

MEMO# 35720

May 29, 2024

CFTC Staff Announces Updated Part 43 Block and Cap Sizes and Further Extends No-Action Relief Regarding Compliance with Block and Cap Amendments

[35720]

May 29, 2024

TO: Derivatives Markets Advisory Committee RE: CFTC Staff Announces Updated Part 43 Block and Cap Sizes and Further Extends No-Action Relief Regarding Compliance with Block and Cap Amendments

On May 23, 2024, the Commodity Futures Trading Commission's (CFTC or "Commission") Division of Data (DOD) published updated post-initial appropriate minimum block sizes and post-initial cap sizes as determined under Part 43 of the Commission's regulations.^[1] At the same time, the CFTC's Division of Market Oversight (DMO) issued a no-action letter extending the relief granted in CFTC Letter 22-03^[2] regarding the compliance dates for certain amendments to the CFTC's swap data reporting rules concerning block trades and cap sizes.^[3] An overview of the updated post-initial minimum block and cap sizes, as well as the no-action relief, is summarized below.

Updated Post-Initial Minimum Block and Cap Sizes

In 2020, the Commission amended Part 43 of its regulations regarding real-time reporting of swap data, including amendments to Regulation 43.4(h) concerning post-initial cap sizes and Regulation 43.6 concerning block trades and large notional off-facility swaps ("Block and Cap Amendments").^[4] Among other things, the Block and Cap Amendments generally increased swap block thresholds from 50% notional amount to post-initial 67% notional amount and increased cap sizes from 67% notional amount to a post-initial 75% notional amount.

Pursuant to the Block and Cap Amendments, the CFTC is required to update the post-initial block and cap sizes no less than once each calendar year based on a one-year window of swap transaction and pricing data. The CFTC last published post-initial block and cap sizes in April 2023, which were based on data predominantly falling within calendar year 2022.^[5] The updated post-initial block and cap sizes published on May 23, 2024, were based on a one-year window of swap transaction and pricing data corresponding with calendar year

2023.^[6] The CFTC's Part 43 regulations also specify that the updated post-initial block and cap sizes be effective on the first day of the second month following the date of publication unless otherwise indicated on the CFTC's website. Accordingly, the Commission indicated in a press release published on its website that the updated post-initial block and cap sizes will be effective October 7, 2024 (and not the first day of the second month following publication (i.e., July 1, 2024)).

Extension of No-Action Position

In the no-action letter issued contemporaneously with the updated post-initial minimum block and cap sizes, DMO further extended the time period during which it will not recommend that the Commission commence an enforcement action against any entity for failure to comply with the Block and Cap Amendments to October 7, 2024, provided that the entity complies with the block trade and cap size requirements that were in effect on January 1, 2021 (i.e., 50% notional amount for block trades and 67% notional amount for cap sizes). The timing is consistent with the effective date for the updated post-initial minimum block and cap sizes published by DOD.

In a no-action letter issued in October 2023, which extended relief from compliance with the Block and Cap Amendments until July 1, 2024, DMO stated that it did not "intend to extend the no-action position provided in [the] letter beyond" that date.^[7] However, in determining to ultimately extend the no-action relief to October 7, 2024, DMO explained in the current no-action letter that "its extended no-action position may avoid inefficiencies resulting from implementing two sets of block and cap sizes - those set out in [April 2023] and in [May 2024] - in relatively quick succession and with an initial implementation of the post-initial block and cap requirements."

Kimberly R. Thomasson
Assistant General Counsel - Markets, SMAs & CITs

Notes

^[1] See Post-Initial Appropriate Minimum Block Sizes and Post-Initial Cap Sizes for Publicly Reportable Swap Transactions (May 23, 2024), available at <https://www.cftc.gov/media/10716/Part43BlockThresholdsCapSizes052324/download>; see also CFTC Staff Announces Updated Part 43 Block and Cap Sizes and Further Extends No-Action Letter Regarding the Block and Cap Implementation Timeline, CFTC Press Release Number 8913-24 (May 23, 2024) available at <https://www.cftc.gov/PressRoom/PressReleases/8913-24>.

^[2] CFTC No-Action Letter No. 22-03 (Jan. 31, 2022), available at <https://www.cftc.gov/csl/22-03/download>. The letter stated that DOD would not recommend that the Commission commence an enforcement action against any entity for failure to comply with the amended block and cap sizes before December 4, 2023, provided that the entity complied with the Commission's block trade threshold and cap size requirements that were in effect on January 1, 2021.

^[3] CFTC No-Action Letter No. 24-06 (May 23, 2024), available at <https://www.cftc.gov/csl/24-06/download>.

[4] See Final Rule, Real-Time Public Reporting Requirements, 85 Fed. Reg. 75422 (Nov. 25, 2020).

[5] See Revised Post-Initial Appropriate Minimum Block Sizes and Post-Initial Cap Sizes for Publicly Reportable Swap Transactions December 4, 2023 Effective Date (as required by Rule 43.6(g)(6)) (Apr. 19, 2023), available at https://www.cftc.gov/media/8416/Part43_45BlockThresholdsCapSizes0423/download.

[6] See supra note 1.

[7] See CFTC No-Action Letter 23-15 (Oct. 18, 2023) available at <https://www.cftc.gov/csl/23-15/download>.

Copyright © by the Investment Company Institute. All rights reserved. Information may be abridged and therefore incomplete. Communications from the Institute do not constitute, and should not be considered a substitute for, legal advice.