Hillwood Parkway, Fort Worth, TX 76177; telephone (817) 222–5857.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA’s authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency’s authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends the Class E airspace extending upward from 700 feet above the surface at Shenandoah Municipal Airport, Shenandoah, IA, to support IFR operations at this airport.

History

The FAA published a notice of proposed rulemaking in the Federal Register (85 FR 7681; February 11, 2020) for Docket No. FAA–2019–0791 to amend the Class E airspace extending upward from 700 feet above the surface at Shenandoah Municipal Airport, Shenandoah, IA. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Class E airspace designations are published in paragraph 6005 of FAA Order 7400.11D, dated August 8, 2019, and effective September 15, 2019, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

Availability and Summary of Documents for Incorporation by Reference

This document amends FAA Order 7400.11D, Airspace Designations and Reporting Points, dated August 8, 2019, and effective September 15, 2019. FAA Order 7400.11D is publicly available as listed in the ADDRESSES section of this document. FAA Order 7400.11D lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Rule

This amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 by amending the Class E airspace extending upward from 700 feet above the surface within a 6.5-mile radius (increased from a 6.4 mile radius), of Shenandoah Municipal Airport, Shenandoah, IA; and removing the Shenandoah NDB, and associated extensions from the airspace legal description.

This action is the result due to an airspace review caused by the decommissioning of the Shenandoah NDB, which provided navigation information for the instrument procedures at this airport.

FAA Order 7400.11, Airspace Designations and Reporting Points, is published yearly and effective on September 15.

Regulatory Notices and Analyses

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current, is non-controversial and unlikely to result in adverse or negative comments. It, therefore: (1) Is not a “significant regulatory action” under Executive Order 12866; (2) is not a “significant rule” under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that only affects air traffic procedures and air navigation, it is certified that this rule, when promulgated, does not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1F, “Environmental Impacts: Policies and Procedures,” paragraph 5–6.5.a. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:


§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.11D, Airspace Designations and Reporting Points, dated August 8, 2019, and effective September 15, 2019, is amended as follows:

Paragraph 6005  Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.

ACE IA E3 Shenandoah, IA [Amended]

Shenandoah Municipal Airport, IA (Lat. 40°45′06″ N, long. 95°24′49″ W) That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Shenandoah Municipal Airport. Issued in Fort Worth, Texas, on May 5, 2020.

Steven T. Phillips,
Acting Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2020–09892 Filed 5–8–20; 8:45 am]

BILLING CODE 4910–13–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 23

RIN 3038–AE77

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

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rule.

SUMMARY: The Commodity Futures Trading Commission (“Commission” or “CFTC”) is amending the margin requirements for uncleared swaps for swap dealers (“SD”) and major swap participants (“MSP”) for which there is no prudential regulator to add the European Stability Mechanism (“ESM”) to the list of entities that are expressly excluded from the definition of financial end user under Commission regulations and to correct an erroneous cross-reference in Commission regulations (“Final Rules”).

DATES: This final rule is effective June 10, 2020.
FOR FURTHER INFORMATION CONTACT: Joshua B. Sterling, Director, 202–418–6056, jsterling@cftc.gov; Thomas J. Smith, Deputy Director, 202–418–5495, tsmith@cftc.gov; Warren Gorlick, Associate Director, 202–418–5195, wgorlick@cftc.gov; Carmen Moncada-Terry, Special Counsel, 202–418–5795, cmoncada-terry@cftc.gov; or Rafael Martinez, Senior Financial Risk Analyst, 202–418–5462, rmartinez@cftc.gov, Division of Swap Dealer and Intermediary Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1151 21st Street NW, Washington, DC 20581.

SUPPLEMENTARY INFORMATION:

I. Background

In January 2016, the Commission adopted regulation §§ 23.150 through 23.163 (collectively, “CFTC Margin Rule”) to implement section 4s(e) of the Commodity Exchange Act (“CEA”),1 which requires SDFs and MSPs for which there is not a prudential regulator (“CSEs”) to meet minimum initial and variation margin requirements adopted by the Commission by rule or regulation.2 Since adopting the CFTC Margin Rule, the Commission’s Division of Swap Dealer and Intermediary Oversight (“DSIO”) has issued staff guidance, including no-action letters, addressing the application of the rule. In July 2017, DSIO issued CFTC Letter No. 17–34 in response to a request for relief submitted by the ESM.3 The ESM sought relief with respect to uncleared swaps transactions it entered into with SDFs, representing that it was similar to multilateral development banks, as the term is defined in Commission regulation § 23.151, which are excluded from the definition of financial end user and whose swaps are exempt from the CFTC Margin Rule. In October 2019, the Commission proposed to codify CFTC Letter No. 17–34 and amend Commission regulation § 23.151 to exclude the ESM from the definition of financial end user and thus exempt from the CFTC Margin Rule uncleared swaps entered into by the ESM.4 The Commission also proposed to correct a typographical error in Commission regulation § 23.157.5

II. Final Rules

The Commission is adopting the amendments to Commission regulation §§ 23.151 and 23.157 as proposed. The Commission received three comments in the file for the Proposal,6 only one of which directly addressed the Proposal.7 The Futures Industry Association (“FIA”) indicated among other things, that its commodities members generally support the Proposal.8

A. Commission Regulation § 23.151—Definition of Financial end user

The CFTC Margin Rule applies to swap transactions between CSEs and counterparties that are SDFs, MSPs or financial end users. Commission regulation § 23.151 defines the term “financial end user,”9 excluding from the definition sovereign entities, multilateral development banks, the Bank for International Settlements, entities exempt from the definition of financial entity pursuant to section 2(b)(7)(C)(iii) of the Act and implementing regulations, affiliates that qualify for the exemption from clearing pursuant to section 2(b)(7)(D) of the Act, and eligible treasury affiliates that the Commission exempts from the requirements of Commission regulation §§ 23.150 through 23.161 by rule.10

The Commission is adopting the proposed amendment to Commission regulation § 23.151. As amended, Commission regulation § 23.151 excludes the ESM from the definition of financial end user, effectively exempting uncleared swaps transactions entered into by the ESM from the CFTC Margin Rule. With respect to the proposed amendment, FIA stated that its commodity members generally support the Commission’s efforts to amend its rules to relieve burdens on market participants.

The amendment to Commission regulation § 23.151 codifies the relief provided by CFTC Letter No. 17–34, which extends no-action relief from the CFTC Margin Rule with respect to uncleared swaps between SDFs and the ESM. The no-action relief was granted based on the ESM’s representations concerning the nature of its operations. The no-action letter stated that the ESM is an intergovernmental financial institution that provides financial assistance for national or regional development to Euro area member states that are in or are threatened by severe financial distress, similar to multilateral development banks, which are excluded from the definition of financial end user in Commission regulation § 23.151. To accomplish its policy goals, the ESM utilizes several financial assistance instruments, including loans in various forms which can be used for multiple purposes and are offered only subject to bespoke specified conditions, including economic reforms. The ESM enters into uncleared swaps with SDFs to hedge the interest rate and currency risks it faces as a result of entering into and funding loans and to hedge risks associated with its invested capital. The ESM does not, and will not, enter into uncleared swaps for speculative purposes.

In granting no-action relief, DSIO noted that the ESM, like multilateral development banks excluded from the financial end user definition, has a lower risk profile, posing less counterparty risk to an SD and less systemic risk to the financial system. While not explicitly finding that the ESM was a multilateral development bank, DSIO recognized that its functions and credit profile justified relief.11

1 See Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants, 81 FR 636 (Jan. 6, 2016) (“Final Margin Rule”); Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants—Cross-Border Application of the Margin Requirements, 81 FR 34818 (May 31, 2016).

2 See 7 U.S.C. 6s(e)(1)(B). SDFS and MSPs for which there is not a prudential regulator (“CSEs”) to meet minimum initial and variation margin requirements adopted by the Commission by rule or regulation.


5 Id. at 56394.


9 17 CFR 23.151.

10 See id.

11 The Basel Committee on Banking Supervision ascribes to the ESM a 0% risk weight. The ESM has been included in the list of entities that receive a...
Based on the aforementioned considerations, the Commission amends paragraph (2)(iii) of the definition of financial end user in Commission regulation § 23.151 by adding the ESM to the list of entities that are excluded from the definition of financial end user. As a result of the ESM’s exclusion from the definition of financial end user, uncleared swaps entered into between the ESM and CSEs are exempt from the CFTC Margin Rule. The Commission believes that the amendment, as adopted, provides clarity and certainty to CSEs that are counterparties to the ESM that uncleared swaps entered into with the ESM are not subject to the CFTC Margin Rule. The Commission is adopting the amendment because activities conducted by the ESM, like activities conducted by multilateral development banks that are excluded from the financial end user definition, generally have a different purpose in the financial system. These types of entities are established by governments and their financial activities are designed to further governmental purposes, posing less counterparty risk to CSEs and less systemic risk to the financial system. Furthermore, the Commission believes that the amendment encourages international comity and continued cooperation between the Commission and the European Union ("EU") authorities. In this regard, the Commission notes that the ESM is exempt from the European Market Infrastructure Regulation or EMIR’s margin rule for derivatives contracts not cleared by a central counterparty. By taking this action, the Commission acknowledges the unique interests of the EU authorities in the ESM and recognizes that the principles of international comity counsel mutual respect for the important interests of foreign sovereigns.


14 FIA letter at 2.

15 In the Final Margin Rule, the Commission explained that its intent was to exclude immediately available cash funds, which is one form of eligible collateral in Commission regulation § 23.156(a)(1), because allowing such eligible collateral to be held in the form of a deposit liability of the custodian bank would be incompatible with Commission regulation § 23.157(c)’s prohibition against rehypothecation of collateral. See Final Margin Rule, 81 FR at 671. However, the Commission expressly stated that the custodian could use cash funds to purchase other forms of eligible collateral. See id.


B. Amendment of Commission Regulation § 23.157—Correction of Cross-Reference

The Commission is adopting a corrective amendment to Commission regulation § 23.157. In its comment letter, FIA indicated that its commodities members generally support the Commission’s efforts to amend its rules when necessary to correct errors. Commission regulation § 23.157 requires initial margin collected from or posted by a CSE to be held by one or more independent custodians. The CSE must enter into a custodial agreement with each custodian that holds the initial margin collateral. In particular, paragraph (c)(1) of Commission regulation § 23.157 provides that the custodial agreement must prohibit the custodian from rehypothecating, repledging, reusing, or otherwise transferring the collateral except that cash collateral may be held in a general deposit account with the custodian if the funds in the account are used to purchase an asset described in Commission regulation § 23.156(a)(1)(iv) through (xii).

In administering the Commission’s regulations, DSIO staff noticed that the cross-reference to “§ 23.156(a)(1)(iv) through (xii)” in paragraph (c)(1) of Commission regulation § 23.157 was erroneous. First, the existing cross-reference incorrectly refers to non-existing paragraphs. Second, the existing cross-reference excludes treasury securities and U.S. government agency securities, which are included in the list of eligible collateral set forth in Commission regulation § 23.156(a)(1), and which the Commission intended to include as eligible assets into which cash collateral can be converted. To administer the CFTC Margin Rule and prevent confusion in its application, the Commission is hereby amending Commission regulation § 23.157(c)(1) to remove the erroneous cross-reference to “§ 23.156(a)(1)(iv) through (xii)” and replace it with the corrected cross-reference “§ 23.156(a)(1)(iii) through (x).”

III. Administrative Compliance

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (“RFA”) requires Federal agencies, in promulgating regulations, to consider whether the rules they propose will have a significant economic impact on a substantial number of small entities and, if so, provide a regulatory flexibility analysis respecting the impact. The Commission certified that the Proposal would not have a significant economic impact on a substantial number of small entities. The Commission requested comments with respect to the RFA and received no comments.

As discussed in the Proposal, the Final Rules only affect SDs and MSPs that are subject to the CFTC Margin Rule and their covered counterparties, all of which are required to be eligible contract participants (“ECPs”). The Commission has previously determined that SDs, MSPs, and ECPs are not small entities for purposes of the RFA. Therefore, the Commission believes that the Final Rules will not have a significant economic impact on a substantial number of small entities, as defined in the RFA.

Accordingly, the Chairman, on behalf of the Commission, hereby certifies pursuant to 5 U.S.C. 605(b) that the Final Rules will not have a significant economic impact on a substantial number of small entities.

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (“PRA”) imposes certain requirements on Federal agencies, including the Commission, in connection with their conducting or sponsoring any collection of information, as defined by the PRA. The Commission may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid Office of Management and Budget control number. The Final Rules, as adopted, contain no requirements subject to the PRA.

C. Cost-Benefit Considerations

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

In addition, the Commission notes that the consideration of costs and benefits below is based on the understanding that the markets function internationally, with many transactions involving 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 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 Final Rules on all activities subject to the Proposal, whether by virtue of the activity’s physical location in the United States or by virtue of the activities’ connection with or effect on U.S. commerce under CEA section 2(1).

1. Baseline and Rule Summary

The baseline for the Commission’s consideration of the costs and benefits of these Final Rules is the CFTC Margin Rule. The Commission recognizes that to the extent market participants have relied on CFTC Letter No. 17–34, the actual costs and benefits of the amendment to Commission regulation §23.151 as adopted, codifies CFTC Letter No. 17–34 and confirms that uncleared swaps with the ESM as a counterparty are not subject to the CFTC Margin Rule. As discussed in the Proposal, given the limited activity of the ESM in the swaps markets, the Commission believes that the unmargin exposure resulting from uncleared swaps between CSEs and the ESM is unlikely to result in significant risk to the financial system. Inasmuch as margin is posted to protect counterparties against credit risk, the creditworthiness of the ESM is critical to this analysis. The ESM has maintained high capital levels and has ultimate backing from the EU.

Consequently, the Commission is of the view that the ESM does not pose substantial counterparty credit risk. Thus, the Commission believes that there will be no material impact on market participants and the general public relative to the status quo baseline.

b. Efficiency, Competitiveness, and Financial Integrity of Markets

The Commission believes that the efficiency, competitiveness, and financial integrity of markets will not be significantly impacted by amending Commission regulation §23.151 to exclude the ESM from the definition of financial end user and therefore removing the requirement to post and collect margin in uncleared swap transactions with the ESM.

One of the main functions of the ESM is to provide emergency assistance to members states of the EU in financial distress. The Commission believes that relief from the margin requirements will allow the ESM to meet its mission, in particular, in times of tight liquidity, contributing to the stability of the EU financial system and the reduction of risk. Moreover, given the nature of its operations, the ESM is motivated to choose sensible, creditworthy counterparties and to limit its credit risk exposure.

c. Price Discovery

The amendment to Commission regulation §23.151 codifies CFTC Letter No. 17–34, relieving the ESM and its counterparties from the CFTC Margin Rule. The codification of the no-action relief as a rule formalizes a no-action position held by DSIO and promotes transparency concerning the applicability of the CFTC Margin Rule. Because there will not be a legal requirement that margin be posted in uncleared swap transactions with the ESM, such transactions will likely be for prices that deviate from similar uncleared swap transactions with financial end users but be in line with swaps with non-financial entities. As a procedure, the ESM’s member states have irrevocably agreed to contribute a total of approximately €624 billion in additional capital should the ESM face financial distress. Further, the ESM is subject to limits on its lending and borrowing, and the ESM’s property, funding, and assets in its member states are immune from search, requisition, confiscation, expropriation, or any other form of seizure, taking, or foreclosure. In addition, to the extent necessary to carry out its activities, all property, funding, and assets of the ESM are free from restrictions, regulations, controls, and moratorium of any nature. The combined application of these rules and limits is effective in keeping the ESM’s total liabilities well below its available capital.

20 See 7 U.S.C. 2(1).

21 Recent review of data from the SDRs indicates that the ESM engages in limited swap trading activity.

22 CFTC Letter No. 17–34 states that “[w]ith respect to its credit risk, as part of its emergency

23 See CFTC Letter No. 17–34.
result, uncleared swaps entered into with the ESM could increase, which could enhance, or at least not harm, the price discovery process.

d. Sound Risk Management

The ESM is an intergovernmental financial institution established by the EU and its financial activities are designed to advance EU objectives. The ESM’s purpose is to manage the potential for systemic risk by providing support to member states that are in distress. The exposures posed by the ESM are therefore relatively unique. Accordingly, the amendment to Commission regulation § 23.151 to exclude the ESM from the definition of financial end user and thereby remove it from the purview of the CFTC Margin Rule may result in CSEs being more inclined to enter into uncleared swaps with the ESM, benefiting from the overall diversification of their swap portfolios, which is consistent with sound risk management. Also, while relief from the margin requirements will result in the ESM collecting lesser amounts of margin to mitigate the risk of uncleared swaps, increasing the possibility of systemic risk, the Commission believes that the ESM’s uncleared swaps activity, as reflected in the SDR data, is unlikely to result in substantial systemic risk.24

e. Other Public Interest Considerations

As discussed in the Proposal, the Commission believes that the amendment to Commission regulation § 23.151 is also warranted based on the interests of comity and the Commission’s continuing cross-border coordination with EU authorities, such as the 2016 EC–CFTC Agreement, which has fostered cooperation and mutual respect between the CFTC and EU authorities.

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 purposes of the CEA, in issuing any order or adopting any Commission rule or regulation (including any exemption under section 4(c) or 4(b) of the CEA), or in requiring or approving any bylaw, rule, or regulation of a contract market or registered futures association established pursuant to section 17 of the CEA.25

The Commission believes that the public interest to be protected by the antitrust laws is generally fair competition. The Commission requested comments on whether the Proposal implicated any other specific public interest to be protected by the antitrust laws and received no comments.

The Commission has considered the Final Rules to determine whether they are anticompetitive and has identified no anticompetitive effects. The Commission requested comments on whether the Proposal was anticompetitive and, if it is, what the anticompetitive effects are, and received no comments.

Because the Commission has determined that the Final Rules are not anticompetitive and have no anticompetitive effects, the Commission has not identified any less anticompetitive means of achieving the purposes of the CEA.

List of Subjects in 17 CFR Part 23

Capital and margin requirements, Major swap participants, Swap dealers, Swaps.

For the reasons stated in the preamble, the Commodity Futures Trading Commission amends 17 CFR part 23 as set forth below:

PART 23—SWAP DEALERS AND MAJOR SWAP PARTICIPANTS

1. The authority citation for part 23 continues to read as follows:

Authority: 7 U.S.C. 1a, 2, 6a, 6b, 6b–1, 6c, 6p, 6t, 6s, 6t, 9a, 12, 12a, 13b, 13c, 16a, 16, 18, 19, 21.

Section 23.160 also issued under 7 U.S.C. (i); Sec. 721(b), Pub. L. 111–203, 124 Stat. 1641 (2010).

2. In § 23.151, revise paragraph (2)(iii) of the definition of Financial end user to read as follows:

§ 23.151 Definitions applicable to margin requirements.

Financial end user * * *

(2) * * *

(iii) The Bank for International Settlements and the European Stability Mechanism;

* * * * *

3. In § 23.157, revise paragraph (c)(1) to read as follows:

§ 23.157 Custodial arrangements.

(1) Prohibits the custodian from rehypothecating, repledging, reusing, or otherwise transferring (through securities lending, securities borrowing, repurchase agreement, reverse repurchase agreement or other means) the collateral held by the custodian except that cash collateral may be held in a general deposit account with the custodian if the funds in the account are used to purchase an asset described in § 23.156(a)(1)(ii) through (x), such asset is held in compliance with this section, and such purchase takes place within a time period reasonably necessary to consummate such purchase after the cash collateral is posted as initial margin; and

* * * * *

Issued in Washington, DC, on April 17, 2020, by the Commission.

Robert Sidman,
Deputy Secretary of the Commission.

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

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

Appendix 1—Commission Voting Summary

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

Appendix 2—Supporting Statement of Chairman Heath P. Tarbert

I am pleased to support today’s final rule codifying relief from the Margin Rule for the European Stability Mechanism (“ESM”).3 The Margin Rule requires the posting of initial and variation margin for uncleared swaps entered into by certain swap dealers, major swap participants, and “financial end users.”4 Today’s final rule will amend the definition of “financial end user” in Regulation 23.151 to exclude the ESM from the requirements of the Margin Rule.

As I explained when this amendment was proposed last October,5 the ESM provides financing and bond purchases to support Eurozone member states, serving similar functions as a multilateral development bank. Given that multilateral development banks and related entities are excluded from


2 Regulation 23.151 applies to swap dealers, major swap participants, and financial end users that are not subject to regulation by a “Prudential Regulator,” which term our laws use as shorthand to mean what is essentially a banking regulator.


4 The Margin Rule excludes from the definition of “financial end user” sovereign entities, multilateral
theMarginRule, it makes good sense to
codify the same relief for the ESM. This is
especially true given the ESM’s role in the
market. As its name suggests, the ESM is an
agent of stability and does not raise concerns
about risk in the derivatives markets.
Codifying the ESM’s relief when it comes to
financial regulatory areas where nations have
implemented a common set of core
principles internationally. Those
internationally-shared frameworks serve as a
baseline, and national regulators have
necessarily tailored their specific rules to the
unique attributes of their own domestic
markets. But we should be humble, and
indeed wise enough, to resist the temptation
to insist that a foreign counterpart adopt
domestic regulations on a rule-by-rule basis. Cross-border regulation that
utilizes comity and deference can enable the
effective implementation of the post-crisis
G20 derivatives regulatory reforms.

As I have stated before, were financial
regulators to insist that their counterparts
overseas import each other’s specific rules
wholesale, it would lead to an absurd result
ad infinitum. Just as the G20, Financial
Stability Board, and various standard-setting
bodies were established to prevent a global
race to the bottom, their work is also meant
to provide incentives for the complete
restoration of the complete structures of their
domestic regimes onto others. For example, the Principles for
Financial Markets Infrastructure (“PFMI”)
represent international standards for, among
other things, central counterparties and trade
repositories. All of the G20 nations have
adopted the PFMI, providing an opportunity
for meaningful dialogue with both the
European Commission and the European
Securities and Markets Authority regarding
the status of American and European central
counterparties.

Those discussions are ongoing and have
been productive. In particular, we are
working toward a potential cooperative
framework for the supervision of central
counterparties engaged in international
markets. With an eye to this progress, I
believe today’s final amendments to the
Margin Rule are appropriate. I am
couraged by the tone of the dialogue and
the commitment of our EU counterparts to
reach a mutually beneficial arrangement that
will stand the test of time. I believe such an
arrangement for the supervision of third
country central counterparties would entail a
great deal of transparency and international
comity alongside extensive
information sharing and regular
communications between supervisory
authorities. I look forward to continuing to
discuss with our European colleagues to
advance our common interest in a robust and
resilient transatlantic derivatives market.
In that context, I am pleased to support today’s
final rule to exclude the ESM from the
Margin Rule.

Appendix 3—Supporting Statement of
Commissioner Brian Quintenz

In March 2018, I articulated my approach
to our current regulatory relationship with our
European counterparts in light of their
refusal to stand by or re-affirm their 2016
commitment to Eurex. The CFTC’s and European
Commission’s common approach to the
regulation of cross-border central
counterparties (CCPs) (CFTC–EC CCP
Agreement). Specifically, I believe that the
absence of the agreement’s re-affirmation in
the European Market Infrastructure
Regulation 2.2 (EMIR 2.2) directly implied the
agreement’s abrogation. I therefore
vowed that I would either object to or vote
against any relief provided to, or requested
by, European Union authorities until the
agreement’s clarity was restored. Since that
time, I have consistently voted against, or
objected to, any regulation or relief that
provides special accommodations to
European entities, including the proposed
exemption from margin requirements for the
European Stability Mechanism (ESM) that
the Commission seeks to finalize today.

However, the unprecedented devastating
economic and social impacts of COVID–19
across the globe warrant a reprieve from that
position. In the United States, financial
regulators have acted swiftly, decisively, and
boldly to mitigate economic disruptions and
support market liquidity, including
providing regulatory relief where necessary.
I am very proud of the CFTC’s decisive
response to the COVID–19 pandemic, which
promoted the full functioning of derivatives
markets despite the extraordinary challenges
facing exchanges, clearinghouses, and market
intermediaries as a result of social
distancing. I know the Commission, under
the strong leadership of Chairman Heath P.
Tarbert, is committed to providing any
additional relief necessary to ensure that U.S.
markets remain accessible.

Our European counterparts are engaged in
the same epic struggle as we are to lessen the
extraordinary economic and social harms of
this pandemic. Although I remain committed
to ensuring the terms of the CFTC–EC CCP
Agreement are ultimately upheld, I also
recognize that issue is one facet of a much
broader, deeper bond we share with the
European Union—a relationship that has
been grounded in goodwill, trust, and
partnership. Many of the European
institutions affected by the rules and no-
action relief before the Commission today are
likely to be central to the European Union’s
COVID–19 economic recovery efforts. As a
result, I believe it is appropriate to support
the items before the Commission today,
which, by providing relief from CFTC
clearing and margin requirements, may
bolster the ability of EU institutions to
provide critical financial assistance to their
economies, businesses, and citizens.

For example, the European Commission,
ESM, and European Investment Bank (EIB)
are working in concert to take unprecedented
actions at the European level to complement
national measures to mitigate the impacts of
COVID–19. The ESM has long existed as a
financial tool at its disposal, including making loans
to Eurozone member states, purchasing the
bonds of Eurozone members, providing
precautionary credit lines that can be drawn
upon if needed, and directly recapitalizing
financial institutions.

Similarly, the EIB, the lending arm of the
European Union, and the European
Investment Fund (EIF), which specializes in
finance for small and medium sized
businesses, are also working together to
respond to COVID–19. Together, the EIB
and the EIF have proposed a plan to provide
immediate financing to combat the health
and economic effects of the pandemic.

Today the Commission is also voting on a
proposal to codify the ESM’s relief from the
Clearing Requirement under Part 50 of the CFTC’s
rules.

Keynote Address of Commissioner Brian
Quintenz before FIA Annual Meeting, Boca
Raton, Florida (March 14, 2018),
https://www.cftc.gov/PressRoom/SpeechesTestimony/opaquintenz9;
Joint Statement from CFTC Chairman Timothy
Massad and European Commissioner Jonathan Hill,
CFTC and the European Commission: Common
Approach for Transatlantic CCPs (Feb. 10, 2016),
https://www.cftc.gov/PressRoom/PressReleases/
p7342-16.

The proposed implementation of EMIR 2.2 by
ESMA is available at, https://www.esma.europa.eu/
/news/esma-news/esma-consults-tiering-comparable-
compliance-and-fees-under-emir-22.

Dissenting Statement by Commissioner Brian
Quintenz before the Open Commission Meeting:
FBOT Registration (Nov. 5, 2019),
https://www.cftc.gov/PressRoom/SpeechesTestimony/
quintenzstatement110519;
Dissenting Statement by Commissioner Quintenz to the Proposed Exclusion for the Eurex Clearing
from the Commission’s Margin Requirements for
Uncleared Swaps (Oct. 16, 2019),
https://www.cftc.gov/PressRoom/SpeechesTestimony/quintenzstatement121019;
Statement on Staff No-Action Relief for Eurex
Clearing AG (December 20, 2018),
https://www.cftc.gov/PressRoom/SpeechesTestimony/
quintenzstatement122018.

Statement of CFTC Commissioner Brian
Quintenz on Current Market Dynamics and
Commission Actions Related to COVID–19 (March
18, 2020), https://www.cftc.gov/PressRoom/
SpeechesTestimony/quintenzstatement031820.

The time for solidarity in Europe is now—a
concerted European financial response to
time-solidarity-europe-concerted-european-

European Stability Mechanism, Lending Toolkit,
https://www.esm.europa.eu/assistance/lending-
toolkit.

Coronavirus outbreak: EIB Group’s response to
Continued
of these EU institutions may seek to enter into swaps subject to the CFTC’s clearing or uncleared margin requirements in order to hedge the risks associated with these lending and investment activities. Accordingly, I support today’s measures that provide relief from those requirements, thereby freeing up additional capital that can be immediately deployed in the European economy.

When the present hardship caused by COVID–19 abates, I look forward to re-engaging with our European counterparts on the critical issue of the oversight of U.S. CCPs. I believe the possibility still exists for a successful implementation of EMIR 2.2 that fully respects the CFTC’s ultimate authority over U.S. CCPs, and I am committed to doing everything in my power to achieve this outcome.

Amendments To Swap Clearing Requirement Exemptions Under Part 50

I am pleased to support this proposal, which codifies existing relief, from the Commission’s requirement that certain commonly traded interest rate swaps and credit default swaps be cleared following their execution.8 The new exemptions could be elected by several classes of counterparties that may enter into these swaps, namely: Sovereign nations; central banks; “international financial institutions” of which sovereign nations are members; bank holding companies; and savings and loan holding companies, whose assets total no more than $10 billion; and community development financial institutions recognized by the U.S. Treasury Department. Today’s proposal notes that many of these entities have actually relied on existing relief, electing not to clear swaps that are generally subject to the clearing requirement. I strongly support the policy of international “comity” described in the proposal, recognizing that sovereign nations and their instrumentalities should generally not be subject to the Commission’s regulations. I trust that by proposing this relief, the United States, the Federal Reserve, and other U.S. government instrumentalities will receive the same treatment in foreign jurisdictions. As noted above, this policy is timely in light of the current projects the ESM, the EIB, and the EIF are currently undertaking in response to the pandemic. I am pleased that the Commission can provide flexibility to these entities at this time when entering into swaps with U.S. swap dealers. To this end, I also support the decision of the Division of Clearing and Risk to extend the current, time-limited no-action relief provided to the ESM9 pending the finalization of the amendments to part 50. I note that the EIB, EIF, other international financial institutions, central banks, and sovereign entities currently have relief that is not time-limited.10

As for the bank holding companies, savings and loan holding companies, and community development financial institutions that would be provided relief pursuant to this proposal, I am hopeful that the Commission will ultimately finalize this relief, which it first proposed for these entities in 2018.11 However, I note that these entities currently have relief pursuant to no-action letters issued in 2016 that have no expiration dates.12

Final Rule Excluding the European Stability Mechanism From CFTC Margin Requirements for Uncleared Swaps

I support today’s final rule that would exempt a swap between the European Stability Mechanism and a swap dealer from the Commission’s margin requirements applicable to uncleared swaps. This rule is premised on the same policy of international comity referenced in today’s proposed exemption from the swap clearing requirement. I would like to highlight that the EIB, EIF, and the other international financial institutions referenced by the proposed exemption from the swap clearing

8 The swap clearing requirement is codified in part 50 of the Commission’s regulations (17 CFR part 50).
12 CFTC Letters 16–01 and –02 (both Jan. 8, 2016).