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Environmental Assessment for Proposed Rule Entitled, "Storage of Spent Nuclear Fuel in NRC-Approved Storage Casks at Nuclear Power Reactor Sites." (1989).	ML051230231.
"Environmental Assessment and Finding of No Significant Impact for the Final Rule Amending 10 CFR Part 72 License and Certificate of Compliance Terms" (2010).	ML100710441.
Generic Environmental Impact Statement for Continued Storage of Spent Nuclear Fuel: Final Report (NUREG–2157, Volumes 1 and 2) (2014).	ML14198A440 (package).
Application for Amendment 19 to Standardized NUHOMS® Certificate of Compliance No. 1004 for Spent Fuel Storage Casks, Revision 0 (Docket No. 72–1004), November 5, 2024.	ML24310A095.
Response to Request for Supplemental Information—Application for Amendment 19 to Standardized NUHOMS® Certificate of Compliance No. 1004 for Spent Fuel Storage Casks, Revision 1 (Docket No. 72–1004, CAC No. 001028, EPID: L–2024–LLA–0142), February 20, 2025.	ML25051A273.
Response to Request for Additional Information—Application for Amendment 19 to Standardized NUHOMS® Certificate of Compliance No. 1004 for Spent Fuel Storage Casks, Revision 3 (Docket No. 72–1004, CAC No. 001028, EPID: L–2024–LLA–0142), August 26, 2025.	ML25238A033.
Plain Language in Government Writing, dated June 10, 1998	63 FR 31885.
Storage of Spent Fuel In NRC-Approved Storage Casks at Power Reactor Sites: Final Rule, dated July 18, 1990	55 FR 29181.
List of Approved Spent Fuel Storage Casks: TN Americas LLC, NUHOMS® Horizontal Modular Storage System for Irradiated Nuclear Fuel, Certificate of Compliance No. 1004: Direct Final Rule, dated December 22, 1994.	59 FR 65898.

The NRC may post materials related to this document, including public comments, on the Federal rulemaking website at *https://www.regulations.gov* under Docket ID NRC–2026–2806. In addition, the Federal rulemaking website allows members of the public to receive alerts when changes or additions occur in a docket folder. To subscribe: (1) navigate to the docket folder (NRC–2026–2806); (2) click the ''Subscribe'' link; and (3) enter an email address and click on the ''Subscribe'' link.

Dated: August 14, 2026.

For the Nuclear Regulatory Commission.

Michael King,

Executive Director for Operations.

[FR Doc. 2026–17446 Filed 8–25–26; 8:45 am]

BILLING CODE 7590–01–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 37

RIN 3038–AF79

Swap Execution Facility Order Book Requirement for Permitted Transactions

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commodity Futures Trading Commission (''Commission'' or ''CFTC'') proposes to amend its regulations for swap execution facilities (''SEFs'') to remove the requirement for SEFs to offer an order book for swap transactions that are not subject to trade execution requirement under section 2(h)(8) of the Commodity Exchange Act (''CEA'' or ''Act''). These types of swap transactions are referred to in the Commission's regulations as ''permitted transactions.''

DATES: Comments must be received on or before September 25, 2026.

ADDRESSES: You may submit comments, specifically referencing ''Swap Execution Facility Order Book Requirement for Permitted Transactions'' and RIN 3038–AF79, by any of the following methods:

• *Regulations.gov:* Go to *https://www.regulations.gov* and press the ''Search'' button, then proceed as follows:

1. Under Refine Documents Results—check the box to ''Only show documents open for comment'';

2. Under Agency—select ''See More'' and check the box for ''Commodity Futures Trading Commission,'' then press the Apply button;

3. Identify this proposal in the list of CFTC documents open for comment, press the ''Comment'' button to open the submission form, and follow the instructions on the form.

Alternatively, if you are viewing this proposal on *www.federalregister.gov,* click the ''Submit A Public Comment'' button at the top of the page to open the comment form. Follow the instructions on the form to submit your comment to *Regulations.gov*.

• *Mail:* Send to—Christopher Kirkpatrick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581.

• *Hand Delivery/Courier:* Address to—CFTC Comment Submission, Attn: Christopher Kirkpatrick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581.

Please submit your comments using only one of these methods. To avoid possible delays with mail or in-person deliveries, submissions through *Regulations.gov* are encouraged.

All comments must be submitted in English or, if not, accompanied by an English translation. Do not include in your comment text or attachments any personal identifying information or business information that you do not want published online. Comments (regardless of submission method) will be published without review for, and without removal of, any personal identifying information or information your business may consider confidential.

If you wish to submit confidential information for the Commission's consideration, please contact the CFTC personnel listed in this Notice under **FOR FURTHER INFORMATION CONTACT** before making any submission. Please also carefully review the Commission's procedures in 17 CFR 145.9 for requesting confidential treatment under the Freedom of Information Act (''FOIA'') of information submitted to the Commission.

The CFTC reserves the right, but shall have no obligation, to review, pre-screen, filter, or redact all or any part of your comment submission. The CFTC also reserves the right, without further notification, to refuse to publish or to remove from public view all or any part of your submission to the extent it contains content inappropriate for publication in a comment file, such as—without limitation—obscene language, threats of violence, solicitations for commercial sales or illegal activity, or obvious spam. If a submission that is refused for or withdrawn from publication because of inappropriate content also contains comments on the merits of this proposal, such submission will be retained in the record for the matter and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under the FOIA.

Pursuant to the Administrative Procedure Act at 5 U.S.C. 553(b)(4), a plain language summary of the proposed rule is available at *regulations.gov.*

FOR FURTHER INFORMATION CONTACT:

Roger Smith, (202) 418–5344, *rsmith@cftc.gov,* Division of Market Oversight, Commodity Futures Trading Commission, 77 West Jackson Blvd., Suite 800, Chicago, Illinois 60604.

SUPPLEMENTARY INFORMATION:

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I. Background

A. Part 37 of the Commission's Regulations

The Dodd-Frank Wall Street Reform and Consumer Protection Act (''Dodd-Frank Act'') amended the CEA by adding section 5h, which establishes registration requirements and core principles for SEFs.[1] The Commission implemented CEA section 5h by adopting part 37 of its regulations,[2] which sets forth registration and operational requirements for SEFs, including various trading requirements for swaps transacted on SEFs.[3] Among the requirements set forth in part 37 are those specifying minimum trading functionality that a SEF must offer to participants for all listed swaps;[4] those specifying the methods of execution that a SEF must offer for swaps trading, including for the trading of swaps that are subject to the trade execution requirement under CEA section 2(h)(8);[5] and those implementing the statutory core principles with which a SEF must comply in order to obtain and maintain registration with the Commission. The Commission adopted this framework in part to achieve the SEF statutory goals in CEA section 5h(e) of promoting trading on SEFs and promoting pre-trade transparency in the swaps market.[6]

Commission regulation 37.3(a)(2) prescribes the minimum trading functionality that a SEF must provide for all listed swaps, stating that a SEF ''shall, at a minimum, offer an Order Book'' as defined in § 37.3(a)(3) (''Order Book Requirement'' or ''Minimum Trading Functionality''). Commission regulation 37.9(a)(1) defines a ''Required Transaction'' as a transaction involving a swap that is subject to the trade execution requirement, and provides that a SEF must offer, for the execution of a Required Transaction, either (i) an Order Book, or (ii) a request-for-quote system that sends a request-for-quote to no less than three unaffiliated market participants and operates in conjunction with an Order Book for the execution of such transactions (''RFQ System'').[7] The Commission's part 37 regulations also specify additional requirements that correspond to the offering by a SEF of an Order Book or RFQ System for the execution of Required Transactions.[8]

Commission regulation 37.9(c)(1) defines a ''Permitted Transaction'' as a transaction that does not involve a swap that is subject to the trade execution requirement. A SEF may offer any execution method for a Permitted Transaction, and market participants may voluntarily, but are not required to, trade Permitted Transactions on a SEF.[9] As noted above, however, all SEFs currently must satisfy the Order Book Requirement in § 37.3(a)(2) by offering an Order Book, both with respect to Required Transactions and Permitted Transactions.

B. Summary of Proposed Amendments to § 37.3(a)(2)

After several years observing the offering and operating by SEFs of Order Books for Permitted Transactions, and taking into consideration the experience and insights of SEF operators,[10] it is the Commission's preliminary view, as discussed in more detail below, that the Order Book Requirement for Permitted Transactions does not serve to improve transparency or lead to more liquidity in the swaps market on SEFs, which are the CEA statutory goals for SEFs.[11] Further, it is the Commission's preliminary view that the Order Book Requirement for Permitted Transactions places a heavy financial burden on the continual operations of SEFs, which in turn may divert SEF resources away from other efforts that could achieve transparency and liquidity objectives more effectively.[12]

To provide the opportunity for the Commission to reconsider the usefulness and effectiveness of the Order Book Requirement for Permitted Transactions, in 2025, staff of the Commission's Division of Market Oversight issued CFTC No-Action Letter No. 25–24 (''NAL No. 25–24''),[13] which

[1] 7 U.S.C. 7b–3.

[2] Core Principles and Other Requirements for Swap Execution Facilities, 78 FR 33476 (June 4, 2013) (hereinafter ''SEF Core Principles Final Rule'').

[3] The Dodd-Frank Act also added to the CEA certain provisions related to the trading of swaps on designated contract markets (''DCMs''). Given the statutory requirements under DCM Core Principle 9 for DCMs to provide a competitive, open, and efficient market and mechanism for executing transactions that protects the price discovery process of trading in the centralized market of the DCM, the Commission is not proposing any changes to regulatory framework for DCMs. *See* 7 U.S.C. 7(d)(9).

[4] 17 CFR 37.3(a)(2).

[5] CEA section 2(h)(8) requires that transactions involving swaps subject to the CEA section 2(h)(1) clearing requirement be executed on or pursuant to the rules of a DCM or SEF, or a SEF that is exempt from registration, unless no DCM or SEF makes such swaps available to trade (''MAT'') or such swaps qualify for the clearing exception under CEA section 2(h)(7) (the ''trade execution requirement'').

[6] 7 U.S.C. 7b–3(e).

[7] 17 CFR 37.9(a). With the exception of block trades, as defined under § 43.2, Required Transactions must be executed on a SEF's Order Book or RFQ System. 17 CFR 37.9(a)(2)(i).

[8] For example, under § 37.9(b), the Commission implemented a fifteen-second time-delay requirement for Required Transactions that are pre-arranged or pre-negotiated by a broker and submitted as cross trades for execution through the SEF's Order Book. This requirement allows a broker or dealer to execute a Required Transaction by trading against a customer's order, or executing two customers' orders against each other, through pre-negotiation or pre-arrangement, provided that one side of the transaction is exposed to the Order Book for fifteen seconds before the other side of the transaction is submitted for execution.

[9] 17 CFR 37.9(c).

[10] *See* LSEG FX SEF, operated by Refinitiv US SEF LLC (''LSEG SEF''), Request for Relief from Minimum Trading Functionality for Swap Execution Facilities (June 30, 2025) (''LSEG SEF Request Letter''). *See also* Bloomberg SEF LLC (''BSEF''), Order Book and Annual Compliance Report Data Structuring for Security-Based Swap Execution Facilities (Feb. 25, 2026) (''BSEF Request Letter''). While the BSEF Request Letter requested a no-action position from staff of the Securities and Exchange Commission (''SEC'') for BSEF's security-based swap execution facility (''SBEF'') operations, throughout the letter BSEF invokes its experience and insights operating a Commission-registered SEF to bolster its request and provide necessary context.

[11] *See* 7 U.S.C. 7b–3(e)

[12] *Id.*

[13] CFTC Letter No. 25–24, No-Action Position with Respect to the Swap Execution Facility Minimum Trading Functionality under Commission Regulation 37.3(a)(2) (July 30, 2025) (''NAL No. 25–

Continued

provided a no-action position from such requirement.[14] The Commission now seeks public comment on a proposal to codify the staff no-action position. More specifically, the Commission is proposing to amend § 37.3(a)(2) to allow SEFs not to offer an Order Book for Permitted Transactions, while maintaining the requirement for SEFs to offer an Order Book for Required Transactions.[15]

C. Consultation With Other U.S. Financial Regulators

In developing these proposed rules, the Commission has consulted with the SEC, pursuant to section 712(a)(1) of the Dodd-Frank Act.[16]

II. The Proposed Regulations

A. Swap Execution Facility Order Books for Permitted Transactions

1. Background

In § 37.3(a)(2), the Commission designated an Order Book as the ''minimum trading functionality'' each SEF must maintain and offer for each swap that it lists for trading. An Order Book is defined under § 37.3(a)(3) as (i) an electronic trading facility;[17] (ii) a trading facility;[18] or (iii) ''[a] trading system or platform in which all market participants in the trading system or platform have the ability to enter multiple bids and offers, observe or receive bids and offers entered by other market participants, and transact on such bids and offers.''[19]

In the SEF Core Principles Final Rule, the Commission stated its anticipation that an Order Book would typically work well for liquid Required Transactions, *i.e.,* transactions involving swaps that are subject to the trade execution requirement.[20] However, the Commission also acknowledged that the Order Book functionality does not have the requisite flexibility to serve as the ideal method of execution for a variety of swaps, in particular, those swaps that may feature lower levels of liquidity.[21] The Commission nevertheless believed that an Order Book could establish a base level of pre-trade price transparency to all market participants and, thus, required that each SEF offer an Order Book for all swaps that it lists for trading, including both swaps subject to the trade execution requirement and swaps not subject to the trade execution requirement.[22]

The Commission has observed that Order Books for Permitted Transactions, unlike Order Books for Required Transactions, have been rarely used by market participants for swaps trading on SEFs despite their availability for all swaps listed by SEFs for trading. Depending on the product involved, for example, order book trading typically ranges between ''less than [one percent] to less than [three percent] of total CDS transactions'' on SEFs, while order book trading constitutes between ''less than [one percent] to approximately [twenty percent] of total IRS transactions . . . .''[23] In the 2026 BSEF Request Letter, BSEF stated in its experience that ''since 2015, over 96% of Order Book trading has been in [Required Transactions], and less than 4% of Order Book trades have been in [Permitted Transactions]''.[24] Further to this point, LSEG SEF, which trades only Permitted Transactions, stated in its 2025 no-action letter request that ''during the entire time that LSEG SEF's Order Book has been operational (*i.e.,* prior to obtaining temporary registration status in 2013), not a single trade has been executed on, nor any orders submitted to, LSEG SEF's Order Book.''[25] The Commission preliminarily believes that this low level of swaps trading activity on Order Books for Permitted Transactions over more than a decade is likely attributable to an Order Book's inability to support the broad and diverse range of Permitted Transactions that trade episodically, rather than on a continuous basis.[26]

The Commission understands that mandating that a SEF provide an Order Book for Permitted Transactions has imposed significant operational and

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24''). Shortly after the issuance of NAL No. 25–24, SEC staff provided an identical no-action position for SBSEFs. *See* SEC staff, Order Book and Annual Compliance Report Data Structuring for Security-Based Swap Execution Facilities (Feb. 27, 2026).

[14] As defined in § 140.99(a)(2) of the Commission's regulations, a no-action letter is a written statement issued by a Commission Division stating that the Division will not recommend enforcement action to the Commission for failure to comply with a specific provision of the Act or a Commission rule, regulation, or order. A no-action letter represents only the issuing Division's position and binds only that Division. It does not bind the Commission. 17 CFR 140.99(a)(2).

[15] In 2018, the Commission issued a comprehensive proposal to amend the SEF regulatory framework. *See* Swap Execution Facilities and Trade Execution Requirement, 83 FR 61946 (Nov. 30, 2018) (''2018 SEF Proposal''). Among other things, the 2018 SEF Proposal proposed eliminating the Order Book Requirement as part of a more holistic approach to amending the SEF regulatory framework.

In 2021, the Commission adopted two final rulemakings related to the 2018 SEF Proposal. *See* Exemptions From Swap Trade Execution Requirement, 86 FR 8993 (Feb. 11, 2021) and Swap Execution Facilities, 86 FR 9224, (Feb. 11, 2021). Following the adoption of these two final rulemakings, the Commission voted to withdraw the unadopted portions of the 2018 SEF Proposal, including the proposed elimination of the Order Book Requirement. *See* Swap Execution Facilities and Trade Execution Requirement, 86 FR 9304 (Feb. 12, 2021).

While the proposal and rationales contained herein with respect to the Order Book Requirement are, in some cases, identical or similar to the proposal and rationales included in the 2018 SEF Proposal, the Commission believes the context surrounding the two proposals distinguishes them in terms of application and scope. Further, while the Commission received public comments on the 2018 SEF Proposal, given the withdrawal of the unadopted portions of the 2018 SEF Proposal and the Commission's belief that it is important for public comments to be provided and considered in light of the facts and circumstances of the proposal at hand, the Commission believes that any comments made on the 2018 SEF Proposal that are relevant to this rule proposal should be resubmitted as comments to this rule proposal in order to be considered.

[16] Dodd-Frank Act, Public Law 111–203, tit. VII, § 712(a)(1), 124 Stat. 1376 (2010).

[17] CEA section 1a(16) defines ''electronic trading facility'' as a trading facility that (i) operates by means of an electronic or telecommunications network; and (ii) maintains an automated audit trail of bids, offers, and the matching of orders or the execution of transactions on the facility. 7 U.S.C. 1a(16).

[18] CEA section 1a(51) defines ''trading facility'' as ''a person or group of persons that constitutes, maintains, or provides a physical or electronic facility or system in which multiple participants have the ability to execute or trade agreements, contracts, or transactions (i) by accepting bids or offers made by other participants that are open to multiple participants in the facility or system; or (ii) through the interaction of multiple bids or multiple offers within a system with a pre-determined non-discretionary automated trade matching and execution algorithm.'' 7 U.S.C. 1a(51)(A).

[19] 17 CFR 37.3(a)(3).

[20] SEF Core Principles Final Rule at 33564–65.

[21] *Id.* To this end, the Commission acknowledged that for less liquid Required Transactions, however, it anticipated that RFQ systems would help facilitate trading. *Id.*

[22] SEF Core Principles Final Rule at 33564.

[23] J. Christopher Giancarlo and Bruce Tuckman, Swaps Regulation Version 2.0: An Assessment of the Current Implementation of Reform and Proposals for Next Steps 49–50 (Apr. 26, 2018), *available at https://www.cftc.gov/sites/.../oce_chairman_swapregversion2whitepaper_042618.pdf.* (''Giancarlo White Paper'').

[24] BSEF Request Letter at 5.

[25] LSEG SEF Request Letter at 2–3.

[26] In their study of the index CDS market, Pierre Collin-Dufresne, Benjamin Junge, and Anders B. Trolle state that ''[p]roponents of bringing all market participants onto one limit order book typically argue that it would (i) increase quote competition among dealers and (ii) allow clients to occasionally supply liquidity via limit orders thereby lowering overall transaction costs (although at the cost of execution risk). However, a limit order book arguably works best when trading is continuous and it is not necessarily optimal when trading is more episodic as is the case for index CDSs. For instance, Barclay, Hendershott, and Kotz (2006) document a precipitous drop in electronic trading (via limit order books) when Treasuries go off-the-run and trading volumes decline.'' Pierre Collin-Dufresne, Benjamin Junge, & Anders B. Trolle, *Market Structure and Transaction Costs of Index CDSs* 6 n.10 (Swiss Fin. Inst. Res. Paper No. 18–40, 2017) (''2017 Collin-Dufresne Research Paper''), citing Michael J. Barclay, Terrence Hendershott, & Kenneth Kotz, *Automation Versus Intermediation: Evidence from Treasuries Going Off the Run,* 61 J. Fin. 2395, 2395–2414 (2006).

financial costs and burdens, particularly from a technological standpoint, with little benefit to most market participants who choose not to utilize them.[27] For example, LSEG SEF, in its 2025 request for a no-action letter, explained that establishing and maintaining an Order Book incurs substantial financial and staffing costs.[28] LSEG SEF emphasized that it invests significant resources annually to keep its Order Book operational and must periodically upgrade its systems and hardware, which adds further expenses.[29] As such, LSEG SEF argued that the requirement to maintain a rarely used Order Book forces participants to pay for systems they seldom use and hinders SEFs from developing new offerings that could increase new participants and trading activity.[30]

2. Proposed Amendment of § 37.3(a)(2)

Therefore, based in part on its experience, the Commission proposes to amend § 37.3(a)(2) to allow SEFs not to offer an Order Book for Permitted Transactions. However, this proposal would not alter the Order Book Requirement as applicable to Required Transactions. The Commission believes that eliminating the Order Book Requirement for Permitted Transactions would help reduce operating costs for SEFs as they would no longer be required to operate and maintain order book systems that may be poorly suited for trading in less liquid swaps, such as Permitted Transactions, and therefore, do not attract significant pools of liquidity. The Commission acknowledges that some Permitted Transactions may have adequate liquidity to be listed on an Order Book; however, the Commission believes that as a category of swaps, the number of Permitted Transactions that may meet this criterion does not justify a requirement to build out, operate, and maintain an Order Book for all

[27] The Commission understands that these costs include regularly occurring software updates to electronic order book systems and other ongoing technology-related maintenance.

[28] LSEG SEF Request Letter at 3. Similarly, BSEF noted that ''[b]uilding and maintaining an Order Book imposes significant initial and ongoing costs—engineering, infrastructure, market-surveillance integration, and periodic upgrades . . . .'' BSEF Request Letter at 6.

[29] *Id.*

[30] *Id.* Similarly, BSEF argues that the resources used to operate and maintain an Order Book ''could otherwise be directed to protocols SBSEF participants actually use and to innovations that promote transparency and enhanced execution quality.'' BSEF Request Letter at 6. While BSEF's statement is related to SBSEF participants and its operation of an SBSEF, the Commission believes the statement is equally applicable to SEF participants and the operation of a SEF, which BSEF is also.

Permitted Transactions. The Commission believes that instead of employing resources to build and support a dormant trading system or platform, the proposed elimination of the Order Book Requirement for Permitted Transactions provides a SEF with the flexibility to determine how to allocate its resources, particularly as it relates to developing methods of execution that are better suited to trading the products that it lists.[31] The Commission preliminarily believes that the Order Book Requirement has not achieved the CEA section 5h(e) statutory goal of promoting more liquidity in the swaps market on SEFs. To this end, the Commission preliminary believes that other execution methods may be better suited to maximizing participation and concentrating liquidity formation on SEFs for Permitted Transactions.[32] Therefore, the Commission preliminary believes that removing this requirement may help spur further development and innovation in execution methods and bring in more market participants, as this barrier to entry is removed, spurring competition.[33] The Commission also preliminarily believes that eliminating this requirement may encourage SEFs to list new and different types of swaps, given that they would no longer have to incur the costs of operating and supporting Order Books for Permitted Transactions. The Commission notes, however, that a SEF would be free to continue to offer an order book, if it chooses.

The Commission adopted the Order Book Requirement based in part on the statutory goal of promoting pre-trade

[31] *See* LSEG Request Letter at 3–4 stating that offering and maintaining an Order Book for Permitted Transactions ''restricts SEFs' ability to develop new offerings that would attract additional participants and actually encourage more trading on SEFs . . . imposes significant costs on SEFs that divert time and resources away from efforts that could be much more effective at accomplishing [greater transparency and increased liquidity].'' *See also* BSEF Request Letter at 5–6 stating ''[g]iven the costs associated with the operation and maintenance of an Order Book, and the lack of any meaningful benefit to the SBS market, we believe the Order Book requirement for Permitted Transactions should be removed. SBSEF resources could be better deployed elsewhere to provide services that are more useful, innovative, and responsive to customer needs . . . . These resources could otherwise be directed to protocols SBSEF participants actually use and to innovations that promote transparency and enhanced execution quality.''

[32] *See* BSEF Request Letter at 4 referring to statistics regarding the low level of Order Book trading on SEFs, ''[w]hile this statistic pertains to the CFTC-regulated market, it illustrates the broader reality that over-the-counter derivatives liquidity generally coalesces around request-for-quote and voice-intermediated workflows and not Order Books.''

[33] *See supra* note 29.

price transparency,[34] but the Commission acknowledges that the CEA does not explicitly prescribe the Order Book as a SEF minimum trading functionality. In addition, as noted above, Order Books for Permitted Transactions are seldom utilized. Therefore, although they were implemented in part to promote pre-trade price transparency, the Commission preliminarily believes that the Order Book Requirement for Permitted Transactions does not achieve the statutory goal of promoting pre-trade transparency for Permitted Transactions due to their limited usage.

Accordingly, with the proposed elimination of this requirement for Permitted Transactions under § 37.3(a)(2), SEFs would be free to offer any method of execution under § 37.9(c)(2).[35]

Request for Comment

The Commission requests comment on all aspects of the proposed amendments to § 37.3(a)(2). The Commission also invites comments specifically on the following:

(1) Are the proposed amendments to § 37.3(a)(2) appropriate?

(2) Should the Commission still require SEFs to offer an Order Book for all Permitted Transactions, as defined in § 37.9(c)(1) or should the Commission use another method, such as trading volume in a certain swap, to require the use of an Order Book for some Permitted Transactions?

(3) Should the Commission eliminate the requirement for SEFs to offer an Order Book for Required Transactions, as defined in § 37.9(a)(1)?

(4) Are the Commission's preliminary views regarding the usage of Order Books for Permitted Transactions accurate? Do the Commission's assumptions based on the data provided still stand?

III. Effective Date and Transition Period

The Commission proposes that the effective date for the proposed regulations be 30 days after publication of final regulations in the **Federal Register**. The Commission preliminarily believes that such an effective date would allow SEFs and market participants sufficient time to adapt to the amended rules in an efficient and orderly manner.

[34] 7 U.S.C.7b–3(e).

[35] For avoidance of doubt, the Commission emphasizes that this proposal does not change the SEF registration requirements under CEA section 1a(50) and Commission Regulations 37.3(a)(1).

Request for Comment

The Commission requests comment on whether the proposed effective date is appropriate and, if not, the Commission further requests comment on possible alternative effective dates and the basis for any such alternative dates.

IV. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (''RFA'') [36] requires Federal agencies, in promulgating regulations, to consider the impact of those regulations on small businesses. The regulations adopted herein will affect SEFs and their market participants. The Commission has previously established certain definitions of ''small entities'' to be used by the Commission in evaluating the impact of its regulations on small entities in accordance with the RFA.[37] The Commission previously concluded that SEFs are not small entities for the purpose of the RFA.[38] The Commission has also previously stated its belief in the context of relevant rulemakings that SEFs' market participants, which are all required to be eligible contract participants (''ECPs'') [39] as defined in section 1a(18) of the CEA,[40] are not small entities for purposes of the RFA.[41] Therefore, the Chairman, on behalf of the Commission, hereby preliminarily certifies, pursuant to 5 U.S.C. 605(b), that the regulations will not have a significant economic impact on a substantial number of small entities. The Commission invites the public to comment on whether SEFs and SEF market participants covered by these proposed rules should be considered small entities for the purpose of the RFA.

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.* (''PRA'') imposes certain requirements on Federal agencies (including the Commission) in connection with conducting or sponsoring any ''collection of information,'' [42] as defined by the PRA. Among its purposes, the PRA is intended to minimize the paperwork burden to the private sector, to ensure that any collection of information by a government agency is put to the greatest possible uses, and to minimize duplicative information collections across the government.[43]

The PRA applies to all information, ''regardless of form or format,'' whenever the government is ''obtaining, causing to be obtained, [or] soliciting'' information, and includes required ''disclosure to third parties or the public, of facts or opinions,'' when the information collection calls for ''answers to identical questions posed to, or identical reporting or recordkeeping requirements imposed on, ten or more persons.'' [44] The PRA requirements have been determined to include not only mandatory, but also voluntary information collections, and include both written and oral communications.[45] The Commission may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid Office of Management and Budget (''OMB'') control number.

This proposed rulemaking affects regulations that contain collections of information for which the Commission has previously received control numbers from OMB. The titles for these collections of information are ''Core Principles and Other Requirements for Swap Execution Facilities, OMB control number 3038–0074.'' This proposed rulemaking would not, however, alter or revise any existing information collections or impose any new information collection requirements from any persons or entities that require approval of OMB under the PRA. Accordingly, it will create no new paperwork burdens or modifications to existing burdens that are subject to review by the Office of Management and Budget under the PRA.

C. Cost-Benefit Considerations

Section 15(a) of the CEA [46] requires the Commission to ''consider the costs and benefits'' of its actions before promulgating a regulation under the CEA or issuing certain orders. Section 15(a) further specifies that the costs and benefits shall be evaluated in light of five broad areas of market and public concern: (1) protection of market participants and the public; (2) efficiency, competitiveness, and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations. The Commission considers the costs and benefits resulting from its discretionary determinations with respect to the section 15(a) factors.

1. Background

The Commission is proposing to amend § 37.3(a)(2) to limit its requirement of offering an Order Book to only Required Transactions.

The baseline against which the Commission considers the costs and benefits of these proposed rules is the statutory and regulatory requirements of the CEA and Commission regulations now in effect, in particular § 37.3(a)(2) of the Commission's regulations. The Commission, however, notes that as a practical matter SEFs and market participants have adopted some current practices based upon the no-action letter provided by Commission staff.[47] As such, to the extent that SEFs have relied on the relevant staff no-action letter, the actual costs and benefits discussed below of the proposed rules may not be fully realized.

To the extent possible, the Commission has endeavored to quantify the costs and benefits of this proposal; However, in some instances, it is not reasonably feasible to quantify the costs and benefits to SEFs and certain market participants with respect to, for example, market integrity. Notwithstanding these types of limitations, however, the Commission otherwise identifies and considers the costs and benefits of these rules in qualitative terms.

In the following consideration of costs and benefits, the Commission first identifies and discusses the benefits and costs attributable to the proposed rule amendments. The Commission, where applicable, then considers the costs and benefits of the proposed rules in light of the five public interest considerations set out in § 15(a) of the CEA.

The Commission notes that this consideration of costs and benefits is based on the understanding that the swaps market functions internationally, with many transactions involving U.S. firms taking place across international boundaries, with some Commission registrants being organized outside of the United States, with leading industry members typically conducting operations both within and outside the

[36] 5 U.S.C. 601 *et seq.*

[37] 47 FR at 18618–21 (Apr. 30, 1982).

[38] SEF Core Principles Final Rule, 78 FR 33476, 33548 (June 4, 2013) (citing 47 FR 18618, 18621 (Apr. 30, 1982) (discussing DCMs); 66 FR 42256, 42268 (Aug. 10, 2001) (discussing DTFs, ECMs, and EBOTs); and 66 FR 45604, 45609 (Aug. 29, 2001) (discussing registered DCOs)).

[39] 17 CFR 37.703.

[40] 7 U.S.C. 1(a)(18).

[41] 66 FR 20740, 20743 (Apr. 25, 2001) (stating that ECPs by the nature of their definition in the CEA should not be considered small entities).

[42] *See* 44 U.S.C. 3502(3)(A).

[43] *See* 44 U.S.C. 3501.

[44] *See* 44 U.S.C. 3502(3).

[45] *See* 5 CFR 1320.3(c)(1).

[46] 7 U.S.C. 19(a).

[47] In its discussion of alternatives, the Commission believes it is also relevant to consider the costs and benefits of the proposed regulations in comparison to circumstances in which such no-action letter is no longer available.

United States, and with industry members commonly following substantially similar business practices wherever located. Where the Commission does not specifically refer to matters of location, the below discussion of costs and benefits refers to the effects of the proposed rules on all swaps activity subject to the proposed and amended regulations, whether by virtue of the activity's physical location in the United States or by virtue of the activity's connection with or effect on U.S. commerce under CEA section 2(i).[48]

2. Permitted Transaction Order Books

The Commission is proposing to amend § 37.3(a)(2) to eliminate the requirement that SEFs offer an Order Book for Permitted Transactions, while maintaining the requirement to offer an Order Book for Required Transactions.

a. Benefits

The Commission preliminarily believes that not requiring SEFs to offer an Order Book for Permitted Transactions would benefit SEFs by helping them reduce operating costs, as they would no longer be required to operate and maintain an Order Book for trading Permitted Transactions. In addition, for those SEFs that may enter the market, these savings would extend to the development and design of an Order Book, as it is no longer required, if they did not list Required Transactions on their SEF. The Commission notes that these benefits are currently available to market participants through the existing no-action letter.

Further, as discussed above, the Commission preliminarily believes that by eliminating the Order Book requirement for Permitted Transactions, SEFs will be able to more effectively employ their resources, and no longer face the prospect of being required to provide Order Books that will not be utilized.

The Commission preliminarily believes that eliminating the Order Book Requirement for Permitted Transactions would provide several other benefits. Based on its experience, the Commission has observed that market participants have generally not used Order Books for swaps trading on SEFs despite their availability for all Permitted Transactions.[49] The Commission recognizes that market participants view Order Books as unsuitable for trading in a large segment of the swaps market and believes that eliminating this requirement would reduce costs by enabling SEFs to discontinue their use as a method of execution or limit their availability, based on their own discretion, to Permitted Transactions that are liquid enough to support such trading. Moreover, new SEFs would be able to register without setting up an Order Book for Permitted Transactions, which should significantly reduce the cost of establishing a SEF, especially for SEFs that plan to offer only Permitted Transactions. In removing this barrier of entry, the Commission believes that it may result in a more competitive marketplace, as more SEFs vie for trading activity.

Accordingly, the Commission preliminarily believes that the proposed elimination of the one size fits all Order Book Requirement for Permitted Transactions would free up resources that could enable SEFs to innovate and develop new and different methods of execution tailored to their markets, which may be more efficient, transparent, and cost-effective means for participants to trade Permitted Transactions. Such methods could be more efficient for a broader range of swaps and various market liquidity conditions, which may allow SEFs to effectively promote appropriate counterparty and swap-specific levels of pre-trade price transparency. This potential innovation of efficient, transparent, and cost-effective means of trading Permitted Transactions would facilitate natural market evolution by SEFs, which may ultimately lower transaction costs and increase trading efficiency.[50]

As the Commission is not prohibiting the use of an Order Book for Permitted Transactions, the Commission anticipates that SEFs that already are listing Permitted Transactions on their Order Book, will continue to offer them for some or all of these Permitted Transactions if they believe they are appropriate, such that customers who wish to transact Permitted Transactions on Order Books would continue to be able to do so. The Commission also notes that swap transactions on SEFs will continue to be subject to the part 43 real-time reporting requirements, so market participants would continue to benefit from the post-trade transparency associated with access to information about the most recent transaction price.

b. Costs

As noted above, not requiring SEFs to offer an Order Book for Permitted Transactions should enable SEFs to reduce operating costs. Since any existing Order Books for Permitted Transactions are not actively used, the Commission preliminarily believes that removing the Order Book Requirement (and not requiring SEFs to create such Order Books) should not impose significant costs on market participants.

The Commission notes that some market participants may not perceive a significant cost from the lack of availability of an Order Book for Permitted Transactions because the Order Books for Permitted Transactions on many SEFs exhibit little or no trading activity and contain few or no bids and offers, despite SEFs maintaining them over the past decade. The original intent of the Order Book Requirement was to provide market participants price transparency; however, since market participants are not currently using the available Order Books for Permitted Transactions, the Commission preliminarily believes that the cost related to removing the requirement would be de minimis.[51] As

[48] Section 2(i)(1) applies the swaps provisions of both the Dodd-Frank Act and Commission regulations promulgated under those provisions to activities outside the United States that ''have a direct and significant connection with activities in, or effect on, commerce of the United States[.]'' 7 U.S.C. 2(i). Section 2(i)(2) makes them applicable to activities outside the United States that contravene Commission rules promulgated to prevent evasion of Dodd-Frank.

[49] A research study by Lynn Riggs, Esen Onur, David Reiffen, and Haoxiang Zhu finds that for index CDS, a minimal amount of trading activity on the two highest-volume SEFs occurs via an order book. Lynn Riggs, Esen Onur, David Reiffen & Haoxian Zhu, Mechanism Selection and Trade Formation on Swap Execution Facilities: Evidence from Index CDS 10 (2017),*available at https://www.cftc.gov/idc/groups/public/@economicanalysis/documents/file/oce_mechanism_selection.pdf* (''2017 Riggs Study''). Similarly, in the BSEF Request Letter, BSEF stated in its experience that ''since 2015, over 96% of Order Book trading has been in [Required Transactions], and less than 4% of Order Book trades have been in [Permitted Transactions]''. BSEF Request Letter at 5. Further to this point, LSEG SEF, which trades only Permitted Transactions, stated in its no-action letter request that ''during the entire time that LSEG SEF's Order Book has been operational (*i.e.,* prior to obtaining temporary registration status in 2013), not a single trade has been executed on, nor any orders submitted to, LSEG SEF's Order Book.'' LSEG SEF Request Letter at 2–3

[50] Darrell Duffie and Haoxiang Zhu suggest that work-ups can sometimes be a more efficient means of transacting than a limit order book. *See* Darrell Duffie & Haoxiang Zhu, *Size Discovery,* 30 Rev. Fin. Stud. 1095–1150 (2017).

[51] To the extent that requiring SEFs to offer Order Books for Permitted Transactions facilitates their eventual use, the proposed elimination of the Order Book Requirement under § 37.3 creates a potential decrease in future pre-trade price transparency. If SEFs decide to stop offering Order Books for Permitted Transactions pursuant to this proposal, some swaps markets may not be able to move onto an Order Book even if there is future interest from some market participants. This cost would be mitigated to the extent that SEFs can always reinstate their Order Books for Permitted

Continued

noted above, the Commission anticipates that SEFs that believe Order Books are appropriate for Permitted Transactions would continue to offer them, so in that case, there would be no loss of the perceived benefit of an Order Book for Permitted Transactions.

Further, the Commission notes that to the extent that SEFs respond to the proposed approach by focusing the cost-savings and freed up resources from eliminating Order Books for Permitted Transactions into offering additional flexible execution methods, market participants should benefit by having the opportunity to choose an execution method with a more appropriate level of pre-trade transparency for their transactions and their swap trading needs.

c. Consideration of Alternatives

The relevant no-action position set forth in NAL No. 25–24, upon which the proposal is based, is subject to withdrawal by Commission staff. In addressing alternatives to adopting the proposed amendments to § 37.3(a)(2), the Commission considered the costs and benefits associated with withdrawal of the no-action position in NAL No. 25–24, which would obligate SEFs to satisfy the requirements of existing § 37.3(a)(2). The Commission preliminarily believes that adopting the proposed amendments to § 37.3(a)(2) would help reduce related costs for SEFs with respect to offering Order Books for Permitted Transactions.

Section 15(a) Factors

a. Protection of Market Participants and the Public

Allowing SEFs to eliminate the Order Book for Permitted Transactions should not impact protection of market participants. While protecting market participants also benefits the public, the Commission has not identified any further effect of the proposal on protection of the public.

b. Efficiency, Competitiveness, and Financial Integrity of the Markets

The proposed elimination of the Order Book Requirement would enhance efficiency by enabling SEFs to free up resources that were previously required for operating, maintaining, and updating seldomly used Order Books for Permitted Transactions. Freeing up these resources could enable SEFs to innovate and develop new and different methods of execution tailored to their markets, which may be more efficient, transparent, and cost-effective means for participants to trade Permitted Transactions. Such methods could be more efficient for a broader range of swaps and various market liquidity conditions, which may allow SEFs to effectively promote appropriate counterparty and swap-specific levels of pre-trade price transparency. This potential innovation of efficient, transparent, and cost-effective means of trading Permitted Transactions would facilitate natural market evolution by SEFs, which may ultimately lower transaction costs and increase trading efficiency. In addition, the Commission preliminarily believes that removing this requirement may result in more competition in the SEF space. As noted above, designing and developing an Order Book is a significant barrier of entry into this space, so by removing this barrier, it is possible that more SEFs may enter the market, which may result in a more efficient market for Permitted Transactions. The Commission has not identified any likely effects of the proposed amendments on financial integrity in the swap markets. The Commission preliminarily believes expects that, since there are few, if any, active Order Books for Permitted Transactions, SEFs will not use the proposed amendment to § 37.3(a)(2) to remove active Order Books that are providing competitive markets.

c. Price Discovery

The Commission preliminarily believes that the proposed amendment to § 37.3(a)(2), which would allow SEFs to choose not offer an Order Book for Permitted Transactions, would not materially inhibit price discovery since the Commission anticipates that SEFs would retain Order Books for Permitted Transactions where price discovery is occurring but to that point, the Commission preliminarily believes that currently price discovery is not occurring in Order Books for Permitted Transactions as addressed within this proposal.

d. Sound Risk Management Practices

The Commission has not identified any likely effects of the proposed amendments on sound risk management practices in the swap markets.

e. Other Public Interest Considerations

The Commission is identifying a public interest benefit in codifying the no-action position in NAL 25–24, where the efficacy of that position has been demonstrated. In such a situation, the Commission believes it serves the public interest to engage in notice-and-comment rulemaking, where it seeks and considers the views of the public in amending its regulations, rather than for SEFs to continue to rely on a staff provided no-action position that does not bind the Commission, provides less long-term certainty, and offers a more limited opportunity for public input.

Request for Comment

The Commission invites public comment on all aspects of its cost benefit considerations, including the discussion of the section 15(a) factors. Commenters are requested to provide data and any other information or statistics to support their position. To the extent commenters believe that the costs or benefits of any aspect of the proposed rules are reasonably quantifiable, the Commission requests that they provide data and any other information or statistics to assist the Commission in quantification.

(5) The Commission preliminarily believes that SEFs are relying on the no action position in NAL 25–24 and are not currently offering Order Books for Permitted Transactions. Is the Commission's understanding correct?

(6) If a SEF applicant was required to comply with existing § 37.3(a)(2) and build an Order Book for Permitted Transactions, what costs and expenses would the SEF applicant incur? To the extent possible, please quantify the costs and expenses in U.S. Dollars.

(7) What costs and expenses have SEFs typically incurred in operating, maintaining, and updating an Order Book for Permitted Transactions? To the extent possible, please quantify the costs and expenses in U.S. Dollars.

(8) Is there a viable alternative to a total removal of the requirement of an Order Book for Permitted Transactions? If so, how should the Commission implement it and what costs and benefits would be incurred?

D. Antitrust Considerations

Section 15(b) of the CEA requires the Commission to take into consideration the public interest to be protected by the antitrust laws and endeavor to take the least anticompetitive means of achieving the objectives of the CEA, in issuing any order or adopting any Commission rule or regulation. The Commission does not anticipate that the proposed amendments to parts 37 would promote or result in anti-competitive consequences or behavior. On the contrary, as described in its analysis of Cost-Benefit Considerations, the Commission anticipates that the proposed amendments will afford SEFs additional flexibility to innovate and develop new methods of execution tailored to their markets, which may be

Transactions in response to customer demand or offer other execution methods that provide similar pre-trade price transparency benefits.

more efficient, transparent, and cost-effective and thereby promote competition. The Commission requests comments on this preliminary analysis and on the potential impact of the proposed amendments on competition.

E. Executive Orders 12866, 13563, and 14192

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select those regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; and distributive impacts). Section 3(f) of Executive Order 12866 defines a ''significant regulatory action'' as any regulatory action that is likely to result in a rule that may: (1) have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, or the President's priorities.

The Office of Management and Budget has determined that this action is not a significant regulatory action as defined in Executive Order 12866, as amended, and therefore it was not subject to Executive Order 12866 review.

This Proposal, if finalized as proposed, is expected to be an Executive Order 14192 deregulatory action.

List of Subjects in 17 CFR Part 37

Order Books, Permitted transactions, Swaps, Swap execution facilities, Minimum trading functionality.

For the reasons stated in the preamble, the Commodity Futures Trading Commission proposes to amend part 37 of title 17 of the Code of Federal Regulations as follows:

Revise part 37 to read as follows:

PART 37—SWAP EXECUTION FACILITIES

■ 1. The authority citation for part 37 continues to read as follows:

Authority: 7 U.S.C. 1a, 2, 5, 6, 7, 7a–2, 7b–3, and 12a, as amended by Titles VII and VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 1376.

■ 2. Revise § 37.3(a)(2) to read as follows:

§ 37.3 Requirements and procedures for registration.

(a) * * *

(2) *Minimum trading functionality.* A swap execution facility shall, at a minimum, offer an Order Book as defined in paragraph (a)(3) of this section for Required Transactions as defined in § 37.9(a)(1).

* * * * *

Issued in Washington, DC, on August 24, 2026, by the Commission.

Robert Sidman,

Deputy Secretary of the Commission.

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

Swap Execution Facility Order Book Requirement for Permitted Transactions—Voting Summary

On this matter, Chairman Selig voted in the affirmative. No Commissioner voted in the negative.

[FR Doc. 2026–17416 Filed 8–25–26; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–115646–25]

RIN 1545–BR77

Pro Rata Share of Subpart F Income, Tested Income, or Tested Loss

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to the determination of a United States shareholder's pro rata share of subpart F income, tested income, or tested loss of a controlled foreign corporation. The proposed regulations would affect shareholders of foreign corporations, including United States shareholders of controlled foreign corporations.

DATES: Written or electronic comments and requests for a public hearing must be received by October 26, 2026.

ADDRESSES: Commenters are strongly encouraged to submit public comments electronically. Submit electronic submissions via the Federal eRulemaking Portal at *www.regulations.gov* (indicate IRS and REG–115646–25) by following the online instructions for submitting comments. Requests for a public hearing must be submitted as prescribed in the ''Comments and Requests for a Public Hearing'' section. Once submitted to the Federal eRulemaking Portal, comments cannot be edited or withdrawn. The Department of the Treasury (Treasury Department) and the IRS will publish for public availability any comment submitted to the IRS's public docket. Send paper submissions to: CC:PA:01:PR (REG–115646–25), Room 5503, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Dylan J. Steiner at (202) 317–6934; concerning submissions of comments and requests for a public hearing, contact the Publications and Regulations Section of the Office of Associate Chief Counsel (Procedure and Administration) by email at *publichearings@irs.gov* (preferred) or by telephone at (202) 317–6901 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Authority

This document contains proposed additions and amendments to 26 CFR part 1 (proposed regulations) under sections 951 and 951A and certain other provisions of the Internal Revenue Code (Code) relating to the determination of a United States shareholder's pro rata share of subpart F income, tested income, or tested loss of a controlled foreign corporation. The proposed regulations also include guidance regarding the transition rule (transition rule) in section 70354(c)(2) of Public Law 119–21, 139 Stat. 72 (July 4, 2025), commonly known as the One, Big, Beautiful Bill Act (OBBBA). The proposed regulations are issued pursuant to the express delegations of authority in section 951(a)(4) and section 70354(c)(2) of the OBBBA. The proposed regulations are also issued pursuant to the express delegation of authority in section 7805(a).

Background

I. Scope

This Background describes the rules for determining a United States shareholder's pro rata share of subpart F income, tested income, or tested loss, as relevant, as well as certain other related provisions. Any term used but not defined in this preamble has the meaning given to it in the proposed regulations.