSR. Further, these registered broker-dealers would be required to review these policies and procedures at least annually.[501]

4. Duplicative, Overlapping or Conflicting Federal Rules

The Commission believes there are no rules that duplicate, overlap, or conflict with the proposed amendments.

5. Significant Alternatives

Pursuant to section 3(a) of the Regulatory Flexibility Act,[502] the Commission must consider certain types of alternatives, including: (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation or simplification of compliance and reporting requirements under the rule for small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part of the rule, for small entities.

We are proposing to require registered broker-dealers (including registered SB SEFs) to report security-based swap transactions that are effected by or through it if neither side of the security-based swap transaction includes a U.S. person, a registered security-based swap dealer, a registered major security-based swap participant, or a non-U.S. person who arranged, negotiated, or executed the security-based swap from a location in the United States. The proposed amendments would enable the Commission to gain a better understanding of the security-based swap market, including the size and

[488] *See* section V.E.2(c), *supra.*

[489] *See* 17 CFR 240.0–10(a).

[490] *See* 17 CFR 240.17a–5(d).

[491] *See* 17 CFR 240.0–10(c).

[492] *See* 13 CFR 121.201 (Subsector 522).

[493] *See id.* at Subsector 522.

[494] *See id.* at Subsector 523.

[495] *See id.* at Subsector 524.

[496] *See id.* at Subsector 525.

[497] *See* Regulation SBSR Proposed Amendments Release, 80 FR 14801. *See also* Regulation SBSR Adopting Release, 80 FR 14727–28.

[498] *See* section VII.B.3, *supra.*

[499] *See* section VI.A.1, *supra.*

[500] *Id.*

[501] *See* section VI.B.3, *supra.*

[502] 5 U.S.C. 603(c).

scope that market, and should enable us to identify exposure to risks undertaken by individual market participants or at various levels of aggregation, as well as credit exposures that arise between counterparties.[503] The regulatory data collected as a result of the proposed amendments would enable us to conduct robust monitoring of the security-based swap market for potential risks to financial stability.[504] The Commission considered whether it is necessary or appropriate to establish different compliance and reporting requirements under the rule; or clarify, consolidate, or simplify the compliance and reporting requirements for small entities under the rule. Because the proposed rule amendments would enhance the Commission's ability to oversee relevant activity related to security-based swap dealing occurring within the United States, our ability to monitor market participants for compliance with specific Title VII requirements, and our ability to monitor for manipulative and abusive practices involving security-based swap transactions, we preliminarily believe that small entities should be covered by the proposed amendments to Regulation SBSR. We preliminarily believe that establishing different compliance or reporting requirements for small entities, or exempting small entities from the proposed amendments could complicate the rules and potentially create gaps in the regulatory data that is reported and publicly disseminated that would be inconsistent with the goals of Title VII and the proposed amendments. Additionally, we do not consider performance rather than design standards to be consistent with the statutory mandate requiring reporting of security-based swaps to registered SDRs and the public dissemination of transaction and pricing data to enhance price discovery of security-based swaps.[505]

6. Solicitation of Comment

We are soliciting comments regarding this analysis. We request comment on the number of small entities that would be subject to the amendments and whether the proposed amendments would have any effects that have not been discussed. We request that commenters describe the nature of any effects on small entities subject to the amendments and provide empirical data to support the nature and extent of the effects.

[503] *See* Section VI.B.3, *supra.*

[504] *See* Section VI.B.3, *supra.*

[505] *See* Exchange Act sections 13(m)(1)(G) and 13(m)(1)(B).

X. Statutory Basis and Text of Proposed Rules

Pursuant to the Exchange Act, 15 U.S.C. 78a *et seq.,* and particularly, Sections 3(b), 23(a)(1), 3C(e), 11A(b), 13(m)(1), 13A(a), 17(a), and 30(c) thereof, Sections 712(a)(2), (6), and 761(b) of the Dodd-Frank Act, the SEC is proposing to amend rules 3a71–3 and 3a71–5, and 900, 901, 906, 907 and 908, under the Exchange Act.

List of Subjects

17 CFR Part 240

Brokers, Confidential business information, Fraud, Reporting and recordkeeping requirements, Securities.

17 CFR Part 242

Brokers, Fraud, Reporting and recordkeeping requirements, Securities.

Text of Proposed Rules

For the reasons stated in the preamble, the SEC is proposing to amend Title 17, Chapter II of the Code of the Federal Regulations as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

■ 1. The general authority citation for part 240 continues to read, and a sectional authority is added in numerical order to read as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78c–3, 78c–5, 78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78k, 78k–1, 78*l,* 78m, 78n, 78n–1, 78o, 78o–4, 78o–10, 78p, 78q, 78q–1, 78s, 78u–5, 78w, 78x, 78*ll,* 78mm, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4, 80b–11, and 7201 *et seq.,* and 8302; 7 U.S.C. 2(c)(2)(E); 12 U.S.C. 5221(e)(3); 18 U.S.C. 1350; and Pub. L. 111–203, 939A, 124 Stat. 1376, (2010) unless otherwise noted.

* * * * *

Sections 3a71–3 and 3a71–5 are also issued under Pub. L. 111–203, sections 712, 761(b), 124 Stat. 1754 (2010), and 15 U.S.C. 78dd(c).

* * * * *

■ 2. § 240.3a71–3 is amended by:

■ a. Adding paragraphs (a)(6) through (a)(9);

■ b. Adding paragraph (b)(1)(iii)(C); and

■ c. Adding paragraph (c).

The additions read as follows:

§ 240.3a71–3 Cross-border security-based swap dealing activity.

(a) * * *

(6) *U.S. security-based swap dealer* means a security-based swap dealer, as defined in section 3(a)(71) of the Act (15 U.S.C. 78c(a)(71)), and the rules and regulations thereunder, that is a U.S. person.

(7) *Foreign security-based swap dealer* means a security-based swap dealer, as defined in section 3(a)(71) of the Act (15 U.S.C. 78c(a)(71)), and the rules and regulations thereunder, that is not a U.S. person.

(8) *U.S. business* means:

(i) With respect to a foreign security-based swap dealer:

(A) Any security-based swap transaction entered into, or offered to be entered into, by or on behalf of such foreign security-based swap dealer, with a U.S. person (other than a transaction conducted through a foreign branch of that person); or

(B) Any security-based swap transaction arranged, negotiated, or executed by personnel of the foreign security-based swap dealer located in a U.S. branch or office, or by personnel of an agent of the foreign security-based swap dealer located in a U.S. branch or office; and

(ii) With respect to a U.S. security-based swap dealer, any transaction by or on behalf of such U.S. security-based swap dealer, wherever entered into or offered to be entered into, other than a transaction conducted through a foreign branch with a non-U.S. person or with a U.S.-person counterparty that constitutes a transaction conducted through a foreign branch of the counterparty.

(9) *Foreign business* means security-based swap transactions that are entered into, or offered to be entered into, by or on behalf of, a foreign security-based swap dealer or a U.S. security-based swap dealer, other than the U.S. business of such person.

(b) * * *

(1) * * *

(iii) * * *

(C) Security-based swap transactions connected with such person's security-based swap dealing activity that are arranged, negotiated, or executed by personnel of such non-U.S. person located in a U.S. branch or office, or by personnel of an agent of such non-U.S. person located in a U.S. branch or office; and

* * * * *

(c) *Application of customer protection requirements.* A registered foreign security-based swap dealer and a registered U.S. security-based swap dealer, with respect to their foreign business, shall not be subject to the requirements relating to business conduct standards described in section 15F(h) of the Act (15 U.S.C. 78o–10(h)), and the rules and regulations thereunder, other than the rules and regulations prescribed by the Commission pursuant to section 15F(h)(1)(B) of the Act (15 U.S.C. 78o–10(h)(1)(B)).

■ 3. § 240.3a71–5 is amended by adding paragraph (c) to read as follows:

§ 240.3a71–5 Exception for cleared transactions executed on a swap execution facility.

* * * * *

(c) The exceptions in paragraphs (a) and (b) of this section shall not apply to any security-based swap transactions of a non-U.S. person connected with its security-based swap dealing activity that are arranged, negotiated, or executed by personnel of such non-U.S. person located in a U.S. branch or office, or by personnel of an agent of such non-U.S. person located in a U.S. branch or office.

* * * * *

PART 242—REGULATIONS M, SHO, ATS, AC, NMS, AND SCI AND CUSTOMER MARGIN REQUIREMENTS FOR SECURITY FUTURES

■ 4. The authority citation for part 242 continues to read as follows:

Authority: 15 U.S.C. 77g, 77q(a), 77s(a), 78b, 78c, 78g(c)(2), 78i(a), 78j, 78k–l(c), 78*l*, 78m, 78n, 78o(b), 78o(c), 78o(g), 78q(a), 78q(b), 78q(h), 78w(a), 78dd–1, 78mm, 80a–23, 80a–29, and 80a–37.

■ 5. § 242.900 is further amended, as proposed at 80 FR 14801 (March 19, 2015), by:

■ a. In paragraph (u)(3), removing the period and adding in its place ''; or''; and

■ b. Adding paragraph (u)(4) to read as follows:

§ 242.900 Definitions

* * * * *

(u) * * *

(4) A registered broker-dealer (including a registered security-based swap execution facility) that is required to report a security-based swap to that registered security-based swap data repository by § 242.901(a).

* * * * *

■ 6. § 242.901 is amended by:

■ a. Adding paragraphs (a)(2)(ii)(E)(*2*) through (*4*); and

■ b. Revising paragraph (d)(9).

The additions and revision read as follows:

§ 242.901 Reporting obligations.

(a) * * *

(2) * * *

(ii) * * *

(E) * * *

(*2*) If one side includes a non-U.S. person that falls within § 242.908(b)(5) or a U.S. person and the other side includes a non-U.S. person that falls within rule § 242.908(b)(5), the sides shall select the reporting side.

(*3*) If one side includes only non-U.S. persons that do not fall within § 242.908(b)(5) and the other side includes a non-U.S. person that falls within rule § 242.908(b)(5) or a U.S. person, the side including a non-U.S. person that falls within rule § 242.908(b)(5) or a U.S. person shall be the reporting side.

(*4*) If neither side includes a U.S. person and neither side includes a non-U.S. person that falls within § 242.908(b)(5) but the security-based swap is effected by or through a registered broker-dealer (including a registered security-based swap execution facility), the registered broker-dealer (including a registered security-based swap execution facility) shall report the information required by §§ 242.901(c) and 242.901(d).

* * * * *

(d) * * *

(9) The platform ID, if applicable, or if a registered broker-dealer (including a registered security-based swap execution facility) is required to report the security-based swap by § 242.901(a)(2)(ii)(E)(*4*), the broker ID of that registered broker-dealer (including a registered security-based swap execution facility);

* * * * *

■ 7. § 242.906 is amended by revising paragraphs (b) and (c) to read as follows:

§ 242.906 Other duties of participants.

(a) * * *

(b) *Duty to provide ultimate parent and affiliate information.* Each participant of a registered security-based swap data repository that is not a platform, a registered clearing agency, or a registered broker-dealer (including a registered security-based swap execution facility) that becomes a participant solely as a result of making a report to satisfy an obligation under § 242.901(a)(2)(ii)(E)(*4*) shall provide to the registered security-based swap data repository information sufficient to identify its ultimate parent(s) and any affiliate(s) of the participant that also are participants of the registered security-based swap data repository, using ultimate parent IDs and counterparty IDs. Any such participant shall promptly notify the registered security-based swap data repository of any changes to that information.

(c) *Policies and procedures to support reporting compliance.* Each participant of a registered security-based swap data repository that is a security-based swap dealer, major security-based swap participant, registered clearing agency, registered broker-dealer (including a registered security-based swap execution facility) that becomes a participant solely as a result of making a report to satisfy an obligation under § 242.901(a)(2)(ii)(E)(*4*), or platform shall establish, maintain, and enforce written policies and procedures that are reasonably designed to ensure that it complies with any obligations to report information to a registered security-based swap data repository in a manner consistent with §§ 242.900 through 242.909. Each such participant shall review and update its policies and procedures at least annually.

* * * * *

■ 8. § 242.907 is amended by revising paragraph (a)(6) to read as follows:

§ 242.907 Policies and procedures of registered security-based swap data repositories.

(a) * * *

(6) For periodically obtaining from each participant other than a platform, a registered clearing agency, or a registered broker-dealer (including a registered security-based swap execution facility) that becomes a participant solely as a result of making a report to satisfy an obligation under § 242.901(a)(2)(ii)(E)(*4*) information that identifies the participant's ultimate parent(s) and any participant(s) with which the participant is affiliated, using ultimate parent IDs and counterparty IDs.

* * * * *

■ 9. § 242.908 is amended by adding paragraphs (a)(1)(iii) through (v); and is further amended as proposed at 80 FR 14801 (March 19, 2015), by adding paragraph (b)(5) to read as follows:

§ 242.908 Cross-border matters.

(a) * * *

(1) * * *

(iii) The security-based swap is executed on a platform having its principal place of business in the United States;

(iv) The security-based swap is effected by or through a registered broker-dealer (including a registered security-based swap execution facility); or

(v) The transaction is connected with a non-U.S. person's security-based swap dealing activity and is arranged, negotiated, or executed by personnel of such non-U.S. person located in a U.S. branch or office, or by personnel of an agent of such non-U.S. person located in a U.S. branch or office.

* * * * *

(b) * * *

(5) A non-U.S. person that, in connection with such person's security-based swap dealing activity, arranged, negotiated, or executed the security-based swap using its personnel located in a U.S. branch or office, or using

personnel of an agent located in a U.S. branch or office.

By the Commission.

Dated: April 29, 2015.

Brent J. Fields,

Secretary.

[FR Doc. 2015–10382 Filed 5–12–15; 8:45 am]

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Part III

Securities and Exchange Commission

Joint Industry Plans; Notice

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–74892; File No. 4–657]

Joint Industry Plans; Order Approving the National Market System Plan To Implement a Tick Size Pilot Program by BATS Exchange, Inc., BATS Y-Exchange, Inc., Chicago Stock Exchange, Inc., EDGA Exchange, Inc., EDGX Exchange, Inc., Financial Industry Regulatory Authority, Inc., NASDAQ OMX BX, Inc., NASDAQ OMX PHLX LLC, The Nasdaq Stock Market LLC, New York Stock Exchange LLC, NYSE MKT LLC, and NYSE Arca, Inc., as Modified by the Commission, for a Two-Year Period

May 6, 2015.

I. Introduction

On August 25, 2014, NYSE Group, Inc., on behalf of BATS Exchange, Inc., BATS Y-Exchange, Inc., Chicago Stock Exchange, Inc., EDGA Exchange, Inc., EDGX Exchange, Inc., Financial Industry Regulatory Authority, Inc. (''FINRA''), NASDAQ OMX BX, Inc., NASDAQ OMX PHLX LLC, the Nasdaq Stock Market LLC, New York Stock Exchange LLC, NYSE MKT LLC, and NYSE Arca, Inc., (collectively ''SROs'' or ''Participants''), filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 11A of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 608 thereunder,[2] a proposed national market system (''NMS'') *Plan to Implement a Tick Size Pilot Program* on a one-year basis (''NMS plan'').[3] The Participants filed the NMS plan to comply with an order issued by the Commission on June 24, 2014 (''June 2014 Order'').[4] The NMS plan, which included the details of Participants' proposal of the Tick Size Pilot Program (''Tick Size Pilot''), was published for comment in the **Federal Register** on November 7, 2014.[5] The Commission received 77 comment letters in response to the NMS plan.[6] On

[1] 15 U.S.C. 78k–1.

[2] 17 CFR 242.608.

[3] *See* Letter from Brendon J. Weiss, Vice President, Intercontinental Exchange, Inc., to Secretary, Commission, dated August 25, 2014.

[4] *See* Securities Exchange Act Release No. 72460 (June 24, 2014), 79 FR 36840 (June 30, 2014).

[5] *See* Securities and Exchange Act Release No. 73511 (November 3, 2014), 79 FR 66423 (''Notice'').

[6] *See* Letters from John Richardson, dated August 26, 2014 (''Richardson Letter''); Arthur T. Ling, dated August 26, 2014 (''Ling Letter''); Dan Blecha, dated August 26, 2014 (''Blecha Letter''); Tom Sosnoff, dated August 27, 2014 (''Sosnoff Letter''); Michael Choffy, dated August 28, 2014 (''Choffy Letter''); Joseph Runsdorf, dated August 29, 2014 (''Runsdorf Letter''); Tony J. Gagliano, dated September 1, 2014 (''Gagliano Letter I''); Howard L. Greenblatt, dated September 2, 2014 (''Greenblatt Letter''); Ernest Callipari, dated September 2, 2014 (''Callipari Letter''); Ali Bangura, dated September 3, 2014 (''Bangura Letter''); Tony J. Gagliano, dated September 3, 2014 (''Gagliano Letter II''); Theodore R. Lazo, Managing Director and Associate General Counsel of Securities Industry and Financial Markets Association (''SIFMA''), dated September 9, 2014 (''SIFMA Letter I''); John C. Nagel, Managing Director and Sr. Deputy General Counsel of Citadel, LLC, dated September 12, 2014 (''Citadel Letter I''); Christopher Nagy, CEO, and Dave Lauer, President, KOR Group LLC, dated September 15, 2014 (''KOR Letter I''); Stuart J. Kaswell, Executive Vice President & Managing Director, General Counsel of Managed Funds Association, dated September 20, 2014 (''MFA Letter I''); John Daley, Chairman of the Board and James Toes, President & CEO of Security Traders Association, dated September 23, 2014 (''STA Letter I''); Brian A. Johnson, Executive Director for Research of Committee on Capital Markets Regulation, dated September 26, 2014 (''CMR Letter I''); Jeffrey P. Ricker, dated October 6, 2014 (''Ricker Letter''); David Adorney, Professional Equity Trader, dated November 11, 2014 (''Adorney Letter''); Richard B. Gorelick, CEO of RGM Advisors, LLC, dated November 13, 2014 (''RGM Letter''); Representative Sean P. Duffy, U.S. House of Representatives, dated November 17, 2014 (''Duffy Letter''); Joseph Galinskie, dated November 18, 2014 (''Galinskie Letter''); Tom Quaadman, Vice President, U.S. Chamber of Commerce, Center for Capital Markets Competitiveness, dated November 20, 2014 (''CCMC Letter I''); David Shields, Vice Chairman & Co-CEO, Wellington Shields & Co., dated December 2, 2014 (''Wellington Shields Letter''); Dave Weild, Chairman & CEO, IssuWorks, Inc., dated December 3, 2014 (''IssuWorks Letter''); Tim Quast, President, ModernNetworks IR, LLC, dated December 8, 2014 (''ModernNetworks Letter''); Larry Tabb, Founder & CEO, Tabb Group, dated December 10, 2014 (''Tabb Letter''); John Endean, President, American Business Conference, dated December 12, 2014 (''ABC Letter''); Scott Kupor, Managing Partner, Andreessen Horowitz and Jeffrey M. Solomon, CEO Cowen and Company; Equity Capital Formation Task Force, dated December 18, 2014 (''ECFTF Letter''); Eduardo A. Repetto, Co-Chief Executive Officer and Co-Chief Investment Officer, Dimensional Fund Advisors, dated December 18, 2014 (''DFA Letter''); Sal Arnuk and Joseph Saluzzi, Partners and Co-Founders, Themis Trading, LLC, dated December 19, 2014 (''Themis Letter''); Simon D. Yates, CEO, Two Sigma Securities, LLC, dated December 19, 2014 (''Two Sigma Letter''); Mortimer J. Buckley, Managing Director and Chief and Investment Officer, The Vanguard Group, Inc., dated December 19, 2014 (''Vanguard Letter''); Rob Flatley, CEO and Dave Weisberger, MD, Head of Market Structure Analysis, CoreOne Technologies LLC, submitted December 19, 2014 (''CoreOne Letter''); Alan F. Hill, CEO and William K. Jones, Executive Chairman, JonesTrading Institutional Services LLC, dated December 19, 2014 (''JonesTrading Letter''); R. Glenn Hubbard, Co-Chair, John L. Thornton, Co-Chair and Hal S. Scott, Director, Committee on Capital Markets Regulation, dated December 19, 2014 (''CMR Letter II''); John Daley, Chairman of the Board and James Toes, President & CEO, Security Traders Association, dated December 19, 2014 (''STA Letter II''); John McCarthy, General Counsel, KCG Holdings, Inc., dated December 19, 2014 (''KCG Letter''); Douglas A. Cifu, Chief Executive Officer, Virtu Financial, dated December 19, 2014 (''Virtu Letter''); E. Cartier Esham, Executive Vice President, Emerging Companies, Biotechnology Industry Organization, dated December 22, 2014 (''BIO Letter''); Micah Hauptman, Financial Services Counsel, Consumer Federation of America, dated December 22, 2014 (''CFA Letter''); Bobby Franklin, President & CEO, National Venture Capital Association, dated December 22, 2014 (''NVCA Letter''); Eric Swanson, General Counsel and Secretary, BATS Global Markets, Inc. dated December 22, 2014 (''BATS Letter''); Theodore R. Lazo, Managing Director and Associate General Counsel, SIFMA, dated December 22, 2014 (''SIFMA Letter II''); Daniel G. Weaver, Ph.D., Professor of Finance, Director, Master of Financial Analysis Program, Associate Director, Whitcomb Center for Research in Financial Services, Rutgers, The State University of New Jersey, dated December 22, 2014 (''Weaver Letter''); Stuart J. Kaswell, Executive Vice President & Managing Director, General Counsel, Managed Funds Association, dated December 22, 2014 (''MFA Letter II''); Kurt N. Schacht, Managing Director and James C. Allen, Head, CFA Institute, dated December 22, 2014 (''CFA Institute Letter''); Robert J. McCarthy, Director of Regulatory Policy, Wells Fargo Advisors, LLC, dated December 22, 2014 (''Wells Fargo Letter''); Daniel Keegan, Managing Director, Head of Equities for the Americas, Citigroup Global Markets Inc., dated December 22, 2014 (''Citigroup Letter''); Richie Prager, Managing Director; Hubert DeJesus, Managing Director; Supurna Vedbrat, Managing Director; Joanne Medero, Managing Director, BlackRock, Inc., dated December 22, 2014 (''BlackRock Letter''); Adam Sussman, Head of Market Structure, Liquidnet, Inc., dated December 22, 2014 (''Liquidnet Letter''); Manisha Kimmel, Managing Director, Financial Information Forum, dated December 22, 2014 (''FIF Letter''); Tom Quaadman, Vice President, U.S. Chamber of Commerce, Center for Capital Markets Competitiveness, dated December 22, 2014 (''CCMC Letter II''); Ari Burstein, Senior Counsel, Investment Company Institute, dated December 22, 2014 (''ICI Letter''); Jeff Brown, Senior Vice President, Legislative and Regulatory Affairs, Charles Schwab & Co., Inc., dated December 22, 2014 (''Schwab Letter''); Kimberly Unger, CEO and Executive Director, Security Traders Association of New York, dated December 22, 2014 (''STANY Letter''); Scott C. Goebel, Senior Vice President & General Counsel, Fidelity Management & Research Co., dated December 22, 2014 (''Fidelity Letter''); Dennis Dick, CFA, Head, Equity Market Structure, Bright Trading LLC, dated December 22, 2014 (''Bright Trading Letter''); Raymond M. Tierney III, President and Chief Executive Officer, Gary Stone, Chief Strategy Officer, Bloomberg Tradebook LLC dated December 22, 2014 (''Bloomberg Letter''); Mao Ye, Assistant Professor of Finance, University of Illinois, Urbana-Champaign, dated December 22, 2014 (''Ye Letter''); Paul J. Jiganti, Managing Director, Market Structure and Client Advocacy and John S. Markle, Deputy General Counsel—Retail and Clearing Operations, TD Ameritrade, Inc., dated December 22, 2014 (''TD Ameritrade Letter''); James J. Angel, Ph.D., CFA, Associate Professor of Finance, Georgetown University dated December 22, 2014 (''Angel Letter''); Christopher Nagy and Dave Lauer, KOR Group, LLC dated December 22, 2014 (''KOR Letter II''); James G. Ongena, General Counsel, Chicago Stock Exchange, Inc., dated December 22, 2014 (''CHX Letter''); Andrew Stevens, General Counsel, IMC Financial Markets, dated December 30, 2014 (''IMC Letter''); Michael Jacejko, Chief Executive Manager, Birch Bay Capital, LLC, dated December 31, 2014 (''Birch Bay Letter''); James P. Selway III, Managing Director, Head of Electronic Brokerage, ITG Inc., dated January 5, 2015 (''ITG Letter''); John C. Nagel, Managing Director & Sr. Deputy General Counsel, Citadel LLC, dated January 5, 2015 (''Citadel Letter II''); Thomas Wittman, Executive Vice President, The NASDAQ OMX Group, LLC, dated January 16, 2015 (''Nasdaq Letter''); Brendon J. Weiss, Co-Head Government Affairs, NYSE, LLC, dated January 16, 2015 (''NYSE Letter''); Senators Mark R. Warner and Pat Toomey, The United States Senate, dated January 23, 2015 (''Warner-Toomey Letter''); Daniel Zinn, General Counsel, OTC Markets Group Inc., dated February 24, 2015 (''OTC Markets Letter''); Jared Albert, dated March 10, 2015 (''Albert Letter''); Representative Juan Vargas, U.S. House of Representatives, dated March 27,

February 26, 2015, the Commission extended the deadline for Commission action on the NMS plan and designated May 6, 2015 as the new date by which the Commission would be required to take action.[7] This order approves the NMS plan, as modified by the Commission, for a two-year period. A copy of the NMS plan, as modified by the Commission, is attached as *Exhibit A* hereto.

II. Background

Since the inception of decimalization [8] in 2001, there has been a significant shift in the nature of trading, the structure of the markets, and the roles of market participants. In the context of decimalization, market participants and others have raised concerns that the shift to quoting and trading in the one penny minimum price variation may have had a detrimental impact on the market quality for securities of small and middle capitalization companies. For example, a few studies issued after the implementation of decimalization raised questions regarding whether decimalization has reduced incentives for underwriters to pursue public offerings of smaller companies, limited the production of sell-side research for small and middle capitalization companies and made it less attractive to become a market maker in the shares for smaller companies.[9]

In 2012, the Jumpstart Our Business Startups Act (''JOBS Act'') [10] directed the Commission to conduct a study and report to Congress on how decimalization affected the number of initial public offerings (''IPOs''), and the liquidity and trading of securities of smaller capitalization companies.[11] The JOBS Act also provided that the Commission could, by rule, designate a minimum increment for the securities of emerging growth companies [12] that is greater than $0.01 but less than $0.10 for use in all quoting and trading of securities in any exchange or other execution venue, if the Commission determined that such securities should be quoted and traded using a minimum increment of greater than $0.01.[13]

The Commission submitted the staff study to Congress in July 2012 (''Decimalization Report'').[14] The Decimalization Report did not reach any firm conclusions about the impact of decimalization on the number of IPOs or the liquidity and trading of the securities of small capitalization companies.[15] However, based on the information considered in the Decimalization Report, staff recommended that ''[t]he Commission should not proceed with the specific rulemaking to increase tick sizes, as provided for in Section 106(b) of the JOBS Act, but should consider additional steps that may be needed to determine whether rulemaking should be undertaken in the future.'' [16] The Decimalization Report suggested a public roundtable, where recommendations could be presented on a pilot program that would generate data to allow the Commission to further assess decimalization's impact.

The Commission staff convened a Decimalization Roundtable, in February 2013, with broad participation from market participants, academics and others, including an issuer representative. Many panelists believed that factors other than decimalization were more significant contributors to the decline of IPOs in recent years. Although participants offered diverging views on the likely outcome of any increase in the minimum tick size, there was broad support among the panelists for the Commission to conduct a pilot program to gather further information, particularly with respect to the impact of wider tick sizes on liquidity in the securities of small capitalization companies. Some panelists, however, expressed concern about the potential costs to investors of wider minimum tick sizes.[17]

In June 2014, the Commission issued the June 2014 Order, pursuant to Section 11A(a)(3)(B) of the Act,[18] directing the Participants to act jointly in developing and filing with the Commission an NMS plan to implement a pilot program that, among other things, would widen the quoting and trading increment for certain small capitalization stocks.[19] The Commission issued the June 2014 Order to further study and assess the impact of decimalization on the securities of small capitalization companies. Pursuant to the June 2014 Order, on August 25, 2014, the Participants filed the proposed NMS plan.[20]

As discussed in detail throughout this order, the Commission believes that the Tick Size Pilot, as reflected in the proposed NMS plan, and subject to the modifications prescribed by the Commission, should support further examination and analysis on the impact of tick sizes on the trading and liquidity of the securities of small capitalization companies. The Commission believes that altering tick sizes could result in significant market-wide benefits and improvements to liquidity and capital formation. Yet, as discussed in detail below, these changes could also impose costs, including on investors resulting from larger spreads. Because of the potential significance of the benefits and costs, as well as the uncertainty that currently exists about the likely outcome of changing tick sizes, the Commission believes it is appropriate to test these important issues in a way that can produce robust results that informs future policy making. The Tick Size Pilot is therefore, by design, an objective, data-driven test that is designed to evaluate how a wider tick size would impact trading, liquidity, and market quality of securities of smaller capitalization companies. The Commission believes that the Tick Size Pilot, as now constructed, is necessary to provide for a test that can produce robust results that will allow the Commission to effectively test the potential benefits and costs of permanently changing tick sizes for smaller capitalization stocks.

2015 (''Vargas Letter''); and Atsushi Saito, Director and Representative Executive Officer, Group CEO, Japan Exchange Group, Inc., received April 17, 2015 (''Saito Letter''). The Commission received two comment letters after the June 2014 Order was issued and before the proposed NMS plan was submitted. These comment letters are included in the comment file with the other comment letters received in response to the NMS plan. *See also* Letters from Shawn Leary, dated August 24, 2014 (''Leary Letter''); and Tony BenBrahim, dated August 24, 2014 (''BenBrahim Letter'').

[7] *See* Securities and Exchange Act Release No. 74388, 80 FR 12054 (March 5, 2015).

[8] Decimalization refers to setting the tick size at penny increments. A tick is the minimum pricing increment that can be used to trade securities. Prior to 2001, securities in the U.S. equity markets were generally quoted and traded in fractional tick sizes, ranging from $1/32 or $1/64 for low-priced securities to $1/8 or $1/4 for higher-priced securities.

[9] *See* June 2014 Order, *supra* note 4, for a complete discussion of the background on decimalization.

[10] Jumpstart Our Business Startups Act, Pub. L. 112–106, 126 Stat. 306 (2012).

[11] Section 106(b) of the JOBS Act. 15 U.S.C. 78k–1(c)(6).

[12] An ''emerging growth company'' is defined in the Securities Act of 1933 (''Securities Act'') and the Act as an issuer with total annual gross revenues of less than $1 billion during its most recently completed fiscal year. *See* Section 2(a)(19) of the Securities Act and Section 3(a)(80) of the Act.

[13] *Id.*

[14] *Report to Congress on Decimalization* (July 2012) available at *http://www.sec.gov/news/studies/2012/decimalization-072012.pdf.*

[15] *See* Decimalization Report *supra* note 13. *See also* June 2014 Order *supra* note 4 (describing the Decimalization Report).

[16] *Id.*

[17] Information about the Decimalization Roundtable, including the transcript, comment letters and list of panelists is available at *http://www.sec.gov/spotlight/decimalization.shtml*.

[18] 15 U.S.C. 78k–1(a)(3)(B).

[19] *See* June 2014 Order *supra* note 4.

[20] *See* NMS plan *supra* note 3.

The Commission believes that the potential magnitude of the benefits that would be revealed by the Tick Size Pilot justify the costs of running these tests. The effect of wider tick sizes for small capitalization stocks on trading, liquidity, and market quality is not clear and the Tick Size Pilot will provide data to analyze any such effects. A wider tick size for small capitalization stocks may change the composition of market participants for these stocks as well as the behavior of market participants. The wider tick size may incentivize market makers to increase their market making activities in these stocks. This, in turn, may attract more investors and with increased interest in those stocks, trading activity may increase, which may also improve liquidity and market quality. There are many interconnected dimensions to trading, liquidity, and market quality. If a wider tick size leads to more active market making and attracts more investors to small capitalization stocks, we may observe positive effects on trading, liquidity, and market quality as measured by metrics such as trading volume, displayed depth, effective spreads, or execution costs for small and large trades.

Improved liquidity and market quality would be desirable for any stock, but would be particularly beneficial for small capitalization stocks because these stocks tend to be difficult and/or expensive to trade, which may discourage investment. Were there to be improved liquidity, investors and issuers would benefit. Investors would benefit because it would be easier and less expensive for them to trade in these stocks. Issuers would benefit from improved liquidity and market quality in two ways. First, more trading activity and investor attention may make an issuer's stock more attractive, which may reduce the company's cost of capital as well as increase their opportunities to raise capital. Second, improved liquidity may reduce an issuer's cost of capital because stocks with higher liquidity tend to have lower cost of capital. Consequently, improved liquidity may reduce liquidity risk and translate into lower cost of capital.[21] We expect these benefits would manifest during the Pilot Period if they are in fact present.

The Commission, however, recognizes that these benefits may not manifest in the manner or to the extent anticipated. And, as noted above, we cannot know in advance the full effects, whether they be positive or negative, of a wider tick size on the market behavior of market participants in response to the Tick Size Pilot. As discussed in detail below, the Commission has seriously considered the concerns about costs that implementation of the Tick Size Pilot would create for market participants and the complexity of the Tick Size Pilot, and has tried to mitigate both where possible without undermining the objectives of the Tick Size Pilot. The Commission nevertheless believes that incurring the costs of the Tick Size Pilot is appropriate in these circumstances. The Tick Size Pilot will provide the Commission and interested parties with real-world data regarding the effect of wider tick sizes on trading, liquidity and market quality for small-capitalization companies, and this empirical data will inform analyses and potential future regulatory actions to, among other things, capture any benefits from wider tick sizes on a permanent basis.[22]

Therefore, the Commission finds that the NMS plan is necessary or appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanism of, a national market system, or otherwise in furtherance of the purposes of the Act.

III. Description of the Proposed NMS Plan and the Tick Size Pilot

The NMS plan filed by the Participants contained provisions to implement the Tick Size Pilot,[23] including provisions related to the administration and operation of the Tick Size Pilot, the data to be collected and made public, and the specific assessments to be conducted by the Participants. In this section, the proposed NMS plan is described, and further below there is discussion and analysis of the comments received and the NMS plan, as approved with Commission modifications.

A. Criteria for Pilot Securities

Section V of the NMS plan sets forth five criteria for selection of NMS common stocks[24] that would be included in the Tick Size Pilot (''Pilot Securities''). The five criteria for determining the Pilot Securities are: (1) a market capitalization[25] of $5 billion or less on the last day of the Measurement Period;[26] (2) a Closing Price[27] of at least $2.00 on the last day of the Measurement Period; (3) a Closing Price on every U.S. trading day during the Measurement Period that is not less than $1.50; (4) a Consolidated Average Daily Volume (''CADV'')[28] during the Measurement Period of one million shares or less; and (5) a Measurement Period Volume-Weighted Average Price (''VWAP'')[29] of at least $2.00. Further, the Participants proposed that an NMS

[21] *See, e.g.,* Amihud, Y., Mendelson, H., *Asset pricing and the bid-ask spread,* 17 Journal of Financial Economics 223, (1986); Easley, D., Hvidkjaer, S. O'Hara, M., *Is Information Risk a Determinant of Asset Returns?,* 57 Journal of Finance 2185 (2002); Easley, D., O'Hara, M., *Information and the Cost of Capital,* 59 Journal of Finance 1553 (2004); Acharya, V., Pedersen, L., *Asset Pricing with Liquidity Risk,* 77 Journal of Financial Economics 375 (2005).

[22] The Commission notes that certain commenters believed that the Tick Size Pilot could provide valuable data and should be studied notwithstanding its potential costs. *See* Tabb Letter at 8; CFA Institute Letter at 2; CHX Letter at 17; Nasdaq Letter at 5–6; and NYSE Letter at 3.

[23] *See* NMS plan *supra* note 3.

[24] The NMS plan defines NMS common stock as an NMS stock that is common stock of an operating company. *See* NMS plan Section (I)(Q). NMS stock means any NMS security other than an option. *See* 17 CFR 242.600(b)(47). NMS security means any security or class of securities for which transaction reports are collected, processed, and made available pursuant to an effective transaction reporting plan, or an effective national market system plan for reporting transactions in listed options. *See* 17 CFR 242.600(b)(46).

[25] The NMS plan calculates market capitalization by multiplying the total number of shares outstanding on such day by the Closing Price of the security on such date. *See* NMS plan Section (V)(A)(1).

[26] The NMS plan defines Measurement Period as the U.S. trading days during the three calendar month period ending at least 30 days prior to the effective date of the Pilot Period. *See* NMS plan Section (I)(N). The NMS plan defines Pilot Period as the operative period of the Tick Size Pilot, lasting one year from the date of implementation. *See* NMS plan Section (I)(U). As discussed further below, in response to comments and after additional consideration, the Commission has modified the market capitalization threshold to lower it to $3 billion or less. In addition, as discussed further below, in response to comments and after additional consideration, the Commission has modified the definition of Pilot Period to extend the duration of the Tick Size Pilot to two years. *See infra* Section V.B.

[27] The NMS plan defines Closing Price as the closing auction price on the primary listing exchange or if not available, the last regular-way trade reported by the processor prior to 4:00 p.m. ET. *See* NMS plan Section (I)(H). The NMS plan defines processor as the single plan processor responsible for the consolidation of information for an NMS stock pursuant to Rule 603(b) of Regulation NMS. *See* NMS plan Section (I)(Y).

[28] The NMS plan calculates CADV by adding the single-counted share volume of all reported transactions in the Pilot Security during the Measurement Period and dividing by the total number of U.S. trading days during the Measurement Period. *See* NMS plan Section (V)(A)(4).

[29] The NMS plan calculates the Measurement Period VWAP by calculating the volume-weighted average price for each U.S. trading day during the Measurement Period, summing the daily volume-weighted average price across the Measurement Period, and dividing by the total number of U.S. trading days during the Measurement Period. *See* NMS plan Section (V)(A)(5).

common stock for an issuer that had its IPO within 6 months of the start of the Pilot Period would not be eligible to be a Pilot Security.

B. Assignment of Pilot Securities

As proposed in the NMS plan, the Tick Size Pilot would consist of three Test Groups, with each Test Group consisting of 400 Pilot Securities. The Pilot Securities that are not placed in the Test Groups would be placed in the Control Group.

The Operating Committee [30] of the NMS plan would oversee the process of assigning the Pilot Securities into the Control Group and the three Test Groups. First, the Pilot Securities would be placed into a maximum of 27 categories by means of a stratified random sampling process. Each Pilot Security would be categorized as: (1) low, medium, or high share price based on the Measurement Period VWAP; (2) low, medium, or high market capitalization based on the last day of the Measurement Period; and (3) low, medium, or high trading volume based on the CADV during the Measurement Period. Each category (share price, market capitalization, trading volume) would then be divided into three sub-categories, each containing a third of the securities in the category. This process would yield 27 categories. However, if a single category contained fewer than ten securities, such category would be combined with another category that contains at least ten securities. If two or more categories contained fewer than ten securities each, those categories would be combined, provided that the combined category contains at least ten securities. If the combined category contains fewer than ten securities, then such category would be combined with another of the 27 categories that contains at least ten securities.

After the categories are finalized, the Pilot Securities would then be randomly selected from each category to be included in the three Test Groups, based on the percentage of Pilot Securities in such category. Each category would be represented in all three Test Groups based on the category's relative proportion to the population of Pilot Securities. Similarly, a primary listing exchange's securities would be selected from each category and included in the three Test Groups.

Each primary listing exchange would, free of charge, make publicly available on its Web site the list of Pilot Securities that are listed on such exchange and that are included in the Control Group and Test Groups. Appendix A to the NMS plan provides the specific details about the data that each exchange would make available on its Web site to identify the Pilot Securities.

C. Control Group and Test Groups

As noted above, the Tick Size Pilot would contain a Control Group and three Test Groups, each of which has incrementally different quoting and trading requirements.

1. Control Group

Pilot Securities in the Control Group would continue to be quoted and traded at any price increment currently permitted.

2. Test Group One: Widened Quote Increment

Pilot Securities in Test Group One would have a quoting increment of $0.05 but could continue to trade at any currently permitted price increment. The Participants would be required to adopt rules that would prohibit the Participants or any member of a Participant from displaying, ranking, or accepting from any person any displayable or non-displayable bids or offers, orders, or indications of interest in increments other than $0.05. Orders priced to execute based on the midpoint and orders entered in a Participant-operated retail liquidity program [31] could be ranked and accepted in increments of less than $0.05.

3. Test Group Two: Widened Quote and Trade Increment

Pilot Securities in Test Group Two would have the same quoting increment as Test Group One ($0.05) along with the applicable quoting exceptions, but could only be traded in $0.05 minimum increments. The Participants would be required to adopt rules that prohibit trading centers operated by the Participants and members of the Participants from executing orders in any Pilot Security in Test Group Two in price increments other than $0.05. The $0.05 trading increment would apply to all trades, including brokered cross trades, absent an exception.

Three exceptions to the $0.05 trading increment would be applicable. First, trading could occur at the midpoint of the National Best Bid (''NBB'') and the National Best Offer (''NBO'' and together with NBB, ''NBBO''),[32] or the midpoint of the best protected bid and the best protected offer.[33] Second, Retail Investor Orders [34] could be executed with price improvement of at least $0.005 better than the best protected bid or the best protected offer. Finally, Negotiated Trades [35] could trade in increments less than $0.05.

4. Test Group Three: Widened Quote and Trade Increment With a Trade-At Prohibition

Pilot Securities in Test Group Three would be subject to the same quoting and trading increments as those in Test Group Two as well as the same exceptions. However, the trading of these securities would also be subject to a trade-at prohibition.[36] The trade-at

[30] *See* NMS plan Section (III)(C) on the composition of the Operating Committee. Each Participant will have one individual staff member to represent the Participant on the Operating Committee.

[31] *See* NASDAQ OMX BX Rule 4780; BATS Y Rule 11.24; NYSE Rule 107C; NYSE MKT—Equities Rule 107C and NYSE Arca Equities Rule 7.44.

[32] *See* 17 CFR 242.600(b)(42).

[33] *See* 17 CFR 242.600(b)(57).

[34] *See* NMS plan Section (I)(DD) (defining Retail Investor Order as ''an agency order or a riskless principal order originating from a natural person, provided that, prior to submission, no change is made to the terms of the order with respect to price or side of market and the order does not originate from a trading algorithm or any other computerized methodology. The Participant that is the DEA of a member of a Participant operating a trading center executing a Retail Investor Order will require such trading center to sign an attestation that substantially all orders to be executed as Retail Investor Orders will qualify as such under the [NMS] [p]lan'').

[35] *See* NMS plan Section (I)(P) (defining Negotiated Trades as ''(i) a Benchmark trade, including, but not limited to, a VWAP trade or a Time-Weighted Average Price trade, provided that, if such trade is composed of two or more component trades, each component trade complies with the quoting and trading increment requirements of the [NMS] [p]lan, or with an exception to such requirements, or (ii) a Pilot Qualified Contingent Trade.''). The NMS plan defines a Benchmark trade as ''the execution of an order at a price that was not based, directly or indirectly, on the quoted price of a Pilot Security at the time of execution and for which the material terms were not reasonably determinable at the time the commitment to execute the order was made.'' *See* NMS plan Section (I)(C). The NMS plan defines Pilot Qualified Contingent Trade as ''a transaction consisting of two or more component orders, executed as agent or principal, where: (1) at least one component order is in an NMS common stock; (2) all components are affected with a product or price contingency that either has been agreed to by the respective counterparties or arranged for by a broker-dealer as principal or agent; (3) the execution of one component is contingent upon the execution of all other components at or near the same time; (4) the specific relationship between the component orders (*e.g.,* the spread between the prices of the component orders) is determined at the time the contingent order is placed; (5) the component orders bear a derivative relationship to one another, represent different classes of shares of the same issuer, or involve the securities of participants in mergers or with intentions to merge that have been announced or since canceled; and (6) the transaction is fully hedged (without regard to any prior existing position) as a result of the other components of the contingent trade.'' *See* NMS plan Section (I)(V).

[36] A ''trade-at'' is defined under the NMS plan as an execution by a trading center of a sell order for a Pilot Security at the price of a protected bid or the execution of a buy order for a Pilot Security at the price of a protected offer. *See* NMS plan Section (I)(LL). As discussed further below, after additional

Continued

prohibition, as defined under the NMS plan, would'' (1) prevent a trading center that was not quoting from price-matching protected quotations and (2) permit a trading center that was quoting at a protected quotation to execute orders at that level, but only up to the amount of its displayed size'' (''Trade-At Prohibition''). Specifically, the Participants would be required to adopt rules prohibiting trading centers operated by the Participants and members of the Participants from executing a sell order for a Pilot Security at the price of a protected bid, or from executing a buy order for a Pilot Security at the price of a protected offer, unless such executions fall within certain enumerated exceptions.

The NMS plan contains thirteen exceptions to the Trade-At Prohibition. These exceptions describe when a trading center would be permitted to execute an order for a Pilot Security at a price equal to a protected bid or protected offer. The first exception would be for when an order is executed by a trading center that is displaying a quotation, via either a processor or an SRO quotation feed, at a price equal to the traded-at protected quotation, but only up to the trading center's full displayed size (''Size Limitation''). A further condition to this exception proposed by the Participants would limit trading centers' ability to execute an incoming order by requiring that executions occur on the venue where the protected quote was displayed. Specifically, the Participants proposed that where the quotation is displayed through a national securities exchange, the execution at the size of the order must occur against the displayed size on such national securities exchange (''Exchange Venue Limitation''). Where the quotation is displayed through the Alternative Display Facility (''ADF'') or another facility approved by the Commission that does not provide execution functionality, the execution of the order must occur against the displayed size in accordance with the rules of the ADF or such approved facility (''ADF Venue Limitation'' together with Exchange Venue Limitation, ''Venue Limitation'').[37]

In addition, the NMS plan provides that Block Size orders [38] and Retail Investor Orders executed with at least $0.005 price improvement would be excepted from the Trade-At Prohibition. These exceptions were also set forth in the June 2014 Order.

The next exceptions (numbers 4 through 12) are based on the exceptions that are found in Rule 611 of Regulation NMS.[39] Specifically, the NMS plan provides that trading centers would be permitted to execute an order for a Pilot Security at a price equal to a protected bid or protected offer in the following situations: (1) when the trading center displaying the protected quotation that was traded-at was experiencing a failure, material delay, or malfunction of its systems or equipment; (2) when an order is executed as part of a transaction that was not a ''regular way'' contract; (3) when an order is executed as part of a single-priced opening, reopening, or closing transaction by the trading center; (4) when a protected bid was priced higher than a protected offer in the Pilot Security; (5) when an order is identified as an Intermarket Sweep Order; (6) when an order is executed by a trading center that simultaneously routed Trade-at Intermarket Sweep Orders [40] to execute against the full displayed size of the protected quotation that was traded-at; (7) when the order is executed as part of a Negotiated Trade; (8) when the trading center displaying the protected quotation that was traded-at, had displayed, within one second prior to execution of the transaction that constituted the trade-at, a best bid or best offer, as applicable, for the Pilot Security with a price that was inferior to the price of the trade-at transaction; and (9) when the order executed by a trading center which, at the time of order receipt, the trading center had guaranteed an execution at no worse than a specified price (''stopped order'') where: (A) the stopped order was for the account of a customer; (B) the customer agreed to the specified price on an order-by-order basis; and (C) the price of the trade-at transaction was, for a stopped buy order, equal to the NBB in the Pilot Security at the time of execution or, for a stopped sell order, equal to the NBO in the Pilot Security at the time of execution.

Lastly, the NMS plan contains an exception for an order of a fractional share of a Pilot Security, provided that such fractional share order was not the result of breaking an order for one or more whole shares of a Pilot Security into orders for fractional shares or was not otherwise effected to evade the requirements of the Trade-At Prohibition or any other provisions of the Tick Size Pilot.

D. Collection and Assessment of Tick Size Pilot Data

1. Trading Center Data

The Participants would be responsible for collecting data specified in Appendix B of the NMS plan, which generally includes daily market quality statistics, data on specific orders, and data on market makers [41] (''Trading Center Data'').[42] In addition, each Participant that is the Designated Examining Authority (''DEA'') [43] of a member of a Participant operating a trading center would require such member to collect and provide to the DEA data related to daily market quality statistics and data related to specific orders consistent with the terms and conditions specified in Appendix B of the NMS plan. The Participants and each member of a Participant operating a trading center would also be required to collect such data for dates starting six months prior to the Pilot Period through six months after the end of the Pilot Period. Each Participant would make available to other Participants a list of members designated as market makers on that Participant's trading center.

On a monthly basis, the Participants and the DEA for each member of a

consideration, the Commission modified the definition of trade-at to clarify that it applies during Regular Trading Hours. *See infra* Section V.D.4.

[37] As discussed further below, in response to comments and after additional consideration, the Commission has modified the NMS plan to remove the Venue Limitation. *See infra* Section V.D.4.d.

[38] *See* 17 CFR 242.600(b)(9). As discussed further below, in response to comments and after additional consideration, the Commission has modified the definition of Block Size for purposes of the Tick Size Pilot. *See infra* Section V.D.4.e.

[39] 17 CFR 242.611.

[40] The NMS plan defines Trade-at Intermarket Sweep Orders as ''a limit order for a Pilot Security that meets the following requirements: (1) When routed to a trading center, the limit order is identified as an Intermarket Sweep Order; and (2) Simultaneously with the routing of the limit order identified as an Intermarket Sweep Order, one or more additional limit orders, as necessary, are routed to execute against the full displayed size of any protected bid, in the case of a limit order to sell, or the full displayed size of any protected offer, in the case of a limit order to buy, for the Pilot Security with a price that is equal to the limit price of the lit order identified as an Intermarket Sweep Order. These additional routed orders also must be marked as Intermarket Sweep Orders.'' *See* NMS plan Section (I)(MM).

[41] A ''market maker'' is defined under the NMS plan as ''a dealer registered with any self-regulatory organization, in accordance with the rules thereof, as (i) a market maker or (ii) a liquidity provider with an obligation to maintain continuous, two-sided trading interest.'' *See* NMS plan Section (I)(L).

[42] *See* NMS plan Appendix B.

[43] A DEA is defined under the NMS plan as ''the self-regulatory organization responsible for (i) examining such member for compliance with the financial responsibility requirements imposed by the Exchange Act, or by Commission or self-regulatory organization rules, (ii) receiving regulatory reports from such member, (iii) examining such member for compliance with, and enforcing compliance with, specified provisions of the Exchange Act, the rules and regulations thereunder, and self-regulatory organization rules, and (iv) carrying out any other specified regulatory functions with respect to such member.'' *See* NMS plan Section (I)(I).

Participant operating a trading center would make the specified Trading Center Data publicly available on their Web sites for free and would report such data to the Commission on a disaggregated basis by trading center. The publicly available data would not identify the trading center that generated the data.

2. Market Maker Profitability Data [44]

Each Participant that is the DEA of a market maker would require such market maker to provide the DEA the data specified in Appendix C of the NMS plan regarding daily market maker trading profits with respect to the Pilot Securities on a monthly basis (''Market Maker Profitability Data''). Each market maker would also be required to provide to its DEA the Market Maker Profitability Data for dates starting six months prior to the Pilot Period through six months after the end of the Pilot Period. Moreover, on a monthly basis, the DEA would aggregate the Market Maker Profitability Data and make the aggregated data publicly available via the DEA's Web site for free, and report such data to the Commission. The publicly available data would not identify the market makers that generated the data.

3. Assessment of Tick Size Pilot Data

The Participants proposed to provide to the Commission, and make publicly available, a joint assessment of the impact of the Tick Size Pilot, no later than six months after the end of the Pilot Period.[45] As proposed, the assessment would include the statistical and economic impact of an increase in the quoting increment related to: (1) market quality, (2) the number of market makers, (3) market maker participation, and (4) market transparency.[46] The assessment would also evaluate:

- whether any market capitalization, daily trading volume, or other thresholds can differentiate the results of the above assessment across stocks;
- the statistical and economic impact of the above assessments for the incremental impact of the trading increment and for the joint effect of an increase in both the quoting increment and the trading increment;
- the statistical and economic impact of the above assessments for the incremental impact of a Trade-At Prohibition and for the joint effect of an increase in the quoting increment, an increase in the trading increment, and a Trade-At Prohibition; and
- any other economic issues that Participants believe the Commission should consider in any rulemaking that may follow. The Participants may also individually submit to the Commission, and make publicly available, an additional supplemental assessment of the impact of the Tick Size Pilot.

E. Policies and Procedures

Pursuant to the NMS plan, the Participants and members of Participants would be required to establish, maintain, and enforce written policies and procedures that are reasonably designed to comply with the quoting and trading increments for the Pilot Securities. Each Participant would develop appropriate policies and procedures that provide for collecting and reporting to the Commission the Trading Center Data. Each Participant that is the DEA of a member of a Participant operating a trading center would require such member to develop appropriate policies and procedures for collecting and reporting the Trading Center Data to the DEA. Each Participant that is the DEA of a member of a Participant operating a trading center would develop appropriate policies and procedures for collecting and reporting the Trading Center Data to the Commission.

Further, each Participant that is the DEA of a market maker would require such market maker to develop policies and procedures for collecting the Market Maker Profitability Data and report it to the DEA. Each Participant that is the DEA of a market maker would develop appropriate policies and procedures that provide for collecting and reporting such data to the Commission on an aggregated basis.[47] The DEA would also develop policies and procedures reasonably designed to ensure the confidentiality of the non-aggregated data it receives from market makers.

F. Additional Components of the NMS Plan

In addition to setting forth the details of the Tick Size Pilot, the NMS plan contains operational details including provisions related to the admission of new participants, amendments, the composition and responsibilities of the Operating Committee, and withdrawal from the NMS plan.

IV. Summary of Comments

As noted above, the Commission received 77 comment letters on the Tick Size Pilot contained in the proposed NMS plan.[48] Thirty-three commenters generally supported the Tick Size Pilot,[49] although almost all of these commenters suggested that certain aspects of the proposed Tick Size Pilot be modified prior to approval and implementation.[50] Several of the

[44] As discussed further below, in response to comments and after additional consideration, the Commission has modified the Market Maker Profitability Data requirement. *See infra* Section V.E.2.

[45] As discussed further below, in response to comments and after additional consideration, the Commission has modified the NMS plan to require the assessment to be submitted to the Commission 18-months after the implementation of the Tick Size Pilot. *See infra* Section V.E.3.

[46] As discussed further below, in response to comments and after additional consideration, the Commission has modified the NMS plan to require the Participants to conduct an assessment on market maker profitability. *See infra* Section V.E.3.

[47] The Market Maker Profitability Data would be aggregated by Pilot Security.

[48] *See supra* note 6. The opinions' of the commenters are nuanced as many commenters support certain aspects of the NMS plan while opposing other aspects of the NMS plan. Eighteen comment letters were received in response to the Commission's press release announcing that the proposed NMS plan and Tick Size Pilot had been submitted. These comment letters are included in the comment file with the comment letters received in response to the Notice. The Commission notes that five of the comment letters received in response to the press release requested that the Commission provide an extended comment period. *See* CMR Letter I; MFA Letter I; KOR Letter I; SIFMA Letter I; and Citadel Letter I. *See also* CCMC Letter I. The Investor Advisory Committee (''IAC'') established by Section 911 of The Dodd-Frank Act also submitted recommendations to the Commission with respect to a tick pilot. *See Recommendation of the Investor Advisory Committee Decimalization and Tick Sizes,* available at: *http://www.sec.gov/spotlight/investor-advisory-committee-2012/investment-adviser-decimilization-recommendation.pdf (''IAC Recommendations'').* The IAC's Recommendations were issued prior to the Commission's June 2014 Order. The Commission discussed the IAC Recommendations in the June 2014 Order.

[49] *See* Gagliano Letter I; Callipari Letter; Gagliano Letter II; STA Letter I; Duffy Letter; Galinskie Letter; IssuWorks Letter; Tabb Letter; ABC Letter; ECFTF Letter; Themis Letter; Two Sigma Letter; STA Letter II; KCG Letter; Virtu Letter; BIO Letter; NVCA Letter; BATS Letter; SIFMA Letter II; Weaver Letter; CFA Institute Letter; Citigroup Letter; BlackRock Letter; STANY Letter; Bright Trading Letter; Bloomberg Letter; KOR Letter II; CHX Letter; IMC Letter; Nasdaq Letter; NYSE Letter; Warner-Toomey Letter; OTC Markets Letter; and Vargas Letter.

[50] Four of these commenters, while supporting a pilot to test wider tick sizes, nevertheless questioned whether wider ticks would have a positive impact on liquidity or would support increased research for small capitalization companies. *See* Tabb Letter at 1 (''While I am a strong proponent of the Tick Size Pilot, I do not foresee positive results, such as greater research coverage, more small/mid-cap[italization] IPOs, a wider diversity of market makers, reduced impact of high-frequency traders, lower transaction costs, or better quality of equity markets.''); CFA Institute Letter at 1 (stating ''skeptic[ism] that wider trading increments for small cap[italization] stocks will enhance the liquidity of those securities. . .''); KOR Letter II at 4 (stating the ''idea that increased market making profitability will lead to better research/analyst coverage and encourage more IPOs is an idea that is out of touch with modern markets post-Regulation NMS''); and IMC Letter at 1 (noting reservations about the effect of wider ticks on IPOs and job growth). *See also* CoreOne Letter at 2 (stating that it is unlikely the Tick Size Pilot will increase the amount of research coverage for Pilot Securities).

commenters supporting the Tick Size Pilot believed that a wider tick increment would improve the quality of trading for small capitalization securities or that it is valuable to test this hypothesis.[51] Additionally, some of these commenters believed that a wider tick increment would increase depth and liquidity.[52] For example, one commenter stated that a well-designed Tick Size Pilot would ''[allow] for a true empirical test of the effects of wider spreads and limited increments in small-cap[italization] stocks [would] encourage fundamental buyers and sellers to meaningfully engage with each other.'' [53]

Conversely, twenty commenters generally opposed the Tick Size Pilot.[54] Some of these commenters were concerned that a wider tick increment would increase investor execution costs or that the Tick Size Pilot would be unduly disruptive.[55] Three commenters argued that the impact of tick sizes had already been studied.[56] One commenter noted that increasing tick sizes would impact his ability to trade efficiently.[57] Other commenters argued that wider spreads would only help market professionals at the expense of investors.[58]

Generally, commenters opposing the Tick Size Pilot were concerned about its costs to investors and the complexity of its design.[59] For example one commentator estimated ''that the [Tick] Pilot could cost investors hundreds of millions of dollars.'' [60] Other commenters stated the Tick Size Pilot would ''make it more expensive for investors to buy and sell [P]ilot [S]ecurities.'' [61] Commenters also opined that the Tick Size Pilot would increase operational risk, and heighten market complexity which would require ''a whole redesign of trading systems and algorithms.'' [62] Another commenter stated that, ''while the purported benefits of the [Tick Size Pilot] are questionable, the costs are real and significant.'' [63]

Additionally, Tick Size Pilot opponents indicated that the underlying goals of the Tick Size Pilot were not properly defined and tenuous.[64] For example, one commenter stated that the Tick Size Pilot's ''goal seems simply to find ways to drive higher profits to exchanges and some of their favored clients.'' [65]

Seventeen commenters, while providing substantive analysis and opinion, did not specifically express support for, or, opposition to, the Tick Size Pilot.[66] While the commenters generally focused on issues related to the proposed Tick Size Pilot, some also raised tangential or alternative market-based solutions such as those relating to access fees, maker-taker fee models, payment-for-order-flow, and high frequency trading.[67] For instance, nine commenters stated that the Commission should test the elimination of exchange access fees, either independently or in conjunction with the Trade-At Prohibition; [68] two commenters suggested the Commission implement a stand-alone trade-at pilot; [69] and three commenters suggested that subpenny pricing should be explored and studied.[70]

Several commenters supported the Commission's use of ''data-driven'' research to formulate market structure changes.[71] Additionally, some commenters believed that, while the Tick Size Pilot may not achieve the goal of improved liquidity for small-

[51] *See* Gagliano Letter I (arguing that five cent spreads will greatly enhance participation, volume and increase market depth); Callipari Letter; ECFTF Letter at 1; STA Letter II at 2; BIO Letter at 2; NVCA Letter at 2; BATS Letter at 1; SIFMA Letter II at 1; STANY Letter at 2; Bloomberg Letter at 2; CHX Letter at 1; Nasdaq Letter at 3; and NYSE Letter at 1.

[52] *See* Gagliano Letter I; Callipari Letter; BIO Letter at 2; NVCA Letter at 2; and NYSE Letter at 1.

[53] *See* ECFTF Letter at 1.

[54] *See* BenBrahim Letter; Richardson Letter; Ling Letter; Blecha Letter; Sosnoff Letter; Choffy Letter; Runsdorf Letter; Greenblatt Letter; Bangura Letter; Ricker Letter; DFA Letter; Vanguard Letter; CFA Letter; MFA Letter II; Wells Fargo Letter; ICI Letter; Schwab Letter; Fidelity Letter; TD Ameritrade Letter; and Citadel Letter II. *See also IAC Recommendations.*

[55] *See* Vanguard Letter at 1; CFA Letter at 4; MFA Letter II at 6 (stating more than 20% of all U.S. listed companies will be impacted by the Tick Size Pilot); Wells Fargo Letter at 4; and ICI Letter at 5. *See also IAC Recommendations.*

[56] *See* Ling Letter; Blecha Letter; and Runsdorf Letter.

[57] *See* Richardson Letter.

[58] *See* Richardson Letter; Ling Letter; Sosnoff Letter; Choffy Letter; and Bangura Letter. *See also* Greenblatt Letter (stating that expanding the tick sizes will only help market makers become wealthy).

[59] *See* DFA Letter at 2 (raising concerns that U.S. companies would incur a higher cost of capital); Vanguard Letter at 4 (stating that ''any program that increases the minimum quoting or trading increments will necessarily result in increased transaction costs to long-term investors''); MFA Letter II at 3 (expressing concern that the Tick Size Pilot would harm investors by creating unnecessary market complexities and systems risks); Wells Fargo Letter at 9 (expressing concerns about both costs to investors and complexity); Fidelity Letter at 3–4 (citing concerns both about increased trading costs for retail investors and complexity and implementation costs); TD Ameritrade Letter at 2; and Citadel Letter II at 5 (citing concerns about implementation costs, systems risks, and investor costs). *See also* IAC Recommendations.

[60] *See* TD Ameritrade Letter at 2.

[61] *See* BenBrahim Letter; Greenblatt Letter; Bangura Letter; Wells Fargo Letter at 2 (expressing opposition to increased tick sizes and increased transaction costs); and MFA Letter II at 3 (stating that artificially widening spreads and increasing trading costs would make it expensive for investors to buy and sell securities).

[62] *See* MFA Letter II at 3. *See also infra* note 74 and accompanying text.

[63] *See* Vanguard Letter at 4.

[64] *See* Vanguard Letter at 1; Wells Fargo Letter at 6; Schwab Letter at 9; and Citadel Letter II at 2. *See also* IAC Recommendations.

[65] *See* Schwab Letter at 9.

[66] *See* Leary Letter; Adorney Letter; RGM Letter; CCMC Letter I; Wellington Shields Letter; ModernNetworks Letter (noting its agreement with the premise behind wider ticks, such as discouraging arbitrage, encouraging market making and longer holding periods); CoreOne Letter; JonesTrading Letter; CMR Letter II; Liquidnet Letter; FIF Letter; CCMC Letter II; Ye Letter; Angel Letter; Birch Bay Letter; ITG Letter; Albert Letter and Saito Letter.

[67] *See* Wellington Shields Letter at 2 (subpenny pricing should be eliminated and quotes should have a time-in-force); Virtu Letter at 2 (recommending the Commission study and establish specific market maker obligations through an NMS plan and eliminate access fees); Liquidnet Letter at 1–2 (asserting that Commission should pass Rule 10b–18 prior to the Tick Size Pilot and should conduct a simplified version of the Trade-At Prohibition independently along with other market structure issues such as removing access fees, and eliminating maker-taker pricing); BIO Letter at 5 (suggesting other measures to assist small capitalization companies such as an increase in the qualifying cap for accelerated filers and as well as an exception from XBRL reporting requirements); CFA Institute at 6; ICI Letter at 6 (stating other market initiatives, such as maker-taker, should be addressed prior to the Tick Size Pilot); Birch Bay Letter at 1 (asserting all orders should have a minimum lifespan of at least one-second); Schwab Letter at 5 (stating that if the Commission wants to test order flow migration, it should reduce exchange access fees and liquidity rebates); Bright Trading Letter at 3 (suggesting that OTC market makers should be required to provide ''meaningful'' price improvement); Bloomberg Letter at 15 (suggesting that reduced access fees should be the subject of a pilot); Ye Letter at 1 (suggesting that the maker-taker fees should be analyzed); Angel Letter at 11 (suggesting that a maker-taker pilot should be conducted); and KOR Letter II at 2.

[68] *See* Virtu Letter at 2; CFA Institute at 6; Liquidnet Letter at 2 (asserting a simplified version of the Trade-At Prohibition should be tested independently along with other market structure issues such as removing access fees, and eliminating maker-taker pricing); Schwab Letter at 5; Fidelity Letter at 5 (suggesting that a trade-at prohibition should also contemplate access fees, maker-take, internalization, but noted that these were properly excluded from the Tick Size Pilot); Bright Trading Letter at 3; Bloomberg Letter at 15; Ye Letter at 1; Angel Letter at 11; and KOR Letter II at 5 (suggesting that the Trade-At Prohibition should be coupled with access fee reform or the elimination of rebates).

[69] *See* Vanguard Letter at 2 and ICI Letter at 4.

[70] *See* Greenblatt Letter; RGM Letter at 1; and MFA Letter II at 3. *But see* Wellington Shields Letter at 5 (stating subpenny pricing causes the front running of trades); Ye Letter at 2; and ModernNetworks Letter at 3 (arguing against studying subpenny pricing).

[71] *See* RGM Letter at 1; ABC Letter at 3; ECFTF Letter at 1; Two Sigma Letter at 1; KCG Letter at 6; Virtu Letter at 2; BIO Letter at 4; CFA Institute Letter at 6; BlackRock Letter at 1; STANY Letter at 2; Bloomberg Letter at 3; Angel Letter at 2; KOR Letter II at 2; IMC Letter at 2; Nasdaq Letter at 4; and OTC Markets Letter at 2.

capitalization securities, it nonetheless should be tested.[72] For example, one commenter stated, ''we believe it is worth the effort, time and money to test these ideas in the real world . . . as an important step in helping to improve the market for small capitalization companies in the future.'' [73]

A. Costs and Complexity of the Tick Size Pilot

Several commenters expressed concerns related to the costs and complexity of the Tick Size Pilot.[74] Some commenters expressed concern that trading costs of the wider tick size would be borne either by investors [75] or the brokers and institutions representing customer interest.[76] Two commenters suggested that investor costs related to the Tick Size Pilot would be at least $200 million annually.[77] Certain commenters expressed concern that the Tick Size Pilot would inflate the cost of capital for the issuers of Pilot Securities.[78]

Other commenters were concerned with the costs associated with the complexity of the Tick Size Pilot. Some commenters thought that the three Test Group design of the Tick Size Pilot would drive costs upward,[79] but several commenters more directly attributed the potential costs to the complexity caused by the inclusion of Test Group Three and its Trade-At Prohibition.[80] Some commenters opined that eliminating Test Group Three would eliminate much of the complexity related to the Tick Size Pilot.[81] In particular, certain commenters stated that the complexity and costs of the Trade-At Prohibition result from the changes to technology and programming that would be necessary for effective implementation.[82] Some commenters expressed concern that the Tick Size Pilot would lead to increased operational risks.[83] However some commenters, while acknowledging that there would be costs associated with the Tick Size Pilot, believed the Commission should move forward because of the importance of testing the impact of wider tick increments on the liquidity and market quality of securities with smaller capitalization.[84]

Certain commenters believed that the Tick Size Pilot should be subject to a cost benefit analysis pursuant to the Commission rulemaking process.[85] Some of these commenters questioned whether the costs of the Tick Size Pilot outweighed its benefits. Others commenters posited that a cost-benefit analysis, focused on the implementation costs of the Tick Size Pilot, should be completed.[86] Other commenters suggested that an assessment of investor costs should be completed prior to the implementation of the Tick Size Pilot.[87]

B. Duration of the Tick Size Pilot

Twenty-three commenters discussed whether the Pilot Period should be extended, remain as proposed, or implemented on a provisional basis.[88] Seventeen commenters opined that the Pilot Period should be longer than one-year.[89] Some of these commenters indicated that the Pilot Period should be extended to justify the associated implementation costs.[90] Others indicated that better data could be gathered with a longer Pilot Period.[91] In particular, some of these commenters opined that the data generated from a longer Pilot Period would be less likely to be skewed by short-term or aberrational events.[92] One commenter suggested that the one-year time period would make it easy to manipulate the data to produce negative outcomes.[93] Other commenters stated that additional time is necessary to allow for market participants to adjust their behavior.[94]

Some commenters also indicated that the relatively short Pilot Period could have a negative impact on participation. Several commenters indicated that due to, among other things, the complexity and cost relative to the short duration of the Pilot Period, some market participants would avoid trading Pilot Securities during the Tick Size Pilot.[95]

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[72] *See* Tabb Letter at 1; Angel Letter at 1–2 (arguing that corporate issuers should set their trading increments and supporting a data-driven approach); KOR Letter II at 4; and IMC Letter at 1.

[73] *See* CFA Institute Letter at 2.

[74] *See* Duffy Letter at 2; DFA Letter at 2; Vanguard Letter at 4; Fidelity Letter at 3–4; TD Ameritrade Letter at 2; MFA Letter II at 3; Wells Fargo Letter at 9; ITG Letter at 4–6; and Citadel Letter II at 5.

[75] *See* BenBrahim Letter; DFA Letter at 2; Vanguard Letter at 1; KCG Letter at 2–3; Wells Fargo Letter at 5; and Citadel Letter II at 5.

[76] *See* DFA Letter at 1; Two Sigma Letter at 2; and TD Ameritrade Letter at 2.

[77] *See* Two Sigma Letter at 2 (estimating excess trading costs of implementing Test Group Two and Three of $200 million annually) and TD Ameritrade Letter at 2 (utilizing optimistic assumptions would be $273,149,484 annually).

[78] *See* DFA Letter at 2 and NVCA Letter at 7.

[79] *See* DFA Letter at 2 (arguing that the Tick Size Pilot's four group design where each group has its own rules and exemptions increases both the risk and costs); MFA Letter II at 7–8 (asserting that the Tick Size Pilot ''will greatly increase complexity by creating four different trading schemes that will need to be implemented by trading centers and institutional investors . . . The financial cost for such significant systems development, coding, reprogramming and testing are likely to be meaningful.''); and Wells Fargo Letter at 9 (stating ''the costs and risks of the [Tick] Pilot would be lessened in a study involving only one control group and one test group without exceptions).

[80] *See* Tabb Letter at 1; ECFTF Letter at 2; CMR Letter II at 7; KCG Letter at 14; FIF Letter at 3; and TD Ameritrade Letter at 2.

[81] *See* Tabb Letter at 1; Two Sigma Letter at 3; Vanguard Letter at 5; MFA Letter II at 6; and Wells Fargo Letter at 8.

[82] *See* Tabb Letter at 5–6 (stating ''[t]he programing for this . . . will be challenging, significant, and require massive testing.''); CoreOne Letter at 7; Wells Fargo Letter at 8; FIF Letter at 3; and ITG Letter at 5.

[83] *See* SIFMA Letter II at 5; Wells Fargo Letter at 3; ICI Letter at 5; and Citadel Letter II at 6 (stating ''it would be unfortunate if the Commission approved a pilot that imposed such an extraordinary degree of operational risk on the markets.'').

[84] *See* Tabb Letter at 8; CFA Institute Letter at 2; CHX Letter at 17 (this commenter provided an estimate of potential implementation costs for all three Test Groups of approximately $140,000 and suggested that such costs for all market centers could be in excess of $8.0 million); Nasdaq Letter at 5–6; and NYSE Letter at 3.

[85] *See* Duffy Letter at 2; KCG Letter at 8–9; SIFMA Letter II at 7; MFA Letter II at 8; Wells Fargo Letter at 3; Citigroup Letter at 5; Schwab Letter at 8–9; STANY Letter at 9–10; Bloomberg Letter at 21–22; TD Ameritrade Letter at 4; ITG Letter at 4; Citadel Letter II at 3–4; Nasdaq Letter at 7; and OTC Markets Letter at 9.

[86] *See* BlackRock Letter at 4; FIF Letter at 6; and Citadel Letter II at 5.

[87] *See* Wells Fargo Letter at 9; SIFMA Letter II at 8; and Citadel Letter II at 5.

[88] *See* Duffy Letter at 1; Galinskie Letter at 2; IssuWorks Letter at 3; Tabb Letter at 1; ABC Letter at 2; ECFTF Letter at 1–2; Themis Letter at 6; CoreOne Letter at 2; CMR Letter II at 2; STA Letter II at 7; BIO Letter at 7; CFA Letter at 6; NVCA Letter at 3–5; CFA Institute Letter at 3; BlackRock Letter at 6; Liquidnet Letter at 1; CCMC Letter II at 2; ICI Letter at 5; STANY Letter at 9; Angel Letter at 7; KOR Letter II at 3; CHX Letter at 6; and Warner-Toomey Letter at 1. See also IAC Recommendations.

[89] *See* Duffy Letter at 1; Galinskie Letter at 2; IssuWorks Letter at 3; Tabb Letter at 5–6; ABC Letter at 2; ECFTF Letter at 1–2; Themis Letter at 6; CoreOne Letter at 2; CMR Letter II at 2; BIO Letter at 3; NVCA Letter at 3–5; CFA Institute Letter at 3; Liquidnet Letter at 1; STANY Letter at 9; KOR Letter II at 3; Warner-Toomey Letter at 1; and Vargas Letter at 1.

[90] *See* Duffy Letter at 1; IssuWorks Letter at 3; ABC Letter at 3; NVCA Letter at 3; Liquidnet Letter at 3; STANY Letter at 9; Warner-Toomey Letter at 1; and Vargas Letter at 1. *See also* Tabb Letter at 8 (while not suggesting a longer duration, asserting that the one-year duration, which would require extensive technology development, may not be the best use of industry resources).

[91] *See* ECFTF Letter at 1 (arguing that ''[a] significantly longer time period is required to gather meaningful data around whether the changes to the market structure are having the desired effects''); CoreOne Letter at 2 (stating ''it remains unclear if the [Tick] Pilot could generate meaningful data . . . given the [Tick] Pilot's length among other things.''); NVCA Letter at 4; and STANY Letter at 9.

[92] *See* ECFTF Letter at 1–2; CMR Letter II at 2; NVCA Letter at 4–5; and Vargas Letter at 1.

[93] *See* Duffy Letter at 1.

[94] *See* Duffy Letter at 2; ECFTF Letter at 1–2; Themis Letter at 6; CMR Letter II at 2; BIO Letter at 3; SIFMA Letter II at 5–6; CFA Institute Letter at 3; and KOR Letter II at 3.

[95] *See* IssuWorks Letter at 4; ECFTF Letter at 2; CMR Letter II at 7; STA Letter II at 11; NVCA Letter at 5; BATS Letter at 4; SIFMA Letter II at 6–7; FIF Letter at 6; ICI Letter at 6; Schwab Letter at 5; STANY Letter at 9; Fidelity Letter at 4; Bloomberg Letter at 13; TD Ameritrade Letter at 3; CHX Letter at 7; Citadel Letter II at 6; Warner-Toomey Letter at 4; and Vargas Letter at 1.

A number of commenters expressed concern that if market participants avoided trading Pilot Securities the assessment of the Tick Size Pilot would be frustrated by skewed data.[96]

The recommended duration for the Tick Size Pilot varied among commenters advocating for a longer Pilot Period. Four commenters stated that the Pilot Period should be extended to five-years,[97] while other commenters suggested either a two-[98] or three-year duration.[99] Some commenters opined that the Pilot Period should be longer, but did not provide a specific time period.[100] Instead of a specific time period, others suggested a range of eighteen months to five years.[101]

Six commenters stated that the Pilot Period of the Tick Size Pilot should be one-year as proposed.[102] One commenter, who advocated for a Tick Size Pilot with a one-year Pilot Period, asserted that sufficient data to analyze the effects of wider ticks could be generated within that timeframe.[103] Another commenter stated that there would need to be greater confidence in the benefits of Tick Size Pilot in order to justify a longer Pilot Period.[104]

Among the commenters advocating for a one-year Pilot Period, there was variance on whether the Tick Size Pilot should be cut off immediately after one-year[105] or remain in operation while the results are assessed.[106] One commenter stated that the Tick Size Pilot should be assessed following the first six months of the Pilot Period but that the Tick Size Pilot should still only operate for the one-year Pilot Period.[107] Five commenters offered that the Pilot Period should initially operate for one-year with the possibility of an extension if such action is supported by the data.[108] Five commenters stated that the Tick Size Pilot should continue during the final assessment of the data in order to mitigate unnecessary changes in the market.[109] Another commenter stated that the Pilot Period should be at least one-year to gather preliminary results and, if deemed appropriate, extended for a ''full economic cycle'' thereafter to determine its impact on capital formation.[110]

C. Criteria for Pilot Securities

The Commission received many comments with respect to the selection criteria for Pilot Securities. The commenters raised concerns about the proposed selection criteria, especially the market capitalization threshold, and suggested other criteria to be considered.[111]

1. Market Capitalization of Pilot Securities

Sixteen commenters argued that a $5 billion market capitalization threshold is too high.[112] Commenters argued that the market capitalization threshold should be decreased because the $5 billion threshold would capture securities not traditionally considered small capitalization securities, which are the focus of the Tick Size Pilot.[113] Two commenters believed that the $5 billion market capitalization threshold would include stocks that do not have the liquidity and market quality concerns that the Tick Size Pilot seeks to address.[114] Various commenters recommended that the market capitalization threshold for Pilot Securities be lowered from $5 billion to a range of $250 million to $2 billion.[115]

2. Other Comments on the Selection Criteria

Some commenters stated that the current volume threshold of CADV of one million shares should be altered. For example, one commenter suggested that the volume threshold should range from 300,000 shares to 500,000 shares for illiquid securities.[116] Another commenter stated that the volume threshold should be based upon the daily dollar trading value to focus on small capitalization securities.[117] One commenter opined that the volume threshold should be based upon the volume relative to the public float.[118]

3. Suggestions for Additional Selection Criteria

A number of commenters recommended that additional selection criteria should be required and recommended additional thresholds for the selection of Pilot Securities. Nine commenters opined that an average weighted daily spread of five cents or greater should be a qualifying factor to avoid artificially widening the spread and increasing transaction costs for

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[96] *See* IssuWorks Letter at 4; CoreOne Letter at 7; BATS Letter at 5; SIFMA Letter II at 6; Warner-Toomey Letter at 1; and Vargas Letter at 1.

[97] *See* Duffy Letter at 1; Galinskie Letter at 2; IssuWorks Letter at 3; and Themis Letter at 6.

[98] *See* KOR Letter II at 3.

[99] *See* ECFTF Letter at 1–2 and Liquidnet Letter at 1. *See also* Vargas Letter at 1 (advocating for a longer Tick Size Pilot and stating that many experts suggested a three-year duration.).

[100] *See* Tabb Letter at 1; ABC Letter at 2; CMR Letter II at 2 (believing the Tick Size Pilot should be extended by one to two years); and CFA Institute Letter at 3.

[101] *See* CMR Letter II at 2; BIO Letter at 3 (stating a range of three to five years); NVCA Letter at 3–5 (stating the Pilot should last greater than three-years); and STANY Letter at 9 (indicating a Pilot duration of eighteen months to five-years).

[102] *See* CCMC Letter II at 2; STA Letter II at 7; CFA Letter at 6; BlackRock Letter at 6; ICI Letter at 5; and CHX Letter at 6.

[103] *See* CFA Letter at 6.

[104] *See* BlackRock Letter at 6. *See also* IAC Recommendations.

[105] *See* CCMC Letter II at 2 (asserting the Pilot should end completely following a year). *See also* BlackRock Letter at 6 (asserting that the Tick Size Pilot should have a ''finite duration and clear end date'').

[106] *See* STA Letter II at 7; FIF Letter at 6 (advocating for a preliminary assessment during the Tick Size Pilot to avoid unnecessary disruption); STANY Letter at 9 (noting that ending the Tick Size Pilot and possibly reintroducing it after the assessment would result in unnecessary risks and costs); KOR Letter II at 3; and CHX Letter at 6.

[107] *See* STA Letter II at 7.

[108] *See* STA Letter II at 7; ICI Letter at 5 (asserting that the Tick Size Pilot could only be extended for one-year if necessary); Angel Letter at 7; KOR Letter II at 3; and CHX Letter at 6.

[109] *See supra* note 106 and accompanying text.

[110] *See* Angel Letter at 7.

[111] One commenter stated that the proposed Measurement Period should be extended to the previous twelve months to verify whether any unique circumstances created any unintentional biases. *See* CFA Institute Letter at 4. *See also* FIF Letter at 1 (suggesting that the Measurement Period should be redefined to conclude seven months before the effective date of the Tick Size Pilot). Another commenter argued that consideration be given to securities that are priced under $5.00 per share. *See* IssuWorks Letter at 4.

[112] *See* ECFTF Letter at 2; Themis Letter at 3; Vanguard Letter at 6; CMR Letter II at 5; CFA Letter at 3; NVCA Letter at 6; BATS Letter at 2–3; SIFMA Letter II at 8; MFA Letter II at 5–6; Wells Fargo Letter at 8; ICI Letter at 4; Schwab at 10–11; STANY Letter at 7; Fidelity Letter at 3; Warner-Toomey Letter at 2; and OTC Markets Letter at 3–4.

[113] *See* MFA Letter II at 4; Wells Fargo Letter at 8; ICI Letter at 4; and Warner-Toomey Letter at 2 (stating ''re-examine . . . [the capitalization threshold] to remain consistent with goals of the Pilot''). Commenters stated the directive from Congress in the JOBS Act and also echoed by the Commission in the June 2014 Order was to address concerns of small capitalization securities. *See* MFA Letter II at 5–6 and KCG Letter at 10. One commenter also argued that small capitalization stocks would benefit the most from the Tick Size Pilot. *See* ECFTF Letter at 2.

[114] *See* Vanguard Letter at 6 and STA Letter II at 5.

[115] *See* ECFTF Letter at 2 (recommending lowering the threshold to $750 million); Themis Letter at 3 (recommending lowering the threshold to $2 billion); Vanguard Letter at 6 (recommending lowering the threshold to $500 million); CMR Letter II at 5 (recommending lowering the threshold to $750 million); CFA Letter at 3 (recommending lowering the threshold to $2 billion); NVCA Letter at 6 (recommending lowering the threshold to less than $1 billion); BATS Letter at 2–3 (recommending lowering the threshold to less than $1 billion); SIFMA Letter II at 8 (recommending lowering the threshold to less than $1 billion); MFA Letter II at 6 (recommending lowering the threshold to $750 million); Wells Fargo Letter at 8 (recommending lowering the threshold to $1 billion); STANY Letter at 7 (recommending lowering the threshold to $750 million); Fidelity Letter at 3 (recommending lowering the threshold to $750 million to $1 billion); and OTC Markets Letter at 3–4 (recommending lowering the threshold to $250 million).

[116] *See* CFA Letter at 3.

[117] *See* NVCA Letter at 6 (stating an appropriate average daily dollar trading value for small capitalization stocks is less than $10 million).

[118] *See* Virtu Letter at 2.

investors.[119] Other commenters stated that securities with an average spread of less than five cents would not benefit from the Tick Size Pilot because they are already very liquid.[120] Finally, two commenters suggested that including the daily turnover of a security would be a useful qualifying criterion to help determine liquidity.[121]

4. Securities Excluded from the Tick Size Pilot

Two commenters raised the possibility of regulatory arbitrage and asserted that cross-listed securities from Canada should not be eligible for the Tick Size Pilot.[122] Another commenter suggested that any security that trades below $1.00 during the Measurement Period should be eliminated from consideration as a Pilot Security. Further, the commenter stated that if a Pilot Security during the Pilot Period trades below $1.00 then its data should be removed from the Tick Size Pilot.[123] Two commenters supported the exclusion of ETFs.[124]

D. Control Group, Test Groups, and Trade-At Prohibition

A number of commenters discussed the design of the Tick Size Pilot. Two commenters opined that there were too many Pilot Securities included in each Test Group.[125] Some commenters indicated there were too many test groups, which would make the Tick Size Pilot complex to implement and difficult to assess.[126] One commenter supported the Tick Size Pilot design opining that it represented ''logical steps'' by comparing the trading environments of the test groups, and adding that ''[i]f there is an incremental effect that each change has on various quality of markets metrics, it should be apparent from the [Tick] Pilot data.'' [127] Another commenter supported the inclusion of all three Test Groups in order to ''deepen [the] understanding of the various factors impacting liquidity in [today's] fragmented market.'' [128]

Commenters suggested testing tick sizes other than the proposed $0.05 increment. Some commenters suggested that various tick size increments, both larger [129] and smaller [130] than the proposed $0.05 increment, be concurrently tested. Other commenters suggested that subpenny increments should be tested.[131] One commenter believed the $0.05 trade increment should apply to the opening and closing auctions and asked for this issue to be directly addressed in the Tick Size Pilot.[132] Conversely, another commenter suggested that the opening and closing auctions should be exempt from the Tick Size Pilot.[133]

One commenter asserted that, in order to avoid logistical and operational problems of rejecting non-conforming orders for brokers and customers, the Tick Size Pilot should permit orders that are received but not priced in $0.05 increments to be re-priced for display purposes to a permissible $0.05 increment.[134] Another commenter requested clarification on the handling of orders and quotes that are not in a proper tick increment.[135]

1. Test Group One: Widened Quote Increment

One commenter suggested that Test Group One should be eliminated in order to reduce the Tick Size Pilot's complexity.[136] Four commenters theorized that Test Group One ''probably will drive more volume to the dark pools'' because the trade increment is less than $0.05.[137] For example, one commenter stated, ''[w]ith no controls around trading increments, we will see a deterioration in market quality as more trading moves off-exchange, and lit market making is further disadvantaged.'' [138] One commenter suggested that market participants should be permitted in Test Group One to accept or rank orders in penny increments because exchanges and agency ATSs would be at a competitive disadvantage vis-à-vis broker-owned proprietary execution systems that could trade, accept and rank orders at otherwise impermissible increments.[139] One commenter stated that Test Group One should be eliminated because ''we should not be engaging in experiments that actively increase undisplayed liquidity.'' [140]

2. Test Group Two: Widened Quote and Trade Increment

The comments on Test Group Two were mainly directed at the exception for Retail Investor Orders, which is also applicable to Test Group Three. Two commenters argued that the definition of Retail Investor Order should be broadened so that it would be less burdensome to implement and applicable to more individuals.[141] Five commenters stated that an attestation should not be required, as it would be unwieldy for trading centers to surveil and attest that substantially all trades entered into the system originated from an individual.[142]

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[119] *See* CoreOne Letter at 3 (advocating for using the average displayed spread for the Measurement Period); Two Sigma Letter at 2 (stating the securities meeting this criteria are approximately 25% of the NMS common stocks and would therefore be a large enough universe while minimizing the risk of increasing transaction costs to investors); CFA Letter at 3; MFA Letter II at 7 (asserting that the spread on some qualifying securities could increase by 500%); CFA Institute Letter at 4; Wells Fargo Letter at 9; Schwab Letter at 10–11; and OTC Markets Letter at 3–4. *See also* KCG Letter at 10 (arguing that artificially wider spreads will increase transaction costs).

[120] *See* CFA Letter at 3 (stating that ''securities with $0.01 spreads are already highly liquid and actively traded''); MFA Letter II at 7; and Schwab Letter at 10–11.

[121] *See* CMR Letter II at 3–4 and STA Letter II at 4–5.

[122] *See* STA Letter II at 9 and SIFMA Letter II at 10.

[123] *See* CHX Letter at 2.

[124] *See* CFA Institute at 4 (stating that the exclusion recognizes their different shareholder base) and ICI Letter at 4.

[125] *See* STA Letter II at 5–6 and BATS Letter at 3 (arguing that the number of Pilot Securities per Test Group should be reduced to 100 securities). *But see* CFA Institute at 4 (asserting that 400 securities per Test Group are appropriate for ''more robust analysis'').

[126] *See* STA Letter II at 5 (arguing that the Tick Size Pilot should have only one test group); KCG Letter at 3 (asserting the Tick Size Pilot should include only Test Group One, but generally supports Test Groups One and Two); MFA Letter II at 6 (arguing that the Tick Size Pilot's ''broader scope will likely frustrate the Commission's ability to assess the impact of increased tick sizes on liquidity for small-cap[italization] stocks''). *See also supra* note 81 and accompanying text (advocating for the elimination of Test Group Three). *See also infra* note 136 and accompanying text (asserting Test Group One should be eliminated).

[127] *See* CHX Letter at 11.

[128] *See* NYSE Letter at 3.

[129] *See* IssuWorks Letter at 3 (advocating to study $0.10 or larger trade increments); CoreOne Letter at 3 (suggesting testing $0.02 and $0.10 trade increments); and OTC Markets Letter at 4 (stating the Commission should review trade increments of $0.10 and $0.25).

[130] *See* CoreOne Letter at 3.

[131] *See* Greenblatt Letter; RGM Letter at 2 (suggesting the Commission look into subpenny trade increments); and MFA Letter II at 3 (asserting that the Commission should test half-penny increments for highly liquid securities).

[132] *See* FIF Letter at 2.

[133] *See* Citigroup Letter at 6.

[134] *See* ITG Letter at 6–7 (noting that for purposes of order display and regulatory compliance, ''price-sliding'' is permissible in the context of Rule 201 of Regulation SHO).

[135] *See* FIF Letter at 2.

[136] *See* KOR Letter II at 3.

[137] *See* Wellington Shields Letter at 4 (arguing that market participants may be hesitant to display liquidity in instances where the quoting increment is changed without corresponding changes to the minimum trading increment); Tabb Letter at 3 (forecasting that off-exchange volume to rise to between 60–70% from its current range of lower to mid-40%); CFA Letter at 4; and KOR Letter II at 3 (stating that ''as constructed, [Trade Group One] will simply divert flow from lit markets to dark pools and internalizers.'').

[138] *See* KOR Letter II at 3.

[139] *See* BATS Letter at 3.

[140] *See* CFA Letter at 4.

[141] *See* Wells Fargo Letter at 5 and FIF Letter at 2.

[142] *See* Tabb Letter at 5; Two Sigma Letter at 2; KCG Letter at 9 (noting that the definition of Retail Investor Order was too complex and ambiguous and would lead to many of the largest retail firms to not sign the required attestations); STANY Letter at 6; and TD Ameritrade at 5.

Other commenters requested clarification of the Retail Investor Order definition.[143] One commenter questioned whether the definition of Retail Investor Order in the Tick Size Pilot was consistent with that of the Retail Liquidity Programs at various exchanges.[144] Another commenter suggested that the Retail Investor Order definition should be based on the ''individual customer'' account type definition used by FINRA's OATS.[145]

Other commenters supported the Tick Size Pilot's proposed exception for Retail Investor Orders.[146] Two other commenters thought the exception for Retail Investor Orders should apply generally to all orders, including institutional orders.[147] One commenter opined that the exception should be broadened to alleviate the implementation burden.[148]

Seven commenters opposed the Retail Investor Order exception because the minimum price improvement required by the exception was not large enough.[149] Some of these commenters were concerned that the relatively low level of required price improvement needed to qualify for the exception would encourage internalization.[150] Some of these commenters also believed that the wider spread warranted a more significant amount of price improvement relative to the spread.[151]

Some commenters opposed the exception for Retail Investor Orders for other reasons.[152] For instance, one commenter believed that all Tick Size Pilot pricing should be in $0.05 increments to effectively attract liquidity and market makers and thus the Retail Investor Order exception could undermine the validity of the Tick Size Pilot.[153] Another commenter argued that in light of the highly desirable nature of retail order flow, the elimination of the exception would encourage more displayed liquidity.[154] Another commenter was concerned that the Retail Investor Order exception would cause price competition to be prioritized, and negatively impact the Tick Size Pilot because of its view that markets that compete mostly on price are generally unable to compete on the value provided by, for instance, research, sales, and capital commitment.[155] This commenter stated that the tick size must have ''integrity'' in order to attract investor interest, and did not think, among other things, that the Retail Investor Order exception made ''economic sense.'' [156]

3. Test Group Three: Widened Quote and Trade Increment With a Trade-At Prohibition

The Commission received many comments on Test Group Three, and in particular, on the Trade-At Prohibition. Twenty-seven commenters opposed the Trade-At Prohibition.[157] These commenters generally believed that the Trade-At Prohibition was overly complex [158] and would be costly to implement and operate,[159] and could induce market participants to opt-out of quoting and trading in Test Group Three Pilot Securities.[160] Some of these commenters opined that the Tick Size Pilot data could be distorted if a number of market participants were to forego quoting and trading in the Test Group Three Pilot Securities because of the Trade-At Prohibition.[161] Other commenters argued that the Trade-At Prohibition would increase costs for investors.[162] One commenter pointed to Australian and Canadian rules[163] as evidence that market quality would be adversely affected and as a justification to not implement trade-at domestically.[164] Finally, three commenters supported testing the Trade-At Prohibition and encouraged

[143] *See* Two Sigma Letter at 2; KCG Letter at 9; STANY Letter at 6; Fidelity Letter at 7 (seeking clarification on whether there is a restriction on who the contra party may be for a Retail Investor Order); and TD Ameritrade Letter at 5–6.

[144] *See* TD Ameritrade Letter at 7–8.

[145] FINRA's Order Audit Trail System (''OATS'') is a FINRA owned automated reporting system that captures order information in NMS stocks and OTC equity securities that is required for all FINRA members. *See* FINRA Rule 7410(k). OATS defines an individual customer account type as ''an account that does not meet the definition of FINRA Rule 4512(c) and is also not a proprietary account.'' *See* FIF Letter at 2.

[146] *See* Virtu Letter at 2 (supporting the mid-point, retail, block size, and single-priced transactions exceptions in the Tick Size Pilot) and CHX Letter at 13.

[147] *See* SIFMA Letter II at 9 and Citadel Letter II at 8–9.

[148] *See* SIFMA Letter II at 9.

[149] *See* Galinskie Letter at 2; CFA Letter at 5; Weaver Letter at 2; CFA Institute Letter at 6; STANY Letter at 6; IMC Letter at 2; and Birch Bay Letter at 1.

[150] *See* IMC Letter at 2 and Birch Bay Letter at 1 (asserting that the exception would also undermine the Trade-At Prohibition of Test Group 3). *See also* Wells Fargo Letter at note 19 (asserting that the number of exceptions, especially the retail price improvement exception, would render the data inconclusive).

[151] *See* Galinskie Letter at 2 (arguing for ''meaningful'' price improvement); CFA Letter at 5; IMC Letter at 2 (advocating for price improvement of fifty-percent of the tick size); and Birch Bay Letter at 1 (arguing that price improvement should be a full five-cent improvement).

[152] *See* Wellington Shields Letter at 4; IssuWorks Letter at 5; and KOR Letter II at 4. *See also* Galinskie Letter at 2 (arguing that subpenny trading should be eliminated across all markets).

[153] *See* Wellington Shields Letter at 4 (arguing that the midpoint exception should be eliminated because it provides price improvement to the liquidity taker but prevents public order interaction with a liquidity provider, which the commenter suggests is not necessarily a market benefit.). *See also* Bright Trading Letter at 2 (opining that the Retail Order exception will increase the toxicity of the order flow, which will result in market makers widening their quote spreads or not quoting at all).

[154] *See* KOR Letter II at 4. This commenter also opined that the retail price improvement exception would increase payment-for-order-flow stating, ''With tick sizes at a penny, internalizers had little leeway in how much they could pay for orders, as they are generally only profiting at a fraction of the spread. By blowing out spreads but excluding retail trades at the midpoint, the result will be a dramatic increase in PFOF rates.''

[155] This commenter believes that pure price competition would not attract more liquidity. *See* IssuWorks Letter at 5.

[156] *See* IssuWorks Letter at 5.

[157] *See* STA Letter I at 3; Tabb Letter at 5–6; ECFTF Letter at 2; Two Sigma Letter at 2–3; Vanguard Letter at 5 (stating that while it is opposed to including the Trade-At Prohibition in the Tick Size Pilot, it supports a trade-at prohibition for the overall market if it is coupled with the elimination of maker-taker pricing); CoreOne Letter at 7; JonesTrading Letter at 1 (stating that Trade-At Prohibition is not related to the purpose of the Tick Size Pilot); CMR Letter II 5–8; STA Letter II at 6; KCG Letter at 11–17; NVCA Letter at 7; BATS Letter at 4–6; SIFMA Letter II at 4; MFA Letter II at 7–8; Wells Fargo Letter at 5–6; Citigroup Letter at 2; BlackRock Letter 2–3; Liquidnet Letter at 2; ICI Letter at 3–4; Schwab Letter at 4; STANY Letter at 5–6; Fidelity Letter at 5; Bloomberg Letter at 16; TD Ameritrade Letter 2–4; KOR Letter II at 4–5; ITG Letter at 4–5; Citadel Letter II at 6; and OTC Markets Letter at 7–9.

[158] *See* Tabb Letter at 5 (noting that the Trade-At Prohibition would introduce significant market structure complexity); ECFTF Letter at 2 (stating the belief that Trade-At Prohibition introduces an unnecessary layer of complexity); STA Letter II at 6; ICI Letter at 4; ITG Letter at 3 (noting that the Trade-At Prohibition introduces unnecessary levels of complexity and associated unintended consequences); and Citadel Letter II at 6–7.

[159] *See* MFA Letter II at 7 (expressing concerns that Test Group Three would exponentially increase the complexity and cost of the Tick Size Pilot) and Citigroup Letter at 4 (noting that overwhelming majority of the cost of the Tick Size Pilot can be attributed to the Trade-At Prohibition).

[160] *See* CoreOne Letter at 7 (noting that an unintended consequence of Trade-At Prohibition is that a number of market participants will elect to trade using third parties or not trade at all in Test Group Three in order to avoid the cost of implementation).

[161] *See* Two Sigma Letter at 3 and CoreOne Letter at 7 (noting that opting-out would potentially compromise the validity of the results and cast doubt on whether the results could be extrapolated to a broader based, final rule).

[162] *See* CMR Letter II at 3 (noting that the inclusion of a Trade-At Prohibition without also addressing related issues like exchange access fees and backup systems could harm investors and increase the likelihood of extreme adverse market events); Schwab Letter at 2 (noting concerns that the Trade-At Prohibition will have on execution quality and cost for retail investors); and Citadel Letter II at 5.

[163] *See* Australian Securities and Investment Commission Market Integrity Rule 4.1.1 and Investment Industry Regulatory Organization of Canada Universal Market Integrity Notice 12–0130.

[164] *See* BlackRock Letter at 2. *But see* CFA Institute Letter at 2–3 (asserting that despite the negative market quality effects of trade-at rules internationally, the NMS plan should be implemented domestically as it could lead to valuable information).

the Commission to simultaneously reduce the market access fee cap.[165]

Ten commenters that opposed the Trade-At Prohibition nevertheless recommended modifications related to the provision should the Commission approve the Tick Size Pilot with the Trade-At Prohibition.[166] These other commenters' recommendations included, among other things, changing the scope of the Trade-At Prohibition,[167] and changing the retail price improvement exception.[168]

Fourteen commenters supported testing the Trade-At Prohibition.[169] Five commenters supported the Trade-At Prohibition as proposed.[170] Certain commenters expressed their belief that the Trade-At Prohibition could enhance displayed liquidity [171] and provide valuable information to the Commission.[172] Several commenters argued that the Trade-At Prohibition should apply to all securities not just Pilot Securities.[173] One commenter suggested that interested parties should not prejudge the efficacy of the Trade-At Prohibition and stated that ''studying the impact of tick increments and display priority will benefit emerging growth companies regardless of whether the [Tick Size Pilot] leads to the permanent adoption of five-cent tick increments, national display priority, a Trade-At rule, or any other rule.'' [174] Another commenter, while skeptical about the benefits of the Trade-At Prohibition, supported its inclusion in the Tick Size Pilot in order to ''gather hard evidence to help make the case . . . whether trade-at is a good idea.'' [175] Several commenters believed that the Trade-At Prohibition would support the price discovery mechanism and mitigate the migration of displayed interest to off-exchange trading venues.[176] Many of these commenters argued that the Trade-At Prohibition should be included in the Tick Size Pilot in order to mitigate this potential migration of trading.[177]

a. Protected Quotations Standard

Several commenters discussed the use of the protected quotation standard rather than the NBBO for the Trade-At Prohibition. Some commenters were concerned that using the protected quotation standard would protect less competitive prices and undermine price competition [178] or would be too onerous.[179] While other commenters favored using the protected quotation standard as a means to encourage posting lit quotations.[180] Two commenters requested that the protected quotation standard be clarified.[181]

b. SRO Quotation Feed

One commenter supported the use of an SRO Quotation Feed to post and execute trades at the protected quote.[182] This commenter stated that this feature would assist trading centers which cannot publish their own protected quotation.

c. Size Limitation

Several commenters discussed the Tick Size Pilot's Size Limitation.[183] Commenters specifically took issue with the restriction prohibiting a trading center from immediately accessing its hidden, reserve interest that is at a protected price.[184] Several commenters were concerned the Size Limitation would inhibit execution quality and create risks of information leakage.[185]

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[165] *See* Virtu Letter at 2; CFA Institute Letter at 6; and Bright Trading Letter at 3. *See also* KOR Letter II at 5.

[166] *See* KCG Letter at 11–17; NVCA Letter at 7; BATS Letter at 5–6 (noting that Trade-At Prohibition should only apply to protected NBBO, not protected quotes and executing against nondisplayed orders when the market is crossed); SIFMA Letter II at 4; BlackRock Letter at 2–3; Liquidnet Letter at 2 (noting that the thirteen exceptions are too complex); STANY Letter at 5–6; Bloomberg Letter at 15 (opining that there are less burdensome alternatives to the proposed Trade-At Prohibition, including reduced access fees, permitting issuers enter into contracts with market makers to set their own spreads, and implementing a trade-at prohibition that is more consistent with the June 2014 Order); KOR Letter II at 4–5; and Citadel Letter II at 7.

[167] *See* BATS Letter at 5 (noting that Trade-At Prohibition should only apply to protected NBBO, not protected quotes); SIFMA Letter II at 7 (noting that broker-dealers should be able to internalize without any size limitation if they are quoting at the NBBO); BlackRock Letter at 2 (stating that non-displayed liquidity at NBBO should be allowed to execute); KOR Letter II at 5 (supporting a simplified Trade-At Prohibition independently); and Citadel Letter II at 7 (noting that the Trade-At Prohibition should not prohibit a trading center from executing more than displayed size).

[168] *See* KCG Letter at 9 (stating the proposed Retail Investor Order definition is too complex); STANY Letter at 6 (stating that the price improvement of the Retail Investor Order exception needs to be greater and the attestation should be amended); KOR Letter II at 4 (stating that the Retail Investor Order exception would offset the purpose of the Trade-At Prohibition to promote the execution of displayed liquidity and should be eliminated); and Citadel Letter II at 8–9 (noting that all orders should have price improvement exception and exchange retail programs should not receive special treatment).

[169] *See* Adorney Letter; Wellington Shields Letter at 5; Themis Letter at 2 (expressing concerns for the exceptions to Trade-At Prohibition as overly complex); Virtu Letter at 2; BIO Letter at 4; CFA Letter at 5–6; CFA Institute Letter at 5 (stating the Tick Size Pilot as well as the Trade-At Prohibition would be a ''useful exercise''); Bright Trading Letter at 2; Angel Letter at 10–11; CHX Letter at 17; IMC Letter at 2; Birch Bay Letter at 1 (stating strong support for the Trade-At Prohibition to curtail internalization); Nasdaq Letter at 4; and NYSE Letter at 3.

[170] *See* Adorney Letter; Wellington Shields Letter at 3; BIO Letter at 4; CHX Letter at 17; IMC Letter at 1; and Nasdaq Letter at 4.

[171] *See* Wellington Shields Letter at 5; CHX Letter at 17; and IMC Letter at 2.

[172] *See* BIO Letter at 4.

[173] *See* Adorney Letter (''every time an order is executed away in a dark pool at the same price (or some cruel di minimis price like $15.997), it is 100% trading ahead of potential orders . . .'') and Vanguard Letter at 2.

[174] *See* Nasdaq Letter at 4.

[175] *See* Angel Letter at 10–11.

[176] *See* CHX Letter at 17 (expressing concern that ''if left unchecked migration could rise to a level where the price discovery mechanism provided by 'lit' venues could be compromised.''); IMC Letter at 2; Nasdaq Letter at 5; and NYSE Letter at 3 (acknowledging speculation that larger ticks could lead to more internalization and harm liquidity, but believes the outcome is uncertain and it is important for the data to decide).

[177] *See* CHX Letter at 17; IMC Letter at 2; and NYSE Letter at 3.

[178] *See* CMR Letter II at 6.

[179] *See* CMR Letter a 6; BATS Letter at 5 (stating that use of protected quotes at the NBBO properly balances the goal of rewarding those who set lit prices while also preserving trading center competition); and Citigroup Letter at 2.

[180] *See* CFA Institute Letter 3 and CHX Letter at 18 (stating the protected quotation standard ''supports price discovery'' and is analogous to Rule 611 of Regulation NMS that would make it ''simple to understand and implement'').

[181] *See* FIF Letter at 3 (requesting clarification on what quotes would be subject to the Trade-At Prohibition—protected quotations or NBBO) and Bloomberg Letter at 21 (inquiring whether a matching engine could use the protected quotation standard for routing while using the NBBO standard for matching).

[182] *See* CHX Letter at 18.

[183] *See* Tabb Letter at 5; CMR Letter II at 6; STA Letter II at 10; KCG Letter at 15 (stating that the Size Limitation is beyond the scope of the Commission's June 2014 Order); BATS Letter at 5–6; SIFMA Letter II at 7; Citigroup Letter at 2; BlackRock Letter at 3; Bloomberg Letter at 13; CHX Letter at 19; Citadel Letter II at 7; and NYSE Letter at 3.

[184] *See* STA Letter II at 10 (noting that the change in execution logic is highly complex and recommends that hidden orders be provided an exemption to satisfy incoming orders); SIFMA Letter II at 7 (stating that broker-dealers should be allowed to internalize order flow without a limitation on size if they are displaying a quote at the price of the NBB or NBO and execution quality of large orders primarily from institutions could be harmed); Bloomberg Letter at 13 (expressing lack of support for trading with all display before trading with reserve); and Citadel Letter II at 7 (noting that there is substantial un-displayed liquidity at exchanges through iceberg orders and other non-displayed orders, and tapping this additional liquidity is very important to institutional and retail investors).

[185] *See* Tabb Letter at 5 (noting that execution certainty would be reduced); CMR Letter II at 6 (noting that information leakage risk would increase as investors with large orders would have to simultaneously execute against the BBO at multiple venues, thereby exposing the orders to significant signaling risk and market impact); BATS Letter at 5–6 (noting that not allowing execution of non-displayed order at a price equal to a protected quotation may disincent trading centers from quoting in the lit markets); SIFMA Letter II at 7 (stating that broker-dealers should be allowed to internalize order flow without a limitation on size if they are displaying a quote at the price of the NBB or NBO and execution quality of large orders

Continued

Other commenters were concerned that the Size Limitation would add implementation complexity, among other things, due to additional routing obligations.[186] Two commenters supported the Size Limitation arguing that without it the Trade-At Prohibition would do very little to promote displayed liquidity.[187]

d. Venue Limitation

Commenters generally opposed the Venue Limitation because it would restrict market makers' execution of incoming orders to lit exchanges.[188] Commenters opined that the Venue Limitation offered little, if any, market quality enhancement, and was anti-competitive.[189] One commenter stated; ''[T]here is no real benefit to price discovery and no real benefit to the displayed order; therefore, there is no incentive for market participants to display additional liquidity. It is simply a way to subsidize the for-profit exchanges by forcing more orders to be routed to them.'' [190] Two of the Participants, however, asserted that the Venue Limitation was an analog to the Size Limitation and is necessary to gauge the market impact of wider tick sizes.[191]

e. Block Size Orders

Several commenters suggested that the Block Size definition be altered to more accurately reflect block size transactions of small capitalization securities.[192] Two commenters recommended that the Block Size exception should be included in all Test Groups to help maintain institutional trading in Pilot Securities,[193] while another commenter stated that block trades should have the same execution increments as Retail Investor Orders.[194]

f. Other Test Group Three Exceptions

Seven commenters, while supporting the Trade-At Prohibition, recommended that its exceptions be modified.[195] Two commenters opined that the Trade-At Prohibition should not contain exceptions similar to Rule 611 of Regulation NMS because the Trade-At Prohibition would then replicate the complexity of Regulation NMS.[196] Other commenters opined that the Retail Investor Order exception should be modified or eliminated.[197] One commenter stated that the fractional shares exception to the Trade-At Prohibition was reasonable because fractional shares cannot be displayed and this exception would have a minimal effect on the market.[198]

g. Odd Lots

Finally, several commenters made suggestions regarding odd lots. One commenter suggested that odd lots should be subject to the Trade-At Prohibition because current trading practices create a large number of odd lot trades that would circumvent the Tick Size Pilot.[199] Another commenter, however, suggested that odd lot orders be excepted from the Trade-At Prohibition, as odd lots historically are often excluded from regulatory requirements.[200] One commenter requested clarity on the treatment of odd lots.[201]

E. Collection and Assessment of Tick Size Pilot Data

1. Trading Center Data

Several commenters stated that the Tick Size Pilot should leverage existing reporting requirements to ease the implementation burden.[202] Commenters suggested that existing data, such as data available through MIDAS,[203] Rule

primarily from institutions could be harmed); and BlackRock Letter at 3 (stating that the Size Limitation creates excessive delay in execution and sub-optimally broadcasts order flow in illiquid names to multiple venues when there might have been sufficient reserve or non-displayed interest to accommodate the order).

[186] *See* CMR Letter II at 6; STA Letter II at 10 (noting that the change in execution logic is highly complex and recommends that hidden orders be provided an exemption to satisfy incoming orders); Citigroup Letter at 2 (noting that the Size Limitation and Venue Limitation are more onerous than any version of trade-at and there is no real benefit to price discovery and to displayed order); and BlackRock Letter at 3.

[187] *See* CHX Letter at 19 (stating that without the Size Limitation, the Trade-At Prohibition would do little if anything to promote displayed liquidity and that it would reinforce the price discovery mechanism) and NYSE Letter at 3.

[188] *See* CMR Letter II at 7 (noting that the Venue Limitation would increase message traffic between exchanges and other trading centers, which may cause additional failures of systems); KCG Letter at 16; SIFMA Letter II at 7 (stating that broker-dealers should be allowed to internalize order flow without a limitation on size if they are displaying a quote at the price of the NBB or NBO); Citigroup Letter at 2; Citadel Letter II at 7; and OTC Markets Letter at 8.

[189] *See* KCG Letter at 16 (stating that the Venue Limitation is beyond the scope of the Commission's June 2014 Order and ''anti-competitive on its face''); Citigroup Letter at 2 (noting that the Size Limitation and Venue Limitation are more onerous than any version of trade-at and there is no real benefit to price discovery and to displayed order); Citadel Letter II at 7 (stating that market makers should not be forced to route all of their orders to the exchanges who would then reap the full benefit of their unnecessarily high, but permitted, ''take'' fees); and OTC Markets Letter at 8 (stating that the Venue Limitation violates the most basic principles of competition and capitalism, under which a variety of venues should be able to compete to offer the best package of price and services to investors).

[190] *See* Citigroup Letter at 2.

[191] *See* CHX Letter at 20 (stating that the Venue Limitation is necessary for the same reason as the Size Limitation) and NYSE Letter at 3 (supporting the Venue Limitation to protect displayed quotes, strengthen the incentive for market makers to quote aggressively, and allow the ability to analyze the impact of a protected quote requirement on a wider tick size).

[192] *See* SIFMA Letter II at 7 (stating that the block size definition should be decreased); BlackRock Letter at 3–4 (noting that ''[n]early a third of equities eligible for the [Tick] [P]ilot have average daily trading volumes which are lower than 50,000 shares. A block of 10,000 shares would be incommensurate with the volume profile for these stocks as it represents a substantial percentage of the daily trading volume.''); and Fidelity Letter at 7.

[193] *See* JonesTrading Letter at 2 (asserting that the Negotiated Trade Exception should also apply to al Test Groups to preserve institutional anonymity) and Citadel Letter II at 8 (advocating for the exemption to preserve executive quality).

[194] *See* Liquidnet Letter at 2 (noting that block execution is important to institutional investors and that block orders should be allowed to execute at half-penny increments).

[195] *See* Themis Letter at 4–5; CFA Letter; CFA Institute Letter; Bright Trading Letter; IMC Letter; Birch Bay Letter; and NYSE Letter (supporting certain limited exceptions to the Trade-At Prohibition in circumstances where the end customer is benefited by the exception). *See also* IssuWorks Letter at 5 (while not expressing support or opposition to the Trade-At Prohibition, the commenter suggested that odd-lot trades should be subject to the Trade-At Prohibition). *But see* CHX Letter at 18 (supporting the exceptions as proposed).

[196] *See* Themis Letter at 4–5 and CFA Letter at 5–6 (arguing that the exceptions should be eliminated and the price improvement for retail investors should be increased). *But see* FIF Letter at 3 (while not expressing support or opposition to the Trade-At Prohibition, the commenter stated that it approved of mirroring the Regulation NMS exceptions).

[197] *See* CFA Letter at 5; CFA Institute Letter at 5–6 (objecting to the retail price improvement amount as not sufficient to prevent market participants from stepping in front of displayed limit orders); Bright Trading Letter at 2 (objecting strongly to the retail exception because retail order flow would be more valuable on the exchanges); IMC Letter at 2 (noting that $0.005 hardly qualifies as meaningful price improvement and recommends at least half of the applicable tick); and Birch Bay Letter at 1 (believing that price improvement should be the full five cent tick increment for retail orders).

[198] *See* CHX Letter at 20.

[199] *See* IssuWorks Letter at 5 (citing O'Hara, Yao, and Ye paper, *What's Not There, The Odd-Lot Bias in TAQ Data,* that asserted 19% of trades are missing from the consolidated tape).

[200] *See* SIFMA Letter at 9 (asserting that larger orders divided up to create odd lots should not qualify for the exemption).

[201] *See* BATS Letter at 6.

[202] *See* CoreOne Letter at 6; STA Letter II at 3 (recommending a widely used quantitative market metrics to measure improvements and degradations in overall liquidity available); FIF Letter 3–4; SIFMA Letter II at 8; STANY Letter at 8–9; Nasdaq Letter at 6–7; and NYSE Letter at 2–3.

[203] Market Information Data and Analytics System (''MIDAS'') collects and processes data from the consolidated tapes as well as from separate proprietary feeds made individually available by each equity exchange. *See http://www.sec.gov/marketstructure/midas.html.*

605,[204] the SIPs,[205] and OATS,[206] could be used to lessen the burden of collection.[207] One commenter stated the collected data should focus only on data that allows for centralized comparisons and analysis.[208] This commenter also suggested that only data relevant to increased liquidity of Pilot Securities should be collected.[209] Some commenters believed certain additional data metrics should be included to better facilitate the assessment of the Tick Size Pilot.[210]

Several commenters supported the public availability of data for potential analysis by academics and other interested parties.[211]

2. Market Maker Profitability Data

Thirteen commenters discussed whether the Market Maker Profitability Data should be collected.[212] Ten commenters opposed collecting the Market Maker Profitability Data [213] because they believe gathering such data would be costly.[214] One commenter noted that profitability information is highly confidential and proprietary.[215] This commenter stated that profitability information is not currently disclosed except in a public company context, and requiring market makers to disclose their profitability to competitors (*i.e.,* the exchanges) is anti-competitive. This commenter posited that market makers may opt-out of trading in Pilot Securities rather than disclose the profitability information.

Additionally, two commenters stated that Market Maker Profitability Data is difficult to calculate and attribute to a specific activity.[216] Other commenters argued that the Market Maker Profitability Data is not necessary or useful to the goals of the Tick Size Pilot and therefore should not be collected.[217] Some commenters suggested that this data element was unnecessary and would provide the Participants with a competitive insight and advantage on market maker operations.[218]

Three commenters supported the collection of the Market Maker Profitability Data.[219] One commenter stated that the collection of this data would help to identify the effect of the Tick Size Pilot on market maker business practices.[220] Another commenter stated that Market Maker Profitability Data has analytical value for the Tick Size Pilot and indicated that the dissemination of the data on an aggregated basis would alleviate confidentiality concerns.[221]

One commenter stated the collection of the Market Maker Profitability Data should only be done if it is absolutely necessary for the Tick Size Pilot and, if so, then it should also be collected from ATSs and exchanges.[222] As a potential alternative to Market Maker Profitability Data, one commenter suggested the use of a ''Market Maker/Investment Bank'' scorecard that includes metrics or important drivers of liquidity.[223]

Two commenters expressed concerns related to the confidentiality of Market Maker Profitability Data because of the potential for such data to be reverse engineered and attributed to specific market participants after becoming publicly available.[224]

3. Assessment of Tick Size Pilot Data

Many commenters stated that the NMS plan should clearly define what would constitute a successful Tick Size Pilot and warrant implementation on a permanent basis.[225] Some commenters stated that it is important to quantify, within the metrics, specific data ranges that would be considered successful.[226] Another commenter noted that ''liquidity'' should be defined in order to facilitate the assessment of the Tick Size Pilot's impact on liquidity.[227]

Other commenters suggested specific data that would indicate the Tick Size Pilot's success or failure.[228] One

[204] Rule 605, Disclosure of Order Execution Information (''Rule 605'') is a trading center monthly reporting requirement regarding covered orders in NMS stocks. *See* 17 CFR 242.605.

[205] Securities Information Processor (''SIP'') is any person engaged in the business of collecting, processing, or preparing for distribution information with respect to transactions or quotations. *See* 15 U.S.C. 78c(22).

[206] *See supra* note 145 and accompanying text.

[207] *See* CoreOne Letter at 6; STA Letter II at 4 (advocating for additional categories of data that can be obtained through MIDAS); SIFMA Letter II at 8; STANY Letter at 8–9; CHX Letter at 2; Nasdaq Letter at 6–7; and NYSE Letter at 2–3.

[208] *See* FIF Letter at 3.

[209] *See* FIF Letter at 3–4 (suggesting sixteen specific data requirements that would be relevant to assessing liquidity).

[210] *See* Bloomberg Letter at 17 (suggesting the NMS plan data include order type usage statistics, off-exchange trading information, and research coverage metrics); Weaver Letter at 2 (requiring brokers to report the number of shares internalized). *See also IAC Recommendations.*

[211] *See* BIO Letter at 4 (stating an interest in reviewing the Tick Size Pilot results on an industry-by-industry basis); CFA Institute Letter at 6 (asserting that ''[p]ublic release ensures accountability and peer review of the data by enabling independent researchers to look for unique and potentially valuable bits of information within the data.''); Bloomberg Letter at 17; and KOR Letter II at 5–6 (urging the Commission to provide free and open access to Tick Size Pilot data to ensure broadened analysis from varied perspectives). Two commenters suggested that the data should be available in a downloadable format. *See* CFA Letter at 6; and FIF Letter at 2.

[212] *See* Duffy Letter at 2; CoreOne Letter at 2 (noting that it is going to be very difficult to measure the impact on research coverage from market maker profitability); STA Letter II at 10; KCG Letter at 18; CFA Letter at 7; SIFMA Letter II at 9; Citigroup Letter at 4–5; FIF Letter at 5–6; STANY Letter at 8; TD Ameritrade Letter at 5; Angel Letter at 8; CHX Letter at 21–22; and NYSE Letter at 2.

[213] *See* Duffy Letter at 2; STA Letter II at 10; KCG Letter at 18; SIFMA Letter II at 9; Citigroup Letter at 4–5; FIF Letter at 5–6; STANY Letter at 8; TD Ameritrade Letter at 5; CHX Letter at 21–22; and NYSE Letter at 2.

[214] *See* SIFMA Letter II at 8 (arguing the collection of market maker profitability unnecessarily increases the burden on market makers) and FIF Letter at 5–6 (asserting that the collection of market maker profitability would involve significant implementation). *See also* STANY Letter at 8 and NYSE Letter at 2 (stating eliminating the collection of market maker profitability would reduce the cost of the Tick Size Pilot).

[215] *See* STANY Letter at 8.

[216] *See* Citigroup Letter at 4 (arguing it is not feasible, nor accurate, to measure market maker profitability on a symbol-by-symbol basis) and FIF Letter at 6 (calculating profit includes access fees and rebates that are computed monthly and not on a trade-by-trade basis at the time of execution).

[217] *See* STA Letter II at 10; KCG Letter at 18; TD Ameritrade Letter at 5; and CHX Letter at 27. *See also* CoreOne Letter at 2 (asserting the correlation between market maker profitability and research would be difficult to determine).

[218] *See* KCG Letter at 18 (stating that ''[e]xchanges compete directly with market makers for order flow and should not collect, review and interpret their competitors' profitability data'' and it would also place market makers at a disadvantage when negotiating for services provided by exchanges); Citigroup Letter at 5 (arguing that market maker profitability should not be published to a primary competitor); and STANY Letter at 8 (asserting that the collection of market maker profitability is ''anti-competitive and extremely disadvantageous to market makers'').

[219] *See* CFA Letter at 6–7; CFA Institute Letter at 6; and Angel Letter at 8.

[220] *See* CFA Letter at 6–7.

[221] *See* Angel Letter at 8.

[222] *See* TD Ameritrade at 5.

[223] *See* Fidelity Letter at 8.

[224] *See* FIF Letter at 4 and STANY Letter at 8.

[225] *See* ECFTF Letter at 3; CMR Letter II at 2; STA Letter II at 2; KCG Letter at 7; BATS Letter at 6; BlackRock Letter at 6; Schwab Letter at 10; STANY Letter at 4–5; Fidelity Letter at 5–6; and TD Ameritrade Letter at 5.

[226] *See* STA Letter II at 2 (stating the Tick Size Pilot's goals should be prioritized from the onset in the event a conflict among the specific goals developed.); KCG Letter at 8 (arguing that ''the 200+ data collection items are susceptible to post-[Tick Size Pilot] use to build a story of ''success'' based on whatever criteria a given reviewer decides at that time''); BATS Letter at 6; BlackRock Letter at 6 (asserting that due to the associated costs of the Tick Size Pilot ''criteria for success should also be unambiguous''); Schwab Letter at 10; STANY Letter at 4–5 (stating that without a clear metrics to determine success ''[e]ach of the various business models will be able to lay a credible claim to success.''); and Fidelity Letter at 5 (asserting that success metrics need to be clearly defined from the onset ''to avoid post hoc justifications and arguments about success and failure.'').

[227] *See* Warner-Toomey Letter at 2.

[228] *See* ModernNetworks Letter at 2 (stating increasing the number of committed market-makers, more market participants, larger trade sizes and deeper displayed buy-sell interest should determine the success of the Tick Size Pilot); Tabb Letter at 2 (providing six metrics that indicate success: market efficiency, greater liquidity, larger

Continued

commenter, focused on issuers of small capitalization securities, stated that capital formation criteria should be used to gauge the success of the Tick Size Pilot.[229] Another commenter, however, was concerned that the Tick Size Pilot would be prejudged if success metrics were defined before empirical data was gathered.[230]

Three commenters stated that the Tick Size Pilot data should be analyzed on a more frequent periodic basis until the final assessment is conducted.[231]

F. Use of an NMS Plan

Fourteen commenters indicated that the Tick Size Pilot should not be the subject of an NMS plan, but instead should be presented as, and adhere to the procedural requirements of, a formal Commission rulemaking that includes additional cost-benefit analysis.[232] Some commenters believed that the Tick Size Pilot is a market structure initiative that is too significant and impactful to be delegated to the Participants through an NMS plan.[233] A number of commenters questioned whether it was appropriate to have Participants formulate an NMS plan that would affect their competitors.[234] Commenters were also concerned that not all affected market participants, such as market makers, broker-dealers, and institutional investors, were included in the process of establishing the terms of the Tick Size Pilot and the NMS plan.[235] Additionally, some commenters intimated that a conflict of interest may exist by highlighting that the Participants who devised the NMS plan are now for-profit entities.[236]

G. Issuer Participation

A few commenters suggested that Pilot Security issuers should have discretion to set their own minimum increments.[237] One commenter stated that companies should be empowered to determine their increments by contract with market makers.[238] Another commenter stated there should be an ''Issuer Committee'' formed to advocate for the interests of issuers in the process.[239] Another commenter suggested the formation of a ''Tick Size Pilot Advisory Committee'' that would be able to provide input after the completion of the Tick Size Pilot comment period.[240]

Three commenters favored allowing issuers of Pilot Securities to opt-out of participating in the Tick Size Pilot.[241] One commenter stated that the decision to participate in the Tick Size Pilot should be determined by the Board of Directors or current shareholders of the company.[242] Three commenters opposed the idea of allowing a Pilot Security issuer to opt-out of the Tick Size Pilot because it could skew the data.[243]

H. Implementation of Tick Size Pilot

Several commenters offered suggestions on how the Tick Size Pilot should be implemented. Two commenters suggested that the implementation period should be at least one-year, but could be reduced if the Tick Size Pilot was simplified.[244] One commenter indicated that in order to adequately assess the burden and time necessary to implement the Tick Size Pilot, the requirements needed to be finalized prior to developing an implementation schedule.[245] Other commenters stated that either the Commission, or the Participants, should release detailed frequently-asked-questions to assist implementation of the Tick Size Pilot to help alleviate confusion.[246] One commenter requested that the list of securities be finalized prior to determining the implementation schedule.[247]

V. Discussion and Commission Findings

In 1975, Congress directed the Commission, through the enactment of Section 11A of the Act,[248] to facilitate the establishment of a national market system to link together the individual markets that trade securities. Congress found the development of a national market system to be in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure fair competition among brokers and dealers, among exchange markets, and between exchange markets and markets other than exchange markets.[249] Section 11A(a)(3)(B) of the Act authorizes the Commission, ''by rule or order, to authorize or require self-regulatory organizations to act jointly with respect to matters as to which they share authority under this title in planning, developing, operating, or regulating a national market system (or a subsystem thereof) or one or more facilities.'' [250] Rule 608 under Regulation NMS provides that the Commission's approval of a NMS plan is required to be based upon a finding that the plan is ''necessary or appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect

transaction size, increased certainty of execution, less off-exchange activity and greater price discovery, more market-making firms other than high-frequency firms); ECFTF Letter at 3 (indicating that Tick Size Pilot success should be determined by increase in relative level of trading liquidity, increase in change of institutional ownership, higher rate of equity capital issuance); and STA Letter II at 3–4. *See also* IAC Recommendations.

229 *See* ECFTF Letter at 3 (advocating for using higher rate of equity capital issuance as a metric for success).

230 *See* Nasdaq Letter at 4.

231 *See* FIF Letter at 6; KOR Letter II at 3; and CHX Letter at 6. *See also* STANY Letter at 9 (requesting the Tick Size Pilot continue while its final assessment is conducted to avoid unnecessary costs, potential confusion, and greater risks of system errors).

232 *See* Duffy Letter at 2; KCG Letter at 8–9; SIFMA Letter II at 7; MFA Letter II at 8; Wells Fargo Letter at 3; Citigroup Letter at 5; Schwab Letter at 8–9; STANY Letter at 9–10; Bloomberg Letter at 21–22; TD Ameritrade Letter at 4; ITG Letter at 4; Citadel Letter II at 3–4; Nasdaq Letter at 7; and OTC Markets Letter at 9.

233 *See* Schwab Letter at Letter 8–9; Bloomberg Letter at 22 (stating the Commission should not defer to Participants for such major policy decisions); ITG Letter at 4 (opining that the Tick Size Pilot would modify certain obligations under Regulation NMS, and that NMS plans should implement the Commission's policy directives but not amend existing regulations established under federal securities laws); and Citadel Letter II at 3 (asserting that the temporary nature of a significant pilot should not exempt it from traditional rulemaking).

234 *See* SIFMA Letter II at 2–3 (asserting the NMS plan benefits Participants more than others); TD Ameritrade Letter at 4 (stating the NMS plan unfairly gives more control of the Tick Size Pilot to one set of market participants over others); ITG Letter at 4 (stating that the SROs devising the NMS plan have potential conflicts of interests with ATSs and market makers); and Citadel Letter II at 4 (claiming that exchanges are able implement an NMS plan while excluding broker-dealers, issuers, investment funds, and the general investing public from the process).

235 *See* Schwab Letter at 7 (asserting that ''it is unacceptable for exchanges to design the [NMS] [p]lan without any input from other parts of the industry.''); TD Ameritrade Letter at 4; and Citadel Letter II at 4.

236 *See* KCG Letter at 8–9; Schwab Letter at 7; TD Ameritrade Letter 1; and Citadel Letter II at 5.

237 *See* Bloomberg Letter at 16 and Angel Letter at 4.

238 *See* Bloomberg Letter at 16 (citing certain European markets that allow for issuers to contract with market makers to determine the spread).

239 *See* ModernNetworks Letter at 2.

240 *See* NYSE Letter at 3.

241 *See* DFA Letter at 3; Themis Letter at 2; and CCMC Letter II at 3.

242 *See* DFA Letter at 3.

243 *See* STA Letter II at 9; ICI Letter at 4; and CHX Letter at 9 (stating that an opt-out provision should be allowed only if there is also an opt-in provision; but either would be premature without data). *See also* IAC Recommendations.

244 *See* SIFMA Letter II at 10 (citing the rollout period required for other Commission actions and indicating that if the Trade-At Prohibition is removed a shorter time would be sufficient) and FIF Letter at 6 (asserting a twenty month implementation would be necessary for the current NMS plan, but if it was simplified only a twelve month period would be necessary).

245 *See* CHX Letter at 1.

246 *See* KCG Letter at 17; Liquidnet Letter at 2; and Bloomberg Letter at 20.

247 *See* Bloomberg Letter at 20.

248 15 U.S.C. 78k–1.

249 15 U.S.C. 78k–1(a)(1)(C)(ii).

250 15 U.S.C. 78k–1(a)(3)(B).

the mechanism of, a national market system, or otherwise in furtherance of the purposes of the Act.'' [251] Further, Rule 608 provides the Commission with the authority to approve a NMS plan, ''with such changes or subject to such conditions as the Commission may deem necessary or appropriate.'' [252]

While the Commission has reviewed certain aspects of decimalization and tick sizes over the years, the Commission has not tested whether a wider tick size for small capitalization stocks improves the market quality for these stocks.[253] As noted above, the JOBS Act directed the Commission to conduct a study, which resulted in the Decimalization Report. The Decimalization Report further recommended a public roundtable, which in turn produced broad support among its panelists for a pilot program. Since issuing the June 2014 Order, the Commission has received 77 comment letters that relate to, among other things, the development, costs, and complexity of the Tick Size Pilot, and the Commission has carefully considered the comments and the issues raised. The Commission has conducted significant analysis relating to the development, costs, and complexity of the Tick Size Pilot. As noted in the June 2014 Order and reflected in several comment letters,[254] it has been suggested that the minimum one penny tick size has had a detrimental impact on incentives for underwriters to pursue public offerings of smaller capitalization stocks, the production of sell-side research, and the incentives for broker-dealers to make markets in the securities of smaller capitalization companies. The Commission believes that it is in the public interest to gather objective evidence on the impact of the minimum tick size, and study a minimum of $0.05 tick size, on the trading, liquidity and market quality of securities of smaller capitalization companies.

The Commission believes that the Tick Size Pilot set forth in the NMS plan is reasonably designed to provide measurable data that should facilitate the ability of the Commission, the public, and market participants to review and analyze the effect of tick size on the trading, liquidity, and market quality of securities of smaller capitalization companies. The Tick Size Pilot should provide a data-driven approach to evaluate whether certain changes to the market structure for Pilot Securities would be consistent with the Commission's mission to protect investors, maintain fair, orderly and efficient markets and facilitate capital formation.

As described in detail below, the Commission, consistent with Rule 608, is modifying certain aspects of the NMS plan and the Tick Size Pilot. Specifically, the Commission is making the following changes to the NMS plan: (1) Extending the Pilot Period to two years; (2) lowering the market capitalization threshold criteria for identifying Pilot Securities to $3 billion or less; (3) modifying the Trade-At Prohibition by: (i) Amending the definition of trade-at to clarify that the provision would only be operative during Regular Trading Hours; (ii) removing the Venue Limitation, and (iii) lowering the thresholds in the Block Size definition; (4) modifying the data elements related to Market Maker Profitability Data by: (i) Removing the data element that would have required realized trading profits to be calculated net of fees and rebates, and (ii) requiring further aggregation of the Market Maker Profitability Data made publically available; (5) requiring Participants to provide an assessment on the impact of the Tick Size Pilot on market maker profitability; and (6) modifying the time when Participants must submit their assessments to the Commission.

The Commission received comments on market structure issues other than the Tick Size Pilot, such as maker-taker fee structures, access fees, payment for order flow, high frequency trading, and subpenny quoting.[255] The Tick Size Pilot is a targeted, limited-term pilot that is directed at analyzing discrete issues related to a segment of the equity markets. While the Commission appreciates market participants' views and opinions on these matters, the Commission believes that there would be substantial additional costs and complexity if the Tick Size Pilot were expanded to address these additional issues, and that they are broader than what the Commission wants to study in connection with the Tick Size Pilot. Therefore, the Commission is not expanding the Tick Size Pilot to assess these other market structure issues.

A. Costs and Complexity of the Tick Size Pilot

The Commission received numerous comments related to the costs and complexity of implementing and complying with the Tick Size Pilot in general, and Test Group Three in particular.[256] Commenters also expressed concerns about the potential increased costs that might be incurred by market participants, investors, and issuers as a result of the wider minimum tick size mandated by the Tick Size Pilot.[257]

With respect to market participants, such as trading centers and routing brokers, commenters believed that those market participants would incur substantial costs to reprogram and/or implement and operate as brand new, their trading, order routing, compliance, and other systems to implement the Tick Size Pilot. Such reprogramming or new implementation of systems would also include additional testing and compliance costs. Concerns were particularly pronounced with respect to the costs and complexity of implementing Test Group Three and its Trade-At Prohibition and, as noted above, some commenters believed market participants might cease trading Test Group Three securities for the proposed one-year duration of the Tick Size Pilot rather than incur those implementation costs.[258] Other commenters expressed concerns that the complexity of the Tick Size Pilot would lead to increased operational risks for market participants and the market as a whole. One commenter believed that the Tick Size Pilot would impede its ability to trade efficiently in Pilot Securities.

The Tick Size Pilot, by design, is an objective, data-driven test intended to evaluate how a wider tick size would impact trading, liquidity, and market quality of securities of smaller capitalization companies. As noted above, the Commission cannot know in advance the full effects, whether positive or negative, of a wider tick size on the behavior of market participants in response to the Tick Size Pilot. While the effects of wider tick sizes for small capitalization stocks on trading, liquidity, and market quality are not clear, the Commission believes that the Tick Size Pilot will generate data to help

[251] 17 CFR 242.608(b)(2). *See also* 15 U.S.C. 78k–1(a).

[252] 17 CFR 242.608(b)(2).

[253] *See supra* note 56 and accompanying text. These commenters suggested that the Commission had already studied the impact of tick sizes. While the Commission staff did prepare the Decimalization Report, which summarized academic literature related to the impact of decimalization, the Commission has not studied the impact of wider ticks on small capitalization stocks. *See* Decimalization Report, *supra* note 14.

[254] *See* June 2014 Order, *supra* note 4. *See also* IssuWorks Letter at 2; ECFTF Letter at 1; BIO Letter at 2 (''The one-size-fits-all tick size imposed by decimalization has hampered small company growth since it was implemented in 2000.''); BlackRock Letter at 1; and CCMC Letter II at 2.

[255] *See supra* notes 67–70 and accompanying text.

[256] *See supra* Section IV.A. *See also infra* Section V.D.4. for the discussion on Test Group Three and the Trade-At Prohibition.

[257] *See supra* Section IV.A.

[258] For a full discussion of the change in the Pilot Period to two years to address these concerns, *see infra* Section V.B.

inform whether significant benefits, such as improved liquidity and market quality, could be realized by investors, issuers, and other market participants. The Tick Size Pilot will provide the Commission and interested parties with real-world data regarding the effects of wider tick sizes on trading, liquidity and market quality for small-capitalization companies, and this empirical data will inform analyses and may serve as a basis for potential future regulatory actions to, among other things, capture any benefits from wider tick sizes on a permanent basis. The Commission, therefore, believes that the potential magnitude of the benefits that could be revealed by the Tick Size Pilot justify the costs of the Tick Size Pilot.

The Commission acknowledges that implementation of the Tick Size Pilot would create costs for market participants and potential operational risks. The Commission has taken seriously the concerns about costs, complexity, and operational risks, and has tried to carefully balance those concerns with the objectives and goals of the Tick Size Pilot. As a result, in response to comments, the Commission has decided to exercise its authority under Rule 608(b)(2) [259] to modify the Tick Size Pilot, as described below and elsewhere in this order. As noted by a one commenter, ''[a]ny systems change, no matter how thoroughly prepared and tested, creates a risk of error and negative impact to the market.'' [260] The Commission acknowledges that implementation of the Tick Size Pilot may involve operational risks, but believes that the Tick Size Pilot's design will permit market participants to leverage the use of existing compliance systems, which have been tested and currently are in use, and that this should serve to mitigate operational risks. In addition, certain of the Commission modifications to the Tick Size Pilot will further align the Tick Size Pilot requirements with existing systems which should further mitigate operational risks. The Commission believes that these Tick Size Pilot modifications should lessen the costs, complexity, and operational risks of its implementation and compliance without impairing the quality and relevance of the data to be collected. The Commission also notes that it is approving a one-year implementation period, which should provide market participants with adequate time for the careful development and rigorous testing of their compliance systems for the Tick Size Pilot.

Trading centers (*i.e.,* exchanges, alternative trading systems, and market makers and other internalizing broker-dealers), as well as non-trading center broker-dealers that route orders for customers or themselves and certain institutional and other investors, would incur costs to implement and comply with the Tick Size Pilot. Market participants would need to modify systems to comply with the minimum $0.05 quoting and/or trading increment and applicable exceptions for all three Test Groups. While some systems changes would be required for the purposes of the Tick Size Pilot, market participants already have systems in place to comply with the existing minimum $0.01 quoting increment and applicable exemptions under Rule 612 of Regulation NMS.[261] Rule 612 (''Subpenny Rule'') prohibits trading centers, among other things, from accepting, ranking or displaying an order priced greater than $1.00 per share in an increment smaller than $0.01, absent an applicable exemption. Consequently, the Commission believes that compliance with the quoting restrictions of the Tick Size Pilot would be implemented in a manner similar to the Subpenny Rule, so that trading centers and other market participants would be able to leverage existing Subpenny Rule compliance systems by, for example, adjusting their parameters from $0.01 to $0.05 as applicable. Nonetheless, the costs to market centers to implement the Tick Size Pilot could be substantial.[262]

As noted above, many commenters expressed concerns about the costs and complexity of implementing and complying with Test Group Three, and the Commission acknowledges the particular complexity of implementing and complying with the Trade-At Prohibition.[263] Among other things, trading centers would need to monitor protected quotations on other trading centers and prevent an execution that would match the price of any such quotation unless the trading center itself was displaying a protected quotation at that price, and of at least that size, absent an applicable exception. While compliance with the Trade-At Prohibition would require systems changes by trading centers, the Commission believes that, as with the minimum quoting increment, trading centers should be able to leverage existing compliance systems when implementing this aspect of the Tick Size Pilot. Trading centers today already have systems in place to comply with the provisions of Rule 611 under Regulation NMS (''Trade-Through Rule'') [264] and applicable exceptions, which operates in a manner similar to the Trade-At Prohibition. In addition, as discussed below, the Trade-At Prohibition has been designed to closely parallel the operation of Rule 611 (*e.g.,* by using protected quotations as the compliance benchmark rather than the NBBO, by mirroring most of the Rule 611 exceptions into the Trade-At Prohibition, and, as modified by the Commission, by eliminating the Venue Limitation). Accordingly, the Commission believes that trading centers should be able to efficiently build upon their existing Rule 611 compliance systems, which today monitor protected quotations on other trading centers and prevent an execution at a price worse than such quotations absent an applicable exception, to comply with the Trade-At Prohibition. In addition, the Commission acknowledges that certain non-trading center broker-dealers that desire to control the routing of their orders today monitor protected quotations and use ''intermarket sweep orders'' to allow trading centers to rely on an exception from Rule 611. These broker-dealers also would need to make adjustments to their compliance systems if they desire to use the comparable intermarket sweep order exception to the Trade-At Prohibition but, as with trading centers, the Commission believes they should be able to efficiently leverage their existing Rule 611 compliance systems to do so. Because compliance with the Trade-At Prohibition would be implemented in a manner similar to compliance with Regulation NMS, and by leveraging those longstanding systems, the Commission does not believe that compliance with the Trade-At Prohibition would create material additional operational risks or materially reduce the efficiency of trading in Pilot Securities as market participants already are complying with Regulation NMS.

The Commission also acknowledges that trading centers would be required to produce specified data in connection with the Tick Size Pilot and there would

[259] 17 CFR 242.608(b)(2).

[260] *See* SIFMA Letter at 6.

[261] 17 CFR 242.612.

[262] *See* CHX Letter at 17 (Estimating that its potential implementation costs for all three Test Groups would be approximately $140,000, and suggesting that such costs for approximately 60 market centers could be in excess of $8.0 million). *See also supra* note84.

[263] *See supra* Section IV.A. *See also infra* Section V.D.4. for the discussion on Test Group Three and the Trade-At Prohibition.

[264] 17 CFR 242.611.

be some associated costs and burdens.[265] Among other things, trading centers would have to produce certain data on market quality, orders, and market maker participation, and market makers additionally would be required to produce certain profitability data. The Commission believes that trading centers should be able to leverage existing systems for collecting and reporting execution quality data under Rule 605 of Regulation NMS for certain of the data relating to market quality and order information.[266] With respect to producing Market Maker Profitability Data, the Commission notes that market makers may capture trading profit data for internal business purposes. As discussed further below, the Commission believes that the design of the Trading Center Data already mitigates concerns about confidentiality and has further modified the Market Maker Profitability Data requirements to address concerns regarding the confidentiality of that data.[267]

The Commission recognizes that trading centers and market makers would be required to incur some additional costs to produce the specific data called for by the Tick Size Pilot. In particular, the Commission recognizes that trading centers and market makers would need to make changes to their systems to compile the data and that transmitting the data would entail costs as well. However, as discussed below, the Trading Center Data and Market Maker Profitability Data are necessary to examine specific components of the Tick Size Pilot. As such, the Tick Size Pilot will provide the Commission and interested parties with real-world data regarding the effects of wider tick sizes on trading, liquidity, and market quality for securities of small capitalization companies, and this empirical data will inform analyses and potential future regulatory actions to, among other things, capture any benefits from wider tick sizes on a permanent basis.

As discussed below in Section V.E.2, the Commission is modifying certain aspects of the Tick Size Pilot to reduce the data production burdens and related concerns about the confidentiality thereof (*e.g.,* by eliminating the requirement for market makers to report realized trading profits net of fees and rebates, and by requiring Market Maker Profitability Data that is made publicly available to be further aggregated).[268] The Commission is not modifying the Trading Center Data to address confidentiality concerns. First, the order data and the market quality data would be available on a significant lag, mitigating potential risks about confidentiality. One concern is that order data and market quality data may reveal the trading intentions of market participants. However, this concern is mitigated if the data is disseminated with a significant lag because market participants may have completed their trades, rendering this information less sensitive. Second, the Commission does not believe that the order data would be sufficiently detailed to identify particular investors or their trading strategies. Further, current market quality data identifies the trading center producing the data, so any increases in risks regarding confidentiality are unlikely to be significant. The collection and analysis of relevant data, however, is the central purpose of the Tick Size Pilot. The effects of wider tick sizes for small capitalization stocks on trading, liquidity, and market quality are not clear and the Tick Size Pilot will provide data to allow the Commission to effectively test for the potential benefits and costs of permanently changed tick sizes. The Commission believes that the potential magnitude of the benefits that could be revealed by the Tick Size Pilot justify the costs of running the Tick Size Pilot.

Finally, the Commission acknowledges the concerns expressed by commenters about the potential increased costs that might be incurred by investors and issuers as a result of the wider minimum tick size mandated by the Tick Size Pilot.[269] As noted above, several commenters expressed concern that the Tick Size Pilot would help market professionals at the expense of investors. In fact, two commenters believed that the increased costs to investors could exceed $200 million per year. Other commenters expressed the view that the Tick Size Pilot could raise the cost of capital for issuers.[270] Other commenters suggested that an assessment of investor costs should be completed prior to the implementation of the Tick Size Pilot.

The Commission notes that the central purpose of the Tick Size Pilot is to assess the market quality impact of an increase in the tick size for the securities of smaller capitalization companies, which is comparable to assessing the impact of the Tick Size Pilot on investors. Notwithstanding the opinions of the commenters, whether an increased tick size would improve market quality, or increase or reduce execution costs for some or all investors, in some or all Pilot Securities, is not known at this time. As further discussed in Section V.C.1, the number of potential Pilot Securities that currently trade with a spread of greater than $0.05, and less than $0.05, is approximately equal. For Pilot Securities that currently trade with less than $0.05 spread, the costs for investors to trade smaller orders, typically placed by retail investors, at the quote may increase while the costs for investors to trade small orders in general may or may not increase, depending on the degree to which trades execute between the bid and the offer. The impact on larger orders, typically placed by institutional investors, however, is not clear. The impact on Pilot Securities that currently trade with a spread of greater than $0.05 similarly is not clear, as spreads in these securities may change as well depending on the impact of an increase in the tick size on market making incentives. The Commission notes that the exception for Retail Investor Orders was proposed by the Participants as a means to reduce the risk of the Tick Size Pilot having a detrimental impact on retail investor execution quality, and further, the Commission has made modifications to the proposal submitted by the Participants (*e.g.,* lowering the market capitalization threshold to exclude securities that tend to have narrower spreads and, with respect to the Trade-At Prohibition, removing the Venue Limitation [271] and liberalizing the Block Size definition).[272]

[265] *See, e.g.,* FIF Letter at 5–6; SIFMA Letter at 8 (''the data collections specified in Appendices B and C of the Proposed Plan are extremely burdensome on broker-dealers and should be eliminated . . . The proposed collections of order and profitability data unnecessarily increase the burden on all trading centers, especially market makers who would be subject to both Appendix B and C.''); Nasdaq Letter at 6; and Citadel Letter at 8.

[266] 17 CFR 242.605.

[267] *See infra* Section V.E.2.

[268] The Commission also notes that data production costs should also be reduced as a result of the modification of the market capitalization threshold which will reduce the universe of potential Pilot Securities. *See infra* Table 1 in Section V.C.1.

[269] *See supra* note 59 and accompanying text. *See also* IAC Recommendations (expressing concern that a pilot would disproportionately harm retail investors because their trading costs would rise). The Commission has carefully considered the IAC Recommendations from January 2014. After careful deliberation and considering the IAC Recommendations, the Commission is approving the NMS plan, as modified.

[270] *See supra* note 78 and accompanying text.

[271] The removal of the Venue Limitation should reduce the potential costs and complexity associated with the proposed Tick Size Pilot by not requiring liquidity that would have been affected by the Trade-At Prohibition to be routed from off exchange venues to lit venues. *See infra* Section V.D.4.d.

[272] The modification to liberalize the Block Size definition should serve to mitigate disruptions to

Continued

With respect to the specific cost estimates, the Commission appreciates the efforts of commenters to quantify costs and has carefully assessed the estimates. These estimates rely on historical trading data and reasonable assumptions on how retail execution quality may change with wider tick sizes. The Commission cannot know, however, the full impact of wider tick sizes on investors, before the Tick Size Pilot is underway. With the exception of the modifications and consideration for retail investors in the original design of the Tick Size Pilot, the Commission does not believe it can further reduce these costs without sacrificing the utility of the Tick Size Pilot. Specifically, the Commission would need to focus the Tick Size Pilot exclusively on stocks with higher transaction costs, which are determined by spreads. As noted in Section V.C.3. below, if the tick size mechanically affects a criterion for inclusion, then the Tick Size Pilot would be severely limited in its ability to inform any future rulemaking by the Commission. While the effects of wider tick sizes for small capitalization stocks on trading, liquidity, and market quality are not clear, the Commission believes that the Tick Size Pilot will generate data to help inform whether the significant benefits, such as improved liquidity and market quality, could be realized by investors, issuers, and other market participants. The Tick Size Pilot will provide the Commission and interested parties with real-world data regarding the effect of wider tick sizes on trading, liquidity, and market quality for small-capitalization companies and this empirical data will inform analyses and potential future regulatory actions to, among other things, capture any benefits from wider tick sizes on a permanent basis. The Commission, therefore, believes that the potential magnitude of the benefits that would be revealed by the Tick Size Pilot justify the costs of the Tick Size Pilot.

Similarly, while the Commission recognizes the potential connection between tick size, liquidity, and cost of capital, the impact of an increased tick size on the costs and ability of issuers to raise capital, if any, is not known at this time. As noted above, the Commission believes that altering tick sizes could result in significant market-wide benefits and improvements to capital formation. In particular, if a wider tick size leads to more active market making and attracts more investors to small capitalization stocks, positive effects on trading, liquidity, and market quality as measured by metrics such as trading volume, displayed depth, effective spreads, or execution costs for small and large trades could be observed. Indeed, some advocates for a tick size pilot argue that a wider tick size would benefit issuer's capital formation and cost of capital.[273] Nonetheless, the Commission recognizes that these benefits may not manifest in the manner or to the extent anticipated. Further, the Commission believes that the design of the Tick Size Pilot and the data in the Appendices will facilitate robust analyses to help assess the benefits and costs of wider tick sizes. Nevertheless, the Commission intends to carefully monitor implementation of the Tick Size Pilot and, should it appear that the protection of investors is compromised, the Tick Size Pilot can be modified or terminated early to protect them and integrity of the market.

Some commenters expressed the view that the Tick Size Pilot should have been implemented through Commission rulemaking that includes a cost-benefit analysis or that the Commission should have conducted a cost-benefit analysis as part of the NMS plan process. The Commission reasonably concluded that proceeding with the Tick Size Pilot through an NMS plan was an appropriate way to gather information necessary to assess whether changes should ultimately be made through rulemaking or otherwise. As discussed in detail in the June 2014 Order, and noted above, consideration of issues related to minimum tick sizes has been ongoing for years.[274] That history of study led the Commission to conclude that it could not adequately evaluate the need for additional regulatory action without empirical data that would be generated from a pilot implemented through an NMS plan. The Commission is modifying the NMS plan in response to comments, including comments with respect to the costs and benefits. Consideration of the potential costs and benefits of the Tick Size Pilot is reflected in the June 2014 Order, the Notice and this order which also addresses comments about the potential competitive impact and other economic consequences of the NMS plan.

The Commission's approval of the NMS plan is designed and intended to produce measurable data to study the impact of a wider tick size on the liquidity and trading in the securities of smaller capitalization companies, which should support an objective data-driven review of this important policy issue. Legitimate questions have been raised about the impact of decimalization on the market for small capitalization securities.[275] The Tick Size Pilot, as modified, should produce valuable data to allow the Commission, the public, and market participants to assess the impact of a wider tick size on the trading, liquidity, and market quality of smaller company stocks. Notwithstanding, the Commission would, and expects the Participants to, actively monitor the operation of the Tick Size Pilot[276] and, if necessary, the Tick Size Pilot can be modified or terminated early to ensure the protection of investors and integrity of the market.

In addition, the Commission emphasizes that it welcomes the submission of additional comments and empirical evidence during the Pilot Period with respect to, among other things, the operation of the Tick Size Pilot, in particular the three Test Groups, and the costs associated therewith. The Commission would take such comments into account in its consideration of related future regulatory actions.

B. Tick Size Pilot Duration

As proposed, consistent with the June 2014 Order, the Pilot Period would be for one year. In the June 2014 Order, the Commission noted that it preliminarily believed that a one-year Pilot Period would be sufficient to generate data to reliably analyze the effects and impact of wider tick sizes. Several commenters argued that the Pilot Period should be longer than one-year.[277] Commenters suggested that the Tick Size Pilot would be too complex and costly to implement for a one-year Pilot Period, which could lead market participants to opt-out of quoting and trading in the Pilot Securities, especially in Test Group Three Pilot Securities.[278] As noted by several commenters, the one-year Pilot Period could lead some market participants to decide not to participate in the Tick Size Pilot.[279] For example, one commenter suggested that a one-year Pilot Period would not be ''enough time to warrant start-up costs and other

the institutional trading of securities with smaller market capitalization. *See infra* Section V.D.4.e.

[273] *See, e.g.,* BIO Letter at 5.

[274] *See supra* Section II. *See also* June 2014 Order, *supra* note 4 for a further discussion on the history of decimalization and tick sizes.

[275] *See supra* note 9 and accompanying text.

[276] *See* June 2014 Order, 79 FR at note 50, *supra* note 4. As noted in the June 2014 Order, during the Pilot Period, the Commission believes that Participants should notify the Commission if they detect any broadly negative impact of the Tick Size Pilot on market quality.

[277] *See supra* note 89 and accompanying text.

[278] *See supra* note 90 and accompanying text.

[279] *See supra* notes 95–96 and accompanying text.

investments to participate.'' [280] Another commenter suggested that a longer Pilot Period would ''provide a better incentive for investments that market participants will need to make in order to increase their exposure to the small cap[italization] market.'' [281] Some commenters suggested that a longer Pilot Period could also help justify its up-front implementation costs. Commenters noted that if market participants did not participate in the Tick Size Pilot, the reliability of the data could be compromised.

The Commission recognizes that there would be start-up costs and other investments associated with participating in the Tick Size Pilot, and does not want the Pilot Period to be a disincentive to participate. The Commission believes that extending the Pilot Period to two years would help address some of those concerns in part by having those costs spread out over a longer period. The Commission expects that a longer Pilot Period should encourage wider participation (or remove incentives to opt-out of participation) and therefore help make the data more reliable, richer, and useful. [282] Accordingly, after carefully considering the comments, the Commission is modifying the NMS plan by lengthening the Pilot Period from one-year to two-years.

The Commission does not think it is necessary to extend the Tick Size Pilot beyond two years. As noted above, several commenters suggested a Pilot Period longer than two years.[283] In the Order, the Commission noted its preliminary belief that a one-year period would generate sufficient data to reliably analyze the effects and impact of the wider tick size. The Commission continues to believe that meaningful data could be generated in a relatively short time period but believes that extending the Pilot Period for one additional year could encourage participation in the Tick Size Pilot, which further supports the goal of generating sufficient data. If a number of market participants decided to refrain from participating in the Tick Size Pilot, the ability to generate and collect data sufficient to study the impact of wider tick sizes would be frustrated. The Commission also notes that a longer Pilot Period should help to mitigate concerns that the data generated from the Tick Size Pilot could be susceptible to short term fluctuations as suggested by commenters. Therefore, the longer Pilot Period should also support representational faithfulness.[284] The Commission understands that some commenters supported the one-year Pilot Period.[285] However, the Commission believes that the longer Pilot Period is necessary for the reasons discussed above.

The Commission received comments on whether the Tick Size Pilot should cease at the end of the Pilot Period or continue to operate while the data are assessed.[286] As described below, the Participants will be required to submit their assessment 18 months after the start of the Tick Size Pilot, based on data generated during the first 12 months.[287] This timing is consistent with the timing set forth in the June 2014 Order,[288] but would provide the Commission and the public with valuable information about the Tick Size Pilot's impact during the Pilot Period. In addition, the Trading Center Data and Market Maker Profitability Data would be publically available during the Pilot Period, which would allow market participants and the public to conduct analysis during the Pilot Period.

The Commission, however, is only approving a Pilot Period of two years in this order. Any proposal to extend the Tick Size Pilot beyond the two-year term would be considered and evaluated at a later date. Therefore, the modification to the Pilot Period of the Tick Size Pilot, extending its duration to two-years, is appropriate.

C. Criteria for Pilot Securities

The Tick Size Pilot sets forth five criteria for determining which NMS common stocks would be included: (1) Market capitalization of $5 billion or less; (2) Closing Price of at least $2.00 on the last day of the Measurement Period; (3) Closing Price of at least $1.50 on every trading day during the Measurement Period; (4) CADV of one million shares or less; and (5) VWAP of at least $2.00.

1. Market Capitalization for Pilot Securities

Many commenters noted that the market capitalization threshold was too high and recommended that the threshold be lowered.[289] Commenters expressed views that the $5 billion market capitalization threshold would include many securities not considered as small capitalization stocks. Certain comments recommended that the market capitalization threshold be as low as $250 million to $2 billion. After carefully considering the comments and reviewing prior staff analysis,[290] the Commission deems it appropriate to change the NMS plan by lowering the market capitalization threshold for Pilot Securities from $5 billion or less to $3 billion or less. In the June 2014 Order, the Commission preliminary believed that a market capitalization of $5 billion or less would capture the securities of smaller and middle capitalization companies with low liquidity and trading activity, and would provide the Tick Size Pilot with a broad sample. However, in response to the comments received, the Commission staff reviewed its analysis of stocks from a period of July 1, 2013 to August 31, 2013,[291] and found that lowering the market capitalization threshold from $5 billion or less to $3 billion or less should ensure that there would be a sufficient sampling of stocks to support the analysis of the Tick Size Pilot, including as it relates to a variability in effective spreads, particularly effective spreads greater than 5 cents per share for Pilot Securities. Table 1 reflects staff's analysis.

[280] *See* Duffy Letter at 1. *See also* ABC letter at 3.

[281] *See* ABC Letter at 3.

[282] The Commission notes that market makers not trading in Pilot Securities would forgo the profits they could earn from trading in those securities. Those foregone potential profits would be larger over a longer time period. In addition, the larger potential profits that could be earned by market makers over the longer time period should help to offset any implementation and compliance costs associated with trading in the Pilot Securities.

[283] *See supra* Section IV.B.

[284] In this respect, the Commission notes that the costs of implementing the Tick Size Pilot should be justified not by a longer duration per se, but by the benefits that a longer Tick Size Pilot would bring in generating useful data that could guide potential future tick size rulemaking. The Commission notes that one commenter suggested that the proposed one-year time period would make the data easy to manipulate. *See* Duffy Letter at 1. As noted, the Commission believes that the longer Pilot Period should support data integrity.

[285] *See supra* Section IV.B.

[286] *See supra* notes 105–108.

[287] Therefore, the modification to the Pilot Period will not delay assessment of the Tick Size Pilot.

[288] The June 2014 Order and proposed NMS plan provided that Participants should submit their assessment six months after the end of the Tick Size Pilot, which would have been 18-months after the start of the Tick Size Pilot.

[289] *See supra* Section IV.C.1.

[290] *See* June 2014 Order, *supra* note 4.

[291] *See* June 2014 Order, *supra* note 4.

TABLE 1—EFFECTIVE SPREAD DISTRIBUTION [292]

Market capitalization categories	Number of stocks	Effective spreads (in cents)		Percent of stocks with effective spread >$0.05
		90th percentile	10th percentile	
Less than $1 billion	1,979	25.33	1.42	53.97
Less than $2 billion	2,376	23.10	1.43	50.04
Less than $3 billion	2,574	22.31	1.43	48.10
Less than $5 billion	2,758	21.93	1.43	46.63

Overall, Table 1 provides evidence that the selection of a market capitalization threshold involves trading-off potential sample size, which affects statistical power,[293] and the potential negative impact of the Tick Size Pilot on stocks with low current effective spreads. The analysis in Table 1 shows that no single threshold can produce a clear-cut sample of securities for the Tick Size Pilot. In particular, for each potential market capitalization threshold in the table, approximately 10% of stocks have effective spreads of 1.43¢ or less. Further, for stocks in the lower thresholds, more stocks have higher effective spreads. This shows that the range of effective spreads is greater for lower market capitalization stocks. However, the number of stocks in the potential sample declines with market capitalization as well. Table 1 also shows that lowering the market capitalization threshold from $5 billion or less to $3 billion or less would reduce the universe of potential Pilot Securities by only 184 stocks, which suggests that the threshold of $3 billion or less would restrict the Tick Size Pilot to smaller stocks while still assuring a sufficiently large sample.

Therefore, the Commission believes that it is necessary and appropriate to change the NMS plan by lowering the market capitalization threshold to $3 billion or less. The Commission notes that this change would result in fewer securities eligible to be included in the Tick Size Pilot, but this reduction should not materially impact the Tick Size Pilot's goal of generating useful data. Further, the lowered threshold should lessen the impact of the Tick Size Pilot on the overall market, in that stocks included in the Test Groups would be smaller and less liquid; and their combined trading volume as a proportion of the overall market volume would also be lowered.

Many commenters recommended lowering the market capitalization threshold to $1 billion or less (or to an even lower threshold).[294] However, Table 1 shows that further reducing the market capitalization threshold from $3 billion or less to $1 billion or less would reduce the number of Pilot Securities by additional 595 stocks. The Commission believes that such a reduction in market capitalization would result in a sample size that is too small (1,979 stocks, including the Control Group), significantly reducing the power of a statistical analysis of the Tick Size Pilot. Moreover, the threshold of $1 billion or less would limit the ability to assess the impact of the widened ticks on stocks with different market capitalizations and hence the utility of the Tick Size Pilot in assessing possible market capitalization thresholds for a potential future tick size rulemaking.[295]

2. Other Proposed Selection Criteria for Pilot Securities

The Commission received a few comments on the other proposed selection criteria.[296] For example, one commenter suggested that the volume threshold should range from 300,000 to 500,000 for illiquid shares. The Commission has considered these comments but does not believe it is necessary to modify the Tick Size Pilot any further in response. First, by having a floor of 300,000 shares, many small capitalization firms would be excluded from the Tick Size Pilot. Second, the upper threshold of 500,000 would reduce the sample size and limit the variation in stock characteristics in the Tick Size Pilot. The goal of the Tick Size Pilot is to study the effect of tick size on the liquidity and trading of small capitalization stocks. Therefore, the Commission believes that the universe of Pilot Securities should include a variety of stock characteristics in the sample to facilitate the ability to conduct fulsome assessments.

Other commenters suggested that the CADV be lowered or that it should be based on the dollar trading value or that it should be based relative to public float. The Commission has considered these comments but does not believe it is necessary to modify the Tick Size Pilot any further in response. In particular, it is widely known that these volume measures are highly correlated with each other and therefore would most likely produce similar samples of Pilot Securities. Further, share volume is less correlated with market capitalization than other volume measures, so it would add the most as a separate criterion.

3. Additional Criteria for Pilot Securities

Commenters also suggested additional criteria for selecting the Pilot Securities.[297] For example, several commenters suggested that the average weighted daily spread of five cents or greater should be a criterion because some securities with spreads less than five cents would not benefit from the Tick Size Pilot. After careful review, the Commission believes that the selection criteria as proposed in the NMS plan, and modified by the Commission, are appropriate. In particular, the Commission believes that the selection criteria should provide an appropriate number of securities to test while also minimizing potential concerns about costs to investors and issuers. Further, tick size does not mechanically affect the approved criteria set forth in the Tick Size Pilot, making it more informative for any potential future tick size rulemaking.

The Commission does not believe that a spread criterion should be included. Tick size mechanically affects alternative criteria such as bid-ask spreads and effective spreads, such that

[292] Data in this table covers common stocks with average price greater than $2 per share and average daily trading volume smaller or equal than one million shares during the period of July 1, 2013–August 31, 2013. Data comes from the NYSE's Trade and Quote Data.

[293] Statistical power is the ability to detect an effect, if the effect actually exists.

[294] *See supra* note 115 and accompanying text.

[295] Two commenters recommended lowering the market capitalization threshold to $2 billion or less *see supra* note 115 and accompanying text. That threshold would suffer from the same disadvantages as the threshold of $1 billion or less, although to a lesser extent. In particular, Table 1 shows that reducing the market capitalization threshold from $3 billion or less to $2 billion or less would reduce the number of Pilot Securities by additional 198 stocks. *See supra* Table 1 in Section V.C.1. The threshold of $2 billion or less would also limit the ability to assess the impact of the widened ticks on stocks with different market capitalizations.

[296] *See supra* Section IV.C.2.

[297] *See supra* Section IV.C.3.

using such criteria to determine Pilot Securities would make the Tick Size Pilot less informative on when the tick size in a stock should be smaller. In addition, researchers should be better positioned, without spread criteria that is set forth by the NMS plan, to use Tick Size Pilot data to independently suggest tick size criteria for securities with smaller capitalization.

4. Securities Excluded From the Tick Size Pilot

The Tick Size Pilot, as proposed, excludes securities that have had an IPO within six months of the start of the Pilot Period. Commenters expressed views on other securities that should be excluded from the Tick Size Pilot, including securities that are cross-listed in Canada and securities that trade below $1.00 per share during the Pilot Period. The Commission notes that securities that are cross-listed in Canada are included in other NMS provisions and plans; accordingly the Commission believes that such securities should also be included in the Tick Size Pilot. The Commission also notes that researchers may choose not to include all securities in the Test Groups when they undertake their analyses. In particular, researchers may choose not to include securities that are cross-listed with Canada if they think the results of their analyses may be significantly affected.

The Commission believes that the exclusion of securities that have participated in a recent IPO is necessary because such stocks would not have a full data set prior the start of the Tick Size Pilot, which would limit the ability of the Commission and the public to analyze the effects of the Tick Size Pilot against a sufficient baseline.

One commenter suggested that the NMS plan specifically eliminate Pilot Securities that trade at $1.00 or less during the Pilot Period. The Commission notes that the Participants proposed additional selection criteria to minimize the likelihood that securities that trade with a share price of $1.00 or less would be included in the Tick Size Pilot. Specifically, there are three criteria that seek to evaluate the share price of potential Pilot Securities: (1) a closing price of at least $2.00 on the last day of the Measurement Period; (2) a closing price on every U.S. trading day during the Measurement Period that is not less than $1.50; and (3) a Measurement Period VWAP of at least $2.00 per share. The Participants stated that these criteria were designed to avoid having securities priced $1.00 or less selected as Pilot Securities but the Participants state that Pilot Securities would not be excluded from the Tick Size Pilot if their share price falls to $1.00 or less during the Pilot Period. The commenter has not suggested that these criteria are not sufficient for this purpose but states that it is ''reasonable to expect a small number of Pilot Securities to trade below $1.00 during the Pilot.'' The Commission believes that once established, the universe of Pilot Securities should stay as consistent as possible so that the analysis and data can be accurate throughout the Pilot Period.

Finally, the Commission received a few comments supporting the exclusion of ETFs from the Tick Size Pilot. The Commission agrees that these securities should be excluded because their pricing is derivative of the value of their component securities.

5. Assignment of Pilot Securities

The NMS plan contains procedures for stratified random sampling in which the Participants would assign the Pilot Securities into 27 categories, and then randomly assign Pilot Securities into the Tick Size Pilot groups (Control Group and three Test Groups), based on the percentages of Pilot Securities in each category. The Commission did not receive comments with respect to this aspect of the NMS plan.

In the June 2014 Order, the Commission stated that the assignment of Pilot Securities into each test group should involve stratified sampling by market capitalization and price. The Participants proposed to add the CADV to the market capitalization and price. The Commission believes that the addition of CADV should ensure that each test group contains a representative of the total universe of Pilot Securities. Specifically, this should help ensure that the four groups of securities are comparable to each other in terms of stock characteristics and therefore should provide an ideal experimental setting for robust analysis of the Tick Size Pilot.[298]

D. Control Group and Test Groups

The Tick Size Pilot would have a Control Group and three Test Groups, comprised of 400 Pilot Securities per test group. Test Group One Pilot Securities would quote in $0.05 per share increments and would trade at any currently permitted increments. Test Group Two Pilot Securities would quote in $0.05 per share increments like those in Test Group One, but would only be permitted to trade in $0.05 per share increments, subject to three exceptions. Finally, Test Group Three Pilot Securities would quote in $0.05 per share increments and trade at $0.05 per share increments consistent with Test Group Two, and be subject to the Trade-At Prohibition. Pilot Securities in the Control Group would continue to quote and trade at the pricing increments that are currently permitted.

Several commenters opined about the design of the Tick Size Pilot. For example, some commenters suggested that the Tick Size Pilot should be narrower, with only one or two test groups which would lessen the cost and complexity of the Tick Size Pilot.[299] Other commenters supported the incremental design of the Tick Size Pilot.

The Commission notes that the NMS plan has been designed to incrementally assess potential changes to the Tick Size Pilot, such that Test Group One would only add a wider quoting increment, while Test Group Two would also add a wider trading increment, and finally Test Group Three would add the Trade-At Prohibition. The Commission believes that constructing the Tick Size Pilot in this manner should generate the most meaningful and measurable data that should allow the Commission and other interested parties to conduct studies.

Commenters also expressed their views that other tick sizes, both larger and smaller than the proposed $0.05 tick size increment, should be included and tested concurrently within the Tick Size Pilot.[300] In the June 2014 Order, the Commission stated its preliminary belief that $0.05 is an appropriate minimum increment, due to the significant percentage of Pilot Securities with a bid-ask spread of greater than $0.05. As noted above, the Commission modified and analyzed potential Pilot Securities based on the $3 billion market capitalization threshold, for a period of July 1, 2013 to August 31, 2013 and found that 48.1 percent of these securities had effective spreads greater than $0.05.[301] For these securities, the impact on costs to investors of an increase of the minimum price increment to $0.05 is not clear, as effective spreads in these securities may change as well depending on the impact of an increase in the tick size on market making incentives. For securities with effective spreads smaller than $0.05, the

[298] Ideally, researchers would want to have identical stocks in each group to isolate the effects of the different treatments in the four groups. However, because this is not possible, researchers employ techniques to make the stocks in the four groups as similar as possible. The SROs have proposed such a technique.

[299] *See supra* note 126 and accompanying text.

[300] *See supra* notes 129–131 and accompanying text.

[301] *See supra* Table 1 in Section V.C.1.

effective spread may or may not rise due to the increase in the minimum increment, depending on the degree to which trades execute between the bid and the offer. Increased effective spreads, holding everything else equal, would represent increased costs to investors. However, the Tick Size Pilot will be able to address whether the increased minimum increment will lead to more market maker participation and ultimately, to more liquidity in small capitalization stocks, which may counteract increased costs due to higher effective spreads. The Commission believes that the data supports the conclusion that, on balance, the $0.05 increment is appropriate for the Tick Size Pilot because it should mitigate cost increases to investors while supporting a robust test. While commenters suggested additional increments to test along with the $0.05 increment, the Commission believes that additional increments could increase the Tick Size Pilot's complexity by, for example, increasing the number of test groups in the Tick Size Pilot, which in turn would require more programming development and system changes by market participants.[302]

In the NMS plan, the Participants proposed 400 Pilot Securities per Test Group positing that the increased size of each Test Group would help to ensure a sufficient data yield for the completion of required assessments even in the event of the removal or exclusion of Pilot Securities. The Commission received three comments on this aspect of the Tick Size Pilot, two of which said the Test Groups should be smaller and one who thought 400 was appropriate.[303] The Commission believes 400 Pilot Securities per Test Group should be large enough to generate data to reliably test for the effects of larger tick size, and should make the Tick Size Pilot more resilient in the event of the unforeseen removal or exclusion of Pilot Securities. Therefore, the Commission believes that assigning 400 Pilot Securities to each Test Group is appropriate.

The Commission received a few other comments related to the operation of the Tick Size Pilot. Specifically, two commenters offered differing opinions with respect to whether the Tick Size Pilot should operate during opening and closing auctions.[304] The Commission notes that the NMS plan provides that the Tick Size Pilot would be operational during and outside of Regular Trading Hours, which is defined in the NMS plan as consistent with Rule 600(b)(64) of Regulation NMS.[305] If the Participants find that further clarification or modification is needed to address the opening and closing auctions, they may utilize the procedures set forth in Rule 608 to amend the NMS plan. However, the Commission notes that switching to penny increments during these auctions may cause additional complexity and would be different than how these auctions are currently run. Specifically, opening and closing auctions typically do not operate with increments different than the increments used during Regular Trading Hours.

In addition, two commenters requested clarification on how to handle orders that do not conform to the quoting increments.[306] The Commission notes that the Participants, as required under the NMS plan, would be required to adopt rules that are needed for compliance by the Participants and their members with the provisions of the Tick Size Pilot.[307] In addition, the Participants, as required under the NMS plan would be required to develop written policies and procedures that are reasonably designed to comply with the quoting and trading requirements of the Tick Size Pilot. Therefore, the Participants should ensure that they address issues and questions related to the operation of the Tick Size Pilot during the implementation period.

1. Control Group

The Pilot Securities in the Control Group would be quoted and traded in any increment currently permitted. Any Pilot Securities that are not selected to be included in a test group would be placed in the Control Group. The Commission believes that the Control Group should provide a baseline for the analysis of the effect of the Tick Size Pilot on liquidity and market quality data.

2. Test Group One: Widened Quote Increment

As discussed above, Pilot Securities in Test Group One would have a quoting increment restriction of $0.05 but could continue to trade at any currently permitted price increment. The Participants would be required to adopt rules that would prohibit the Participants or any member of a Participant from displaying, ranking, or accepting from any person any displayable or non-displayable bids or offers, orders, or indications of interest in increments other than $0.05. Orders priced to execute pegged to the midpoint of the NBBO and orders entered in a Participant's retail liquidity program could be quoted at less than the $0.05 increment. The Commission notes that Test Group One would be different from the Control Group in only one manner—the quoting increment would be widened.

Several commenters argued that Test Group One should be eliminated because trading for Test Group One Pilot Securities would migrate to non-displaying trading centers.[308] One commenter also suggested eliminating Test Group One to reduce the complexity of the Tick Size Pilot.[309] This commenter believed that eliminating Test Group One would reduce the costs of implementing the Tick Size Pilot and posited that "there is little disagreement" that Test Group One would divert order flow to unlit markets.[310]

The Commission, however, believes, as noted above, that Test Group One is necessary as an initial incremental change to test the impact of the Tick Size Pilot on market quality and liquidity of this market segment. The Commission believes that Test Group One is reasonably designed to generate data on how trading characteristics and liquidity would change if the quoting increment alone is widened. One commenter suggested that exchanges and agency ATSs would be at a competitive disadvantage vis-à-vis broker-owned proprietary execution systems which can execute orders at any increment without accepting or ranking an order at an impermissible increment. This commenter recommended that market participants be permitted to accept and rank, but not display, orders in one penny increments for Test Group

[302] While additional increments would provide additional data and would allow for additional tests, the Commission believes that the Tick Size Pilot with one increment will allow for a comprehensive analysis of the effects of an increased tick size and the added complexity would not be justified. In addition, the added complexity of additional increments may not only make analyses more complicated, but rather may even reduce the statistical power of such analyses and increase the operational risk of implementing the Tick Size Pilot.

[303] *See supra* note 125 and accompanying text.

[304] *See supra* notes 132–133 and accompanying text.

[305] *See* NMS plan Section I(CC) and 17 CFR 242.600(b)(64) defines Regular Trading Hours as the time between 9:30 a.m. and 4:00 p.m. Eastern Time.

[306] *See supra* notes 134–135 and accompanying text.

[307] Any new rules or changes to existing rules of the Participants would be subject to Section 19 of the Act. *See* 15 U.S.C. 78s.

[308] *See supra* Section IV.D.1.

[309] *See supra* note 136 and accompanying text.

[310] The Commenter did however acknowledge that removing Test Group One from the Tick Size Pilot would be a significant change. *See* KOR Letter II at 3.

One.[311] The Commission notes the quoting restrictions of Test Group One would be implemented in a manner similar to Rule 612, the Subpenny Rule.[312] Further, the Commission notes that the issue raised by the commenter is present in the current trading environment with Rule 612, where brokers may execute trades in increments finer than $0.01 so long as they do not accept, rank, or display orders in such increments. The Commission believes it is important to test and evaluate Test Group One with a design that is similar to the current trading environment and within the context of the Tick Size Pilot's incremental design that should permit qualitative comparison with Test Group Two and Test Group Three. Accordingly, the Commission does not believe it is necessary to modify the Tick Plan to address the distinction raised by the commenter.

While commenters have raised counterpoints, the Commission believes that it is necessary to initially test this incremental change to generate data to analyze the impact, if any, on market quality for the Pilot Securities in Test Group One. The Commission notes that Test Group One would only test how a wider quoting increment implemented using the current regulatory framework, reflected in Rule 612, could impact the liquidity and trading of smaller capitalization securities. Test Group One is not designed to favor one group of market participants over other groups of market participants any more than the existing regulatory framework. In particular, including Test Group One would allow the Tick Size Pilot to examine each change incrementally to identify the changes that are economically most important. Further, the Commission recognizes that the design of the Test Groups create differing incentives for the display and execution of orders which may result in the migration of order flow,[313] which is why the inclusion of Test Group One is vital. This Test Group could potentially generate data on the degree to which widening the quoting increment alone results in a migration to non-displaying trading centers.

Specifically, Test Group One should enhance the ability of the Tick Size Pilot to generate data on the effects of wider ticks and any resulting order flow migration on liquidity, execution quality, volatility, market maker profitability, competition, and transparency.

3. Test Group Two: Widened Quote and Trade Increment

Pilot Securities in Test Group Two would be required to be quoted in a $0.05 increment, like Test Group One, but trading would be limited to the $0.05 increment subject to three exceptions. Specifically, executions could occur at a price other than a $0.05 increment in the following circumstances: (1) midpoint executions at the NBBO or best protected bid and best protected offer; (2) retail price improvement of at least $0.005 better than the best protected bid or offer; and (3) Negotiated Trades.

After carefully weighing comments, the Commission believes that Test Group Two and the exceptions, including the exception for retail price improvement, are reasonably designed to generate data on how trading characteristics and liquidity would incrementally change relative to Test Group One if the trading increment is widened. The Commission believes it is important to measure the incremental impact of a trading increment on market quality for small capitalization stocks and it would be useful to compare the data generated by this Test Group against the data in Test Group One. As the Commission noted in the June 2014 Order, if the minimum quoting increment is changed without corresponding changes to the minimum trading increment, market participants may be hesitant to display liquidity in larger $0.05 increments if other market participants could easily trade ahead of them in smaller increments.

As noted above, commenters raised concerns with respect to the retail price improvement exception.[314] Some commenters argued that the exception should be broadened to include all orders as a means to alleviate implementation burdens. Some commenters argued that the level of price improvement should be increased to more than the proposed $0.005. Another commenter expressed its opposition to the retail exception because it believes that the exception would undermine the Tick Size Pilot.[315]

By allowing Retail Investor Orders to trade at certain prices other than the $0.05 trading increment and receive price improvement, the Commission believes that some of concerns related to costs for retail investors could be minimized. As noted earlier in Section V.A., retail investors may incur costs due to the Tick Size Pilot in the form of wider bid-ask spreads, which imply less favorable prices and high transaction costs if retail investors were required to trade only at the displayed quotation. As noted above, many potential Pilot Securities would have bid-ask spreads of greater than $0.05, although an equal number may have spreads less than $0.05. Therefore, the Tick Size Pilot could potentially widen bid-ask spreads of some Pilot Securities, which could increase costs for retail investors. The ability to receive price improvement, therefore, should reduce some retail investor costs. Further, the Commission does not believe that the exception for Retail Investor Orders would undermine the Tick Size Pilot and believes it is appropriate to provide this exception for retail investors.

The Commission, however, does not believe that it is necessary or appropriate to expand the price improvement exception to all orders. The Commission believes that such a modification could undermine the purpose of Test Group Two, which is to assess the impact of a trading increment on trading and liquidity. As noted above, this exception was designed to mitigate cost concerns for retail investors that typically receive price improvement under current trading conditions.[316]

Commenters stated that the attestation should not be required because it would be unwieldy for trading centers to conduct surveillance to ensure that only bona fide retail orders qualify.[317] The Commission notes that certain Participants have approved retail liquidity programs that require market participants to submit an attestation. Thus, many market participants must currently comply with an attestation requirement, and should already have the appropriate policies and procedures in place. While it should not be unwieldy for these trading centers to conduct surveillance for the attestation requirement, the Commission acknowledges that there would be additional costs for trading centers and their market participants that are not

[311] *See* BATS Letter at 3.

[312] 17 CFR 242.612.

[313] For example, if a larger minimum quoting increment leads to wider bid-ask spreads, but the trading increment remains unchanged, it would produce an incentive to internalize order flow and execute off-exchange because price improvement would be relatively cheaper to provide.

[314] *See supra* Section IV.D.2.

[315] *See supra* notes 155–156 and accompanying text.

[316] *See* June 2014 Order *supra* note 4.

[317] *See supra* Section IV.D.2. *See also* Tabb Letter at 5; Two Sigma Letter at 2 (''It is unclear how a trading center receiving order flow from large numbers of natural persons can design surveillance programs that would allow them to confidently make this attestation.''); KCG Letter at 9 (noting that the definition of Retail Investor Order was too complex and ambiguous and would lead to many of the largest retail firms to not sign the required attestations); STANY Letter at 6; and TD Ameritrade at 5.

currently required to comply with the attestation requirements. However, the Commission believes that the attestation requirement is necessary to promote the integrity and goals of the Tick Size Pilot by helping to ensure that only bona fide retail orders entered by market participants are eligible for the retail price improvement exception.

The Commission acknowledges that there are potential downsides to widening the quoting and trade increment to $0.05 but believes that the Tick Size Pilot is designed to reasonably balance the need to generate data and the potential higher costs for investors. The Commission also recognizes that the $0.05 quoting and trading increment for Test Group Two could have an effect on competition between exchanges and non-exchange trading centers, including the potential migration of order flow. The extent of any such potential order flow migration or other competitive impact is not known at this time. The Commission believes that the data analysis from the results of Test Group Two should provide information on the potential competitive impact and the incremental economic effects of a wider trading increment, including any incremental effects on the incentives for the display and execution of orders that may result in the migration of order flow relative to the other Test Groups and the Control Group. This should better inform the Commission and interested parties of the impact of a wider tick increment.

4. Test Group Three: Widened Quote and Trade Increment With a Trade-At Prohibition

Pilot Securities in Test Group Three would be quoted and traded in $0.05 increment like Test Group Two and provided with the same trading exceptions. In addition, Test Group Three would introduce another incremental change—the Trade-At Prohibition. In the June 2014 Order, the Commission described a trade-at prohibition as requiring a trading center that was not displaying at the NBBO at the time the trading center received an incoming marketable order to either: (1) execute the order with significant price improvement ($0.05 or the midpoint of the NBBO); (2) execute the order at the NBBO if the size of the incoming order is of block size; or (3) route intermarket sweep orders to execute against the full displayed size of the protected quotations at the NBBO and the execute the balance of the order at the NBBO price. In the Notice, the Commission noted that, in the context of the Tick Size Pilot, an important purpose of a trade-at requirement would be to test whether, in a wider tick environment, the ability of market participants to match displayed quotes, without quoting, would negatively affect market makers' quoting practices. The Commission further noted that if quoting practices were affected negatively, then it could undermine one of the central purposes of the Tick Size Pilot, namely to determine whether wider tick sizes positively affect market maker participation and pre-trade transparency. For example, if the results of Test Groups One and Two were to show an improvement in liquidity with wider tick increments but a loss to transparency because of an order flow migration to the OTC market, perhaps Test Group Three would show similar improvements to liquidity but without the loss to transparency.

The Participants proposed to define ''trade-at'' in the NMS plan as ''the execution by a trading center of a sell order for a Pilot Security at the price of a protected bid or the execution of a buy order for a Pilot Security at the price of a protected offer.'' [318] The Commission notes that the proposed definition of trade-at set forth in the NMS plan would require compliance with the Trade-At Prohibition outside of Regular Trading Hours. In particular, the NMS plan states that the Tick Size Pilot would be applicable during and outside of Regular Trading Hours.[319] The application of the Trade-At Prohibition outside of Regular Trading Hours would extend its application beyond what is currently required for the Trade-Through Rule under Regulation NMS.[320] As noted above, the Commission expects that market participants would be able to leverage existing Rule 611 systems for implementing and complying with the Tick Size Pilot, which currently do not apply outside of Regular Trading Hours. The application of the Trade-At Prohibition outside of Regular Trading Hours would be broader than what the Commission envisioned for trade-at and could increase implementation and compliance burdens for market participants. Therefore, the Commission has deemed it necessary to modify the definition of trade-at under the NMS plan to provide that it is only applicable during Regular Trading Hours.

Under the proposed Trade-At Prohibition, trading centers that are not quoting cannot match protected quotations and a trading center quoting at the protected quotation can execute orders but only up to the size of its displayed quotation. The Tick Size Pilot included thirteen exceptions to the Trade-At Prohibition, when trading centers may trade at a protected quotation or price match.

The Commission received several comments that opposed the inclusion of the Trade-At Prohibition.[321] Commenters raised concerns about the complexity and costs of implementing Test Group Three which they concluded could lead market participants to forego participation in Test Group Three and distort the resulting data. Other commenters suggested that the Trade-At Prohibition would increase operational risks. Several commenters suggested that Test Group Three should be eliminated to reduce the complexity related to the Tick Size Pilot. Other commenters suggested that the Trade-At Prohibition would increase investor costs if off-exchange venues are restricted in their ability to compete for executions. One commenter pointed to Australian and Canadian rules as evidence that market quality would be adversely affected and as a justification to not implement trade-at domestically.

Several commenters, however, supported the inclusion of the Trade-At Prohibition.[322] Commenters raised concerns that Test Group One and Test Group Two could provide less incentive for market participants to display liquidity and result in trades migrating to dark venues. As noted by several commenters, wider spreads, and the potential increased profits derived therefrom, could incentivize market participants to execute more transactions in Pilot Securities on dark venues.[323] Some commenters, therefore, supported including the Trade-At Prohibition to test its impact on displayed liquidity and market quality.

The data generated by this test group should inform the Commission, the public, and market participants on the incremental impact of the Trade-At Prohibition on trading characteristics and liquidity of Pilot Securities when the quoting and trading increments are widened. The Trade-At Prohibition should test whether market participants are incentivized to display more liquidity in a wider tick environment. Therefore, the Commission believes that the inclusion of the Trade-At Prohibition should enhance the utility of the Tick Size Pilot. Further, the data generated by Test Group Three would

[318] *See* NMS plan Section (I)(LL).

[319] *See* NMS plan Section (IX).

[320] The definition of ''trade-through'' in Rule 600(b)(77) of Regulation NMS provides that it is applicable during Regular Trading Hours. *See* 17 CFR 242.600(b)(77).

[321] *See supra* note 157 and accompanying text. *See also* Section IV.A.

[322] *See supra* note 169 and accompanying text.

[323] *See supra* note 176 and accompanying text.

allow the Commission and the public to test the incremental impact on displayed liquidity and market quality in a wider tick environment when compared to Test Group One and Test Group Two. As noted, several commenters stated that trading in Test Groups One and Two could migrate to non-displayed venues. As a control measure, the Commission believes that it is important to test whether given larger quoting and trading increments, market quality could be enhanced by an incentive to display liquidity such as the Trade-At Prohibition.[324]

However, the Commission acknowledges commenters' concerns about the cost and complexity of the Trade-At Prohibition. The Commission is therefore modifying the Trade-At Prohibition, as described below, to mitigate and address some of these concerns. The Commission believes that the modifications to the Trade-At Prohibition should reduce the complexity of the provision while maintaining its utility in the Tick Size Pilot. The modified Trade-At Prohibition, as well as the modification to extend the Tick Size Pilot's duration, should work in tandem to ensure that there is wider participation in the Tick Size Pilot.

The Commission recognizes that the Trade-At Prohibition may have some effect on competition between exchanges and non-exchange trading centers. However, the Commission does not believe that this modified Trade-At Prohibition should have significant effects on this competition. Non-exchange trading centers should continue to be able to compete with exchanges for order flow, albeit either in a displayed manner or by providing price improvement. Further, the Commission believes that the exceptions to the modified Trade-At Prohibition, such as the exception for Retail Investor Orders and Block Size orders, should exclude the types of transactions that occur primarily off-exchange.[325] As a result, the Trade-At Prohibition should not result in a migration to exchanges of transactions not likely to occur on exchanges in the Control Group. In addition, the Tick Size Pilot data should facilitate tests on the effect of a conditional Trade-At Prohibition on investors and the effect on competition of any resulting migration to exchanges. Finally, the Commission notes that the market structure and regulatory framework in Australia and Canada are very different from the U.S. market structure and regulatory framework. For example, the U.S. equity market structure includes higher levels of off-exchange trading and trading is dispersed among a large number of market centers.[326] Accordingly, the Commission believes the experiences of those jurisdictions with a trade-at prohibition are not clearly relevant when considering a trade-at prohibition in the context of the Tick Size Pilot. As discussed above, the Commission believes that the Trade-At Prohibition is necessary to fully study the impact on the liquidity and trading of smaller capitalization securities.

The Participants proposed deviations from, or additions to, the trade-at prohibition set forth in the June 2014 Order, as follows: (1) the proposed Trade-At Prohibition would apply to any protected bid or protected offer, rather than just the NBBO; (2) trading centers displaying a quote at the price of a protected quote on an SRO proprietary quote feed could execute an incoming order at that displayed price; (3) a trading center could only execute up to its displayed size (*i.e.,* Size Limitation); (4) a trading center must execute where the protected quotation is displayed (*i.e.,* Venue Limitation); (5) nine exceptions to the Trade-at Prohibition modeled after the exceptions found in Rule 611 of Regulation NMS; and (6) an exception for fractional shares.

a. Protected Quotations Standard

The Participants proposed to use a protected quotation standard rather than the NBBO for the Trade-At Prohibition. As described in the Notice, the protected quotation standard would give broader protection to aggressively displayed quotes because the protected quotation standard encompasses the aggregate of the most aggressively priced displayed liquidity on all trading centers, while the NBBO standard is limited to the single best order in the market.[327] A few commenters opposed expanding the Trade-At Prohibition to protected quotations. One commenter suggested that protecting less competitive prices than the NBBO would undermine price competition and increase complexity,[328] while other commenters supported the protected quotation standard because it would encourage more aggressive quoting on multiple trading centers.[329]

After careful consideration, the Commission believes that using protected quotations as the basis for the Trade-At Prohibition is appropriate. The protected quotations standard should further enhance displayed liquidity by providing incentives for market participants and trading centers to display additional liquidity. The Commission does not believe that using protected quotations for the Trade-At Prohibition would necessarily result in less price competition. The Commission expects that market participants would continue to compete to provide liquidity via the best priced orders under the Tick Size Pilot.[330] Further, the Commission believes that using the protected quotations standard should help to alleviate concerns that the Tick Size Pilot is complex and costly to implement, as it would allow more displaying trading centers to execute orders at their displayed price and because market participants currently use the same standard to comply with Rule 611 of Regulation NMS.

b. SRO Quotation Feed

The Participants proposed to allow price matching by trading centers that have displayed a quote at the price of a protected quote through an SRO proprietary data feed. One commenter stated this feature would assist a trading center that cannot publish its own protected quotation.[331] The Commission believes that the use of an SRO proprietary data feed is appropriate. Trading centers displaying a quote on an SRO proprietary data feed have contributed to displayed liquidity, and therefore should be able to trade at these displayed prices, subject to the Size Limitation.

[324] The Commission notes that the inclusion of Test Group Three would not necessarily provide data that could examine whether a broader trade-at prohibition, applied to all securities with all tick sizes and fewer exceptions, would benefit investors.

[325] *See* Laura Tuttle, SEC Staff Paper, *OTC Trading: Description of Non-ATS Trading in National Market System Stocks,* (March 2014) available at *http://www.sec.gov/marketstructure/research/otc_trading_march_2014.pdf*.

[326] *See* Securities Exchange Act Release No. 61358 (January 14, 2010), 75 FR 3593 (January 21, 2010) (''Concept Release on Equity Market Structure'').

[327] *See* 17 CFR. 242.600(b)(42). When two or more market centers transmit to the plan processor identical bids or offers for an NMS security, the best bid or best offer is determined by ranking the identical bids or offers by size and then time. As a result, while two market centers may display identical prices, only one market center will display the national best bid or national best offer. Moreover, the Commission notes that the NBBO could contain manual quotations.

[328] *See supra* Section IV.D.3.a.

[329] Two other commenters requested clarification related to the protected quotation standard. The Commission notes that specific clarification questions should be addressed by the Participants during the implementation period. *See supra* note 181 and accompanying text.

[330] The Commission notes that Rule 611 of Regulation NMS would apply to transactions executed under the Tick Size Pilot.

[331] *See supra* Section IV.D.3.b.

c. Size Limitation

The Participants proposed to limit the price matching by trading centers that have displayed a protected quote with the Size Limitation. Under the Size Limitation, displaying trading centers would only be permitted to execute an incoming order up to the size of its protected quotation, and executions against undisplayed interest at that price level could not occur unless other protected quotations at that price are satisfied. Several commenters opposed the Size Limitation.[332] Commenters suggested that hidden reserve orders at the protected quotation price level should be allowed to execute without satisfying the other protected quotations. A few commenters believed that the Size Limitation would reduce execution certainty or cause delays in executions. Other commenters stated that the Size Limitation would lead to information leakage for larger sized orders because of the need to route to multiple venues to execute against protected quotes. Further, commenters stated that undisplayed liquidity, both on- and off-exchange, is important to retail and institutional investors.

While the June 2014 Order did not specify the Size Limitation, the Commission believes that it supports one of the reasons for testing trade-at in the Tick Size Pilot—to determine its impact on displayed liquidity and market quality in a wider tick environment. As one commenter noted, the Size Limitation should create a strong incentive to display liquidity.[333] The Commission notes that some commenters suggested that allowing hidden reserve orders to execute before same-priced protected quotations could incentivize market participants to display a quote for a nominal size. The Trade-At Prohibition is intended to test whether a trade-at is needed to encourage the display of limit orders with depth greater than a nominal size in a wider tick environment. During the Tick Size Pilot, Test Group Three should allow researchers to measure whether this structure results in increases in displayed liquidity, and if so, whether it has a positive impact on market quality. The Commission believes that without the Size Limitation, the incentive to display liquidity could be reduced, which in turn would undermine a primary rationale for testing trade-at in a wider tick environment. Commenters also raised concerns with respect to execution certainty and execution delay. The Commission believes that the Size Limitation could potentially increase execution certainty by providing incentives to display additional liquidity. The Commission believes that the Size Limitation's effect on execution delay is uncertain due to the potential increase in routing to execute against protected quotations, and would monitor results of the Tick Size Pilot to determine if there is significant execution delay.

The Commission also notes that the modification to the Block Size definition should mitigate and address some commenter concerns related to execution certainty and information leakage that some commenters believe could occur as a result of the Size Limitation. The reduced threshold for Block Size orders should lower the risk of market exposure for investors trading with size. The liberalized Block Size definition should permit more orders to trade without being restricted by the Trade-At Prohibition.

d. Venue Limitation

The Participants proposed the Venue Limitation that would restrict where a trading center that is displaying a quotation at the price of a protected quotation could execute incoming orders. Commenters stated that the inclusion of the Venue Limitation would protect displayed quotations, strengthen incentives for market making and gauge the impact of tick size increments.[334] Several other commenters, however, expressed concern that the Venue Limitation would increase the implementation costs and burdens for Test Group Three.[335] For example, one commenter noted that the Venue Limitation would increase message traffic and potentially cause systems failures.[336] Commenters also argued that the Venue Limitation was anti-competitive.[337] In particular, commenters stated that off-exchange trading centers should not be forced to route orders to the exchanges.

After carefully considering the comments, the Commission is modifying the Trade-At Prohibition to remove the Venue Limitation. The Commission notes that the Venue Limitation was not prescribed in the June 2014 Order. The Commission believes that the Venue Limitation would have unnecessarily restricted the ability of off-exchange market participants to execute orders in the Pilot Securities of Test Group Three.[338] Further, the Commission believes that the Venue Limitation would not have created additional incentives to display liquidity and thus is not necessary to support the purposes of the Trade-At Prohibition.[339] The Commission believes that the Size Limitation, as discussed above, should be sufficient to incentivize displayed liquidity because price matching generally would be permitted only if the market participant otherwise was publicly displaying an order in a size at least as large as the size of the matching transaction. The Commission does not believe the Venue Limitation would incentivize any material amount of additional displayed liquidity, and thus would not have provided additional economic information for the Tick Size Pilot.

Further, the Commission believes that removing the Venue Limitation should mitigate commenter concerns about the complexity and cost of implementing the Trade-At Prohibition by reducing the need for off-exchange trading centers to route orders to the exchanges. Therefore, the Commission deems it appropriate to change the NMS plan by removing the Venue Limitation.[340]

e. Modifying the Definition of Block Size

The Trade-At Prohibition proposed by the Participants included a Block Size order exception whereby the price matching of orders of a ''block size'' would be permitted. The Participants, consistent with the June 2014 Order, proposed to use the ''block size'' definition set forth in Regulation NMS, which is an order (1) of at least 10,000 shares or (2) with a market value of at least $200,000.[341] Several commenters explained that a block size order for small capitalization stocks is generally considered to be substantially smaller than that for large capitalization stocks, and thus the Trade-At Prohibition included in the proposed Tick Size Pilot

[332] *See supra* Section IV.D.3.c.

[333] *See* CHX Letter at 19. *See also supra* note 187 and accompanying text.

[334] *See supra* Section IV.D.3.d.

[335] *See supra* Section IV.D.3.d.

[336] *See* CMR Letter II at 7.

[337] *See supra* note 189 and accompanying text.

[338] A potential cost of the Venue Limitation would have been that a broker-dealer would need to connect to the ADF to display off-exchange, thereby incurring initial set-up costs for connectivity and costs to maintain that connectivity. In addition, each quote displayed on the ADF, in addition to an exchange, would result in costs to the broker-dealer related to message and recordkeeping capacity and fees and associated quoting activity costs to be paid to FINRA.

[339] The incremental effect of the Venue Limitation would be to encourage those who display on an exchange to display off-exchange.

[340] The Commission notes that the NMS plan includes three examples for how the Trade-At Prohibition would operate. Those examples do not implicate the Venue Limitation and therefore the Commission is not modifying the examples. *See* NMS plan *supra* note 3.

[341] 17 CFR 242.600(a)(9).

would unduly restrict institutional trading.[342]

In light of the views expressed by the commenters and after supplemental staff analysis, the Commission deems it is appropriate to modify the definition of ''block size,'' for purposes of the Tick Size Pilot. Specifically, an order (1) of at least 5,000 shares or (2) with a market value of at least $100,000 will be considered a block size for purposes of the Tick Size Pilot. This block size adjustment aligns with commenters' request for a smaller block size to reflect trading characteristics for potential Pilot Securities, and is consistent with the Commission staff analysis which indicates that, based on the modified selection criteria, the potential Pilot Securities, on average, trade at comparatively smaller sizes than securities with larger market capitalization. The following table reflects staff analysis:

TABLE 2 [343]—TRADE SIZE DISTRIBUTION STATISTICS

Shares/Dollars	Percent of trades	Percent of share volume	Percent of $ volume
Panel A: All NMS securities			
≥10,000 shares or ≥$200,000	0.24	13.04	16.27
Panel B: Stocks eligible for the Tick Size Pilot			
≥1,000 shares or ≥$20,000	2.08	26.61	23.37
≥3,000 shares or ≥$60,000	0.38	15.44	13.91
≥5,000 shares or ≥$100,000	0.18	12.03	11.24
≥10,000 shares or ≥$200,000	0.07	8.68	8.61

In particular, Table 2 indicates that among all NMS securities, trades with at least 10,000 shares or with a market value of at least $200,000 constitute 0.24 percent of all trades, 13.04 percent of traded share volume, and 16.27 percent of traded dollar volume. In contrast, among stocks eligible for the Tick Size Pilot, trades with at least 10,000 shares or with a market value of at least $200,000 constitute only 0.07 percent of all trades, 8.68 percent of traded share volume, and 8.61 percent of traded dollar volume.

The Commission received one comment suggesting that Block Size orders should be able to execute in subpenny increments in a manner similar to Retail Investor Orders that receive price improvement.[344] However, to avoid undermining the incremental design of the Tick Size Pilot, the Commission does not believe that Block Size orders in the Tick Size Pilot should have the same execution increments as Retail Investor Orders.

The Commission also notes that the modified Block Size definition should ease some of the burden related to the Trade-At Prohibition. Specifically, the modified Block Size definition should mitigate any potential disruption to the institutional trading of Pilot Securities by allowing more of such orders to match protected quotes. Therefore, the Commission deems it appropriate to modify the definition of Block Size to lower the thresholds.

f. Addressing Other Test Group Three Exceptions

The Participants proposed nine exceptions (numbers 4 through 12) to the Trade-At Prohibition that were not specified in the June 2014 Order. These exceptions were based on the exceptions to Rule 611.[345] Commenters raised concerns that the exceptions were too numerous and added to the complexity of the Tick Size Pilot.[346] One commenter, however, agreed with the rationale for using the Rule 611 exceptions.[347]

The Commission believes that these exceptions are appropriate. The Commission notes that market participants currently have rules, procedures, and systems in place to comply with Rule 611. Therefore, the Commission believes that the consistency with Rule 611 should alleviate concerns regarding the costs and burdens of implementing the Tick Size Pilot because market participants should be able to leverage existing systems.

The Commission recognizes the concerns related to modeling the Trade-At Prohibition exceptions on the Rule 611 exceptions. Specifically, the Commission notes that two commenters argued that the rationale for the Rule 611 exceptions should not be necessarily applied to the Trade-At Prohibition.[348] The Commission notes that approval of the Trade-At Prohibition is limited solely to the instant NMS plan and the Tick Size Pilot, and believes that utilizing current rules, procedures and systems should facilitate the implementation of the Tick Size Pilot.

The Participants also proposed an exception to the Trade-At Prohibition for fractional shares where fractional shares do not the result from dividing an order for one or more whole shares. One commenter supported this exception.[349] The Commission notes that there could be potential difficulty in the routing and executing of fractional shares and believes that such a limited exception is appropriate.

g. Odd Lots

The Commission notes that several commenters requested clarification on how odd lot orders would be treated under the Trade-At Prohibition.[350] Under Regulation NMS, odd lot orders are not considered protected quotations.[351] Since the Trade-At

[342] *See supra* Section IV.D.3.e.

[343] Data in Panel A covers all securities in the NYSE's Trade and Quote database, which consists of all NMS securities except options. Data in Panel B covers common stocks with average price greater than $2 per share, average daily trading volume smaller or equal than one million shares, and market capitalization smaller or equal than $3 billion. All data covers the period of July 1, 2013—August 31, 2013 and comes from the NYSE's Trade and Quote Data.

[344] *See supra* note 194 and accompanying text.

[345] 17 CFR 242.611(b)(2).

[346] *See supra* Section IV.D.3.f.

[347] *See* CHX Letter at 18 (supporting the exceptions as proposed).

[348] *See supra* note 196 and accompanying text.

[349] *See supra* Section IV.D.3.f.

[350] *See supra* Section IV.D.3.g.

[351] *See* Rule 600(b)(8) defines a bid or offer as the bid price or offer price communicated by a member of a national securities exchange or member of a national securities association to any broker or dealer, or to any customer, at which it is willing to buy or sell one or more round lots of any NMS security, as either principal or agent, but shall not include indications of interest. This definition of

Continued

Prohibition only applies to protected quotations, odd lot orders and the odd lot portion of mixed lot orders would therefore not be covered by the Trade-At Prohibition. On the other hand, if a trading center that is not displaying a quotation at the price equal to the traded-at protected quotation and then receives an odd lot order or the odd lot portion of a mixed lot order, the trading center would be prevented from executing the odd lot order at the price of the protected quotation unless an exception applies.[352]

E. Collection and Assessment of Tick Size Pilot Data

The Participants proposed Trading Center Data and Market Maker Profitability Data elements that were consistent with the June 2014 Order. Several commenters suggested that the data elements should be based solely on currently available data, such as the data reported to the processors, SRO proprietary data feeds, or under Rule 605, which would ease reporting burdens and costs.[353] However, as discussed below, the Commission believes that the Trading Center Data and Market Maker Profitability Data are necessary to provide the Commission and the public with measurable data on which to assess the Tick Size Pilot's impact.

1. Trading Center Data

The Tick Size Pilot would require the Participants to collect market quality statistics, data on specific orders, and data on market makers. The data would be publicly available on a monthly basis. Some commenters suggested that the Commission should rely on currently available data as this would reduce the implementation costs while still providing sufficient information to study the effects of the Tick Size Pilot.[354] However, the Commission believes that it is necessary to collect the Trading Center Data in order to fully analyze the Tick Size Pilot. These new data elements are important for assessing the Tick Size Pilot's impact on liquidity, execution quality, market maker activity, competition, and transparency and are not included currently in the publicly available data.[355]

In particular, the market quality statistics in the Trading Center Data expand in several important ways on the data reported under Rule 605. For example, compared to Rule 605 data, the market structure statistics are daily instead of monthly and will be publicly available more centrally, contain a broader set of orders, contain additional information on cancelations and hidden orders, and contain additional categories on order size and time to execution. As described in more detail below, the Trading Center Data are intended to build on an infrastructure that already exists for the collection of Rule 605 data and tailors the data from that infrastructure to the purposes of the Tick Size Pilot.

Requiring daily data and making it available more centrally should improve the feasibility of studying the Tick Size Pilot. Many liquidity and execution quality statistics using SIP data can be calculated, but these statistics are imperfect because they focus on trades instead of orders. For the purposes of assessing the Tick Size Pilot, execution quality of orders is more relevant. Rule 605 data, on the other hand, focuses on orders, but are available on a monthly aggregated basis and are from each of hundreds of trading centers. The daily frequency of the market quality statistics should allow for the study of the time series of metrics in a manner that provides a greater ability to statistically detect changes in market quality resulting from the Tick Size Pilot because it allows for the analysis of effects on a daily basis.[356] Requesting data that can be collected using existing Rule 605 infrastructure should reduce the incidence of data errors that result from creating a dataset from scratch which should increase the reliability of the data and reduce costs.

Including additional orders and reducing duplication could help to tailor the market quality statistics to the purposes of the Tick Size Pilot. The market quality statistics include a broader set of orders than Rule 605 statistics, with reduced double counting. In particular, the Tick Size Pilot requires producing market quality statistics on all orders regardless of inclusion in Rule 605 statistics, but includes only statistics on orders that the execution venue executes in part or full. The market quality statistics categorize some of the orders not included in Rule 605 data. In particular, the market quality statistics include categories for resting intermarket sweep orders, retail liquidity providing orders and midpoint passive liquidity orders and separates statistics by whether the statistics are for orders included in Rule 605 data or not. In addition, the market quality statistics include an order size category to capture orders of 10,000 shares or more, which are excluded from Rule 605. Because the purpose of Rule 605 differs from that of the Tick Size Pilot, studies of the Tick Size Pilot necessarily benefit from the inclusion of all orders that could be impacted by wider tick sizes. The Trading Center Data does not include the Rule 605 data on orders that are routed away in their entirety. The Rule 605 data for a particular trading center includes orders that a trading center routed away in their entirety. If this data was aggregated, it would produce double counting of these orders. Because Commission staff intends to aggregate the Trading Center Data across the trading centers, the Commission has decided to not require this information to prevent the likely double counting that could occur when such orders are routed in their entirety.[357]

Including additional data elements and categories in market quality statistics compared to Rule 605 allows for the study of key issues and helps to supplement other existing public data such as the data on the Commission's Market Structure Web site.[358] The additional market quality statistics include information on displayed or hidden order status, which would provide a more fulsome view of transparency than other sources of information on hidden orders including those on the Commission's Market Structure Web site.[359] The market structure statistics include significantly more refined time interval categories

bid or offer is embedded in the definition of ''quotation'' in Rule 600(b)(62), as well as the definition of ''protected bid'' or ''protected offer'' in Rule 600(b)(57). *See* ''Frequently Asked Questions Concerning Rule 611 and Rule 610, Question 7.03'', available at *https://www.sec.gov/divisions/marketreg/nmsfaq610–11.htm#sec7*.

[352] *See Data Highlight 2014–01: Odd Lot Rates in a Post-Transparency World,* (January 9, 2014), available at *http://www.sec.gov/marketstructure/research/sec_data_highlight_2014–01.pdf*.

[353] *See supra* Section IV.E.1.

[354] *Id.*

[355] Some commenters suggested that the data-collection requirements should be limited to data elements needed to assess the impact of the Tick Size Pilot on liquidity. While recognizing the importance of liquidity, as discussed throughout this order, measuring changes in liquidity is not the only goal of the Tick Size Pilot. Therefore, a broader range of data elements needs to be available for a full analysis of the Tick Size Pilot.

[356] Statistically, a daily time series provides greater ability for tests to detect changes resulting from the Tick Size Pilot.

[357] In addition, such orders would be attributed to the market center that routed them away and execution quality metrics for that market center would contain such orders that were not executed on the market center.

[358] The Commission's Market Structure Web site (*http://www.sec.gov/marketstructure/*) allows the public access to data derived from the Commission's MIDAS, which several commenters suggested as an alternative to the Trading Center Data. *See supra* Section IV.E.1.

[359] The Commission's Market Structure Web site provides data on hidden orders for only a subset of exchanges because not all exchanges provide hidden order information in their proprietary data feeds, which supply data to MIDAS.

(starting with microseconds rather than seconds) to measure speed of order executions and additional order categories. These changes allow for comparability to the statistics available on the Commission's Market Structure Web site. The Trading Center Data adds information on speed of order cancellations.[360] Because the Tick Size Pilot may affect investors' behavior regarding cancellations, the ability to observe those changes would help to better understand the effects of the Tick Size Pilot.

The Trading Center Data on specific orders provides disaggregated execution, cancellation and routing statistics for individual market and marketable limit orders. This type of information is not available from any public source or from any raw data source that, as a practical matter, is available in an easily and publicly accessible manner to meet the needs of the Tick Size Pilot. As noted above, order information is more relevant for studies of the Tick Size Pilot than SIP data because order information can consider the full order size. The data on specific orders improves on the market quality statistics by allowing researchers to more directly test hypotheses on the effect of the Tick Size Pilot on quote competition and transparency, for example. Researchers can also supplement statistics they derive from this data with statistics on limit orders from the Commission's Market Structure Web site.

Finally, the Trading Center Data includes daily statistics on registration and participation of market makers. Information on market maker registration and participation is necessary to test the hypothesis that widening the tick size could encourage market making in such a way to improve the liquidity and trading of small capitalization stocks, which could potentially allow such issuers to raise capital more easily. Such data is not available publicly, except from a few exchanges.

Because of these enhancements, the Commission believes that collections of Trading Center Data should facilitate a significantly richer analysis than the public data of the effects of the Tick Size Pilot on liquidity (*e.g.,* transaction costs by order size), execution quality (*e.g.,* speed of order executions), market maker activity, competition between trading venues (*e.g.,* routing frequency of market orders), transparency (*e.g.,* choice between displayed and hidden orders), and market dynamics (*e.g.,* rates and speed of order cancellations), and thus is necessary to fully assess the impact of the Tick Size Pilot.

2. Market Maker Profitability Data

The Tick Size Pilot would require market makers to produce the Market Maker Profitability Data, which relates to daily trading profits on the Pilot Securities. Several commenters opposed the collection of Market Maker Profitability Data.[361] Commenters raised concerns about the costs of collecting the data as well as concerns related to the confidentiality and the competitive impact of the data. Commenters suggested that market makers would forego participation in the Tick Size Pilot if they were required to submit their Market Maker Profitability Data.

The Commission notes that one of the premises behind the Tick Size Pilot is that a widened tick increment could increase market maker profits and that the increased profits could foster a more robust secondary market for small capitalization stocks (and ultimately a more robust primary market) by, for example, increasing liquidity, enhancing the attractiveness of acting as a market maker, and possibly increasing the provision of sell-side research. Without the Market Maker Profitability Data, the Commission and the public would not be able to test this hypothesis. In light of the comments on the costs of producing the Market Maker Profitability Data and the confidentiality of the data, however, the Commission deems it necessary to modify this data-collection requirement in two ways.

First, the Commission is eliminating the data element which required realized trading profits net of fees and rebates from the list of the required market maker profitability statistics and the data element that would have required the DEA to calculate the volume-weighted average of market maker realized traded profits net of fees and rebates. Some commenters expressed concern that because fees and rebates are charged monthly and in an aggregate form, the fees and rebates could be difficult to assign to daily trades in specific securities. As a result, data on market maker realized trading profits net of fees and rebates could be difficult to produce accurately and in a cost effective manner.

After carefully considering these comments, the Commission is eliminating these data elements from the list of the required Market Maker Profitability Data because of the difficulties in calculating the data and the concerns about the costs related to the calculation. Eliminating this data element should ease the implementation burdens and costs to produce the data. Further, the Commission recognizes that changes in raw realized trading profits may be more relevant for the economic relation the Tick Size Pilot is addressing. The Commission believes that the data on realized raw trading profits and unrealized raw trading profits should be sufficient to support robust analysis.[362]

Second, to address confidentiality concerns the Commission is modifying the NMS plan to require further aggregation of all Market Maker Profitability Data for public dissemination. Some commenters expressed concern about dissemination of Market Maker Profitability Data (even in aggregate form for each security) and opined that some designated market makers could deregister from Pilot Securities to avoid providing profitability data. The Commission recognizes that some Pilot Securities may have a relatively small number of designated market makers, and that in these cases aggregating profitability data across market makers may be insufficient to fully protect the confidentiality of profits of individual

[360] A wider tick size may change the composition of the market participants for a given stock and it may also change their behavior. For example, ''pinging'' the market, which results in frequent and fast cancellations, becomes more expensive and therefore less attractive. As a result, the practice may be used less in stocks with a wider tick size.

[361] *See supra* Section IV.E.2.

[362] The Commission believes that the costs of producing the modified Market Maker Data may not be high and the Commission understands that market makers may capture trading profit data for internal business purposes. One commenter suggested that measuring market maker profitability for each security may be difficult because ''costs [of market making] are typically allocated to trading across the board, rather than on a symbol-by-symbol basis.'' In response to this comment, the Commission notes that the modified Market Maker Data is limited to measures of gross trading profitability, which do not require information on general operating costs (or allocation of these costs to specific securities). Another commenter mentioned that some market makers may not currently compute their profits on a LIFO basis. However, the Commission believes that even for these market makers it should be fairly easy to implement a LIFO-like method for computing their profits as required by the Tick Size Pilot. Independent of which specific method, *e.g.,* LIFO, FIFO, or average cost basis, is used to compute profits, the same information has to be collected, processed, and stored. The only difference is the formula for computation. The Commission recognizes that there will be costs associated with computing profits in a manner different than current profit calculations. However, the requirement to produce profitability figures for the Tick Size Pilot does not mean that market makers are required to change how they currently compute trading profits for internal business purposes. For example, a market maker may continue to use a FIFO-like method for internal profit computations and only report profits on a LIFO basis for the purpose of the Tick Size Pilot. This would alleviate the risk for disruptions due to a change in their practices.

market makers. For example, some smaller market makers may be able to use aggregate data to infer the profitability of their larger competitors, which could give them an unfair competitive advantage. To address the confidentiality concerns raised by commenters and to ensure that public dissemination of the Market Maker Data does not adversely impact competition between market makers, the Commission has determined that the DEA should further aggregate the Market Maker Profitability Data by each Test Group and Control Group such that the public data will not contain profitability measures for each security. The Commission notes that the data available to Participants and the Commission would continue to identify the market maker profits in individual stocks.[363] As a result of this change, the public would not have the ability to match individual stocks in the Test Groups with stocks from the Control Group and compare changes in profitability between stocks from the Test Groups and the matched stocks. The Commission, however, believes this modification should adequately address confidentiality concerns related the dissemination of detailed Market Maker Profitability Data. Therefore, the Commission deems it appropriate to modify the Market Maker Profitability Data as described above.

Some commenters suggested that the disclosure of Market Maker Profitability Data to DEAs may be anti-competitive, as market makers would essentially have to disclose sensitive, proprietary information to their exchange competitors. In response to these comments, the Commission notes that many market makers are already required to provide profitability information to their DEAs as part of their registration requirements and by virtue of their membership with a national securities exchange or association. Thus, the Commission believes that the additional impact of the disclosing Market Maker Data is not likely to be significant. Moreover, the Commission emphasizes that the Participants are expected to collect and use Tick Size Pilot data, including Market Maker Profitability Data, for legitimate regulatory purposes, and not for inappropriate, anti-competitive purposes.

[363] The Commission notes that it will keep this information confidential, subject to the provisions of applicable law. Additionally, as noted below, because the Participants will have data that is more detailed than the public, the Commission has determined that the SROs should provide an assessment of Market Maker Profitability Data. *See infra* Section V.E.3.

3. Assessment of Tick Size Pilot Data

The Tick Size Pilot would require the Participants to provide a joint assessment on the impact of the Tick Size Pilot, no later than six months after the end of the Pilot Period. In the June 2014 Order, the Commission identified certain assessments that the Participants were to conduct and to submit to the Commission. However, the Participants did not include the assessment related to the impact of quoting and trading increments on the profitability of market makers in the proposed Tick Size Pilot because, in their view, the market makers would be better positioned, compared to the Participants, to analyze such data.[364]

As previously noted, the impact of a wider tick size on market maker profitability is an important assessment to be conducted. In addition, the Commission has modified the Market Maker Profitability Data to require further aggregation of publically released data. While the public will still be able to study this aggregated profitability data, the public is limited in its ability to conduct an independent assessment based on the more granular profitability data available to the Participants and the Commission. Therefore, the Commission is modifying the NMS plan to reflect that the Participants are required to conduct and submit this assessment. The Commission deems it appropriate to modify the NMS plan to require this assessment.

The Commission is also modifying the timing when the impact assessments should be prepared by the Participants and submitted to the Commission. In particular, the Commission is modifying the NMS plan to require the Participants to submit their assessments 18-months after the Tick Size Pilot begins based on data generated during the first year of the Tick Size Pilot or a subset of which that represents the impact of the Tick Size Pilot. The Commission notes that the timing for when the assessments are due to the Commission has not changed. As proposed, the Participants would have submitted their assessment six months after the end of the Pilot Period (which would have been 18-months after the Tick Size Pilot was implemented). This modification has been made in relation to the modified Pilot Period. As a result, the Commission will receive the impact assessment of the Tick Size Pilot six months prior to its completion. The Commission is not modifying the NMS plan to require the Participants to conduct more frequent periodic impact assessments as some commenters' suggested[365] because it does not believe that the incremental benefit of such additional assessment would justify the increased burdens and costs on the Participants. The Commission deems it appropriate to modify the timing of the Participant assessments because it would provide the Commission and the public with relevant data on the impact of the Tick Size Pilot before the Pilot Period ends.

[364] *See* Notice, 79 FR at 66428, *supra* note 5.

Commenters also stated that the Commission should define success metrics for the Tick Size Pilot and what would warrant it being adopted on a permanent basis.[366] The Commission has carefully considered these comments but believes that defining the success metrics before the Tick Size Pilot begins could unduly influence behavior by market participants. The Tick Size Pilot is intended to be a test to inform the Commission and the public about the possible impacts of a wider tick size in small capitalization securities. The NMS plan sets forth the data elements that the Commission believes would be informative and support broad analysis. The Commission has described the questions that it believes the data should be able to address. In particular, the Commission believes that the Tick Size Pilot as designed should generate data that would support analysis and studies of the effect of increased tick size on liquidity, execution quality for investors, volatility, market maker profitability, competition, transparency and institutional ownership. The results of the Tick Size Pilot could reveal tradeoffs among these and other considerations and the potential permutations in the results are likely to be too extensive to define success at this point.

F. Use of an NMS Plan

Certain commenters suggested that the Tick Size Pilot should be implemented via Commission rulemaking, rather than through the NMS plan process.[367] Some commenters suggested that the Tick Size Pilot was too significant to be delegated to the Participants and raised concerns that not all market participants, including market makers, broker-dealers and institutional investors, were included in the development of the Tick Size Pilot. Certain commenters were concerned about potential conflict of interests that could arise in the Participants'

[365] *See supra* Section IV.E.3.

[366] *Id.*

[367] *See supra* Section IV.F.

development of the NMS plan. A number of commenters questioned whether it was appropriate to have Participants formulate an NMS plan that would affect their competitors. Additionally, some commenters intimated that a conflict of interest may exist by highlighting the Participants' for-profit status.

As discussed above, the Commission has reasons to proceed with the Tick Size Pilot as an NMS plan.[368] The process for an NMS plan has some similarities to a rulemaking. Like a Commission rulemaking, an NMS plan is subject to public notice and comment, which provides all interested parties, including market makers, broker-dealers, investors, and issuers, an opportunity to offer substantive comment on the plan prior to Commission consideration of whether to approve it. The Commission published this NMS plan and therefore, it was subject to notice and comment.[369] In addition, the process is subject to Commission's oversight and approval authority. In this regard, Rule 608(b)(2) provides that the Commission shall approve an NMS plan, with such changes or subject to such conditions as the Commission may deem necessary or appropriate, if it finds that such plan or amendment is necessary or appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of, a national market system, or otherwise in furtherance of the purposes of the Act.[370] As discussed throughout this order, the Commission believes the NMS plan meets the standard for approval and has exercised its authority to modify this NMS plan consistent with the standard.

Certain commenters raised concerns related to the role of the Participants, and of potential conflicts of interest, in the development of the Tick Size Pilot. The Commission recognizes that most of the Participants are for-profit exchanges that compete in various respects with their broker-dealer members. However, the Participants also are self-regulatory organizations, with specified regulatory obligations under the Act and Commission rules. Among other things, Section 11A(a)(3) of the Act, and Rule 608 thereunder, contemplate that SROs may act jointly in furtherance of their regulatory obligations by developing and filing proposed NMS plans with the Commission and, if approved, operating them subject to the Commission's oversight and authority.[371] The Commission recognizes that certain provisions of the NMS plan could have a competitive impact on broker-dealer members and other market participants. The Rule 608 process, however, requires that proposed NMS plans be published for public comment and subject to Commission review and approval. As discussed above, the Commission has reviewed the NMS plan and thoroughly evaluated commenters' concerns, including those relating to the impact of the Tick Size Pilot on competition. The Commission has modified the NMS plan by removing the Venue Limitation, which it believes would have placed an unnecessary burden on competition, and the Commission exercised its authority to make other modifications to address other concerns.

G. Issuer Participation

Commenters suggested that issuers should have the ability to opt-in or opt-out of the Tick Size Pilot,[372] or establish committees that represent the interests of issuers during the Tick Size Pilot. One commenter believed that instead of approving the Tick Size Pilot, the Commission should permit issuers to contract with market makers for the purpose of determining their spreads. The Commission has carefully considered these comments but believes that in order to generate useful and reliable data from the Tick Size Pilot, issuers should not be able to opt-in or opt-out. Allowing such an option would introduce a selection bias that would make the results of the Tick Size Pilot applicable only to the participating securities and limit the ability of researchers to draw specific conclusions about the impact of wider tick sizes on market for small capitalization stocks. The Commission believes that permitting issuers to contract with market makers for the purpose of determining spreads would similarly introduce selection bias and undermine the goal of the Tick Size Pilot.[373]

H. Implementation

Commenters noted that a one-year implementation period could be appropriate if the Tick Size Pilot was simplified, by among other things, removing the Trade-At Prohibition. [374] While the Commission has not removed the Trade-At Prohibition, the Commission believes that the modifications to the Tick Size Pilot, such as restricting the Trade-At Prohibition to Regular Trading Hours, removing the Venue Limitation and removing realized trading profits net of fees and rebates from the Market Maker Profitability Data, should lessen some of the implementation burdens.

Accordingly, the Commission believes that he Tick Size Pilot should be implemented within one year after the publication of this order. The Commission believes that the one year period for implementation should provide adequate time for the development and testing of applicable trading and compliance systems, the filing and approval of SRO rules related to the Tick Size Pilot's quoting and trading requirements, and the development and implementation of the written policies and procedures by Participants and their members that are reasonably designed to comply with the applicable quoting and trading increments.

Certain commenters requested that the Commission, or the Participants, release detailed frequently-asked-questions (''FAQs'') to assist implementation of the Tick Size Pilot.[375] As the implementation period progresses, should questions arise, the Commission and the Participants will consider whether to issue FAQs to address any such questions.

One commenter requested that the list of securities be finalized prior to determining the implementation schedule.[376] The Commission does not believe it is necessary to finalize the list of securities prior to determining the implementation schedule. The Commission notes that the list of securities would be finalized based on data collected during the Measurement Period. [377] To avoid including Pilot Securities whose characteristics would not meet the defined selection criteria, the time gap between the Measurement Period and the beginning of the Pilot Period should be as short as possible. For example, the NMS plan includes price as one criterion in the selection of securities such that the closing price be at least $1.50 on every trading day

[368] *See supra* Section V.A.

[369] *See* Notice *supra* note 5.

[370] 17 CFR 242.608(b)(2).

[371] 15 U.S.C. 78k-1(a)(3). *See* 17 CFR 242.608.

[372] *See supra* Section IV.G.

[373] In addition, the Commission notes that certain exchanges currently operate pilot programs that permit issuers to, indirectly through the exchange, compensate market makers to provide liquidity in the issuers' securities. *See, e.g.,* NYSE Arca Equities Rule 8.800 (NYSE Arca Equities ETP Incentive Program); BATS Rule 11.8.02 (BATS Competitive Liquidity Provider Program); and Nasdaq Rule 5950 (Market Quality Program).

[374] *See supra* note 244 and accompanying text.

[375] *See* KCG Letter at 17; Liquidnet Letter at 2; and Bloomberg Letter at 20.

[376] *See* Bloomberg Letter at 20.

[377] *See* NMS plan Section (I)(N), which defines the Measurement Period as the U.S. trading days during the three-calendar-month period ending at least 30 days prior to the effective date of the Pilot Period.

during the Measurement Period. If the Measurement Period ended six months before the start of the Tick Size Pilot, the risk that securities may have prices below $1.00 during the Tick Size Pilot would be higher than the risk with a later Measurement Period.

VI. Conclusion

For the reasons discussed above, the Commission finds that the NMS *Plan to Implement a Tick Size Pilot Program* is necessary or appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanism of, a national market system, or otherwise in furtherance of the purposes of the Act.

It is therefore ordered, that pursuant to Section 11A of the Act, and the rules and regulations thereunder, that the NMS plan (File No. 4–657), as modified, be and it hereby is approved and declared effective, and the Participants are authorized to act jointly to implement the NMS plan and its Tick Size Pilot as a means of facilitating a national market system.

By the Commission.

Brent J. Fields,

Secretary.

Exhibit A

Plan To Implement a Tick Size Pilot Program Submitted to the Securities and Exchange Commission Pursuant to Rule 608 of Regulation NMS Under the Securities Exchange Act of 1934 (*As Modified by the Commission; additions are in underline and deletions are in [brackets]*)

Table of Contents

Preamble

Pursuant to Section 11A(a)(3)(B) of the Exchange Act, which authorizes the SEC to require by order self-regulatory organizations to act jointly with respect to matters as to which they share authority in planning, developing, operating, or regulating a national market system, the SEC issued an order directing the Participants to submit a Tick Size Pilot Plan as a national market system plan pursuant to Rule 608(a)(3) of Regulation NMS under the Exchange Act. In response, the Participants submit this Plan to implement a Tick Size Pilot Program that will allow the Commission, market participants, and the public to study and assess the impact of increment conventions on the liquidity and trading of the common stocks of small capitalization companies. To do so, the Plan provides for the widening of quoting and trading increments for a group of Pilot Securities. As detailed herein, the Pilot Securities will be subdivided into three Test Groups and a Control Group, each with its own requirements and exceptions relating to quoting and trading increments to facilitate the referenced analysis.

I. Definitions

(A) ''Average effective spread'' has the meaning provided in Rule 600(b)(5) of Regulation NMS under the Exchange Act.

(B) ''Average realized spread'' has the meaning provided in Rule 600(b)(6) of Regulation NMS under the Exchange Act.

(C) ''Benchmark trade'' means the execution of an order at a price that was not based, directly or indirectly, on the quoted price of a Pilot Security at the time of execution and for which the material terms were not reasonably determinable at the time the commitment to execute the order was made.

(D) ''Best protected bid'' means the highest priced protected bid.

(E) ''Best protected offer'' means the lowest priced protected offer.

(F) ''Block Size'' *means for purposes of this Tick Size Pilot Program, an order (1) of at least 5,000 shares or (2) for a quantity of stock having a market value of at least $100,000* [has the meaning provided in Rule 600(b)(9) of Regulation NMS under the Exchange Act].

(G) ''Brokered cross trade'' means a trade that a broker-dealer that is a member of a Participant executes directly by matching simultaneous buy and sell orders for a Pilot Security.

(H) ''Closing Price'' means the closing auction price on the primary listing exchange, or if not available, then the last regular-way trade reported by the processor prior to 4:00 p.m. ET.

(I) ''Designated Examining Authority'' means, with respect to a member of two or more self-regulatory organizations, the self-regulatory organization responsible for (i) examining such member for compliance with the financial responsibility requirements imposed by the Exchange Act, or by Commission or self-regulatory organization rules, (ii) receiving regulatory reports from such member, (iii) examining such member for compliance with, and enforcing compliance with, specified provisions of the Exchange Act, the rules and regulations thereunder, and self-regulatory organization rules, and (iv) carrying out any other specified regulatory functions with respect to such member.

(J) ''Exchange Act'' means the Securities Exchange Act of 1934, as amended.

(K) ''Inside-the-quote limit order,'' ''at-the-quote limit order,'' and ''near-the-quote limit order'' mean non-marketable buy orders that are ranked at a price, respectively, higher than, equal to, and lower by $0.10 or less than the National Best Bid at the time of order receipt, and non-marketable sell orders that are ranked at a price, respectively, lower than, equal to, and higher by

$0.10 or less than the National Best Offer at the time of order receipt.

(L) ''Market Maker'' means a dealer registered with any self-regulatory organization, in accordance with the rules thereof, as (i) a market maker or (ii) a liquidity provider with an obligation to maintain continuous, two-sided trading interest.

(M) ''Marketable limit order'' means any buy order with a limit price equal to or greater than the National Best Offer at the time of order receipt, or any sell order with a limit price equal to or less than the National Best Bid at the time of order receipt. For price sliding, pegged, discretionary, or similar order types where the ranked price is different from the limit price, the ranked price will determine marketability.

(N) ''Measurement Period'' means the U.S. trading days during the three-calendar- month period ending at least 30 days prior to the effective date of the Pilot Period.

(O) ''National Best Bid'' and ''National Best Offer'' have the meanings provided in Rule 600(b)(42) of Regulation NMS under the Exchange Act.

(P) ''Negotiated Trade'' means (i) a Benchmark trade, including, but not limited to, a Volume-Weighted Average Price trade or a Time-Weighted Average Price trade, provided that, if such a trade is composed of two or more component trades, each component trade complies with the quoting and trading increment requirements of the Plan, or with an exception to such requirements, or (ii) a Pilot Qualified Contingent Trade.

(Q) ''NMS common stock'' means an NMS stock that is common stock of an operating company.

(R) ''NMS stock'' has the meaning provided in Rule 600(b)(47) of Regulation NMS under the Exchange Act.

(S) ''Operating Committee'' has the meaning provided in Section III(C) of the Plan.

(T) ''Participant'' means a party to the Plan.

(U) ''Pilot Period'' means the operative period of the Tick Size Pilot Program, lasting [one] *two* years from the date of implementation.

(V) ''Pilot Qualified Contingent Trade'' means a transaction consisting of two or more component orders, executed as agent or principal, where: (1) at least one component order is in an NMS common stock; (2) all components are effected with a product or price contingency that either has been agreed to by the respective counterparties or arranged for by a broker-dealer as principal or agent; (3) the execution of one component is contingent upon the execution of all other components at or near the same time; (4) the specific relationship between the component orders *(e.g.,* the spread between the prices of the component orders) is determined at the time the contingent order is placed; (5) the component orders bear a derivative relationship to one another, represent different classes of shares of the same issuer, or involve the securities of participants in mergers or with intentions to merge that have been announced or since canceled; and (6) the transaction is fully hedged (without regard to any prior existing position) as a result of the other components of the contingent trade.

(W) ''Pilot Securities'' means those securities that satisfy the criteria established in Section V.

(X) ''Plan'' means the plan set forth in this instrument, as amended from time to time in accordance with its provisions.

(Y) ''Processor'' means the single plan processor responsible for the consolidation of information for an NMS stock pursuant to Rule 603(b) of Regulation NMS under the Exchange Act.

(Z) ''Protected bid'' and ''protected offer'' have the meanings provided in Rule 600(b)(57) of Regulation NMS under the Exchange Act.

(AA) ''Protected quotation'' has the meaning provided in Rule 600(b)(58) of Regulation NMS under the Exchange Act.

(BB) ''Quotation'' has the meaning provided in Rule 600(b)(62) of Regulation NMS under the Exchange Act.

(CC) ''Regular Trading Hours'' has the meaning provided in Rule 600(b)(64) of Regulation NMS under the Exchange Act. For purposes of the Plan, Regular Trading Hours can end earlier than 4:00p.m. ET in the case of an early scheduled close.

(DD) ''Retail Investor Order'' means an agency order or a riskless principal order originating from a natural person, provided that, prior to submission, no change is made to the terms of the order with respect to price or side of market and the order does not originate from a trading algorithm or any other computerized methodology. The Participant that is the Designated Examining Authority of a member of a Participant operating a trading center executing a Retail Investor Order will require such trading center to sign an attestation that substantially all orders to be executed as Retail Investor Orders will qualify as such under the Plan.

(EE) ''Retail liquidity providing order'' means an order entered into a Participant-operated retail liquidity program to execute against Retail Investor Orders.

(FF) ''SEC'' means the United States Securities and Exchange Commission.

(GG) ''SRO quotation feed'' means any market data feed disseminated by a self-regulatory organization.

(HH) ''Tick Size Pilot Program'' means the program established by this Plan and by the corresponding rules of the Participants.

(II) ''Time of order execution'' means the time (to the second, or to such smaller increments as are available) that an order was executed at any venue.

(JJ) ''Time of order receipt'' means the time (to the second, or to such smaller increments as are available) that an order was received by a trading center for execution.

(KK) ''Time-Weighted Average Price'' means the price calculated as the average price of a security over a specified period of time.

(LL) ''Trade-at'' means the execution by a trading center of a sell order for a Pilot Security at the price of a protected bid or the execution of a buy order for a Pilot Security at the price of a protected offer *during Regular Trading Hours.*

(MM) ''Trade-at Intermarket Sweep Order'' means a limit order for a Pilot Security that meets the following requirements:

(1) When routed to a trading center, the limit order is identified as an Intermarket Sweep Order; and

(2) Simultaneously with the routing of the limit order identified as an Intermarket Sweep Order, one or more additional limit orders, as necessary, are routed to execute against the full displayed size of any protected bid, in the case of a limit order to sell, or the full displayed size of any protected offer, in the case of a limit order to buy, for the Pilot Security with a price that is equal to the limit price of the limit order identified as an Intermarket Sweep Order. These additional routed orders also must be marked as Intermarket Sweep Orders.

(NN) ''Trading center'' has the meaning provided in Rule 600(b)(78) of Regulation NMS under the Exchange Act.

(OO) ''Volume-Weighted Average Price'' means the price calculated by summing up the products of the number of single-counted shares traded and the respective share price, and dividing by the total number of single-counted shares traded.

II. Parties

(A) List of Parties

The parties to the Plan are as follows:

(1) BATS Exchange, Inc., 8050 Marshall Drive, Lenexa, Kansas 66214
(2) BATS Y-Exchange, Inc., 8050 Marshall Drive, Lenexa, Kansas 66214
(3) Chicago Stock Exchange, Inc., 440 South LaSalle Street, Chicago, Illinois 60605
(4) EDGA Exchange, Inc., 545 Washington Boulevard, Sixth Floor, Jersey City, NJ 07310
(5) EDGX Exchange, Inc., 545 Washington Boulevard, Sixth Floor, Jersey City, NJ 07310
(6) Financial Industry Regulatory Authority, Inc., 1735 K Street NW., Washington, DC 20006
(7) NASDAQ OMX BX, Inc., One Liberty Plaza, New York, NY 10006
(8) NASDAQ OMX PHLX LLC, 1900 Market Street, Philadelphia, PA 19103
(9) The Nasdaq Stock Market LLC, 1 Liberty Plaza, 165 Broadway, New York, NY 10006
(10) New York Stock Exchange LLC, 11 Wall Street, New York, NY 10005
(11) NYSE MKT LLC, 11 Wall Street, New York, NY 10005
(12) NYSE Area, Inc., 11 Wall Street, New York, NY 10005

(B) Compliance Undertaking

By subscribing to and submitting the Plan for approval by the SEC, each Participant agrees to comply with, and to enforce compliance by its members, as applicable, with the provisions of the Plan as required by Rule 608(c) of Regulation NMS under the Exchange Act. To this end, each Participant will adopt rules requiring compliance by its members with the provisions of the Plan, as applicable, and adopt such other rules as are needed for such compliance.

(C) New Participants

The Participants agree that any entity registered as a national securities exchange or national securities association under the Exchange Act may become a Participant by: (1) executing a copy of the Plan, as then in effect; (2) providing each then-current Participant with a copy of such executed Plan; and (3) effecting an amendment to the Plan as specified in Section III(B) of the Plan.

III. Amendments to Plan

(A) General Amendments

Except with respect to the addition of new Participants to the Plan, any proposed change in, addition to, or deletion from the Plan will be effected by means of a written amendment to the Plan that: (1) sets forth the change, addition, or deletion; (2) is executed on behalf of each Participant; and (3) is approved by the SEC pursuant to Rule 608 of Regulation NMS under the Exchange Act, or otherwise becomes effective under Rule 608 of Regulation NMS under the Exchange Act.

(B) New Participants

With respect to new Participants, an amendment to the Plan may be effected by the new national securities exchange or national securities association executing a copy of the Plan, as then in effect (with the only changes being the addition of the new Participant's name in Section II(A) of the Plan) and submitting such executed Plan to the SEC for approval. The amendment will be effective when it is approved by the SEC in accordance with Rule 608 of Regulation NMS under the Exchange Act, or otherwise becomes effective pursuant to Rule 608 of Regulation NMS under the Exchange Act.

(C) Operating Committee

(1) Each Participant will select from its staff one individual to represent the Participant as a member of an Operating Committee, together with a substitute for such individual. The substitute may participate in deliberations of the Operating Committee and will be considered a voting member thereof only in the absence of the primary representative. Each Participant will have one vote on all matters considered by the Operating Committee. No later than the initial date of Plan operations, the Operating Committee will designate one member of the Operating Committee to act as the Chair of the Operating Committee.

(2) The Operating Committee will monitor the procedures established pursuant to this Plan and advise the Participants with respect to any deficiencies, problems, or recommendations as the Operating Committee may deem appropriate. The Operating Committee will establish specifications and procedures for the implementation and operation of the Plan that are consistent with the provisions of this Plan. With respect to matters in this paragraph, Operating Committee decisions must be approved by a simple majority vote.

(3) Any recommendation for an amendment to the Plan from the Operating Committee that receives an affirmative vote of at least two-thirds of the Participants, but is less than unanimous, will be submitted to the SEC as a request for an amendment to the Plan initiated by the Commission under Rule 608 of Regulation NMS.

IV. Policies and Procedures

Consistent with the compliance undertakings set out in Section II(B), all Participants and members of Participants will be required to establish, maintain, and enforce written policies and procedures that are reasonably designed to comply with applicable quoting and trading requirements specified in Section VI for the Pilot Securities.

Each Participant, as applicable, will develop appropriate policies and procedures that provide for collecting and reporting to the SEC the data described in Appendix B. In addition, each Participant that is the Designated Examining Authority of a member of a Participant operating a trading center will require such member to develop appropriate policies and procedures for collecting and reporting the data described in Items I and II of Appendix B, as applicable, to the Designated Examining Authority. Each Participant that is the Designated Examining Authority of a member of a Participant operating a trading center will develop appropriate policies and procedures, as applicable, that provide for collecting and reporting such data to the SEC. The data collection and reporting obligations are described below in Section VII.

Each Participant that is the Designated Examining Authority of a Market Maker will require such Market Maker to develop policies and procedures for collecting the data set out in Appendix C and reporting it to the Designated Examining Authority. Each Participant that is the Designated Examining Authority of a Market Maker will develop appropriate policies and procedures that provide for collecting and reporting such data to the SEC on an aggregated basis. The Designated Examining Authority will also develop policies and procedures reasonably designed to ensure the confidentiality of the non-aggregated data it receives from Market Makers. The data collection and reporting obligations are described below in Section VII.

V. Identification of Pilot Securities

(A) Criteria for Selection of Pilot Securities

Pilot Securities will consist of those NMS common stocks that satisfy the following criteria:

(1) A market capitalization of $[5]*3* billion or less on the last day of the Measurement Period, where market capitalization is calculated by multiplying the total number of shares outstanding on such day by the Closing Price of the security on such day;

(2) A Closing Price of at least $2.00 on the last day of the Measurement Period;

(3) A Closing Price on every U.S. trading day during the Measurement Period that is not less than $1.50;

(4) A Consolidated Average Daily Volume (''CADV'') during the Measurement Period of one million shares or less, where the CADV is calculated by adding the single-counted share volume of all reported transactions in the Pilot Security during the Measurement Period and dividing by the total number of U.S. trading days during the Measurement Period; and

(5) A Measurement Period Volume-Weighted Average Price (''Measurement Period VWAP'') of at least $2.00, where the Measurement Period VWAP is determined by calculating the VWAP for each U.S. trading day during the Measurement Period, summing the daily VWAP across the Measurement Period, and dividing by the total number of U.S. trading days during the Measurement Period.

For purposes of the CADV and Measurement Period VWAP calculations described in Sections V(A)(4) and V(A)(5), U.S. trading days during the Measurement Period with early closes will be excluded. An NMS common stock that had its initial public offering within six months of the start of the Pilot Period will not be eligible to be a Pilot Security.

(B) Grouping of Pilot Securities

The Operating Committee will oversee the Pilot Security grouping process in accordance with the methodology and criteria set out in this subsection. Once the population of Pilot Securities has been determined based on the criteria in Section V(A), the Operating Committee will select the Pilot Securities to be placed into three Test Groups by means of a stratified random sampling process. To effect this sampling, each of the Pilot Securities will be categorized as having (1) a low, medium, or high share price based on the Measurement Period VWAP, (2) low, medium, or high market capitalization based on the last day of the Measurement Period, and (3) low, medium, or high trading volume based on the CADV during the Measurement Period, yielding 27 possible categories. Low, medium, and high subcategories will be established by dividing the categories into three parts, each containing a third of the population.

Pilot Securities will be randomly selected from each of the 27 categories for inclusion into the Test Groups. If, however, a single category of Pilot Securities contains fewer than 10 securities, it will be combined with another of the 27 categories that contains at least 10 securities. If two or more categories of Pilot Securities contain fewer than 10 securities, those categories will be combined, provided the combined category contains at least 10 securities. If the combined category contains fewer than 10 securities, then the category will be combined with another of the 27 categories that contains at least 10 securities.

Pilot Securities will be randomly selected from each category for inclusion in the three Test Groups based on the percentage of Pilot Securities comprised of that category. As a result, each category will be represented in the three Test Groups based on its relative proportion to the population of Pilot Securities. Further, a primary listing market's securities will be selected from each category and included in the three Test Groups in the same proportion as that primary listing market's securities comprise each category of Pilot Securities. Each Test Group will consist of 400 Pilot Securities. Those Pilot Securities not placed into the three Test Groups will constitute the Control Group.

(C) Publication of Pilot Securities and Groups

Each primary listing exchange will make publicly available for free on its Web site a list of those Pilot Securities listed on that exchange and included in the Control Group and each Test Group, adjusting for ticker symbol changes and relevant corporate actions. The list of Pilot Securities will contain the data specified in Appendix A.

VI. Pilot Test Groups

As described in Section V(B), the Pilot Securities will be divided into four groups: a Control Group and three Test Groups. Each Test Group will consist of 400 Pilot Securities. The Control Group will consist of the Pilot Securities not placed into a Test Group.

(A) Control Group

Pilot Securities in the Control Group may be quoted and traded at any price increment that is currently permitted.

(B) Test Group One

Pilot Securities in Test Group One will be quoted in $0.05 minimum increments, but may continue to trade at any price increment that is currently permitted. Participants will adopt rules prohibiting Participants or any member of a Participant from displaying, ranking, or accepting from any person any displayable or non-displayable bids or offers, orders, or indications of interest in any Pilot Security in Test Group One in price increments other than $0.05. However, orders priced to execute at the midpoint and orders entered in a Participant-operated retail liquidity program may be ranked and accepted in increments of less than $0.05.

(C) Test Group Two

Pilot Securities in Test Group Two will be subject to the same quoting requirements as Test Group One, along with the applicable quoting exceptions. In addition, Pilot Securities in Test Group Two may only be traded in $0.05 minimum increments. Participants will adopt rules prohibiting trading centers operated by Participants and members of Participants from executing orders in any Pilot Security in Test Group Two in price increments other than $0.05. The $0.05 minimum trading increment applies to brokered cross trades. Pilot Securities in Test Group Two may trade in increments less than $0.05, however, under the following circumstances:

(1) Trading may occur at the midpoint between the National Best Bid and the National Best Offer or the midpoint between the best protected bid and the best protected offer;

(2) Retail Investor Orders may be provided with price improvement that is at least $0.005 better than the best protected bid or the best protected offer; and

(3) Negotiated Trades may trade in increments less than $0.05.

(D) Test Group Three

Pilot Securities in Test Group Three will be subject to the same quoting and trading requirements as Test Group Two, along with the applicable quoting and trading exceptions. In addition, Pilot Securities in Test Group Three will be subject to a trade-at prohibition.

Trade-at Prohibition. Under the trade-at prohibition, the Plan will (1) prevent a trading center that was not quoting from price-matching protected quotations and (2) permit a trading center that was quoting at a protected quotation to execute orders at that level, but only up to the amount of its displayed size.

In accordance with the trade-at prohibition, Participants will adopt rules prohibiting trading centers operated by Participants and members of Participants from executing a sell order for a Pilot Security at the price of a protected bid or from executing a buy order for a Pilot Security at the price of a protected offer unless such executions fall within an exception set forth below.

Trade-at Prohibition Exceptions. Trading centers will be permitted to execute an order for a Pilot Security at a price equal to a protected bid or protected offer under the following circumstances:

(1) The order is executed by a trading center that is displaying a quotation, via either a processor or an SRO quotation feed, at a price equal to the traded-at protected quotation but only up to the trading center's full displayed size [. Where the quotation is displayed through a national securities exchange, the execution at the size of the order must occur against the displayed size on that national securities exchange. Where the quotation is displayed through the Alternative Display Facility or another facility approved by the Commission that does not provide execution functionality, the execution at the size of the order must occur against the displayed size in accordance with the rules of the Alternative Display Facility or such approved facility];

(2) The order is of Block Size;

(3) The order is a Retail Investor Order executed with at least $0.005 price improvement;

(4) The order is executed when the trading center displaying the protected quotation that was traded at was experiencing a failure, material delay, or malfunction of its systems or equipment;

(5) The order is executed as part of a transaction that was not a ''regular way'' contract;

(6) The order is executed as part of a single-priced opening, reopening, or closing transaction by the trading center;

(7) The order is executed when a protected bid was priced higher than a protected offer in the Pilot Security;

(8) The order is identified as an Intermarket Sweep Order;

(9) The order is executed by a trading center that simultaneously routed Trade-at Intermarket Sweep Orders to execute against the full displayed size of the protected quotation that was traded at;

(10) The order is executed as part of a Negotiated Trade;

(11) The order is executed when the trading center displaying the protected quotation that was traded at had displayed, within one second prior to execution of the transaction that constituted the trade-at, a best bid or best offer, as applicable, for the Pilot Security with a price that was inferior to the price of the trade-at transaction.

(12) The order is executed by a trading center which, at the time of order receipt, the trading center had guaranteed an execution at no worse than a specified price (a ''stopped order''), where:

a. The stopped order was for the account of a customer;

b. The customer agreed to the specified price on an order-by-order basis; and

c. The price of the trade-at transaction was, for a stopped buy order, equal to the national best bid in the Pilot Security at the time of execution or, for a stopped sell order, equal to the national best offer in the Pilot Security at the time of execution; or

(13) The order is for a fractional share of a Pilot Security, provided that such fractional share order was not the result of breaking an order for one or more whole shares of a Pilot Security into orders for fractional shares or was not otherwise effected to evade the requirements of the trade-at prohibition or any other provisions of the Plan.

The following examples illustrate the basic operation of the trade-at prohibition:

Example 1

The NBBO for Pilot Security ABC is $20.00 × $20.10. Trading Center 1 is displaying a 100-share protected bid at $20.00. Trading Center 2 is displaying a 100-share protected bid at $19.95. There are no other protected bids. Trading Center 3 is not displaying any shares in Pilot Security ABC but has 100 shares hidden at $20.00 and has 100 shares hidden at $19.95. Trading Center 3 receives an incoming order to sell for 400 shares. To execute the 100 shares hidden at $20.00, Trading Center 3 must respect the protected bid on Trading Center 1 at $20.00. Trading Center 3 must route a Trade-at Intermarket Sweep Order to Trading Center 1 to execute against the full displayed size of the protected bid, at which point Trading Center 3 is permitted to execute against the 100 shares hidden at $20.00. To execute the 100 shares hidden at $19.95, Trading Center 3 must respect the protected bid on Trading Center 2 at $19.95. Trading Center 3 must route a Trade-at Intermarket Sweep Order to Trading Center 2 to execute against the full displayed size of the protected bid, at which point Trading Center 3 is permitted to execute against the 100 shares hidden at $19.95.

Example 2

The NBBO for Pilot Security ABC is $20.00 × $20.10. Trading Center 1 is displaying a 100-share protected bid at $20.00. Trading Center 2 is displaying a 100-share protected bid at $20.00. Trading Center 2 also has 300 shares hidden at $20.00 and has 300 shares hidden at $19.95. Trading Center 3 is displaying a 100-share protected bid at $19.95. There are no other protected bids. Trading Center 2 receives an incoming order to sell for 900 shares. Trading Center 2 may execute 100 shares against its full displayed size at the protected bid at $20.00. To execute the 300 shares hidden at $20.00, Trading Center 2 must respect the protected bid on Trading Center 1 at $20.00. Trading Center 2 must route a Trade-at Intermarket Sweep Order to Trading Center 1 to execute against the full displayed size of Trading Center 1's protected bid, at which point Trading Center 2 is permitted to execute against the 300 shares hidden at $20.00. To execute the 300 shares hidden at $19.95, Trading Center 2 must respect the protected bid on Trading Center 3 at $19.95. Trading Center 2 must route a Trade-at Intermarket Sweep Order to Trading Center 3 to execute against the full displayed size of Trading Center 3's protected bid, at which point Trading Center 2 is permitted to execute against the 300 shares hidden at $19.95.

Example 3

The NBBO for Pilot Security ABC is $20.00 × $20.10. Trading Center 1 is displaying a 100-share protected bid at $20.00. Trading Center 1 is also displaying 300 shares at $19.90 on an SRO quotation feed. Trading Center 2 is displaying a 100-share protected bid at $19.95. Trading Center 2 is also displaying 200 shares at $19.90 on an SRO quotation feed and has 200 shares hidden at $19.90. Trading Center 3 is displaying a 100-share protected bid at $19.90. There are no other protected bids. Trading Center 2 receives an incoming order to sell for 700 shares. To execute against its protected bid at $19.95, Trading Center 2 must comply with the trade-through restrictions in Rule 611 of Regulation NMS and route an intermarket sweep order to Trading Center 1 to execute against the full displayed size of Trading Center 1's protected bid at $20.00. Trading Center 2 is then permitted to execute against its 100-share protected bid at $19.95. Trading Center 2 may then execute 200 shares against its full displayed size at the price of Trading Center 3's protected bid. To execute the 200 shares hidden at $19.90, Trading Center 2 must respect the protected bid on Trading Center 3 at $19.90. Trading Center 2 must route a Trade-at Intermarket Sweep Order to Trading Center 3 to execute against the full displayed size of Trading Center 3's protected bid, at which point Trading Center 2 is permitted to execute against the 200 shares hidden at $19.90. Trading Center 2 does not have to respect Trading Center 1's displayed size at $19.90 for trade-at purposes because it is not a protected quotation.

VII. Collection of Pilot Data

(A) Collection of Trading Center Pilot Data

Throughout the Pilot Period, the Participants will collect the following data with respect to Pilot Securities (as set forth in Appendix B):

(1) Daily market quality statistics of orders by security, order type, original order size (as observed by the trading center), hidden status (as applicable), and coverage under Rule 605 of Regulation NMS;

(2) Specified data regarding market orders and marketable limit orders;

(3) Daily number of registered Market Makers; and

(4) Daily Market Maker participation statistics. Each Participant that is the Designated Examining Authority of a member of a Participant operating a trading center will require such member to collect and provide to the Designated Examining Authority the data described in subparagraphs (1) and (2) above, as applicable, subject to the terms and conditions in Appendix B. The Participants and each member of a Participant operating a trading center will also be required to collect such data for dates starting six months prior to the Pilot Period through six months after the end of the Pilot Period. Each Participant will make available to other Participants a list of members designated as Market Makers on that Participant's trading center.

On a monthly basis, the Participants and the Designated Examining Authority for each member of a Participant operating a trading center will make the data in the applicable subparagraphs specified above publicly available on their Web sites for free and will report such data to the SEC on a disaggregated basis by trading center. The data made publicly available will not identify the trading center that generated the data.

(B) Collection of Market Maker Profitability Data

Each Participant that is the Designated Examining Authority of a Market Maker will require such Market Maker to provide to the Designated Examining Authority the data specified in Appendix C regarding daily Market Maker trading profits with respect to Pilot Securities on a monthly basis. Each Market Maker will also be required to provide to its Designated Examining Authority such daily data for dates starting six months prior to the Pilot Period through six months after the end of the Pilot Period. On a monthly basis, the Designated Examining Authority will aggregate such data related to Market Makers *categorized by the Control Group and each Test Group* and make the aggregated data publicly available on its Web site for free and will report such data to the SEC, *provided, however, the data reported to the SEC shall include the profitability statistics categorized by security.* The data made publicly available will not identify the Market Makers that generated the data *or the individual securities.*

VIII. Assessment of Pilot

No later than [six] *eighteen* months after the [end] *start* of the Pilot Period, the Participants will provide to the Commission and make publicly available a joint assessment of the impact of the Pilot. *The assessment will be conducted using data generated during the first twelve months of the Pilot Period, or a subset of which that represents the impact of the Pilot.* The assessment will include:

(1) An assessment of the statistical and economic impact of an increase in the quoting increment on market quality;

(2) An assessment of the statistical and economic impact of an increase in the quoting increment on the number of Market Makers;

(3) An assessment of the statistical and economic impact of an increase in the quoting increment on Market Maker participation;

(4) An assessment of the statistical and economic impact of an increase in the quoting increment on Market Maker profits;

([4]*5*) An assessment of the statistical and economic impact of an increase in the quoting increment on market transparency;

([5]*6*) An evaluation whether any market capitalization, daily trading volume, or other thresholds can differentiate the results of the above assessments across stocks *(e.g.,* does the quoting increment impact differently those stocks with daily trading volume below a certain threshold);

([6]*7*) An assessment of the statistical and economic impact of the above assessments for the incremental impact of a trading increment and for the joint effect of an increase in a quoting increment with the addition of a trading increment;

([7]*8*) An assessment of the statistical and economic impact of the above assessments for the incremental impact of a trade-at prohibition and for the joint effect of an increase in a quoting increment with the addition of a trading increment and a trade-at prohibition; and

(8) An assessment of any other economic issues that the Participants believe the SEC should consider in any rulemaking that may follow the Pilot. Participants may individually submit to the SEC and make publicly available additional supplemental assessments of the impact of the Pilot.

IX. Implementation

The Tick Size Pilot Program will be implemented on a [one]*two*-year pilot basis. The Tick Size Pilot Program will be applicable during and outside of Regular Trading Hours.

X. Withdrawal from Plan

If a Participant obtains SEC approval to withdraw from the Plan, such Participant may withdraw from the Plan at any time on not less than 30 days' prior written notice to each of the other Participants. At such time, the withdrawing Participant will have no further rights or obligations under the Plan.

XI. Counterparts and Signatures

The Plan may be executed in any number of counterparts, no one of which need contain all signatures of all Participants, and as many of such counterparts as will together contain all such signatures will constitute one and the same instrument.

IN WITNESS THEREOF, this Plan has been executed as of the __day of __ [2014] *2015* by each of the parties hereto.

BATS EXCHANGE, INC.
BY: ______________________

BATS Y–EXCHANGE, INC.
BY: ______________________

CHICAGO STOCK EXCHANGE, INC.
BY: ______________________

EDGA EXCHANGE, INC.
BY: ______________________

EDGX EXCHANGE, INC.
BY: ______________________

FINANCIAL INDUSTRY REGULATORY AUTHORITY, INC.
BY: ______________________

NASDAQ OMX BX, INC.
BY: ______________________

NASDAQ OMX PHLX LLC
BY: ______________________

THE NASDAQ STOCK MARKET LLC
BY: ______________________

NEW YORK STOCK EXCHANGE LLC
BY: ______________________

NYSE MKT LLC
BY: ______________________

NYSE ARCA, INC.
BY: ______________________

Appendix A—Publication of Pilot Securities

The following data will be made publicly available in a pipe delimited format regarding the list of Pilot Securities included in the Control Group and each Test Group. Each primary listing exchange will be responsible for making publicly available for free on its Web site the following data with respect to the Pilot Securities listed on that exchange and included in the Control Group and each Test Group.

I. Identification of Pilot Securities

a. Ticker Symbol
b. Security Name
c. Listing Exchange
d. Date
e. Tick Size Pilot Program Group- character value of
i. ''C'' for Pilot Securities in the Control Group
ii. ''G1'' for Pilot Securities in Test Group One
iii. ''G2'' for Pilot Securities in Test Group Two
iv. ''G3'' for Pilot Securities in Test Group Three

II. Change in Pilot Securities' Ticker Symbols

a. Ticker Symbol
b. Security Name
c. Listing Exchange
d. Effective Date
e. Deleted Date
f. Tick Size Pilot Program Group—character value of
i. ''C'' for Pilot Securities in the Control Group
ii. ''G1'' for Pilot Securities in Test Group One
iii. ''G2'' for Pilot Securities in Test Group Two
iv. ''G3'' for Pilot Securities in Test Group Three
g. Old Ticker Symbol(s)
h. Reason for the change

Appendix B—Data Collected by Participants and Trading Centers

Each Participant, as applicable, will collect and transmit the data described in Items I–IV with respect to Pilot Securities to the SEC in a pipe delimited format on a monthly basis. In addition, each Participant that is the Designated Examining Authority of a member of a Participant operating a trading center will require such member, as applicable, to collect and transmit the data described in Items I and II with respect to Pilot Securities to the Designated Examining Authority in a pipe delimited format on a monthly basis. Each Designated Examining Authority will transmit the data on a disaggregated basis to the SEC, *i.e.,* by trading center. The data will be provided to the SEC within 30 calendar days following month end. All trading centers, including Participants, will report the data described in Items I.a(28) and I.b with respect to only those orders executed, in whole or part, on that trading center. All trading centers will report the remaining data described in Items I.a with respect to any order received by that trading center. The data described in Item I will only be collected for orders received during Regular Trading Hours. All trading centers, including Participants, will report the data described in Item II with respect to any market or marketable limit orders received by that trading center. The data described in Item II will be collected for orders received during and outside of Regular Trading Hours. Orders entered while a trading halt is in effect will be excluded from the data. The data will be provided for dates starting six months prior to the Pilot Period through six months after the end of the Pilot Period.

I. Market Quality Statistics—Daily market quality statistics categorized by security, order type, original order size, hidden status, and coverage under Rule 605, including the following columns of information:

a. For regular hours orders which are market orders (10), marketable limit orders (11), inside-the-quote resting limit orders (12), at-the-quote resting limit orders (13), near-the-quote resting limit orders (within .10 from the NBBO) (14), resting intermarket sweep orders (15), retail liquidity providing orders (16), and midpoint passive liquidity orders (17) executed on the trading center:

(1) Exchange code or trading center identifier;

(2) Ticker Symbol;

(3) Order Type, as defined in the Plan or in I.a of this Appendix;

(4) Original Order size with the following modified categories from Rule 605 reports:

a. Less than 100 shares;
b. 100 to 499 shares;
c. 500 to 1999 shares;
d. 2000 to 4999 shares;
e. 5000 to 9999 shares; and
f. 10000 or more shares;

(5) Hidden Status Category—indicates whether the orders fall into the following categories:

a. Entirely Displayable;
b. Partially Displayable; and
c. Not Displayable;

(6) Rule 605 Coverage—indicates whether the orders are covered in Rule 605 (Y/N);

(7) The cumulative number of orders;

(8) The cumulative number of shares of orders;

(9) The cumulative number of shares of orders canceled;

(10) The cumulative number of shares of orders executed on the receiving trading center;

(11) The cumulative number of orders with special handling instructions (for example, slide, discretion, eligible counterparty, minimum quantity) excluded from price improvement and effective spread statistics;

(12) The cumulative number of shares of orders with special handling instructions (for example slide, discretion, eligible counterparty, minimum quantity) excluded from price improvement and effective spread statistics;

(13) The cumulative number of shares of orders executed at any other trading center;

(14) The cumulative number of shares of orders executed from 0 to less than 100 microseconds after the time of order receipt;

(15) The cumulative number of shares of orders executed from 100 microseconds to less than 100 milliseconds after the time of order receipt;

(16) The cumulative number of shares of orders executed from 100 milliseconds to less than 1 second after the time of order receipt;

(17) The cumulative number of shares of orders executed from 1 second to less than 30 seconds after the time of order receipt;

(18) The cumulative number of shares of orders executed from 30 seconds to less than 60 seconds after the time of order receipt;

(19) The cumulative number of shares of orders executed from 60 seconds to less than 5 minutes after the time of order receipt;

(20) The cumulative number of shares of orders executed from 5 minutes to 30 minutes after the time of order receipt;

(21) The cumulative number of shares of orders canceled from 0 to less than 100 microseconds after the time of order receipt;

(22) The cumulative number of shares of orders canceled from 100 microseconds to less than 100 milliseconds after the time of order receipt;

(23) The cumulative number of shares of orders canceled from 100 milliseconds to less than 1 second after the time of order receipt;

(24) The cumulative number of shares of orders canceled from 1 second to less than 30 seconds after the time of order receipt;

(25) The cumulative number of shares of orders canceled from 30 seconds to less than 60 seconds after the time of order receipt;

(26) The cumulative number of shares of orders canceled from 60 seconds to less than 5 minutes after the time of order receipt;

(27) The cumulative number of shares of orders canceled from 5 minutes to 30 minutes;

(28) The share-weighted average realized spread for executions of orders;

(29) Original Percentage Hidden—the received share-weighted average percentage of shares not displayable as of order receipt;

(30) Final Percentage Hidden—the received share-weighted average percentage of shares not displayed prior to final order execution or cancellation;

(31) Quoted Size at the National Best Bid and National Best Offer -the share weighted average of the consolidated quoted size at the inside price at the time of order execution;

(32) Share-weighted average NBBO Spread at the time of order execution; and

(33) Share-weighted average BBO Spread of reporting exchange at the time of order execution.

b. For market orders and marketable limit orders, except those noted as excluded:

(1) The share-weighted average effective spread for executions of orders;

(2) The cumulative number of shares of orders executed with price improvement;

(3) For shares executed with price improvement, the share-weighted average amount per share that prices were improved;

(4) For shares executed with price improvement, the share-weighted average period from the time of order receipt to the time of order execution;

(5) The cumulative number of shares of orders executed at the quote;

(6) For shares executed at the quote, the share-weighted average period from the time of order receipt to the time of order execution;

(7) The cumulative number of shares of orders executed outside the quote;

(8) For shares executed outside the quote, the share-weighted average amount per share that prices were outside the quote; and

(9) For shares executed outside the quote, the share-weighted average period from the time of order receipt to the time of order execution.

II. Market and Marketable Limit Order Data—The following columns of information with respect to Market Orders and non-booked portions of Marketable Limit Orders:

a. Exchange code or trading center identifier;

b. Ticker Symbol;

c. Date;

d. Time of order receipt;

e. Order Type;

f. Order Size in Shares;

g. Order side- ''B'', ''S'' (including sell short exempt), ''SS'';

h. Order price (if marketable limit);

i. NBBO quoted price;

j. NBBO quoted depth in lots;

k. Receiving market offer for buy or bid for sell (as applicable);

l. Receiving market depth (offer for buy and bid for sell) (as applicable);

m. ISO flag (Y/N);

n. Retail Investor Order flag (Y/N);

o. Routable flag (Y/N);

p. IOC (Y/N);

q. Indicator for quote leader- ''1'' if the receiving market is the first market to post the NBB for a sell or NBO for a buy (as applicable);

r. Average execution price-share-weighted average that includes only executions on the receiving market;

s. Average execution time-share-weighted average period that includes only executions on the receiving market;

t. Executed shares-the number of shares in the order that are executed;

u. Canceled shares—the number of shares in the order that are canceled;

v. Routed shares-the number of shares in the order that are routed to another exchange or market;

w. Routed average execution price-share-weighted average that includes only shares routed away from the receiving market;

x. Average routed execution time-share-weighted average period that includes only executions on the routed markets; and

y. Indicator for special handling instructions (for example, slide, discretion, eligible counterparty, minimum quantity)-identifies orders that contain instructions that could result in delayed execution or an execution price other than the quote.

III. Daily Market Maker Registration Statistics—Each Participant that is a National Securities Exchange will collect daily Market Maker registration statistics categorized by security, including the following columns of information:

a. Ticker Symbol;

b. SRO;

c. Number of registered market makers; and

d. Number of other registered liquidity suppliers.

IV. Daily Market Maker Participation Statistics—Each Participant will collect daily Market Maker participation statistics with respect to each Market Maker engaging in trading activity on the trading center operated by the Participant. With respect to each Market Maker, the Participant will collect such statistics irrespective of whether the Market Maker is registered with the Participant. The participation statistics will be categorized by security, including the columns of information listed below, except that a Participant that is a national securities association will not be required to collect such statistics unless a Market Maker registers with its Alternative Display Facility prior to or during the Pilot Period:

a. Ticker Symbol;

b. Share participation—the number of shares purchased or sold by Market Makers in a principal trade, not including riskless principal. When aggregating across Market Makers, share participation will be an executed share-weighted average per Market Maker;

c. Trade participation—the number of purchases and sales by Market Makers in a principal trade, not including riskless principal. When aggregating across Market Makers, trade participation will be a trade-weighted average per Market Maker;

d. Cross-quote share (trade) participation-the number of shares purchased (the number of purchases) at or above the NBO and the number of shares sold (the number of sales) at or below the NBB at the time of the trade;

e. Inside-the-quote share (trade) participation-the number of shares purchased (the number of purchases) and the number of shares sold (the number of sales) between the NBBO at the time of the trade;

f. At-the-quote share (trade) participation-the number of shares purchased (the number of purchases) that are equal to the National Best Bid price and the number of shares sold (the number of sales) that are equal to the National Best Offer price at the time of or immediately before the trade. In the case of a downward moving National Best Bid or Offer, the National Best Bid or National Best Offer price immediately before the trade will be used; and

g. Outside-the-quote share (trade) participation-the number of shares purchased (the number of purchases) that are less than the National Best Bid price and the number of shares sold (the number of sales) that are greater than the National Best Offer price at the time of or immediately before the trade. In the case of a downward moving National Best Bid or Offer, the National Best Bid or National Best Offer price immediately before the trade will be used.

Appendix C—Data Collected by Market Makers

Each Participant that is the Designated Examining Authority of a Market Maker will require such Market Maker to collect the data described in Item I with respect to orders and executions in Pilot Securities on any trading center and to transmit such data in a pipe delimited format to the Designated Examining Authority on a monthly basis, to be provided within 30 calendar days following month end. Data will only be collected with respect to those orders and executions occurring during Regular Trading Hours. The data will be provided for dates starting six months prior to the Pilot Period through six months after the end of the Pilot Period. Each Designated Examining Authority will be responsible for aggregating the data provided by the Market Makers under Item I and providing the data described in Item II in a pipe delimited format to the SEC.

I. Market Maker Profitability—Daily Market Maker profitability statistics categorized by security, including the following columns of information:

a. Total number of shares of orders executed by the Market Maker;

b. Raw Market Maker realized trading profits—the difference between the market value of Market Maker sales (shares sold x price) and the market value of Market Maker purchases (shares purchased x price). A LIFO-like method will be used for determining which share prices to use in the calculation; and

c. [Market Maker realized trading profits net of fees and rebates—realized trading profits plus rebates the Market Maker collects from trading on that day minus access fees the Market Maker pays for trading on that day (if estimated before allocation of rebates and fees, use expected rebates and fees); and]

[d.] Raw Market Maker unrealized trading profits—the difference between the purchase or sale price of the end-of-day inventory position of the Market Maker and the Closing Price. In case of a short position, the Closing Price from the sale will be subtracted. In the case of a long position, the purchase price will be subtracted from the Closing Price.

II. Aggregated Market Maker Profitability—Total Daily Market Maker profitability statistics categorized by security *as well as categorized by the Control Group and each Test Group,* including the following columns of information:

a. Total Raw Market Maker realized trading profits—the difference between the market value of Market Maker sales (shares sold x price) and the market value of Market Maker purchases (shares purchased x price). A LIFO-like method will be used for determining which share prices to use in the calculation;

b. Volume-weighted average of Raw Market Maker realized trading profits;

[c. Total Market Maker realized trading profits net of fees and rebates—realized trading profits plus rebates the Market Maker collects from trading on that day minus access fees the Market Maker pays for trading on that day (if estimated before allocation of rebates and fees, use expected rebates and fees);

d. Volume-weighted average of Market Maker realized trading profits net of fees and rebates;]

c.[e.] Total Raw Market Maker unrealized trading profits—the difference between the purchase or sale price of the end-of-day inventory position of the Market Maker and the Closing Price. In case of a short position, the Closing Price from the sale will be subtracted. In the case of a long position, the purchase price will be subtracted from the Closing Price; and

d.[f.] Volume-weighted average of Market Maker unrealized trading profits.

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Wednesday, May 13, 2015

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