

From: Torphy, Laura [REDACTED]
Sent: Thursday, July 16, 2020 11:56 PM
To: Tente, Meghan
Subject: [EXTERNAL] Part 43: Proposed Amendments

Meghan –

I hope you are safe and healthy. There was a question raised by the Commission in the notice of proposed rulemaking for part 43 related to the amendments to the capping rules for the other commodity asset class. Regrettably, due to the length of the comment period we didn't have time to include our response as part of our comment letter.

As noted below SDRs would be unable to fully comply with the capping rules as proposed. We were hoping to set up some time to discuss our concerns with the proposed rule as well as possible solutions. Please let me know if you would have time in your schedule to speak with us.

Kind Regards,
Laura

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**Question 50:** For the other commodity swap category (for which swaps are often measured in physical units), swaps have a block size equal to zero, and there is a fixed cap size denominated in USD notional. For such swaps, what are the costs to SDRs to convert the notional amount into USD to determine whether the trade meets the cap threshold?

**Response:** The current capping rule states the cap size should be equal to the greater of the initial appropriate minimum block size for the respective swap category in appendix F or the respective cap sizes in paragraphs (h)(1)(i) through (h)(1)(v). The rule further stipulates that if appendix F does not provide an initial appropriate minimum block size for a particular swap category, the initial cap size for such swap category shall be equal to the appropriate cap size as set forth in paragraphs (h)(1)(i) through (h)(1)(v). In the other commodity asset class the minimum block size set forth in appendix F is in units of measure and the cap size in paragraph § 43.4(h)(1)(v) is listed as a notional amount. Thus in order for an SDR to apply capping in the other commodity asset class pursuant to the current regulation it would require reporting counterparties to convert those swaps submitted as a quantity to a notional amount so an SDR could determine if the trade exceeded block size set forth in Appendix F or the cap sizes in (h)(1)(i) through (h)(1)(v).

As discussed in further detail in the proposed release the amended capping rules would remove appendix F, redefine existing swap categories on which caps would be based and require the application of USD notional values for swaps or instruments for which no cap has been defined. The Commission has established two swap categories in the other commodity asset class on which caps would be based: (1) swaps that have a physical commodity underlier listed in Appendix A to Part 43 and (2) swaps that do not fall within that category. The Commission has yet to determined or published the cap sizes to be applied by the SDRs. Thus it is not clear whether it is the Commission's intention to establish the caps in the other commodity asset class in units, notional amounts or both. For those swaps captured in the second category, §43.4(g)(8) defines the cap size as USD 100 million. The draft technical specification require capping to be applied to the values in the following three fields: Notional Amount (28), to Notional Quantity (35) and Total Notional Quantity (39). As noted previously it is not clear how the cap sizes for the physical commodity underlier listed in Appendix A will be defined by the Commission (i.e., units, notional amounts or both). Should the Commission decide to provide cap sizes for physical commodity underlier listed in Appendix A in both unit of measure and notional amounts the number of commodity swaps

to which a SDR can apply caps would increase. However even with these changes SDRs would be unable to fully comply with the capping requirements contained in §43.4(g) for swaps in the other commodity asset class. The following are scenarios for which, even if the Commission provided cap sizes for physical commodity underlier listed in Appendix A in both units and notional amounts, an SDR would be unable to apply caps because it would not have the necessary information to convert notional amount to units or units to notional amounts: (1) the 'Quantity unit of measure' associated with the 'Notional Quantity' and 'Total Notional Quantity' is different than the units of measure for caps defined by the Commission, or (2) the transaction is reported as a quantity and the cap to be applied is USD 100 million. Given an SDRs would be unable to fully comply with the capping rules as proposed we would suggest the caps for physical commodity underlier listed in Appendix A be defined as total notional amount and the obligation to cap quantity be removed.

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