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COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 45, 46, and 49

RIN 3038-AE31

Amendments to the Swap Data Recordkeeping and Reporting Requirements

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commodity Futures Trading Commission ("Commission" or "CFTC") is proposing revisions to the Commission regulations that set forth the swap data recordkeeping and reporting requirements for swap data repositories ("SDRs"), derivatives clearing organizations ("DCOs"), swap execution facilities ("SEFs"), designated contract markets ("DCMs"), swap dealers ("SDs"), major swap participants ("MSPs"), and swap counterparties that are neither SDs nor MSPs. The Commission is proposing revisions that, among other things, streamline the requirements for reporting new swaps, define and adopt swap data elements that harmonize with international technical guidance, and reduce reporting burdens for reporting counterparties that are not SDs or MSPs.

DATES: Comments must be received on or before [**INSERT DATE 90 DAYS AFTER DATE OF APPROVAL OF THE PROPOSAL BY THE COMMISSION**].

ADDRESSES: You may submit comments, identified by RIN number 3038-AE31, by any of the following methods:

CFTC website: *http://comments.cftc.gov*. Follow the instructions for submitting comments through the Comments Online process on the website.

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: Same as Mail, above.

Federal eRulemaking Portal: *www.regulations.gov*. Follow the instructions for submitting comments.

Please submit your comments using only one method.

All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to *www.cftc.gov*. You should submit only information that you wish to make available publicly. If you wish the Commission to consider information that you believe is exempt from disclosure under the Freedom of Information Act ("FOIA"), a petition for confidential treatment of the exempt information may be submitted according to the procedures established in section 145.9 of the Commission's Regulations.[1]

The Commission reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse or remove any or all of your submission from *www.cftc.gov* that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of the rulemaking will be retained in the public comment file and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under the FOIA.

[1] 17 CFR 145.9. Commission regulations referred to herein are found at 17 CFR chapter I.

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SUPPLEMENTARY INFORMATION:

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I. Background and Introduction

A. Reporting Rules Review

The Commission's swap data reporting regulations were first adopted in 2012 and are located in part 45 of the Commission's regulations.[2] The regulations require swap counterparties, SEFs, and DCMs to report swap data to SDRs. In 2016, the Commission amended part 45 to clarify the reporting obligations for DCOs and swap counterparties with respect to cleared swaps.[3] In addition, throughout this time, the Commission has

[2] Swap Data Recordkeeping and Reporting Requirements, 77 FR 2136 (Jan. 13, 2012).
[3] Amendments to Swap Data Recordkeeping and Reporting Requirements for Cleared Swaps, 81 FR 41736 (June 27, 2016).

undertaken several efforts to identify, and made recommendations to resolve, swap reporting challenges faced by market participants.[4]

The Division of Market Oversight ("Division" or "DMO") is currently completing an update of the swap reporting rules. On July 10, 2017, the Division announced its Roadmap to Achieve High Quality Swaps Data ("Roadmap"), consisting of a comprehensive review to: (i) ensure that the CFTC receives accurate, complete, and high quality data on swaps transactions for its regulatory oversight role; and (ii) streamline reporting, reduce messages that must be reported, and right-size the number of data elements that are reported to meet the agency's priority use-cases for swap data.[5]

The Commission received extensive feedback that addressed many swap reporting topics in response to DMO's Roadmap.[6] Informed by that feedback, the Commission is taking a stepwise approach to amend its rules through separate notices of proposed rulemaking ("NPRMs") as part of the Roadmap review. First, in May 2019, the Commission published an NPRM to streamline and clarify the Commission's SDR regulations in parts 23, 43, 45, and 49 (the "2019 Part 49 NPRM").[7] Among other things, the 2019 Part 49 NPRM proposed modifications to the existing requirements for SDRs to

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[4] *See, e.g.*, Review of Swap Data Recordkeeping and Reporting Requirements, Request for Comment, 79 FR 16689 (Mar. 26, 2014); Press Release, CFTC Staff Issues Request for Comment on Draft Technical Specifications for Certain Swap Data Elements (Dec. 22, 2015), *available at* https://www.cftc.gov/PressRoom/PressReleases/pr7298-15; Press Release, CFTC Requests Public Input on Simplifying Rules (May 3, 2017), *available at* https://www.cftc.gov/PressRoom/PressReleases/pr7555-17.

[5] *See* CFTC Letter 17-33, Division of Market Oversight Announces Review of Swap Reporting Rules in Parts 43, 45, and 49 of Commission Regulations (July 10, 2017), *available at* http://www.cftc.gov/idc/groups/public/@lrlettergeneral/documents/letter/17-33.pdf; Roadmap to Achieve High Quality Swap Data, *available at* http://www.cftc.gov/idc/groups/public/@newsroom/documents/file/dmo_swapdataplan071017.pdf.

[6] Comment letters are available at https://comments.cftc.gov/PublicComments/CommentList.aspx?id=1824. The Commission will discuss comment letters in the relevant sections throughout this release.

[7] *See* Certain Swap Data Repository and Data Reporting Requirements, 84 FR 21044 (May 13, 2019).

confirm the accuracy of swap data with swap counterparties, and proposed requiring reporting counterparties to verify the accuracy of swap data with SDRs.

Now, in this release, the Commission is proposing revisions to the part 45 reporting regulations related to the following topics: simplifying the requirements for reporting swaps; requiring SDRs to validate swap reports; permitting the transfer of swap data between SDRs; alleviating reporting burdens for non-SD/MSP reporting counterparties; and harmonizing the swap data elements counterparties report to SDRs with international technical guidance. The Commission will discuss each of these proposed changes in this release.

In addition, the Commission is proposing amendments to certain part 46 regulations for reporting pre-enactment swaps and transition swaps, primarily to conform to changes the Commission is proposing to part 45.[8] The Commission is also proposing amendments to certain regulations in part 49 that were not addressed in the 2019 Part 49 NPRM.[9] Most of the amendments the Commission is proposing to part 49 concern new requirements for SDRs, including proposed requirements to validate SDR data.[10]

The Commission appreciates the time commenters have taken to explain aspects of the reporting requirements that they believe the Commission could make more efficient. As discussed throughout this release, the Commission believes that the revisions proposed herein address many of these recommendations, as well as several

[8] *See generally* 17 CFR part 46.
[9] *See generally* 17 CFR part 49.
[10] The new requirements proposed for SDRs to validate swap data in § 49.10 are discussed in section IV.C.3 below. The Commission has proposed to define the term "SDR data" in the 2019 Part 49 NPRM. As proposed, "SDR data" would mean the specific data elements and information required to be reported to an SDR or disseminated by an SDR, pursuant to two or more of parts 43, 45, 46, and/or 49, as applicable. *See* 2019 Part 49 NPRM at 21047, 21101.

major domestic and international swap reporting developments that have occurred since the Commission originally adopted part 45.

B. Statutory and Regulatory Framework for Swap Data Recordkeeping and Reporting

Pursuant to section 2(a)(13)(G) of the Commodity Exchange Act ("CEA"), all swaps, whether cleared or uncleared, must be reported to SDRs.[11] SDRs collect and maintain data related to swap transactions, keeping such data electronically available for regulators or the public.[12] CEA section 21(b) directs the Commission to prescribe standards for swap data recordkeeping and reporting, which are to apply to both registered entities and counterparties involved with swaps, and be comparable to standards for clearing organizations in connection with clearing of swaps.[13] CEA sections 4r(a)(2)(A) and 2(h)(5) provide for the reporting of pre-enactment and transition swaps.[14]

In 2011, the Commission adopted the part 49 regulations setting forth the specific duties that SDRs are required to comply with to register as an SDR.[15] In 2012, the Commission adopted the part 45 regulations to implement standards for swap data reporting and recordkeeping[16] and the part 46 regulations to implement standards for pre-

[11] 7 U.S.C. 2(a)(13)(g).
[12] "The term 'swap data repository' means any person that collects and maintains information or records with respect to transactions or positions in, or the terms and conditions of, swaps entered into by third parties for the purpose of providing a centralized recordkeeping facility for swaps." 7 U.S.C. 1a(48). Regulations governing core principles and registration requirements for, and duties of, SDRs are in part 49 of the Commission's regulations. *See generally* 17 CFR part 49.
[13] *See* 7 U.S.C. 24a(b).
[14] *See* 7 U.S.C. 6r(a)(2)(A) and 7 U.S.C. 2(h)(5); *see also* 17 CFR 46.1 (defining "pre-enactment swap" as "any swap entered into prior to enactment of the Dodd-Frank Act of 2010 (July 21, 2010), the terms of which have not expired as of the date of enactment of that Act," and "transition swap" as "any swap entered into on or after the enactment of the Dodd-Frank Act of 2010 (July 21, 2010) and prior to the applicable compliance date on which a registered entity or swap counterparty subject to the jurisdiction of the Commission is required to commence full compliance with all provisions of [part 46]…."
[15] *See generally* Swap Data Repositories: Registration Standards, Duties and Core Principles, 76 FR 54538 (Sept. 1, 2011).
[16] *See generally* Swap Data Recordkeeping and Reporting Requirements, 77 FR 2136 (Jan. 13, 2012).

enactment and transition swap recordkeeping and reporting.[17] In 2016, the Commission amended part 45 to clarify the reporting obligations for cleared swaps.[18]

The Commission will discuss relevant sections of the current parts 45, 46, and 49 regulations throughout this release.

C. International Swap Data Reporting Developments

In response to the financial crisis in 2009, the G20 leaders agreed that all over-the-counter ("OTC") derivatives should be reported to trade repositories ("TRs")[19] to further the goals of improving transparency, mitigating systemic risk, and preventing market abuse. Since November 2014, regulators across major derivatives jurisdictions, including the CFTC, have come together through the Committee on Payments and Market Infrastructures ("CPMI") and the International Organization of Securities Commissions ("IOSCO") working group for the harmonization of key OTC derivatives data elements ("Harmonisation Group") to develop global guidance regarding the definition, format, and usage of key OTC derivatives data elements reported to TRs, including the Unique Transaction Identifier ("UTI"), the Unique Product Identifier ("UPI"), and critical data elements other than UTI and UPI ("CDE").

The Harmonisation Group published *Guidance on the Harmonisation of the Unique Transaction Identifier* ("UTI Technical Guidance")[20] in February 2017 and

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[17] *See generally* Swap Data Recordkeeping and Reporting Requirements: Pre-Enactment and Transition Swaps, 77 FR 35200 (June 12, 2012).
[18] *See generally* Amendments to Swap Data Recordkeeping and Reporting Requirements for Cleared Swaps, 81 FR 41736 (June 27, 2016).
[19] *See* https://www.treasury.gov/resource-center/international/g7-g20/Documents/pittsburgh_summit_leaders_statement_250909.pdf. In the U.S., trade repositories are called SDRs.
[20] CPMI-IOSCO, Technical Guidance, Harmonisation of the Unique Transaction Identifier (Feb. 2017), *available at* https://www.iosco.org/library/pubdocs/pdf/IOSCOPD557.pdf. The CFTC's rules currently

Technical Guidance on the Harmonisation of the Unique Product Identifier[21] ("UPI Technical Guidance") in September 2017.

The Commission currently requires that each swap subject to its jurisdiction be identified by a USI.[22] The UTI Technical Guidance, intended by CPMI-IOSCO to help authorities set rules for a uniform global UTI, provided guidance to authorities on the definition, format, generation, and usage of UTIs. Similarly, CPMI-IOSCO intends that the UPI Technical Guidance will result in a unique UPI code that will be assigned to each distinct OTC derivative product. The Commission's rules do not specify a standardized set of swap product data elements. The new CPMI-IOSCO UPI code will map to a set of data comprised of reference data elements with specific values that together describe the swap product.

In April 2018, the Harmonisation Group published *Technical Guidance on the Harmonisation of Critical OTC Derivatives Data Elements (other than UTI and UPI)* ("CDE Technical Guidance").[23] The CDE Technical Guidance provides technical guidance on the definition, format, and allowable values of over 100 critical data elements, other than UTI and UPI, reported to TRs and important for data aggregation by authorities. The harmonized data elements in the CDE Technical Guidance cover data

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refer to UTIs as USIs. As discussed in section II.E below, the Commission is proposing to harmonize its unique swap identifier ("USI") rules with the UTI Technical Guidance, and change USI references to UTI.

[21] CPMI-IOSCO, Technical Guidance, Harmonisation of the Unique Product Identifier (Sept. 2017), *available at* https://www.iosco.org/library/pubdocs/pdf/IOSCOPD580.pdf.

[22] *See* 17 CFR 45.5.

[23] The CDE Technical Guidance was finalized following consultative reports in September 2015, October 2016, and June 2017. *See* CPMI-IOSCO, Technical Guidance, Harmonisation of Critical OTC Derivatives Data Elements (other than UTI and UPI) (Apr. 2018), *available at* https://www.iosco.org/library/pubdocs/pdf/IOSCOPD598.pdf.

elements ranging from counterparty information, payments, and valuation and collateral to prices and quantities, package trades, and custom baskets.[24]

The Commission has played an active role in the development and publication of the CDE Technical Guidance as part of the CPMI-IOSCO working group, alongside representatives from Canada, France, Germany, Hong Kong, Japan, Singapore, and the United Kingdom, among others. Commission staff provided feedback about the data elements, taking into account the Commission's experience with swap data reporting and its use of such data in fulfilling its regulatory responsibilities. Commission staff also participated in the solicitation of responses to three public consultations on the CDE Technical Guidance, along with related industry workshops and conference calls.[25]

Since each authority is responsible for issuing requirements for market participants on OTC derivatives data reporting, the CDE Technical Guidance does not determine which critical data elements are required to be reported in a given jurisdiction. Instead, if CDE Technical Guidance data elements are required to be reported in a given jurisdiction, the CDE Technical Guidance provides the relevant authorities in that jurisdiction guidance on the definition, format, and allowable values for these data elements that would facilitate consistent aggregation at a global level.

II. Proposed Amendments to Part 45

A. § 45.1 – Definitions

Section 45.1 contains the definitions for terms used throughout the regulations in part 45. Section 45.1 does not contain any subsections. The Commission is proposing to

[24] *Id.*
[25] *See* CPMI-IOSCO, Technical Guidance, Harmonisation of Critical OTC Derivatives Data Elements (other than UTI and UPI) at 9.

separate § 45.1 into two subsections: § 45.1(a) for definitions, and § 45.1(b), which would state that terms not defined in part 45 have the meanings assigned to the terms in Commission regulation § 1.3.[26]

The Commission is also proposing to revise the definitions in proposed § 45.1(a). As part of these revisions, the Commission is proposing to add new definitions, and amend or remove certain definitions. As § 45.1 is arranged alphabetically, the Commission has grouped the discussion of its proposed changes to § 45.1 into corresponding categories (i.e., new definitions, amendments, and removal), except as otherwise noted.

1. Proposed New Definitions

The Commission is proposing to add a definition of "allocation" to § 45.1(a). As proposed, "allocation" would mean the process by which an agent, having facilitated a single swap transaction on behalf of clients, allocates a portion of the executed swap to the clients. Section 45.3(f) currently contains regulations for reporting allocations without defining the term. Defining "allocation" should help market participants comply with the regulations for reporting allocations in § 45.3.

The Commission is also proposing to add a definition of "as soon as technologically practicable" ("ASATP") to § 45.1(a). As proposed, "as soon as technologically practicable" would mean as soon as possible, taking into consideration the prevalence, implementation, and use of technology by comparable market participants. The phrase "as soon as technologically practicable" is currently used

[26] 17 CFR 1.3.

throughout part 45, but is not defined. The Commission is proposing to adopt the same definition of "as soon as technologically practicable" as is defined in § 43.2 of the Commission's regulations for the swap transaction and pricing data.[27]

The Commission is also proposing to add a definition of "collateral data" to § 45.1(a). As proposed, "collateral data" would mean the data elements necessary to report information about the money, securities, or other property posted or received by a swap counterparty to margin, guarantee, or secure a swap, as specified in appendix 1 to part 45. This proposed new definition is explained in a discussion of proposed requirements for reporting counterparties to report collateral data in section II.D.4 below.

The Commission is proposing to add definitions for "execution" and "execution date" to § 45.1(a). As proposed, "execution" would mean an agreement by the parties, by any method, to the terms of a swap that legally binds the parties to such swap terms under applicable law.[28] The term "execution date" would mean the date, determined by reference to eastern time, on which swap execution has occurred. The execution date for a clearing swap that replaces an original swap would be the date, determined by reference to eastern time, on which the original swap has been accepted for clearing. The term "execution" is currently used throughout part 45 but not defined, and the Commission is proposing new regulations that reference "execution date."[29]

The Commission is proposing to add the following three definitions to § 45.1(a): "Global Legal Entity Identifier System," "legal entity identifier" or "LEI," and

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[27] *See* 17 CFR 43.2 (definition of "as soon as technologically practicable").
[28] The Commission notes that the proposed definition of "execution" is functionally identical to the existing definition of execution in part 23 of the Commission's regulations. *See* 17 CFR 23.200(e) (definition of "execution").
[29] *See* proposed §§ 45.3(a) and (b), discussed in sections II.C.2.a and II.C.2.b, respectively, below.

"Legal Entity Identifier Regulatory Oversight Committee" ("LEI ROC"). As proposed, "Global Legal Entity Identifier System" would mean the system established and overseen by the LEI ROC for the unique identification of legal entities and individuals. As proposed, "legal entity identifier" or "LEI" would mean a unique code assigned to swap counterparties and entities in accordance with the standards set by the Global Legal Entity Identifier System. As proposed, "Legal Entity Identifier Regulatory Oversight Committee" would mean the group charged with the oversight of the Global Legal Entity Identifier System that was established by the finance ministers and the central bank governors of the Group of Twenty nations and the Financial Stability Board, under the Charter of the Regulatory Oversight Committee for the Global Legal Entity Identifier System dated November 5, 2012, or any successor thereof.[30] These proposed definitions are all associated with, and further explained in the context of, the § 45.6 regulations for LEI, discussed in section II.F below.

The Commission is proposing to add a definition of "non-SD/MSP/DCO reporting counterparty" to § 45.1(a). As proposed, "non-SD/MSP/DCO reporting counterparty" would mean a reporting counterparty that is not an SD, MSP, or DCO. Currently, DCOs are not included in the term "non-SD/MSP reporting counterparty." This creates problems when, for instance, the Commission did not intend for DCOs to follow the required swap creation data reporting regulations in § 45.3(d) for off-facility swaps not subject to the clearing requirement with a non-SD/MSP reporting counterparty, even though DCOs are technically reporting counterparties that are neither SDs or MSPs.

[30] https://www.leiroc.org/publications/gls/roc_20190130-1.pdf

Instead, DCOs follow the required swap creation data reporting regulations in § 45.3(e) for clearing swaps. The definition of "non-SD/MSP/DCO reporting counterparty" should address this unintended regulatory overlap.

The Commission is proposing to add a definition of "novation" to § 45.1(a). As proposed, "novation" would mean the process by which a party to a swap legally transfers all or part of its rights, liabilities, duties, and obligations under the swap to a new legal party other than the counterparty to the swap under applicable law. This proposed term is currently referenced in the definition of "life cycle event," as well as the § 45.8(g) regulations for determining which counterparty must report, but is not currently defined.

The Commission is proposing to add a definition of "swap" to § 45.1(a). As proposed, "swap" would mean any swap, as defined by § 1.3, as well as any foreign exchange forward, as defined by CEA section 1a(24), or foreign exchange swap, as defined by CEA section 1a(25).[31] The term "swap" is used throughout part 45. The proposed definition would codify the meaning of the term as it is currently used throughout part 45.

The Commission is proposing to add definitions of "swap data" and "swap transaction and pricing data" to § 45.1(a). As proposed, "swap data" would mean the specific data elements and information in appendix 1 to part 45 required to be reported to an SDR pursuant to part 45 or made available to the Commission pursuant to part 49, as applicable; "swap transaction and pricing data" would mean all data for a swap in

[31] The Commission notes that while foreign exchange forwards and foreign exchange swaps are excluded from the definition of "swap," such transactions are nevertheless required to be reported to an SDR. *See* 7 U.S.C. 1a(47)(E)(iii)(definition of "swap").

appendix C to part 43 required to be reported or publicly disseminated pursuant to part 43. The term "swap data" is currently used throughout part 45. The Commission believes that having the term "swap data" apply to part 45 data, and "swap transaction and pricing data" apply to part 43 data would provide clarity across the reporting regulations.[32]

The Commission is proposing to add a definition of "swap data validation procedures" to § 45.1(a). As proposed, "swap data validation procedures" would mean procedures established by an SDR pursuant to proposed § 49.10 to accept, validate, and process swap data reported to an SDR pursuant to part 45. This proposed new definition is explained in a discussion of the proposed regulations for the validation of swap data reported to SDRs in section IV.C.3 below.

The Commission is proposing to add a definition of "unique transaction identifier" to § 45.1(a). As proposed, "unique transaction identifier" would mean a unique alphanumeric identifier with a maximum of 52 characters constructed solely from the upper-case alphabetic characters A to Z or the digits 0 to 9, inclusive in both cases, generated for each swap pursuant to § 45.5. This proposed new definition is used in the discussion of the regulations to transition from using USIs to UTIs. Those proposed changes are explained in section II.E below.

2. Proposed Amendments to Existing Definitions

The Commission is proposing non-substantive minor technical changes to the existing definitions of "asset class," "derivatives clearing organization," and "swap

[32] The Commission has also proposed to add functionally identical definitions for "swap data" and "swap transaction and pricing data" to part 49 of the Commission's regulations as part of the 2019 Part 49 NPRM. *See* 2019 Part 49 NPRM at 21102 (definitions of "swap data" and "swap transaction and pricing data").

execution facility." The remaining discussion in this section addresses substantive amendments.

The Commission is proposing to amend the definition of "business day" in proposed § 45.1(a). Currently, § 45.1 defines "business day" to mean "the twenty-four hour day, on all days except Saturdays, Sundays, and legal holidays, in the location of the reporting counterparty or registered entity reporting data for the swap."[33] The Commission is proposing to replace "the twenty-four hour day" with "each twenty-four hour day," and "legal holidays, in the location of the reporting counterparty" with "Federal holidays." The Commission believes these changes would simplify the current business day definition by removing the responsibility of determining different legal holidays depending on the reporting counterparty's location. The proposed amended definition is used in a discussion of proposed changes to the timing requirements for reporting swap creation data and required swap continuation data in current and proposed §§ 45.3 and 45.4. Those proposed changes are explained in sections II.C and II.D, respectively, below.

The Commission is proposing to amend the definition of "life cycle event" in proposed § 45.1(a). Currently, § 45.1 defines "life cycle event" to mean any event that would result in either a change to a primary economic term of a swap or to any primary economic terms data ("PET data") previously reported to an SDR in connection with a swap. Examples of such events include, without limitation, a counterparty change resulting from an assignment or novation; a partial or full termination of the swap; a

[33] 17 CFR 45.1 (definition of "business day").

change to the end date for the swap; a change in the cash flows or rates originally reported; availability of an LEI for a swap counterparty previously identified by name or by some other identifier; or a corporate action affecting a security or securities on which the swap is based (e.g., a merger, dividend, stock split, or bankruptcy). The Commission is proposing to replace the reference to PET data with required swap creation data.[34] The Commission is also proposing to replace a reference to a counterparty being identified in swap data by "name" with other identifiers to account for situations where counterparties are identified by other means.

The Commission is proposing to amend the definition of "non-SD/MSP counterparty" in proposed § 45.1(a). Currently, § 45.1 defines "non-SD/MSP counterparty" to mean a swap counterparty that is neither an SD nor an MSP. The Commission is proposing to change the defined term to "non-SD/MSP/DCO counterparty."[35] As amended, "non-SD/MSP/DCO counterparty" would mean a swap counterparty that is not an SD, MSP, or DCO. This amendment would conform to the amendments proposed to the term "non-SD/MSP/DCO reporting counterparty" explained in section II.A.1 above.

The Commission is proposing to amend the definition of "required swap continuation data" in proposed § 45.1(a). Currently, § 45.1 defines "required swap continuation data" to mean all of the data elements that must be reported during the

[34] The removal of the term PET data is reflected in the discussion of the proposed changes to the required swap creation data and required swap continuation data regulations in §§ 45.3 and 45.4. Those proposed changes are explained in sections II.C and II.D, respectively, below.

[35] The Commission is proposing to update all references to "non-SD/MSP counterparty" to "non-SD/MSP/DCO counterparty" throughout part 45. To limit repetition, the Commission will not discuss each removal of the phrase throughout this release.

existence of a swap to ensure that all data concerning the swap in the SDR remains current and accurate, and includes all changes to the PET terms of the swap occurring during the existence of the swap. The definition further specifies that for this purpose, required swap continuation data includes: (i) all life cycle event data for the swap if the swap is reported using the life cycle reporting method, or all state data for the swap if the swap is reported using the snapshot reporting method; and (ii) all valuation data for the swap.

First, the Commission is proposing to remove the reference to "primary economic terms of the swap."[36] Second, the Commission is proposing to remove the reference to snapshot reporting.[37] Third, the Commission is proposing to add a reference to the margin and collateral data that would be required to be reported pursuant to proposed § 45.4(c)(2). As amended, the definition would mean all of the data elements that shall be reported during the existence of a swap to ensure that all swap data concerning the swap in the SDR remains current and accurate, and includes all changes to the required swap creation data occurring during the existence of the swap. For this purpose, required swap continuation data includes: (i) all life cycle event data for the swap; and (ii) all swap valuation, margin, and collateral data for the swap.

The Commission is proposing to amend the definition of "required swap creation data" in § 45.1(a). Currently, § 45.1 defines "required swap creation data" to mean all PET data for a swap in the swap asset class in question, and all confirmation data for the

[36] The removal of the term PET data is reflected in the discussion of the proposed changes to the required swap creation data and required swap continuation data regulations in §§ 45.3 and 45.4. Those proposed changed are explained in sections II.C and II.D, respectively, below.
[37] The removal of state data reporting is reflected in the discussion of the proposed changes to the required swap continuation data regulations in § 45.4. Those proposed changes are explained in section II.D below.

swap. The Commission is proposing to replace the reference to PET data and confirmation data with a reference to the swap data elements in appendix 1 to part 45. This proposed amended definition is explained in a discussion of the proposal to eliminate the requirement to report confirmation data in section II.C below.

The Commission is proposing to amend the definition of "valuation data" in § 45.1(a). Currently, § 45.1 defines "valuation data" to mean all of the data elements necessary to fully describe the daily mark of the transaction, pursuant to CEA section 4s(h)(3)(B)(iii),[38] and § 23.431 of the Commission's regulations, if applicable. The Commission is proposing to include a reference to the swap data elements in appendix 1 to part 45. This proposed amended definition is explained in a discussion of the proposal to amend the valuation reporting requirements in § 45.4 in section II.D below.

3. Proposed Removal of Definitions

The Commission is proposing to remove the following definitions from § 45.1: "credit swap;" "designated contract market;" "foreign exchange forward;" "foreign exchange instrument;" "foreign exchange swap;" "interest rate swap;" "major swap participant;" "other commodity swap;" "state data;" "swap data repository;" and "swap dealer." The Commission is proposing to remove these definitions to eliminate redundancy because the terms are already generally defined in § 1.3 of the Commission's regulations or in CEA section 1a.[39]

The Commission is also proposing to remove the following definitions from § 45.1: "confirmation;" "confirmation data;" "electronic confirmation;" "non-electronic

[38] 7 U.S.C. 6s(h)(3)(B)(iii).
[39] 7 U.S.C. 1a.

confirmation;" "primary economic terms;" and "primary economic terms data." These definitions are being removed as part of the proposed amendments to combine PET data and confirmation data into a single required swap creation data report. These proposed amendments are explained in section II.C below.

The Commission is proposing to remove the definition of "quarterly reporting" from § 45.1. Currently, § 45.4(d)(2)(ii) requires non-SD/MSP reporting counterparties to provide quarterly reports of valuation data. The Commission is proposing to remove this requirement for non-SD/MSP reporting counterparties, as explained in section II.D.4 below. As a result, the definition of "quarterly reporting" in § 45.1 is no longer necessary.

The Commission is also proposing to remove the definitions of "electronic verification," "non-electronic verification," and "verification" from § 45.1. Currently, certain deadlines for reporting required swap creation data for off-facility swaps in § 45.3 depend on whether verification occurs electronically.[40] The Commission is proposing to amend the deadlines for reporting counterparties to report required swap creation data in § 45.3. As part of these proposed amendments, the deadlines would no longer depend on verification.[41] Therefore, the definitions related to verification in this context would no longer be necessary.

The Commission is proposing to remove the definition of "international swap" from § 45.1. Currently, § 45.1 defines "international swap" to mean a swap required by U.S. law and the law of another jurisdiction to be reported both to an SDR and to a

[40] For instance, current § 45.3(c)(1)(i)(A) requires reporting counterparties to report all PET data for a swap ASATP or within 30 minutes of execution if verification occurs electronically. *See* 17 CFR 45.3(c)(1)(i)(A).
[41] These proposed amendments are discussed in section II.C below.

different TR registered with the other jurisdiction. The proposal to remove this definition is explained in a discussion of the Commission's proposal to remove the requirements for international swaps in § 45.3(i). Those proposed changes are explained in section II.C.6 below.

Request for Comment

The Commission requests comments on all aspects of the proposed changes to § 45.1. The Commission also invites specific comment on the following:

(1) Does the Commission's proposed definition of "execution date" present problems for SEFs, DCMs, SDRs, or reporting counterparties? Should the Commission instead adopt a definition that aligns with other regulations, including, for instance, the definition of "day of execution" in § 23.501(a)(5)(i)?[42]

B. § 45.2 – Swap Recordkeeping

The Commission is proposing amendments to the § 45.2 swap recordkeeping regulations. The proposed amendments are technical and do not impact the existing requirements or applicability of § 45.2.[43] The proposed technical amendments to § 45.2 are limited to updating terminology and phrasing to improve consistency in the reporting regulations, and to conform to changes proposed elsewhere in part 45.

[42] For the purposes of § 23.501, "day of execution" means the calendar day of the party to the swap transaction that ends latest, provided that if a swap transaction is - (a) entered into after 4:00 p.m. in the place of a party; or (b) entered into on a day that is not a business day in the place of a party, then such swap transaction shall be deemed to have been entered into by that party on the immediately succeeding business day of that party, and the day of execution shall be determined with reference to such business day. 17 CFR 23.501(a)(5)(i). For the purposes of § 23.501, "business day" means any day other than a Saturday, Sunday, or legal holiday. 17 CFR 23.501(a)(5)(ii).

[43] In the 2019 Part 49 NPRM, the Commission proposed relocating the recordkeeping requirements for SDRs from §§ 45.2(f) and (g) to § 49.12. *See* 2019 Part 49 NPRM at 21103. The request for comment for §§ 45.2(f) and (g), as well as any associated cost-benefit analysis, is in the 2019 Part 49 NPRM. *See id.* at 21084-85.

For instance, in this release, the Commission is proposing a technical amendment to remove the phrase "subject to the jurisdiction of the Commission" from § 45.2. The Commission is proposing to remove this phrase from all of part 45.[44] The phrase is unnecessary, as the Commission's regulations apply to all swaps or entities within the Commission's jurisdiction, regardless of whether the regulation states the fact.

C. § 45.3 – Swap Data Reporting: Creation Data

1. Introductory Text

The Commission is proposing to remove the introductory text to § 45.3. As background, the introductory text to § 45.3 provides a broad overview of the swap data reporting regulations for registered entities and swap counterparties. In providing this overview, the introductory text to § 45.3 cross-references reporting regulations in parts 17, 18, 43, 45, 46, and 50.[45] The introductory text also specifies that § 45.3(a)-(d) applies to all swaps except clearing swaps, and § 45.3(e) applies to clearing swaps.

The Commission believes that the introductory text is superfluous because the scope of § 45.3 is clear from the operative provisions of § 45.3.[46] Removing the introductory text would not impact any regulatory requirements, including those referenced in the introductory text.

2. § 45.3(a)-(e) – Swap Data Reporting: Creation Data

[44] To limit repetition, the Commission will not discuss each removal throughout this release.
[45] The introductory text to current § 45.3 references: the § 45.13(b) regulations related to required data standards for reporting swap data to SDRs; the § 49.10 regulations requiring SDRs to accept swap data; the part 46 regulations for reporting pre-enactment swaps and transition swaps; the § 45.4 regulations for reporting required swap continuation data; the § 45.6 regulations for the use of LEIs; the real-time public reporting requirements in part 43; the part 50 regulations for counterparties to report electing the end-user exception from clearing; and the parts 17 and 18 regulations for large trader reporting.
[46] The Commission is proposing to move the reference in the introductory text to required data standards for SDRs in § 45.13(b) to the regulatory text of proposed §§ 45.3(a) and (b) and renumber it from § 45.13(b) to § 45.13(a).

a. § 45.3(a) – Swaps Executed on or Pursuant to the Rules of a SEF or DCM

The Commission is proposing several changes to the § 45.3(a) required swap creation data reporting regulations for swaps executed on or pursuant to the rules of a SEF or DCM. Current § 45.3(a) requires that SEFs and DCMs report all PET data for swaps ASATP after execution. If the swap is not intended to be cleared at a DCO, § 45.3(a) requires that the SEF or DCM also report confirmation data for the swap ASATP after execution.

The Commission is first proposing to revise the § 45.3(a) requirement for SEFs and DCMs to submit both PET data and confirmation data for swaps that are not intended to be cleared at a DCO. As background, PET data reporting includes the reporting of approximately sixty swap data elements, varying by asset class, enumerated in appendix 1 to part 45.[47] Confirmation data reporting includes reporting all of the terms of a swap matched and agreed upon by the counterparties in confirming a swap.[48]

By the terms of the two definitions, PET data, which is a set number of data elements for each asset class, appears to be a subset of confirmation data, which is defined as, "all terms of a swap…." In defining two separate data sets, the Commission intended that that the initial PET data report would ensure that an SDR would have

[47] *See* 17 CFR 45.1 (definition of "primary economic terms"). The Commission is proposing to remove the definition of "primary economic terms" from § 45.1, as discussed in section II.A.3 above.
[48] *See* 17 CFR 45.1 (definition of "confirmation data"). The Commission is proposing to remove the definition of "confirmation data" from § 45.1, as discussed in section II.A.3 above. "Confirmation" is defined as the consummation of legally binding documentation that memorializes the agreement of the parties to all terms of a swap. 17 CFR 45.1 (definition of "confirmation").

sufficient data on each swap for the Commission to perform its regulatory functions while the more complete confirmation data may not yet be available.[49]

However, the current § 45.3 PET data and confirmation data requirements may be encouraging the reporting of duplicative information to SDRs. One of the PET data elements in current appendix 1 to part 45 is "[a]ny other term(s) . . . matched or affirmed by the counterparties in verifying the swap." The comments to this "catch-all" data element in appendix 1 to part 45 instruct reporting counterparties, SEFs, DCMs, and DCOs to use "as many data elements as required to report each such term."[50] The Commission believes that this catch-all has obscured the difference between PET data and confirmation data. The Commission is concerned that reporting counterparties, SEFs, and DCMs are submitting duplicative reports to meet the distinct, yet seemingly indistinguishable, regulatory requirements at the expense of data quality.[51]

DMO requested comment on whether to combine PET data and confirmation data into a single, clearly defined, and electronically reportable set of data elements as part of the Roadmap review.[52] Several commenters supported combining PET and confirmation data as a way to streamline reporting.[53] One commenter supported viewing PET data and confirmation data as a single set of data elements, which would remove confusion in the

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[49] *See* 77 FR at 2142, 2148.
[50] 17 CFR 45 appendix 1.
[51] For instance, in reviewing 49,766 part 45 credit default swap reports from June 1, 2019 to June 7, 2019, Commission staff found that out of the 12,336 swap reports submitted by SEFs and DCMs, 5,883 reports were duplicative in that they related to swaps that had already been reported, while SDs submitted 645 reports that were similarly duplicative out of 22,264 total.
[52] *See* Roadmap to Achieve High Quality Swap Data at 7.
[53] Letter from Global Foreign Exchange Division ("GFXD") of the Global Financial Markets Association ("GFMA") (Aug. 21, 2017) at 6-7; Letter from LedgerX (Aug. 18, 2017) at 1; Letter from The International Swaps and Derivatives Association ("ISDA") and The Securities Industry and Financial Markets Association ("SIFMA") ("Joint ISDA-SIFMA Letter") (Aug. 21, 2017) at 7; Letter from Chatham Financial ("Chatham") (Aug. 21, 2017) at 5.

industry as to what must be reported as part of confirmation data.[54] Other commenters requested that, if the Commission maintains a separate confirmation data reporting requirement, it specify what data elements should be in confirmation data.[55]

Other regulators have taken different approaches to required swap creation data reporting. The Securities and Exchange Commission ("SEC"), for instance, does not have rules for reporting separate confirmation data reports.[56] In the European Union ("EU"), on the other hand, the European Market Infrastructure Regulation ("EMIR")[57] requires reporting of the details of any derivative contract counterparties have concluded and of any modification or termination of the contract. The European Securities and Markets Authority ("ESMA") then develops the specific technical standards and requirements for the implementation of reporting.

The Commission believes eliminating the confirmation data reporting requirement would help streamline swap data reporting under part 45. Therefore, the Commission is proposing to revise § 45.3(a) to require SEFs and DCMs to report a single required swap creation data report, regardless of whether the swap is intended to be cleared.

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[54] Letter from The Depository Trust & Clearing Corporation ("DTCC"), which owns DTCC Data Repository (U.S.), LLC ("DDR") (Aug. 21, 2017) at 2, n.4.
[55] Joint letter from Bloomberg SDR LLC ("BSDR"), Chicago Mercantile Exchange Inc. ("CME"), and ICE Trade Vault, LLC ("Joint SDR Letter") (Aug. 21, 2017) at 6. BSDR voluntarily withdrew its provisional SDR registration on March 21, 2019.
[56] *See generally* 17 CFR 242.901.
[57] Regulation (EU) No 648/2012 of the European Parliament and of the Council on OTC derivatives, central counterparties and trade repositories, Article 9(1) (July 4, 2012) (requiring reporting after execution without reference to separate reports); Commission Implementing Regulation (EU) No 1247/2012 laying down implementing technical standards with regard to the format and frequency of trade reports to trade repositories according to Regulation (EU) No 648/2012 of the European Parliament and of the Council on OTC derivatives, central counterparties and trade repositories, Article 1 (Dec. 19, 2012) (referencing "single" reports under Article 9 of Regulation (EU) No 648/2012).

Second, the Commission is proposing to revise the § 45.3(a) requirement for SEFs and DCMs to report required swap creation data ASATP following execution. As background, the CEA requires that all swaps be reported to SDRs, but does not specify the timeframes for reporting swap data to SDRs for regulatory purposes under sections 2(a)(13)(G) and 4r(a).[58]

When part 45 was adopted in 2012, the Commission believed that reporting swap data immediately following execution was important to further the objectives of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act").[59] Reporting swap data ASATP would ensure that swap data is reported to SDRs in a manner that ensures the ability of the Commission and other regulators to fulfill the systemic risk mitigation, market transparency, position limit monitoring, and market surveillance objectives of the Dodd-Frank Act.[60]

The Commission is concerned that the ASATP deadline for regulatory reporting may be causing reporting counterparties to hastily report required swap creation data that has contributed to data quality issues. As a result, the Commission is considering extending the deadline for required swap creation data in a way that will continue to permit it to fulfill the systemic risk mitigation, market transparency, position limit monitoring, and market surveillance objectives of the Dodd-Frank Act.

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[58] *See* 7 U.S.C. 2(a)(13)(G) ("Each swap (whether cleared or uncleared) shall be reported to a registered [SDR]"); *see also* 7 U.S.C. 6r (establishing the SDR reporting requirements for uncleared swaps without reference to a timing requirement); *see also* Swap Data Recordkeeping and Reporting Requirements, 77 FR 2136, 2150.
[59] Swap Data Recordkeeping and Reporting Requirements, 77 FR 2136, 2150.
[60] *See id.* at 2149.

DMO requested comment on whether to move to a new "T+1" reporting timeline for part 45 in the Roadmap to understand whether additional reporting time would be beneficial.[61] DMO suggested a "T+1" timeline would involve reporting required swap creation data on the next business day following execution.[62] DMO further noted that a "T+1" standard would encourage alignment with the reporting deadlines established by the SEC and ESMA.[63] In response, several commenters expressed support for moving part 45 reporting to "T+1" or a similar delayed time.[64]

The Commission believes this extended reporting timeline could help improve data quality while encouraging alignment with reporting deadlines set by other regulators. The Commission is therefore proposing to revise § 45.3(a) to extend the deadline for SEFs and DCMs to report required swap creation data to T+1 following the execution date. Revised § 45.3(a) would therefore require that for each swap executed on or pursuant to the rules of a SEF or DCM, the SEF or DCM shall report swap creation data electronically to an SDR in the manner provided in § 45.13(a) not later than 11:59 p.m. eastern time on the next business day following the execution date.

b. § 45.3(b)-(d) – Off-Facility Swaps

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[61] *See* Roadmap to Achieve High Quality Swap Data at 10.
[62] *See id.*
[63] The SEC requires primary and secondary trade information be reported within 24 hours of execution on the next business day. 17 CFR 242.901(j). The SEC noted that commenters raised concerns that unreasonably short reporting timeframes would result in the submission of inaccurate transaction information, and that the SEC's interim 24-hour reporting timeframe § 901(j) strikes an appropriate balance between the need for prompt reporting of security-based swap transaction information and allowing reporting entities sufficient time to develop fast and robust reporting capability. *See* Regulation SBSR – Reporting and Dissemination of Security-Based Swap Information, 80 FR 14564, 14623-64 (Mar. 19, 2015). ESMA requires reporting no later than the working day following execution. Regulation (EU) No 648/2012 Article 9(1).
[64] Letter from Chatham at 5; Letter from CME (Aug. 21, 2017) at 2; Letter from the London Clearing House, Ltd. ("LCH") (Aug. 21, 2017) at 3; Letter from GFMA at 7-8; Joint SDR Letter at 10.

The Commission is proposing several changes to the current § 45.3(b)-(d) required swap creation data reporting regulations for off-facility swaps. Many of the proposed changes to requirements in § 45.3(b)-(d) would conform to the revisions proposed in the previous sections to the requirements for swaps executed on SEFs and DCMs.

The current required swap creation data reporting obligations for off-facility swaps are based on the type of swap and type of reporting counterparty. In general, for off-facility swaps subject to the Commission's clearing requirement, § 45.3(b) requires that SD/MSP reporting counterparties report PET data ASATP after execution, with a 15-minute deadline, while non-SD/MSP reporting counterparties report PET data ASATP after execution with a one business hour deadline.[65]

For off-facility swaps that are not subject to the clearing requirement but have an SD/MSP reporting counterparty, § 45.3(c)(1) now generally requires that SD/MSP reporting counterparties report PET data ASATP after execution with a 30-minute deadline, and confirmation data for swaps that are not intended to be cleared ASATP with a 30 minute deadline if confirmation is electronic, or ASATP with a 24 business hour deadline if not electronic, for credit, equity, foreign exchange, and interest rate swaps.[66]

Section 45.3(c)(2) currently requires that for swaps in the other commodity asset class, SD/MSP reporting counterparties report PET data ASATP after execution, with a two-hour deadline, and confirmation data for swaps that are not intended to be cleared

[65] 17 CFR 45.3(b)(1)(i) and (ii).
[66] 17 CFR 45.3(c)(1)(i)-(ii).

ASATP after confirmation with a 30-minute deadline if confirmation is electronic, or a 24 business hour deadline if confirmation is not electronic.[67]

For off-facility swaps that are not subject to the clearing requirement but have a non-SD/MSP reporting counterparty, § 45.3(d) requires reporting counterparties report PET data ASATP after execution with a 24 business hour deadline, and confirmation data ASATP with a 24 business hour deadline if the swap is not intended to be cleared.[68]

The Commission's proposed changes to § 45.3(b)-(d) fall into three categories, discussed below.

First, as part of a restructuring of regulations in § 45.3(a)-(d), the Commission is proposing to replace § 45.3(b)-(d) with new § 45.3(b), titled "Off-facility swaps." This proposed new § 45.3(b) would contain the swap creation data reporting requirements for off-facility swaps. The new timing requirements for reporting off-facility swaps would depend on whether the reporting counterparty is an SD/MSP/DCO or a non-SD/MSP/DCO reporting counterparty. This means the timing requirements in § 45.3(b) would include the required swap creation data reporting requirements for clearing swaps, as they are created at DCOs.[69] Sections 45.3(c)-(d) would be replaced by provisions for allocations and multi-asset swaps, as discussed in the following sections.

Second, the Commission is proposing to revise the requirement in § 45.3(b)-(d) for reporting counterparties to submit separate PET data and confirmation data for all off-facility swaps that are not intended to be cleared at a DCO. The background to this

[67] 17 CFR 45.3(c)(2)(i)-(ii).
[68] 17 CFR 45.3(d).
[69] As part of this change, the Commission is proposing to move the requirements for reporting required swap creation data for clearing swaps from § 45.3(e) to new § 45.3(b).

change is discussed in section II.C.2.a above. As with swaps executed on SEFs and DCMs, the Commission believes a single report would align with the approach taken by other regulators, improve data quality, and be responsive to Roadmap comments.

Third, the Commission is proposing to revise the § 45.3(b)-(d) requirements for reporting counterparties to report required swap creation data ASATP after execution with different deadlines for off-facility swaps.[70]

With respect to off-facility swaps, one Roadmap commenter explained that the current requirement for SD/MSP reporting counterparties to report uncleared swaps in § 45.3(c)(1) within 30 minutes means that reporting counterparties are inputting data before the trade is confirmed, resulting in modifications as terms are finalized.[71] Another commenter requested that end-users be given at least 36, if not 48, hours to report.[72] One commenter requested that, if the Commission maintains confirmation data reporting, the deadline for reporting that data coincide with the deadline for issuing confirmations under § 23.501.[73]

The Commission is proposing to revise the required swap creation data reporting deadlines in § 45.3(a)-(d) for off-facility swaps in two new regulations: § 45.3(b)(1) and § 45.3(b)(2). New § 45.3(b)(1) would require that SD/MSP/DCO reporting counterparties report swap creation data to an SDR by T+1 following the execution date. This standard would be consistent with the standard proposed for SEFs and DCMs in § 45.3(a). The

[70] The background to this amendment is discussed in section II.C.2.a above, in the context of SEF/DCM/DCO reporting.
[71] Letter from GFMA at 7.
[72] Letter from the Commercial Energy Working Group ("CEWG") (Aug. 21, 2017) at 4.
[73] Joint SDR Letter at 6. The regulation provides SDs and MSPs entering into swaps with SD/MSP counterparties must execute confirmations ASATP but in any event by the end of the first business day following the day of execution. 17 CFR 23.501(a)(1).

Commission believes this standard would also address commenters' concerns about needing more time to report to avoid modifications to the data, and would allow for errors identified during the confirmation process to be corrected prior to reporting.

New § 45.3(b)(2) would require that non-SD/MSP/DCO reporting counterparties report swap creation data to an SDR not later than T+2 following the execution date. The Commission anticipates that proposed § 45.3(b)(2) would provide non-SD/MSP/DCO reporting counterparties relief in reporting swap creation data for the minority of off-facility swaps in which both counterparties are non-SD/MSP/DCO counterparties. This extended deadline reflects the Commission's interest in relieving some of the swap data reporting burdens previously imposed on end users in a way that should also help improve data quality.

Therefore the Commission is proposing revised § 45.3(b) to require that for each off-facility swap, the reporting counterparty shall report electronically to an SDR as provided by § 45.3(b)(1) or (b)(2), as applicable.

Proposed § 45.3(b)(1) would require that if the reporting counterparty is an SD, MSP, or DCO, the reporting counterparty shall report swap creation data electronically to an SDR in the manner provided in § 45.13(a) not later than 11:59 p.m. eastern time on the next business day following the execution date.

Proposed § 45.3(b)(2) would require that if the reporting counterparty is a non-SD/MSP/DCO counterparty, the reporting counterparty shall report required swap creation data electronically to an SDR in the manner provided in § 45.13(a) not later than 11:59 p.m. eastern time on the second business day following the execution date.

c. § 45.3(e) – Clearing Swaps

As noted above, the Commission is proposing to move the required swap creation data reporting requirements for clearing swaps from § 45.3(e) to revised § 45.3(b)(1). The required swap creation data reporting requirements would be covered under the "off-facility swaps" regulations, as clearing swaps are created at DCOs. As background, § 45.3(e) currently requires that DCOs report required swap creation data for clearing swaps ASATP after clearing or execution, depending on whether the swap is replacing an original swap. Current § 45.3(e) specifies that required swap creation data for clearing swaps includes all confirmation data and PET data.

Consolidating the requirements for DCOs to report swap creation data in § 45.3(b) with those of SD/MSP reporting counterparties would simplify the reporting requirements. Revised § 45.3(b)(1) would require that SD/MSP/DCO reporting counterparties report required swap creation data to an SDR not later than T+1 following the execution date.[74] This would extend the time DCOs have to report required swap creation data for clearing swaps pursuant to § 45.3(e) from ASATP after clearing or execution to T+1 following the execution date.

While the Commission is proposing to extend the time DCOs have to report required swap creation data, the Commission recognizes that DCOs are required to clear swaps ASATP after execution as if fully automated systems were used.[75] The Commission therefore expects that DCO reporting counterparties may continue to report ASATP, especially if their reporting and clearing processes are connected. However,

[74] The background to this proposed amendment is discussed in connection with the proposed amendment to the required swap creation data reporting deadlines for off-facility swaps, discussed in section II.C.2.b above.
[75] 17 CFR 39.12(b)(7)(ii) and (iii).

proposed § 45.3(b)(1) would provide DCOs with the opportunity to change their reporting practices to take advantage of the additional time.

3. § 45.3(f) – Allocations

The Commission is proposing several amendments to the § 45.3(f) regulations for reporting allocations, including re-designating it as § 45.3(c).[76] As background, § 45.3(f)(1) provides that the reporting counterparty to an initial swap with an allocation agent reports required swap creation data for the initial swap, including a USI. For the post-allocation swaps, § 45.3(f)(2)(i) provides that the agent must tell the reporting counterparty the identities of the actual counterparties ASATP after execution, with a deadline of eight business hours. Section 45.3(f)(2)(ii) provides that the reporting counterparty must create USIs for the swaps and report all required swap creation data for each post-allocation swap ASATP after learning the identities of the counterparties. Section 45.3(f)(2)(iii) provides that the SDR to which the initial and post-allocation swaps were reported must map together the USIs of the initial swap and each post-allocation swap.

The Commission is proposing to specify that required swap creation data for allocations must be reported "electronically" to SDRs in §§ 45.3(c), (c)(1), and (c)(2)(ii). This should be current practice for reporting allocations to SDRs.

The Commission is also proposing to replace the reference in § 45.3(f)(1) (re-designated as § 45.3(c)(1)) to "§ 45.3(a) through (d)" with a reference to paragraphs (a) or (b) of § 45.3, to reflect the structural revisions to § 45.3(a)-(d) discussed above.

[76] The Commission is proposing to redesignate current § 45.3(f) as § 45.3(c) to reflect the consolidation of § 45.3(b)-(d) into § 45.3(b) discussed above.

Because the Commission is proposing to extend the time to report required swap creation data in §§ 45.3(a) and (b), reporting counterparties would have additional time to report required swap creation data for the initial swaps as well.

The Commission is proposing to amend current § 45.3(f)(2)(ii) (re-designated as § 45.3(c)(2)(ii))[77] to replace the requirement to report required swap creation data for post-allocation swaps ASATP after learning the identities of the actual counterparties with a cross-reference to § 45.3(b). This would give reporting counterparties until T+1 or T+2, depending on their status, to report required swap creation data for the allocated swaps, for reasons previously explained.

Finally,[78] the Commission is proposing to remove § 45.3(f)(2)(iii) without re-designation. One of the swap data elements the Commission is to require is an event data element.[79] One of the events in this data element will be "allocation," which would require reporting counterparties to indicate whether a swap is associated with an allocation.

The Commission preliminarily believes this would simplify the current process involving SDRs mapping data elements. The Commission believes these data elements would also provide clarity to reporting counterparties, who are the parties with the information needed to map the data elements even though the rule placed the obligation on SDRs. As a result, the Commission believes removing § 45.3(f)(2)(iii) without re-

[77] The Commission is not proposing to revise the § 45.3(f)(2)(i) requirement (re-designated as § 45.3(c)(2)(i)) for the agent to inform the reporting counterparty of the identities of the reporting counterparty's actual counterparties ASATP after execution, with an eight business hour deadline. Reporting counterparties will still need to know their actual counterparties, and the eight hour deadline is consistent with other regulations for allocations. *See* 17 CFR 1.35(b)(5)(iv).
[78] The Commission is also proposing several non-substantive minor and technical language edits, but is limiting discussion in this section to substantive amendments.
[79] The swap data elements required to be reported to SDRs are discussed in section V below.

designation will result in a better process for reporting counterparties and SDRs that should also help improve data quality.

Therefore, in light of the above proposed amendments, revised § 45.3(c)(1) would require that the initial swap transaction between the reporting counterparty and the agent shall be reported as required by § 45.3(a) or (b), as applicable. Section 45.3(c)(1) would also require that a UTI for the initial swap transaction be created as provided in § 45.5.

Section 45.3(c)(2)(i) would continue to provide that the agent shall inform the reporting counterparty of the identities of the reporting counterparty's actual counterparties resulting from allocation, ASATP after execution, but not later than eight business hours after execution. Section 45.3(c)(2)(ii) would require that the reporting counterparty report required swap creation data, as required by § 45.3(b), for each swap resulting from allocation to the same SDR to which the initial swap transaction is reported. Section 45.3(c)(2)(ii) would also provide that the reporting counterparty shall create a UTI for each such swap as required in § 45.5.

4. § 45.3(g) – Multi-Asset Swaps

The Commission is proposing several amendments to the current § 45.3(g) regulations for reporting multi-asset swaps, proposed to be re-designated as § 45.3(d). Section 45.3(g) now provides that for each multi-asset swap, required swap creation data and required swap continuation data must be reported to a single SDR that accepts swaps in the asset class treated as the primary asset class involved in the swap by the SEF, DCM, or reporting counterparty making the first report of required swap creation data pursuant to § 45.3. Current § 45.3(g) also provides that the registered entity or reporting

counterparty making the first report of required swap creation data report all PET data for each asset class involved in the swap.

The Commission is proposing to amend § 45.3(g) (re-designated as § 45.3(d)) to replace the reference to "making the first report" of required swap creation data with "reporting" required swap creation data. This would reflect the Commission's proposal to require a single report for required swap creation data, instead of separate PET data and confirmation data reports.[80]

The Commission is also proposing to remove the last sentence of the regulation concerning all PET data for each asset class involved in the swap. This sentence is unnecessary, and would no longer be relevant with the Commission's proposal to remove PET data from its regulations.

Therefore, new § 45.3(d) would require that required swap creation data and required swap continuation data be reported to a single SDR that accepts swaps in the asset class treated as the primary asset class involved in the swap by the SEF, DCM, or reporting counterparty reporting required swap creation data pursuant to § 45.3.

5. § 45.3(h) – Mixed Swaps

The Commission is proposing several conforming or otherwise non-substantive amendments to § 45.3(h) for mixed swaps, including re-designating it as § 45.3(e). Current § 45.3(h)(1) requires that for each mixed swap, required swap creation data and required swap continuation data shall be reported to an SDR registered with the Commission and to a security-based SDR ("SBSDR") registered with the SEC. This

[80] *See* sections II.C.2.a and II.C.2.b above.

requirement may be satisfied by reporting the mixed swap to an SDR or SBSDR registered with both Commissions. Current § 45.3(h)(2) requires that the registered entity or reporting counterparty making the first report of required swap creation data pursuant to § 45.3(h) shall ensure that the same USI is recorded for the swap in both the SDR and the SBSDR.

For instance, as with proposed § 45.3(d) for multi-asset swaps and for the same reason, the Commission is proposing to replace "making the first report" of required swap creation data with "reporting" required swap creation data in re-designated § 45.3(e)(2) to improve readability.

Therefore, § 45.3(e)(1) would require that for each mixed swap, required swap creation data and required swap continuation data shall be reported to an SDR and to a SBSDR registered with the SEC.[81] Amended § 45.3(e)(2) would require that the registered entity or reporting counterparty reporting required swap creation data pursuant to § 45.3(h) ensure that the same UTI is recorded for the swap in both the SDR and the SBSDR.

6. § 45.3(i) – International Swaps

The Commission is proposing to remove the § 45.3(i) regulations for international swaps. Section 45.3(i) requires that for each international swap, the reporting counterparty must report to an SDR the identity of the non-U.S. TR to which the swap is also reported and the swap identifier used by the non-U.S. TR. "International swaps" are defined in § 45.1 as swaps required to be reported by U.S. law and the law of another

[81] Section 45.3(e)(1) would continue to provide that the requirement may be satisfied by reporting the mixed swap to an SDR or SBSDR registered with both Commissions.

jurisdiction to be reported to both an SDR and to a different TR registered with the other jurisdiction.[82]

When § 45.3(i) was adopted, the Commission believed that the regulations for international swaps were necessary to provide an accurate picture of the swaps market to regulators to further the purposes of the Dodd-Frank Act.[83] However, if the same swap is reported to different jurisdictions, the USI, or UTI, as discussed in section II.E below, should be the same. If the transaction identifier is the same for the swap, there would be no need for the counterparties to send the identifier to other jurisdictions. In addition, in the future, regulators should have global TR access, further obviating the need for reporting counterparties sending identifiers to multiple jurisdictions.

As a result, the Commission believes that § 45.3(i) is no longer necessary and is proposing to remove § 45.3(i) from its regulations.

7. § 45.3(j) – Choice of SDR

The Commission is proposing non-substantive amendments to § 45.3(j) for reporting counterparties in choosing their SDR, including re-designating it as § 45.3(f). As background, § 45.3(j) now requires that the entity with the obligation to choose the SDR to which all required swap creation data for the swap is reported shall be the entity that is required to make the first report of all data pursuant to § 45.3, as follows: (i) for swaps executed on or pursuant to the rules of a SEF or DCM, the SEF or DCM shall choose the SDR; (ii) for all other swaps, the reporting counterparty, as determined in § 45.8, shall choose the SDR.

[82] The Commission is proposing to remove the definition of "international swap" from § 45.1, as discussed in section II.A.3 above.
[83] Swap Data Recordkeeping and Reporting Requirements, 77 FR 2136, 2151.

For instance, the Commission is proposing to change the heading of newly re-designated § 45.3(f) from "Choice of SDR" to "Choice of swap data repository" to be consistent with other headings throughout part 45.

Therefore, with the proposed amendments, § 45.3(f) would require that for swaps executed on or pursuant to the rules of a SEF or DCM, the SEF or DCM shall choose the SDR, and for all other swaps, the reporting counterparty, as determined in § 45.8, shall choose the SDR.

Request for Comment

The Commission requests comment on all aspects of the proposed changes to § 45.3. The Commission also invites specific comment on the following:

(2) Is the Commission's proposed T+1 deadline for reporting required swap creation data appropriately harmonized with the deadlines set by other regulators and jurisdictions?

(3) Does the Commission's proposed T+1 deadline create any problems for SEFs, DCMs, SDRs, or reporting counterparties by referencing eastern time? Should the Commission instead adopt a definition that aligns with other regulations, including, for instance, the definition of "day of execution" in § 23.501(a)(5)(i)?[84]

(4) Do any of the Commission's proposed changes to the timing deadlines for reporting required swap creation data in § 45.3 raise issues with the sequencing of messages for SDRs that could compromise data quality? For instance, could a T+1 deadline for

[84] For the purposes of § 23.501, "day of execution" means the calendar day of the party to the swap transaction that ends latest, provided that if a swap transaction is - (a) entered into after 4:00 p.m. in the place of a party; or (b) entered into on a day that is not a business day in the place of a party, then such swap transaction shall be deemed to have been entered into by that party on the immediately succeeding business day of that party, and the day of execution shall be determined with reference to such business day. 17 CFR 23.501(a)(5)(i). For the purposes of § 23.501, "business day" means any day other than a Saturday, Sunday, or legal holiday. 17 CFR 23.501(a)(5)(ii).

reporting original swaps and clearing swaps create problems for SDRs in processing swap terminations? Could the 8-hour delay for the allocation agent notifying the reporting counterparty of the actual counterparty's identity create timing message sequencing issues for allocation reporting?

D. § 45.4 – Swap Data Reporting: Continuation Data

1. Introductory Text

The Commission is proposing to remove the introductory text to § 45.4 for the same reasons it is proposing to remove the introductory text to § 45.3.[85] Removing the introductory text would not impact any regulatory requirements, including those referenced in the introductory text.

2. § 45.4(a) – Continuation Data Reporting Method Generally

The Commission is proposing several changes to § 45.4(a), which concerns required swap continuation data reporting. Section 45.4(a) requires that reporting counterparties and DCOs[86] required to report swap continuation data must do so in a manner sufficient to ensure that all data in the SDR for a swap remains current and accurate, and includes all changes to the PET data of the swap occurring during the existence of the swap. Current § 45.4(a) further specifies that reporting entities and counterparties fulfill their obligations by reporting, within the applicable deadlines set

[85] *See* discussion in II.C.1 above. The introductory text to § 45.4 references: the § 45.13(b) regulations for required data standards for reporting swap data to SDRs; the § 49.10 regulations for SDRs to accept swap data; the part 46 regulations for reporting pre-enactment swaps and transition swaps; the § 45.3 regulations for reporting required swap creation data; the § 45.6 regulations for the use of LEIs; the real-time public reporting requirements in part 43; and the parts 17 and 18 regulations for large trader reporting.

[86] SEFs and DCMs do not have reporting obligations with respect to required swap continuation data. DCOs are reporting counterparties for clearing swaps, and are thus responsible for reporting required swap continuation data for these swaps. However, DCOs also have required swap continuation data obligations for original swaps, to which DCOs are not counterparties. As a result, § 45.4(a) must address reporting counterparties and DCOs separately.

forth in § 45.4, the following: (i) life cycle event data to an SDR that accepts only life cycle event data reporting; (ii) state data to an SDR that accepts only state data reporting; or (iii) either life cycle event data or state data to an SDR that accepts both life cycle event data and state data reporting.

First, the Commission is proposing to revise the first two sentences. The first two sentences state that "for each swap, regardless of asset class, reporting counterparties and [DCOs] required to report swap continuation data must do so in a manner sufficient to ensure that all data in the [SDR] concerning the swap remains current and accurate, and includes all changes to the [PET data] of the swap occurring during the existence of the swap. Reporting entities and counterparties fulfill this obligation by reporting either . . . ." The Commission is proposing to replace the text with "for each swap, regardless of asset class, reporting counterparties and [DCOs] required to report required swap continuation data shall report . . . ." to improve readability without changing the regulatory requirement substantively.

Second, the Commission is proposing to remove state data reporting as an option for reporting changes to swaps from § 45.4. As background, state data reporting involves reporting counterparties re-reporting the PET terms of a swap every day, regardless of whether any changes have occurred to the terms of the swap since the last state data report.[87] In contrast, life cycle event data reporting involves reporting counterparties re-

[87] 17 CFR 45.1 (definition of "state data"). The Commission is proposing to remove the definition of "state data" from § 45.1, as discussed in section II.A.3 above.

submitting the PET terms of a swap when an event has taken place that results in a change to the previously reported terms of the swap.[88]

The Commission is proposing to eliminate state data reporting because it would improve data quality without impeding the Commission's ability to fulfill the systemic risk mitigation, market transparency, position limit monitoring, and market surveillance objectives of the Dodd-Frank Act. In adopting part 45, the Commission gave reporting counterparties the option of reporting changes to swaps by either the state data reporting method or life cycle event method to provide flexibility.[89] The Commission is concerned that the option for state data reporting may be contributing to data quality issues by filling SDRs with unnecessary swap messages.

The Commission estimates that state data reporting messages represent the vast majority of swap reports maintained by SDRs and the Commission.[90] The large number of state data reporting messages has complicated the Commission's use of swap data. For instance, determining the changes that occurred over time to a five-year swap reported via state data reporting would require Commission staff to analyze all swap data elements on over 1,800 (360 x 5 = 1,800) state data swap reports associated with the swap.

Other regulators have taken approaches that are less receptive to state data reporting. The SEC, for instance, stated that "Regulation SBSR would not prevent a registered SDR from developing for its members a mechanism or other service that

[88] 17 CFR 45.1 (definition of "life cycle event"). The Commission is proposing to amend the definition of "life cycle event data" in § 45.1, as discussed in section II.A.2 above.
[89] Swap Data Recordkeeping and Reporting Requirements, 77 FR 2136, 2153.
[90] For instance, an analysis of part 45 data showed that during January 2018, SDRs received approximately 30 million state data reporting messages, which included over 77% of all interest rate swap reports submitted to SDRs during that time period. Since reporting began, the Commission estimates that SDRs have received and made available to the Commission over a billion state data reporting messages.

automates or facilitates the production of life cycle events from state data."[91] However, with respect to state data reporting generally, the SEC noted that it "is not sufficient merely to re-report all of the terms of the security-based swap each day without identifying which data elements have changed."[92] Similarly, ESMA requires maintaining a reporting log containing the reporting of "modifications" to the data registered in TRs.[93] With these modifications, ESMA requires the identity of the person or persons requesting the modification, including the TR itself if applicable, the reason or reasons for such modification, a date and timestamp, and a clear description of the changes, including the old and new contents of the relevant data.[94]

In light of the foregoing, the Commission is proposing to remove the option for state data reporting in § 45.4. The Commission preliminarily believes that this would simplify swap reporting by significantly reducing swap message traffic to only those messages corresponding with a change in the terms of a swap. All terms would continue to be reported with each change, but the event and action type swap data elements would indicate the changes that have been made to the swap transaction.[95] This approach would facilitate the Commission's analysis of swap data by drastically reducing the number of

[91] *See* Regulation SBSR – Reporting and Dissemination of Security-Based Swap Information, 80 FR 14564, 14640 n. 692. The SEC explained that its § 901(e)(1) "requires the reporting of a life cycle event . . . that results in a change to information previously reported pursuant to [§] 901(c), 901(d), or 901(i). Thus, Rule 901(e)(1) contemplates the reporting of the specific changes to previously reported information. Reports of life cycle events, therefore, must clearly identify the nature of the life cycle event for each security-based swap."
[92] *Id.*
[93] Commission Delegated Regulation (EU) No 148/2013 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council on OTC derivatives, central counterparties and trade repositories with regard to regulatory technical standards on the minimum details of the data to be reported to trade repositories, Article 4 (Dec. 19, 2012).
[94] *Id.*
[95] The swap data elements required to be reported to SDRs are discussed in section V below.

messages that would need to be analyzed for each swap. Moreover, this approach would be consistent with the approach taken by other regulators.

Therefore, proposed § 45.4(a) would require that for each swap, regardless of asset class, reporting counterparties and DCOs required to report required swap continuation data shall report life cycle event data for the swap electronically to an SDR in the manner provided in § 45.13(a) within the applicable deadlines set forth in § 45.4.[96]

3. § 45.4(b) – Continuation Data Reporting for Clearing Swaps

The Commission is proposing several revisions to the § 45.4(b) required swap continuation data reporting requirements for clearing swaps. First, the Commission is proposing to move the § 45.4(b) required swap continuation data reporting regulations for clearing swaps to revised § 45.4(c). The Commission is then proposing to redesignate current § 45.4(c) as § 45.4(b). Current § 45.4(c) contains the continuation data reporting regulations for original swaps. As revised, newly re-designated § 45.4(b) would be titled "Continuation data reporting for original swaps."

Revised § 45.4(c) would contain the continuation data reporting requirements for all swaps other than original swaps, which would include clearing swaps. The revisions to the continuation data requirements for clearing swaps and uncleared swaps are discussed in section II.D.4 below. The revisions to the continuation data requirements for original swaps in revised § 45.4(b) will be discussed in this section.

Second, the Commission is proposing several amendments to the continuation data reporting regulations for original swaps in § 45.4(c), proposed to be redesignated as

[96] The deadlines for reporting required swap continuation data are discussed in the following two sections.

§ 45.4(b). Current § 45.4(c) requires that required swap continuation data, including terminations, must be reported to the SDR to which the original swap that was accepted for clearing was reported pursuant to § 45.3(a)-(d).[97] For continuation data, § 45.4(c)(1) requires: (i) life cycle event data or state data reporting either on the same day that any life cycle event occurs with respect to the swap, or daily for state data reporting; and (ii) daily valuation data. In addition, § 45.4(c)(2) requires the reporting of: (i) the LEI of the SDR to which all required swap creation data for each clearing swap was reported by the DCO pursuant to § 45.3(e); (ii) the USI of the original swap that was replaced by the clearing swaps; and (iii) the USI of each clearing swap that replaces a particular original swap.

The Commission is proposing to extend the deadline for reporting swap continuation data for original swaps in § 45.4(c)(1). As explained in sections II.C.2.a and II.C.2.b above, the Commission is proposing to extend the deadlines for reporting required swap creation data in § 45.3 for swaps executed on SEFs and DCMs and those executed off-facility to either T+1 or T+2, depending on the reporting counterparty.[98] As a result, the Commission reviewed the reporting deadlines for required swap continuation data to ensure the amendments to the required swap creation data reporting deadlines do not conflict.

In reviewing the continuation data reporting deadlines, the Commission also considered those set by other regulators. For instance, the SEC requires that any events

[97] The regulation also specifies the information must be reported in the manner provided in § 45.13(b) and in § 45.4, and must be accepted and recorded by such SDR as provided in § 49.10. 17 CFR 45.4(c).
[98] The background to these proposed amendments is discussed in connection with the proposed revisions to the required swap creation data reporting deadlines in §§ 45.3(a) and (b), discussed in sections II.C.2.a and II.C.2.b, respectively, above.

that would result in a change in the information reported to a SBSDR be reported within 24 hours of the event taking place.[99] EMIR similarly requires that contract modifications be reported no later than the working day following the modification.[100] Both the SEC and ESMA generally have the same deadlines for reporting new swaps as well as amendments, though the deadline may be more than 24 hours in Europe depending on when the trade was concluded and if the following day is a working day.

Original swaps are swaps that are accepted for clearing by a DCO. Because they are cleared, the original swap reporting counterparties do not report continuation data for original swaps to SDRs. However, the Commission believes aligning the required swap creation data deadlines with the required swap continuation data deadlines would be consistent with the approach taken by other regulators. In light of the foregoing, the Commission is proposing to extend the deadline for reporting continuation data for original swaps to T+1 following any life cycle event.

The Commission is also proposing to remove the references to state data reporting[101] in § 45.4(b) and to clarify that required swap continuation data must be reported "electronically." As explained earlier in this proposal, this should be current practice. In addition, the Commission is proposing to update various cross references and make non-substantive language edits to improve readability.

Therefore, proposed § 45.4(b) would require that for each original swap, the DCO shall report required swap continuation data, including terminations, electronically to the

[99] 17 CFR 242.900(g); 17 CFR 242.901(e).
[100] Reg. 648/2012 Art. 9(1).
[101] The background to this proposed amendment is discussed in connection with the proposed removal of the state data reporting regulations from § 45.4(a), discussed in section II.D.2 above.

SDR to which the swap that was accepted for clearing was reported pursuant to § 45.3 in the manner provided in § 45.13(a) and in § 45.4, and such required swap continuation data shall be accepted and recorded by such SDR as provided in § 49.10. Revised § 45.4(b)(1) would require that the DCO that accepted the swap for clearing shall report all life cycle event data electronically to an SDR in the manner provided in § 45.13(a) not later than 11:59 p.m. eastern time on the next business day following the day, as determined according to eastern time, that any life cycle event occurs with respect to the swap.

Revised § 45.4(b)(2) would continue to require that in addition to all other required swap continuation data, life cycle event data shall include: (i) the LEI of the SDR to which all required swap creation data for each clearing swap was reported by the DCO pursuant to § 45.3(b); (ii) the UTI of the original swap that was replaced by the clearing swaps; and (iii) the UTI of each clearing swap that replaces a particular original swap.

4. § 45.4(c) – Continuation Data for Original Swaps

The Commission is proposing several amendments to the § 45.4(c) regulations for reporting required swap continuation data for original swaps. First, the Commission is proposing to move the required swap continuation data reporting requirements for original swaps from § 45.4(c) to § 45.4(b). The Commission is proposing to move the continuation data reporting requirements for clearing swaps from § 45.4(b) to § 45.4(c), and combine them with the continuation data reporting requirements for uncleared swaps currently located in § 45.4(d). The Commission is proposing to retitle § 45.4(c)

"Continuation data reporting for swaps other than original swaps" to reflect the combination.

The Commission is proposing several revisions to the continuation data reporting regulations for clearing swaps and uncleared swaps in §§ 45.4(b) and (d), respectively, which are proposed to be redesignated as § 45.4(c). The revisions to the continuation data requirements for original swaps are discussed in section II.D.3 above. The revisions to the continuation data requirements for clearing swaps and uncleared swaps to be combined in revised § 45.4(c) will be discussed below in this section.

Current § 45.4(b) requires that for all clearing swaps, DCOs must report: (i) life cycle event data or state data reporting either on the same day that any life cycle event occurs with respect to the swap, or daily for state data reporting; and (ii) daily valuation data. Current § 45.4(d) requires that for all uncleared swaps, including swaps executed on a SEF or DCM, the reporting counterparty must report: (i) all life cycle event data on the same day for SD/MSP reporting counterparties, or the second business day if it relates to a corporate event of the non-reporting counterparty, or state data daily; (ii) all life cycle event data on the next business day for non-SD/MSP reporting counterparties, or the end of the second business day if it relates to a corporate event of the non-reporting counterparty, or state data daily; (iii) daily valuation data for SD/MSP reporting counterparties; and (iv) the current daily mark of the transaction as of the last day of each

fiscal quarter, within 30 calendar days of the end of each fiscal quarter for non-SD/MSP reporting counterparties.[102]

The Commission is proposing to revise the life cycle event reporting deadlines for these swaps to reflect the revisions proposed to the § 45.3(b) required swap creation data reporting deadlines and the § 45.4(b) original swap continuation data reporting deadlines.[103] The Commission is proposing to change the life cycle event reporting deadline for SD/MSP/DCO reporting counterparties from the same day to T+1 following any life cycle event.[104] The Commission is proposing to update the exception for corporate events of the non-reporting counterparty to T+2.

For non-SD/MSP/DCO reporting counterparties, the Commission is proposing to change the life cycle event reporting deadline to T+2 following the life cycle event.

The Commission is also proposing to remove the references to state data reporting in revised § 45.4(c).[105] The Commission is also proposing to clarify that required swap continuation data must be reported "electronically." The Commission is also proposing to update various cross references and make non-substantive language edits to improve readability.

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[102] If a daily mark of the transaction is not available for the swap, the reporting counterparty satisfies the requirement by reporting the current valuation of the swap recorded on its books in accordance with applicable accounting standards. 17 CFR 45.4(d)(2)(ii).

[103] The background to these proposed revisions is discussed in connection with the proposed revisions to the required swap creation data reporting deadlines for off-facility swaps in revised § 45.3(b) and the required swap continuation data deadlines for original swaps in § 45.4(b), discussed in sections II.C.2.b and II.D.3, respectively, above.

[104] The Commission is not similarly proposing to extend the valuation data reporting deadline for SD/MSP/DCO reporting counterparties. The Commission preliminarily believes that valuation data should not be similarly delayed because SDs, MSPs, and DCOs are already creating daily valuations and tracking margin and collateral for reasons independent of their swap reporting obligations.

[105] The background to this proposed amendment is discussed in connection with the proposed removal of the state data reporting regulations from § 45.4(a), discussed in section II.D.2 above.

The Commission is also proposing revisions to the requirements for reporting swap valuation data for all reporting counterparties. As background, DCOs, SDs, and MSPs report valuation data daily, while non-SD/MSP reporting counterparties report the daily mark of transactions quarterly.[106] For DCO, SD, and MSP reporting counterparties, the Commission is proposing to maintain the daily reporting requirement. However, the Commission is proposing to expand the requirement to include margin and collateral data.[107]

As background, the Commission decided not to require collateral data reporting when it adopted part 45 in 2012. At the time, both the Commission and industry understood that collateral information was important for systemic risk management, but was not yet possible to include in transaction-based reporting since it was calculated at the portfolio level.[108] In light of this limitation, the Commission required that the daily mark be reported for swaps as valuation data, but not collateral.[109] However, the Commission noted that while the industry had not yet developed data elements suitable for representing the terms required to report collateral, the Commission could revisit the issue in the future if and when industry and SDRs develop ways to represent electronically the terms required for reporting collateral.[110]

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[106] 17 CFR 45.4(b)(2) and (d)(2).
[107] The Commission is proposing to add a definition of "collateral data" to § 45.1(a), as discussed in section II.A.1 above. As proposed "collateral data" would mean the data elements necessary to report information about the money, securities, or other property posted or received by a swap counterparty to margin, guarantee, or secure a swap, as specified in appendix 1 to part 45.
[108] Swap Data Recordkeeping and Reporting Requirements, 77 FR 2136, 2153.
[109] 17 CFR 45.1 (definition of "valuation data"). The Commission is proposing to amend the definition of "valuation data" in § 45.1(a), as discussed in section II.A.2 above. As amended, "valuation data" would mean the data elements necessary to report information about the daily mark of the transaction, pursuant to CEA section 4s(h)(3)(B)(iii), and to § 23.431 if applicable, as specified in appendix 1 to part 45.
[110] Swap Data Recordkeeping and Reporting Requirements, 77 FR 2136, 2154.

The Commission is concerned that not having margin and collateral data impedes its ability to fulfill the systemic risk mitigation objectives of the Dodd-Frank Act. As a result, the Commission is revisiting this issue as the Commission noted in 2012 to determine whether it is now feasible.

DMO raised the issue of and received comments on new margin and collateral reporting as part of the Roadmap review. Some commenters opposed such reporting,[111] with one recommending that the Commission look for alternative means to collect the data.[112] One commenter indicated that increased harmonization with ESMA on issues such as margin data collection could be helpful.[113]

Other regulators have taken different approaches to margin and collateral data reporting. The SEC does not require reporting of any valuation data or margin and collateral data, for security-based swaps.[114] ESMA, in contrast, requires the reporting of many of the same collateral and margin swap data elements the Commission is proposing to require, either on a portfolio basis or by transaction.[115] With respect to valuation data, ESMA requires central counterparties to report valuations for cleared swaps as the Commission does.[116] EMIR does provide an exemption from valuation reporting, as well

[111] Letter from American Counsel of Life Insurers ("ACLI") (Aug. 21, 2017) at, 2-3 (asserting that margin data would not "be constructive" and the burden would outweigh any benefit); Letter from CEWG at 3; Joint ISDA-SIFMA Letter at 8.
[112] Joint ISDA-SIFMA Letter at 8.
[113] Letter from Chatham at 5.
[114] Regulation SBSR – Reporting and Dissemination of Security-Based Swap Information, 80 FR 14564, 14590 (noting that SEC will continue to assess the reporting and public dissemination regime under Regulation SBSR and could determine to propose additional requirements, such as the reporting of valuations, as necessary or appropriate.).
[115] The collateral and margin data elements themselves are included below in section V.
[116] Reg. 148/2013 Art. 3(5).

as reporting margin and collateral data, for non-financial counterparties, unless they exceed a threshold of derivatives activity.[117]

The Commission believes margin and collateral data is necessary to monitor risk in the swaps market. Given that ESMA is already requiring collateral reporting, and that the Commission is proposing to require many of the swap data elements that ESMA requires, the Commission believes industry is ready to report this data to SDRs.

However, the Commission is concerned that valuation, margin, and collateral data reporting could create a significant burden for non-SD/MSP/DCO reporting counterparties. The Commission is aware that these entities may be smaller and less active in the swaps market, with fewer resources to devote to reporting this complex data. The Commission also recognizes that the quarterly valuation data these counterparties report is not integral to the Commission's ability to monitor systemic risk in the swaps market and may not justify the cost to these entities to report it. The Commission is therefore proposing to remove the current requirement for non-SD/MSP/DCO reporting counterparties to report valuation data in § 45.4(d)(2)(ii). The Commission is also proposing not to require non-SD/MSP/DCO reporting counterparties to report margin and collateral data. The Commission preliminarily believes this would relieve these counterparties from unnecessary burdens without impacting the Commission's ability to monitor systemic risk. The Commission also notes this change would be consistent with the approach taken by ESMA (and the SEC, insofar as the SEC does not require reporting of margin and collateral data from any type of market participant).

[117] Reg. 148/2013 Art. 3(4); Reg. 648/2012 Art. 10.

In light of the foregoing, the Commission is proposing to require margin and collateral reporting for reporting counterparties that are SDs, MSPs, and DCOs in § 45.4(c)(2). Proposed § 45.4(c) would require that for each swap that is not an original swap, including clearing swaps and swaps not cleared by a DCO, the reporting counterparty report all required swap continuation data electronically to an SDR in the manner provided in § 45.13(a) as provided in § 45.4(c). Proposed § 45.4(c)(1)(i) would require that SD/MSP/DCO reporting counterparties report life cycle event data electronically to an SDR in the manner provided in § 45.13(a) not later than 11:59 p.m. eastern time on the next business day following the day, as determined according to eastern time, that any life cycle event occurred, with the sole exception that life cycle event data relating to a corporate event of the non-reporting counterparty shall be reported in the manner provided in § 45.13(a) not later than 11:59 p.m. eastern time on the second business day following the day, as determined according to eastern time, that such corporate event occurred.

Proposed § 45.4(c)(1)(ii) would require that non-SD/MSP/DCO reporting counterparties report life cycle event data electronically to an SDR in the manner provided in § 45.13(a) not later than 11:59 p.m. eastern time on the second business day following the day, as determined according to eastern time, that any life cycle event occurred.

Proposed § 45.4(c)(2) would require that SD/MSP/DCO reporting counterparties report swap valuation data and collateral data electronically to an SDR in the manner provided in § 45.13(b) each business day.

Request for Comment

The Commission requests comment on all aspects of the proposed changes to § 45.4. The Commission also invites specific comment on the following:

(5) Are the Commission's proposed T+1 and T+2 deadlines for reporting required swap continuation data appropriately harmonized with the deadlines set by other regulators and jurisdictions to benefit market participants? Do the Commission's proposed T+1 and T+2 deadlines for reporting required swap continuation data create any operational issues for reporting counterparties that the Commission has not considered?

(6) Is the requirement to report margin and collateral data without distinction for whether a swap is cleared or uncleared redundant with existing part 39 reporting requirements for cleared swaps? Are there efficiencies for reporting counterparties to submit both cleared and uncleared margin and collateral data together to SDRs?

(7) Does the Commission's proposal to no longer require non-SD/MSP/DCO reporting counterparties to report valuation data raise any concerns about the Commission's ability to monitor systemic risk in the U.S. swaps market?

E. § 45.5 – Unique Transaction Identifiers

The Commission is proposing amendments to § 45.5 for USIs. In general, the Commission is proposing to amend § 45.5(a)-(f) to require each swap to be identified with a UTI in all recordkeeping and all swap data reporting, and to require that the UTI be comprised of the LEI of the generating entity and a unique alphanumeric code. The proposed amendments to § 45.5(a)-(f) are discussed in sections II.E.1 to II.E.7 below.

In general, § 45.5 requires each swap to be identified with a USI in all recordkeeping and all swap data reporting, and requires that the USI be comprised of the identifier assigned by the Commission to the generating entity and a unique alphanumeric

code. In response to the Roadmap, the Commission received comment letters supporting adoption of the UTI and UPI standards as part of the review.[118]

Because the current USI requirement was implemented prior to global consensus on the structure and format for a common swap identifier, the Commission preliminarily believes that amending § 45.5 to require each swap to be identified with a UTI in all recordkeeping and all swap data reporting and to require that the UTI be comprised of the LEI of the generating entity and a unique alphanumeric code will result in the structure and format for the swap identifier being consistent with the UTI Technical Guidance, reduce cross-border reporting complexity and encourage global swap data aggregation.

1. Title and Introductory Text

The Commission is proposing several conforming amendments to the § 45.5 title and the introductory text. Current § 45.5 is titled "Unique swap identifiers." The current introductory text states that each swap subject to the jurisdiction of the Commission shall be identified in all recordkeeping and all swap data reporting pursuant to part 45 by the use of a USI, which shall be created, transmitted, and used for each swap as provided in § 45.5(a)-(f).

The Commission is proposing to replace "swap" in the title with "transaction" to reflect the Commission's proposed adoption of the UTI. Accordingly, the Commission is also proposing to update the reference to USI with UTI in the introductory text.

The Commission is also proposing to update the reference to paragraphs (a) through (f) of § 45.5 to (a) through (h) of § 45.5. This amendment would reflect the

[118] Joint ISDA-SIFMA Letter at 4; Joint SDR Letter at 7.

Commission's proposed addition of §§ 45.5(g) and (h), discussed in sections II.E.8 and II.E.9 below.

Therefore, in light of the above proposed amendments, the introductory text would state that each swap shall be identified in all recordkeeping and all swap data reporting pursuant to part 45 by the use of a UTI, which shall be created, transmitted, and used for each swap as provided in paragraphs (a) through (h) of § 45.5.

2. § 45.5(a) – Swaps Executed on or Pursuant to the Rules of a SEF or DCM

The Commission is proposing several conforming amendments to § 45.5(a) for the creation and transmission of USIs for swaps executed on or pursuant to the rules of SEFs and DCMs. Current § 45.5(a)(1) requires that for swaps executed on or pursuant to the rules of SEFs and DCMs, SEFs and DCMs generate and assign USIs at or ASATP following execution, but prior to the reporting of required swap creation data, that consist of a single data field containing: (i) the unique alphanumeric code assigned to the SEF or DCM by the Commission for the purpose of identifying the SEF or DCM with respect to the USI creation; and (ii) an alphanumeric code generated and assigned to that swap by the automated systems of the SEF or DCM, which shall be unique with respect to all such codes generated and assigned by that SEF or DCM.[119]

Current § 45.5(a)(2) requires that the SEF or DCM transmit the USI electronically: (i) to the SDR to which the SEF or DCM reports required swap creation data for the swap, as part of that report; (ii) to each counterparty to the swap ASATP after execution of the swap; and (iii) to the DCO, if any, to which the swap is submitted for

[119] 17 CFR 45.5(a)(1)(i)-(ii).

clearing, as part of the required swap creation data transmitted to the DCO for clearing purposes.[120]

First, the Commission is proposing amendments to conform to the Commission's proposed adoption of the UTI. The Commission is proposing to replace all references to USIs with UTIs in § 45.5(a)(1)-(2). In addition, the Commission is proposing to update the phrase in § 45.5(a)(1) that the USI shall consist of a single data "field" that contains two components to a single data "element with a maximum length of 52 characters" so that the length of the UTI is consistent with the UTI Technical Guidance.[121]

The Commission is also proposing to amend § 45.5(a)(1)(i) describing the first component of the UTI's single data element to replace "unique alphanumeric code assigned to" the SEF or DCM with "legal entity identifier of" the SEF or DCM so that the identifier used to identify the UTI generating entity is consistent with the UTI Technical Guidance.[122] The Commission is also proposing to delete the phrase in the second half of the sentence stating "by the Commission for the purpose of identifying the [SEF] or [DCM] with respect to the [USI] creation," because, according to the UTI Technical Guidance, an LEI is used to identify the UTI generating entity instead of an identifier assigned by individual regulators.

Therefore, in light of the above proposed changes, § 45.5(a)(1)[123] would require that for swaps executed on or pursuant to the rules of SEFs or DCMs, SEFs and DCMs generate and assign UTIs at or ASATP following execution, but prior to the reporting of

[120] 17 CFR 45.5(a)(2)(i)-(iii).
[121] UTI Technical Guidance, Section 3.6.
[122] UTI Technical Guidance, Section 3.5.
[123] Current § 45.5(a)(2) would remain unchanged, except for the single updated reference to UTI in § 45.5(a)(2).

required swap creation data, that consist of a single data element with a maximum length of 52 characters containing: (i) the LEI of the SEF or DCM; and (ii) an alphanumeric code generated and assigned to that swap by the automated systems of the SEF or DCM, which shall be unique with respect to all such codes generated and assigned by that SEF or DCM.

3. § 45.5(b) – Off-Facility Swaps with an SD or MSP Reporting Counterparty

The Commission is proposing several amendments to § 45.5(b) for the creation and transmission of USIs for off-facility swaps by SD/MSP reporting counterparties. Current § 45.5(b)(1) requires that for off-facility swaps with SD/MSP reporting counterparties, the reporting counterparty generate and assign a USI ASATP consisting of a single data field. The single data field is to contain: (i) the unique alphanumeric code assigned to the SD or MSP by the Commission at the time of its registration for the purpose of identifying them with respect to USI creation; and (ii) an alphanumeric code generated and assigned to that swap by the automated systems of the SD or MSP, which shall be unique with respect to all such codes generated and assigned by that SD or MSP. The required USI is to be generated and assigned after execution of the swap and prior to the reporting of required swap creation data and the transmission of data to a DCO if the swap is to be cleared.

Current § 45.5(b)(2) requires that the reporting counterparty transmit the USI electronically: (i) to the SDR to which the reporting counterparty reports required swap creation data for the swap, as part of that report; and (ii) to the non-reporting counterparty to the swap, ASATP after execution of the swap; and (iii) to the DCO, if any, to which

the swap is submitted for clearing, as part of the required swap creation data transmitted to the DCO for clearing purposes.

First, the Commission is proposing to expand the UTI creation and transmission requirements for SD/MSP reporting counterparties to include reporting counterparties that are financial entities.[124] The Commission preliminarily believes that amending § 45.5(b) to extend the responsibility for generating off-facility swap UTIs to reporting counterparties that are financial entities will reduce the UTI-generation burden on non-financial entities.

The Commission also believes this would more closely align the UTI generation hierarchy with the reporting counterparty determination hierarchy in § 45.8, which incorporates financial entities for purposes of determining the reporting counterparty.[125] For example, in an off-facility swap where neither counterparty is an SD nor MSP and only one counterparty is a financial entity, the counterparty that is a financial entity will be the reporting counterparty,[126] yet the SDR would generate the USI under current § 45.5(c).[127] The proposed changes to § 45.5(b) would ensure that for such swap, the financial entity would be assigned to both the reporting counterparty and to generate the UTI. This amendment to § 45.5(b) would also reduce the number of swaps for which SDRs would be required to generate the UTI.

The Commission is also proposing conforming changes. These are to replace "swap dealer or major swap participant reporting counterparty" in the title to § 45.5(b)

[124] 17 CFR 45.1 (definition of "financial entity").
[125] 17 CFR 45.8.
[126] 17 CFR 45.8(c).
[127] 17 CFR 45.5(c).

with "financial entity reporting counterparty" and to replace "swap dealer or major swap participant" in the first sentence of § 45.5(b) with "financial entity." As proposed, the new title of § 45.5(b) would be "Off-facility swaps with a financial entity reporting counterparty" and the first sentence of § 45.5(b) would begin with "For each off-facility swap where the reporting counterparty is a financial entity…."[128] The Commission is similarly proposing to replace references to "swap dealer or major swap participant" in §§ 45.5(b)(1)(i) and (ii) with "reporting counterparty."[129]

Second, the Commission is proposing amendments to conform to the Commission's proposed adoption of the UTI. The Commission is proposing to replace all references to USIs with UTIs in § 45.5(b)(1)-(2). In addition, the Commission is proposing to update the phrase in § 45.5(b)(1) that the USI shall consist of a single data "field" that contains two components to a single data "element with a maximum length of 52 characters" so that the length of the UTI is consistent with the UTI Technical Guidance.[130]

The Commission is also proposing to amend § 45.5(b)(1)(i) describing the first component of the UTI's single data element to replace "unique alphanumeric code assigned to" the SD or MSP with "legal entity identifier of" the reporting counterparty so that the identifier used to identify the UTI generating entity is consistent with the UTI Technical Guidance.[131] The Commission is also proposing to delete the phrase in the second half of the sentence stating "by the Commission at the time of its registration as

[128] *See* row "45.5(b)" of the table in section VIII.3 below.
[129] *See* row "45.5(b)(1)(ii)" of the table in section VIII.3 below.
[130] UTI Technical Guidance, Section 3.6.
[131] UTI Technical Guidance, Section 3.5.

such, for the purpose of identifying the [SD] or [MSP] with respect to the [USI] creation," because, according to the UTI Technical Guidance, an LEI is used to identify the UTI generating entity instead of an identifier assigned by individual regulators.

Therefore, in light of the above proposed changes, § 45.5(b)(1)[132] would require that for off-facility swaps with a financial entity reporting counterparty, the reporting counterparties generate and assign UTIs at or ASATP following execution, but prior to the reporting of required swap creation data, that consist of a single data element with a maximum length of 52 characters containing: (i) the LEI of the reporting counterparty; and (ii) an alphanumeric code generated and assigned to that swap by the automated systems of the reporting counterparty, which shall be unique with respect to all such codes generated and assigned by that reporting counterparty.

4. § 45.5(c) – Off-Facility Swaps with a Non-SD/MSP Reporting Counterparty

The Commission is proposing several amendments to § 45.5(c) for the creation and transmission of USIs for off-facility swaps by non-SD/MSP reporting counterparties. Current § 45.5(c)(1) requires that for off-facility swaps with non-SD/MSP reporting counterparties, the SDR generates and assigns a USI ASATP after receiving the first report of PET data consisting of a single data field containing: (i) the unique alphanumeric code assigned to the SDR by the Commission at the time of its registration for the purpose of identifying them with respect to USI creation; and (ii) an alphanumeric code generated and assigned to that swap by the automated systems of the SDR, which shall be unique with respect to all such codes generated and assigned by that SDR.

[132] Current § 45.5(b)(2) would remain unchanged, except for the single updated reference to UTI in § 45.5(b)(2).

Current § 45.5(c)(2) requires that the SDR transmit the USI electronically: (i) to the counterparties to the swap ASATP after creation of the USI, and (ii) to the DCO, if any, to which the swap is submitted for clearing ASATP after creation of the USI.

First, the Commission is proposing to replace "non-SD/MSP reporting counterparty" in the title to § 45.5(c) with "non-SD/MSP/DCO reporting counterparty that is not a financial entity" and to replace "reporting counterparty is a non-SD/MSP counterparty" in the first sentence of § 45.5(c) with "reporting counterparty is a non-SD/MSP/DCO counterparty that is not a financial entity." As proposed, the new title of § 45.5(c) would be "Off-facility swaps with a non-SD/MSP/DCO reporting counterparty that is not a financial entity" and the first sentence of § 45.5(c) would begin with "For each off-facility swap for which the reporting counterparty is a non-SD/MSP/DCO counterparty that is not a financial entity…." As explained in section II.E.3 above, the Commission is proposing to expand UTI generation responsibilities to financial entities[133], and preliminarily believes that this amendment is needed to clarify that proposed § 45.5(c) would apply only where a reporting counterparty is a non-SD/MSP/DCO counterparty that is not a financial entity.

Second, the Commission is proposing to amend § 45.5(c) to provide non-SD/MSP/DCO reporting counterparties that are not financial entities with the option to generate the UTI for an off-facility swap or to request that the SDR to which required swap creation data will be reported to generate the UTI. If the non-SD/MSP/DCO reporting counterparty that is not a financial entity chooses to generate the UTI for an off-

[133] 17 CFR 45.1 (definition of "financial entity").

facility swap, the reporting counterparty would follow the creation and transmission requirements for financial entity reporting counterparties in §§ 45.5(b)(1) and (2). If the non-SD/MSP/DCO reporting counterparty that is not a financial entity chooses to request the SDR to generate the UTI, the SDR would follow the creation and transmission requirements for SDRs in §§ 45.5(c)(1) and (2). The Commission is proposing amendments to the requirements for SDRs in § 45.5(c)(1), as discussed below.

In the Joint SDR Letter, three SDRs expressed the view that the Commission should adopt the UTI Technical Guidance without modification, after which anyone with an LEI would be able to create a USI, and SDRs would no longer need to generate and transmit UTIs.[134] The Commission participated in the preparation of the UTI Technical Guidance, which includes guidance to authorities for allocating responsibility for UTI generation, including a generation flowchart that places SDRs at the end.[135] The UTI Technical Guidance also notes that "[n]ot all factors" in the flowchart for allocating responsibility for UTI generation "will be relevant for all jurisdictions."[136]

Because the UTI Technical Guidance was produced with the need to accommodate the different trading patterns and reporting rules in jurisdictions around the world, certain factors included in the UTI Technical Guidance generation flowchart are not applicable for the Commission (e.g., factors relating to the principal clearing model[137]

[134] Joint SDR Letter at 7-8.
[135] UTI Technical Guidance at 12-14.
[136] UTI Technical Guidance at 12.
[137] UTI Technical Guidance at 12 (Step 2: "Is a counterparty to this transaction a clearing member of a CCP, and if so is that clearing member acting in its clearing member capacity for this transaction?").

or electronic confirmation platforms)[138], and therefore the Commission is unable to adopt the UTI Technical Guidance without modification. However, the Commission preliminarily believes that none of the provisions of amended § 45.5 conflict with the UTI Technical Guidance, including maintaining the existing obligations for SDRs to generate and transmit UTIs. While UTI generation and transmission responsibilities by SDRs remain in amended § 45.5(c), the Commission also preliminarily believes that the proposed alignment of the UTI generation and reporting counterparty determination for financial entities in amended § 45.5(b) and the proposed reporting option for counterparties that are neither DCOs nor financial entities in amended § 45.5(c) will result in reduced overall UTI generation and transmission burdens for SDRs.

The Commission preliminarily believes that amending § 45.5(c) to provide the reporting counterparty with the option to generate the UTI for an off-facility swap where the reporting counterparty is neither a DCO nor financial entity or, if the reporting counterparty elects not to generate the UTI, to request that the SDR to which required swap creation data will be reported to generate the UTI will simultaneously: (i) provide a reporting counterparty that is neither a DCO nor financial entity with the flexibility to generate the UTI should it choose to do so; and (ii) reduce the number of swaps where an SDR is assigned with UTI generation responsibilities, while also maintaining the existing SDR role as a guarantee that every off-facility swap will be identified with a UTI.

Third, the Commission is proposing amendments to conform to the Commission's proposed adoption of the UTI. The Commission is proposing to replace all references to

[138] UTI Technical Guidance at 12 (Step 6: "Has the transaction been electronically confirmed or will it be and, if so, is the confirmation platform able, willing and permitted to generate a UTI within the required time frame under the applicable rules?").

USIs with UTIs in § 45.5(c)(1)-(2). In addition, the Commission is proposing to update the phrase in § 45.5(c)(1) that the USI shall consist of a single data "field" that contains two components to a single data "element with a maximum length of 52 characters" so that the length of the UTI is consistent with the UTI Technical Guidance.[139]

The Commission is also proposing to amend § 45.5(c)(1)(i) describing the first component of the UTI's single data element to replace "unique alphanumeric code assigned to" the SDR with "legal entity identifier of" the SDR so that the identifier used to identify the UTI generating entity is consistent with the UTI Technical Guidance.[140] The Commission is also proposing to delete the phrase in the second half of the sentence stating "by the Commission at the time of its registration as such, for the purpose of identifying the [SDR] with respect to the [USI] creation," because, according to the UTI Technical Guidance, an LEI is used to identify the UTI generating entity instead of an identifier assigned by individual regulators.

Therefore, in light of the above proposed amendments, § 45.5(c)(1)[141] would require that for swaps with a non-SD/MSP/DCO reporting counterparty that is not a financial entity, the reporting counterparty shall either create and transmit a UTI as provided in § 45.5(b)(1) and § 45.5(b)(2), or request that the SDR to which it reports required swap creation data create and transmit one pursuant to § 45.5(c)(1) or (c)(2).

Proposed § 45.5(c)(1) would provide that the SDR generate and assign UTIs at or ASATP following receipt of a request from the reporting counterparty, that consist of a

[139] UTI Technical Guidance, Section 3.6.
[140] UTI Technical Guidance, Section 3.5.
[141] Current § 45.5(c)(2) would remain unchanged, except for the updated references to UTI in § 45.5(b)(2)(i)(A)-(B).

single data element with a maximum length of 52 characters containing: (i) the LEI of the SDR; and (ii) an alphanumeric code generated and assigned to that swap by the automated systems of the SDR, which shall be unique with respect to all such codes generated and assigned by that SDR.

5. § 45.5(d) – Clearing Swaps

The Commission is proposing several amendments to the § 45.5(d) regulations for the creation and transmission of USIs for clearing swaps. Current § 45.5(d) requires that for each clearing swap, the DCO that is a counterparty to such swap shall create and transmit a USI upon, or ASATP after, acceptance of an original swap for clearing, or execution of a clearing swap that does not replace an original swap, and prior to the reporting of required swap creation data for the clearing swap. Current § 45.5(d)(1) requires that the USI shall consist of a single data field that contains: (i) the unique alphanumeric code assigned to the DCO by the Commission for the purpose of identifying it with respect to USI creation; and (ii) an alphanumeric code generated and assigned to that clearing swap by the automated systems of the DCO, which shall be unique with respect to all such codes generated and assigned by that DCO.

Current § 45.5(d)(2) requires that the DCO transmit the USI electronically to: (i) the SDR to which the DCO reports required swap creation data for the clearing swap; and (ii) to the counterparty to the clearing swap, ASATP after accepting the swap for clearing or executing the swap, if it does not replace an original swap.

First, the Commission is proposing to retitle the section "Off-facility swaps with a [DCO] reporting counterparty." The Commission is proposing to rephrase the introductory text in § 45.5(d) to reflect this shift in terminology.

Second, the Commission is proposing amendments to conform to the Commission's proposed adoption of the UTI. The Commission is proposing to replace all references to USIs with UTIs in § 45.5(d)(1)-(2). In addition, the Commission is proposing to update the phrase in § 45.5(d)(1) that the USI shall consist of a single data "field" that contains two components to a single data "element with a maximum length of 52 characters" so that the length of the UTI is consistent with the UTI Technical Guidance.[142]

The Commission is also proposing to amend § 45.5(d)(1)(i) describing the first component of the UTI's single data element to replace "unique alphanumeric code assigned to the "DCO reporting counterparty with "legal entity identifier of" the DCO so that the identifier used to identify the UTI generating entity is consistent with the UTI Technical Guidance.[143] The Commission is also proposing to delete the phrase in the second half of the sentence stating "by the Commission at the time of its registration as such, for the purpose of identifying the [DCO] with respect to the [USI] creation," because, according to the UTI Technical Guidance, an LEI is used to identify the UTI generating entity instead of an identifier assigned by individual regulators.

Therefore, in light of the above proposed amendments, § 45.5(d)(1)[144] would require that for off-facility swaps with a DCO reporting counterparty, the reporting counterparty generate and assign UTIs at or ASATP following clearing or execution, but prior to the reporting of required swap creation data for the clearing swap, that consist of

[142] UTI Technical Guidance, Section 3.6.
[143] UTI Technical Guidance, Section 3.5.
[144] Current § 45.5(d)(2) would remain unchanged, except for the single updated reference to UTI in § 45.5(d)(2).

a single data element with a maximum length of 52 characters containing: (i) the LEI of the DCO; and (ii) an alphanumeric code generated and assigned to that swap by the automated systems of the DCO, which shall be unique with respect to all such codes generated and assigned by that DCO.

6. § 45.5(e) – Allocations

The Commission is proposing several amendments to the § 45.5(e) regulations for the creation and transmission of USIs for allocations. The Commission is proposing to replace references to USIs with UTI throughout § 45.5(e) to conform to the Commission's proposed adoption of the UTI. The Commission is also proposing non-substantive technical and language edits to update cross-references and improve readability.

7. § 45.5(f) – Use

The Commission is proposing several amendments to the § 45.5(f) regulations for the use of UTIs by registered entities and swap counterparties. Current § 45.5(f) requires that registered entities and swap counterparties subject to the jurisdiction of the Commission include the USI for a swap in all of its records and all of its swap data reporting concerning that swap, from the time it creates or receives the USI, throughout the existence of the swap and for as long as any records are required by the CEA or Commission regulations to be kept concerning the swap, regardless of any life cycle events or any changes to state data concerning the swap, including, without limitation, any changes with respect to the counterparties to or the ownership of the swap.

Section 45.5(f) also specifies that this requirement shall not prohibit the use by a registered entity or swap counterparty in its own records of any additional identifier or

identifiers internally generated by the automated systems of the registered entity or swap counterparty, or the reporting to an SDR, the Commission, or another regulator of such internally generated identifiers in addition to the reporting of the USI.

First, the Commission is proposing amendments to conform to the Commission's proposed adoption of the UTI. The Commission is proposing to replace all references to USIs with UTIs in § 45.5(f). The Commission is also proposing to remove the reference to state data in the regulation,[145] and make minor technical language edits, including removing reference to ownership of the swap, which is not needed given the reference to counterparties.

Second, the Commission is proposing to remove the provision permitting the reporting of any additional identifier or identifiers internally generated by the automated systems of the registered entity or swap counterparty to an SDR, the Commission, or another regulator. The Commission believes this amendment would improve consistency in the swap data reported to SDRs, and further the goal of harmonization of SDR data across Financial Stability Board ("FSB") member jurisdictions.

Therefore, in light of the above proposed amendments, § 45.5(f) would require that registered entities and swap counterparties include the UTI for a swap in all of their records and all of their swap data reporting concerning that swap, from the time they create or receive the UTI, throughout the existence of the swap and for as long as any records are required by the CEA or Commission regulations to be kept concerning the

[145] *See* discussion in section II.D.2 above.

swap, regardless of any life cycle events concerning the swap, including, without limitation, any changes with respect to the counterparties to the swap.

8. § 45.5(g) – Third-Party Service Provider

The Commission is proposing to add new § 45.5(g) to its regulations, titled "Third-party service provider." Proposed § 45.5(g) would create requirements for registered entities and reporting counterparties to, when contracting with third-party service providers to facilitate reporting pursuant to § 45.9, ensure that the third-party service providers create and transmit UTIs.[146]

As background, the Commission has encountered inconsistencies in the format and standard of USIs for swaps reported using third-party service providers. The Commission preliminarily believes that proposed § 45.5(g) will help ensure consistency with the UTI Technical Guidance in the format and standard of UTIs for swaps reported by third-party service providers. The Commission further believes that proposed § 45.5(g) will reinforce the existing responsibility of a registered entity or reporting counterparty under § 45.9 for the data reported on its behalf by a third-party service provider.

Therefore, proposed § 45.5(g) would provide that if a registered entity or reporting counterparty required by part 45 to report required swap creation data or required swap continuation data contracts with a third-party service provider to facilitate reporting pursuant to § 45.9, the registered entity or reporting counterparty ensures that such third-party service provider creates and transmits the UTI as otherwise required for

[146] 17 CFR 45.9.

such category of swap by § 45.5(a)-(e). It would further provide that the UTI shall consist of a single data element with a maximum length of 52 characters that contains: (i) the LEI of the third-party service provider; and (ii) an alphanumeric code generated and assigned to that swap by the automated systems of the third-party service provider, which shall be unique with respect to all such codes generated and assigned by that third-party service provider.

9. § 45.5(h) – Cross-Jurisdictional Swaps

The Commission is proposing to add new § 45.5(h) to its regulations, titled "Cross-jurisdictional swaps." Proposed § 45.5(h) would clarify that if a swap is also reportable to one or more other jurisdictions with a regulatory reporting deadline earlier than the deadline set forth in § 45.3, the swap is to be identified in all reporting pursuant to part 45 with the same UTI that has been generated according to the rules of the jurisdiction with the earliest regulatory reporting deadline.

The Commission believes that the benefits resulting from global swap data aggregation and harmonization are realizable only if each swap is identified in all regulatory reporting worldwide with a single UTI so as to avoid double- or triple-counting of the swap. While the current requirement in part 45 for swap creation data to be reported ASATP after execution results in the Commission having the earliest regulatory reporting deadline, changes to the reporting deadline in proposed amendments to § 45.3 may result in a cross-jurisdictional swap being required to be reported to another jurisdiction earlier than to the Commission. Because the Commission considers it critical that only one unique UTI is used to identify each swap, whether reportable only to the Commission or to multiple jurisdictions, the Commission proposes that, if a cross-

jurisdictional swap is reportable to another jurisdiction earlier than required under part 45, the UTI for such swap reported pursuant to part 45 be generated according to the rules of the jurisdiction with the earliest regulatory reporting deadline.

The Commission preliminarily believes that the new proposed provision would: (i) ensure consistency with the UTI Technical Guidance;[147] (ii) assist the Commission, SDRs, and swap counterparties to avoid potentially identifying a single cross-jurisdictional trade with multiple UTIs; and (iii) eliminate the potential for market participants to be faced with a situation of attempting to comply with conflicting UTI generation rules.

Therefore, proposed § 45.5(h) would require that notwithstanding the provisions of § 45.5(a)-(g), if a swap is also reportable to one or more other jurisdictions with a regulatory reporting deadline earlier than the deadline set forth in § 45.3, the same UTI generated according to the rules of the jurisdiction with the earliest regulatory reporting deadline shall be transmitted pursuant to § 45.5(a)-(g) and used in all recordkeeping and all swap data reporting pursuant to part 45.

Request for Comment

The Commission requests comment on all aspects of the proposed changes to § 45.5.

F. § 45.6 – Legal Entity Identifiers[148]

1. Introductory Text

[147] UTI Technical Guidance at 13 (Step 10: "UTI generation rules of the jurisdiction with the sooner reporting deadline should be followed").
[148] The Commission is proposing to re-number the requirements of § 45.6 to correct current extensive numbering errors.

The Commission is proposing amendments to the introductory text of the § 45.6 regulations for LEIs. The current introductory text states that each counterparty to any swap subject to the jurisdiction of the Commission shall be identified in all recordkeeping and all swap data reporting pursuant to part 45 by means of a single LEI as specified in § 45.6.

First, the Commission is proposing to replace "each counterparty" with each SEF, DCM, DCO, SDR, entity reporting pursuant to § 45.9, and counterparty to any swap. The Commission believes a list of entities would be more precise and help market participants referring to the introductory text.

Second, the Commission is proposing to revise the introductory text to require each SEF, DCM, DCO, SDR, entity reporting pursuant to § 45.9, and counterparty to any swap that is eligible to receive an LEI to "obtain" as well as be identified in all recordkeeping and swap data reporting by a single LEI. The Commission is aware of uncertainty as to whether the requirement to identify each counterparty with an LEI in current § 45.6 also includes a requirement for the counterparty to obtain an LEI, and the Commission preliminarily believes that amending § 45.6 to clarify that a person or entity required to be identified with an LEI in recordkeeping and swap data reporting also has an associated affirmative requirement to obtain an LEI will clarify that identification using LEI necessarily requires the identified person or entity, if eligible to receive an LEI, to obtain an LEI.

The Commission also preliminarily believes that extending the requirement for each counterparty to any swap to be identified in all recordkeeping and swap data reporting by a single LEI to all SEFs, DCMs, DCOs, entities reporting pursuant to § 45.9,

and SDRs will ensure consistency with the CDE Technical Guidance, allow for standardization in the identification in recordkeeping and swap data reporting, and encourage global swap data aggregation.

Therefore, in light of the above proposed amendments, the introductory text to § 45.6 would state that each SEF, DCM, DCO, SDR, entity reporting pursuant to § 45.9, and counterparty to any swap eligible to receive an LEI shall obtain and be identified in all recordkeeping and all swap data reporting pursuant to part 45 by a single LEI as specified in § 45.6.

2. § 45.6(a) – Definitions

The Commission is proposing several changes to the definitions for the LEI regulations in § 45.6(a). As background, current § 45.6(a) provides definitions for "control," "legal identifier system," "level one reference data," "level two reference data," "parent," "self-registration," "third-party registration," and "ultimate parent."

The Commission is proposing to move certain definitions pertaining to LEIs to § 45.1(a). The Commission believes these definitions should be in § 45.1(a) because they are used in regulations outside of § 45.6. These definitions are: "Global Legal Entity Identifier System,"[149] "legal entity identifier" or "LEI," and "Legal Entity Identifier Regulatory Oversight Committee." These definitions are discussed in section II.A.1 above.

The Commission is also proposing to remove certain definitions pertaining to LEIs from § 45.6(a). These definitions would no longer be necessary in light of the

[149] "Global Legal Entity Identifier System" and "local operating unit" would be updated versions of the current definition of "legal identifier system."

proposed amendments to the LEI regulations, discussed in sections II.F.3 to II.F.8 below. These definitions are: "control," "level one reference data," "level two reference data," "parent," and "ultimate parent."

The Commission is proposing to amend certain definitions pertaining to LEIs in § 45.6(a). The Commission is proposing to amend the definition of "self-registration" in several respects. First, the Commission is proposing to remove the specific reference to "level one or level two" reference data, and the accompanying specifier "as applicable." This amendment would reflect the Commission's proposal to remove the definitions of "level one reference data" and "level two reference data."[150]

Second, the Commission is proposing to add a reference to "individuals," to reflect the fact that swap counterparties may be individuals who need to obtain LEIs. As amended, "self-registration" would mean submission by a legal entity or individual of its own reference data.

The Commission is also proposing to amend the definition of "third-party registration." First, the Commission is proposing to remove the specific references to "level one or level two" reference data, and the accompanying specifier "as applicable." This amendment would reflect the Commission's proposal to remove the definitions of "level one reference data" and "level two reference data."[151]

Second, the Commission is proposing to add references to "individuals," to reflect that swap counterparties may be individuals who need to obtain LEIs. As amended,

[150] Instead, as discussed below, the Commission is proposing to add a definition of "reference data." The proposed amendment to "self-registration" would be consistent with the new definition.
[151] Instead, as discussed below, the Commission is proposing to add a definition of "reference data." The proposed amendment to "self-registration" would be consistent with the new definition.

"third-party registration" would mean submission of reference data for a legal entity or individual that is or may become a swap counterparty, made by an entity or organization other than the legal entity or individual identified by the submitted reference data. Examples of third-party registration include, without limitation, submission by an SD or MSP of reference data for its swap counterparties, and submission by a national numbering agency, national registration agency, or data service provider of reference data concerning legal entities or individuals with respect to which the agency or service provider maintains information.

Finally, the Commission is proposing to add two definitions pertaining to LEIs to § 45.6(a). First, the Commission is proposing to add a definition of "local operating unit." As proposed, "local operating unit" would mean an entity authorized under the standards of the Global Legal Entity Identifier System to issue legal entity identifiers. Second, the Commission is proposing to add a definition of "reference data." As proposed, "reference data" would mean all identification and relationship information, as set forth in the standards of the Global Legal Entity Identifier System, of the legal entity or individual to which an LEI is assigned. The terms "local operating unit" and "reference data" are explained in a discussion of the proposed amendments to § 45.6(e) in section II.F.7 below.

3. § 45.6(b) – International Standard for the Legal Entity Identifier

The Commission is proposing several changes to § 45.6(b) regulations for the international standards for LEIs. The proposed amendments to § 45.6(b) would reflect changes that have taken place since the current LEI regulations in § 45.6 were adopted in 2012. As background, § 45.6(b) now states that the LEI used in all recordkeeping and all

swap data reporting required by part 45, following designation of the legal entity identifier system as provided in § 45.6(c)(2), shall be issued under, and shall conform to, International Organization for Standardization ("ISO") Standard 17442, Legal Entity Identifier (LEI), issued by the ISO.

The Commission is proposing to remove the phrase "following designation of the [LEI] system as provided in [§ 45.6(c)(2)]." The governance of the Global Legal Entity Identifier System designed by the FSB with the contribution of private sector participants is now fully in place: while at the beginning of the Global Legal Entity Identifier System, LEI issuers were operating under a temporary endorsement of the LEI ROC, all active LEI issuers have now been accredited.[152] The LEI ROC establishes policy standards, such as the definition of the eligibility to obtain an LEI and conditions for obtaining an LEI; the definition of reference data and any extension thereof, such as the addition of information on relationships between entities; the frequency of update for some or all the reference data; the nature of due diligence and other standards necessary for sufficient data quality; or high level principles governing data and information access.[153]

Therefore, in light of the above proposed amendments, § 45.6(b) would state that the LEI used in all recordkeeping and all swap data reporting required by part 45 shall be issued under, and shall conform to, ISO Standard 17442, Legal Entity Identifier (LEI), issued by the ISO.

4. § 45.6(b) – Technical Principles for the Legal Entity Identifier

[152] Progress report by the LEI ROC, The Global LEI System and regulatory uses of the LEI, 2 (Apr. 30, 2018), *available at* https://www.leiroc.org/publications/gls/roc_20180502-1.pdf.
[153] *Id.*

The Commission is proposing to remove this redundantly-numbered § 45.6(b) for the technical principles for the LEI.[154] Regulations for LEI reference data are currently located in § 45.6(e), which the Commission is proposing to move to § 45.6(c). The revisions to the current § 45.6(e) reference data regulations are discussed in section II.F.7 below.

Currently, this § 45.6(b) regulation enumerates the six technical principles for the legal entity identifier to be used in all recordkeeping and all swap data reporting. The principles in § 45.6(b) are: (i) uniqueness; (ii) neutrality; (iii) reliability; (iv) open source; (v) extensibility; and (vi) persistence.

The Commission is proposing to remove the above technical principles from § 45.6(b). The Commission adopted § 45.6(b) before global technical principles for the LEI were developed. The Commission has participated in the Global Legal Entity Identifier System and the LEI ROC since their establishment in 2013, through which global technical principles have been developed and a functioning LEI system introduced. The Commission preliminarily believes that deleting this current § 45.6(b) to remove the technical principles for the legal entity identifier to be used in all recordkeeping and all swap data reporting is now warranted because the global technical principles that have been developed conform to the technical principles in § 45.6(b).

5. § 45.6(c) – Governance Principles for the Legal Entity Identifier

The Commission is proposing to remove the current § 45.6(c) regulations for the governance principles for the LEI.[155] Regulations for the use of the LEI are currently

[154] This § 45.6(b) was numbered in error, as there is already a § 45.6(b), discussed in section II.F.3 above.
[155] Current § 45.6(c) was also numbered in error because of the duplicate § 45.6(b) sections.

located in § 45.6(f), which the Commission is proposing to move to § 45.6(d), which would be correctly renumbered as § 45.6(d). The revisions to the current § 45.6(f) use of LEI regulations are discussed in section II.F.8 below.

Current § 45.6(c) enumerates the five governance principles for the legal entity identifier to be used in all recordkeeping and all swap data reporting. The governance principles are: international governance; reference data access; non-profit operation and funding; unbundling and non-restricted use; and commercial advantage prohibition.

The Commission is proposing to remove the above governance principles from § 45.6(c). The Commission adopted § 45.6(c) before global governance principles for the LEI were developed. The Commission has participated in the Global Legal Entity Identifier System and the LEI ROC since their establishment in 2013, through which global governance principles have been developed and a functioning LEI system introduced. The Commission preliminarily believes that deleting current § 45.6(c) to remove the governance principles for the legal entity identifier to be used in all recordkeeping and all swap data reporting is now warranted because the global governance principles that have been developed conform to the governance principles in § 45.6(c).

6. § 45.6(e) – Designation of the Legal Entity Identifier System

The Commission is proposing to remove the § 45.6(e) regulations for the designation of the legal entity identifier system. Current § 45.6(e) enumerates the procedures for determining whether a legal entity identifier system meets the Commission's requirements and the procedures for designating the legal entity identifier

system as the provider of legal entity identifiers to be used in all recordkeeping and all swap data reporting.

The Commission adopted § 45.6(e) before a global legal entity identifier system was developed. The Commission has participated in the Global Legal Entity Identifier System and the LEI ROC since their establishment in 2013, through which a functioning LEI system has been introduced, overseeing the issuance of LEIs by local operating units. The Commission preliminarily believes that deleting this current § 45.6(e) to remove the procedures for determining whether a legal entity identifier system meets the Commission's requirements and the procedures for designating the legal entity identifier system as the provider of legal entity identifiers to be used in all recordkeeping and all swap data reporting is now warranted because such determination and designation procedures are no longer needed due to the establishment of Global Legal Entity Identifier System.

7. § 45.6(e) – Reference Data Reporting

The Commission is proposing changes to the § 45.6(e) regulations for LEI reference data reporting.[156] First, the Commission is proposing to move the requirements for reporting LEI reference data in § 45.6(e) to correctly-renumbered § 45.5(c).

Second, the Commission is proposing amendments to the requirements for reporting LEI reference data in current § 45.6(e), proposed to be moved to § 45.6(c). Current § 45.6(e)(1) requires level one reference data for each counterparty to be reported via self-registration, third-party registration, or both, and details the procedures for doing

[156] This § 45.6(e) was numbered in error, as there is already a § 45.6(e) directly preceding it.

so, including the requirement to update level one reference data in the event of a change or discovery of the need for a correction. Current § 45.6(e)(2) contains the requirement, once the Commission has determined the location of the level two reference database, for level two reference data for each counterparty to be reported via self-registration, third-party registration, or both, and the procedures for doing so, including the requirement to update level two reference data in the event of a change or discovery of the need for a correction.

The Commission is proposing to remove the distinction between level one and level two reference data now found in § 45.6(e). Instead, proposed new § 45.6(c) would require that all reference data for each SEF, DCM, DCO, SDR, entity reporting pursuant to § 45.9, and counterparty to any swap be reported via self-registration, third-party registration, or both, to a local operating unit in accordance with the standards set by the Global Legal Entity Identifier System. Proposed new § 45.6(c) would retain the requirement in current § 45.6(e) to update the reference data in the event of a change or discovery of the need for a correction.

The Commission adopted § 45.6(e) before a global legal entity identifier system was developed. The Commission has participated in the Global Legal Entity Identifier System and the LEI ROC since their establishment in 2013, through which a functioning LEI system has been introduced that sets, and updates as needed, the standards governing the identification and relationship reference data required to be provided in order to obtain an LEI. The Commission preliminarily believes that removing § 45.6(e) to remove the distinction between level one and level two reference data, and proposing a new § 45.6(c) to require that all reference data is reported to a local operating unit in accordance

with the standards set by the Global Legal Entity Identifier System is warranted because the establishment of Global Legal Entity Identifier System removes the role of individual authorities in determining the standards governing LEI reference data.

While current § 45.6(e) requires that reference data for only the counterparties to a swap be reported, the extension of the requirement to be identified in all recordkeeping and swap data reporting by a single LEI to all SEFs, DCMs, DCOs, entities reporting pursuant to § 45.9, and SDRs described in section II.F.1 above also necessarily requires that all SEFs, DCMs, DCOs, entities reporting pursuant to § 45.9, and SDRs report their LEI reference data.

Therefore, in light of the above proposed amendments, § 45.6(c) would require that LEI reference data regarding each SEF, DCM, DCO, SDR, entity reporting pursuant to § 45.9, and counterparty to any swap shall be reported, by means of self-registration, third-party registration, or both, to a local operating unit in accordance with the standards set by the Global Legal Entity Identifier System. All subsequent changes and corrections to reference data previously reported would be reported, by means of self-registration, third-party registration, or both, to a local operating unit ASATP following occurrence of any such change or discovery of the need for a correction.

8. § 45.6(f) – Use of the Legal Entity Identifier System by Registered Entities and Swap Counterparties

The Commission is proposing changes to the § 45.6(f) regulations for the use of LEIs by registered entities and swap counterparties. Current § 45.6(f)(1) requires that when a legal entity identifier system has been designated by the Commission pursuant to § 45.6(e), each registered entity and swap counterparty shall use the LEI provided by that

system in all recordkeeping and swap data reporting pursuant to part 45. Current § 45.6(f)(2) requires that before a legal entity identifier system has been designated by the Commission, each registered entity and swap counterparty shall use a substitute counterparty identifier created and assigned by an SDR in all recordkeeping and swap data reporting pursuant to part 45.[157]

Current § 45.6(f)(3) requires that for swaps reported pursuant to part 45 prior to Commission designation of a legal entity identifier system, after such designation each SDR shall map the LEIs for the counterparties to the substitute counterparty identifiers in the record for each such swap. Current § 45.6(f)(4) requires that prior to October 15, 2012, if an LEI has been designated by the Commission as provided in § 45.6, but a reporting counterparty's automated systems are not yet prepared to include LEIs in recordkeeping and swap data reporting pursuant to part 45, the counterparty shall be excused from complying with § 45.6(f)(1), and shall instead comply with § 45.6(f)(2), until its automated systems are prepared with respect to LEIs, at which time it must commence compliance with § 45.6(f)(1).[158]

The Commission is proposing to retitle the section "Use of the legal entity identifier," because, as discussed below, the LEI will no longer be used only by registered entities and swap counterparties. The Commission is also proposing to move the requirements for the use of LEIs from current § 45.6(f) to correctly renumbered §

[157] The requirements for the substitute identifier were set forth in § 45.6(f)(2)(i)-(iv). As the Global Legal Entity Identifier System has been introduced that oversees the issuance of LEIs by local operating units, these requirements are no longer applicable, the Commission will limit the detail of their discussion in this release.
[158] The regulation specified that this paragraph would have no effect on or after October 15, 2012. 17 CFR 45.6(f)(4).

45.6(d),[159] as a result, the Commission's proposed amendments to the requirements for the use of LEIs in current § 45.6(f) discussed below will be captured in new § 45.6(d).

The Commission is proposing to remove the sections of § 45.6(f) that are no longer operative, either because the Commission has designated a legal entity identifier system, or the provisions have expired. For these reasons, the Commission is proposing to remove §§ 45.6(f)(2) and (4). As a result, the substantive requirements of §§ 45.6(f)(2) and (4) will not be moved to § 45.6(d).

While the provisions of § 45.6(f)(3) relating to substitute counterparty identifiers are no longer applicable for new swaps, the substantive requirements in § 45.6(f)(3), which are still applicable for swaps previously reported pursuant to part 45 using substitute counterparty identifiers assigned by an SDR prior to Commission designation of a legal entity identifier system, will be moved to new § 45.6(d)(4). Since this provision is applicable only to old swaps and does not alter existing SDRs obligations, the Commission considers this change to be non-substantive.

The Commission is also proposing the following substantive changes to the regulations requiring the use of LEIs. First, the Commission is proposing revisions to the § 45.6(f)(1) regulations for the use of LEIs. The revised regulations will be moved to § 45.6(d)(1), but discussed below.

The Commission proposes to delete the introductory clause "[w]hen a legal entity identifier system has been designated by the Commission pursuant to paragraph (e) of this section" in § 45.6(f)(1) because it is no longer relevant due to the establishment of

[159] As previously noted, current § 45.6(c) was numbered in error because of the duplicate § 45.6(b) sections.

the Global Legal Entity Identifier System and the LEI ROC in 2013. In addition, while § 45.6(f)(1) currently requires "each registered entity and swap counterparty" to use LEIs in all recordkeeping and swap data reporting pursuant to part 45, the Commission proposes to replace "each registered entity and swap counterparty" with "[e]ach [SEF], [DCM], [DCO], [SDR], entity reporting pursuant to § 45.9, and swap counterparty" in order to, as described in section II.F.1 above, ensure consistency with the CDE Technical Guidance, allow for standardization in the identification in recordkeeping and swap data reporting, and encourage global swap data aggregation. The Commission also proposes to add "to identify itself and swap counterparties" immediately after "use [LEIs]" in this section to clarify the intended use of LEIs. Finally, the Commission proposes to add a new sentence in this section to clarify that if a swap counterparty is not eligible to receive an LEI, such counterparty should be identified in with an alternate identifier pursuant to § 45.13(a). Because some counterparties, including many individuals, are currently ineligible to receive an LEI based on the standards of the Global Legal Entity Identifier System, the Commission believes that this sentence will provide clarity as to how LEI-ineligible counterparties should be identified.

Second, the Commission is proposing new § 45.6(d)(2) to require each SD, MSP, SEF, DCM, DCO, and SDR to maintain and renew its LEI in accordance with the standards set by the Global Legal Entity Identifier System. Current § 45.6(e) requires that reference data be updated in the event of a change or discovery of the need for a correction, which will continue to be required under new § 45.6(c).

Pursuant to the Global Legal Entity Identifier System, established in 2013, a person or entity is issued an LEI after: (1) providing its identification and relationship

reference data to a local operating unit and (2) paying a fee, currently as low as approximately $65, to the local operating unit to validate the provided reference data. After initial issuance, an LEI holder is asked to certify the continuing accuracy of, or provide updates to, its reference data annually, and pay a fee, currently as low as approximately $50, to the local operating unit. LEIs that are not renewed annually are marked as lapsed. Section 45.6 does not currently require annual LEI renewal because part 45 was drafted and implemented prior to the establishment of the Global Legal Entity Identifier System. Since the implementation of § 45.6, the Commission has received consistent feedback from certain market participants and industry groups that the Commission should require at least some LEI holders to annually renew their LEIs.

The Commission is aware that some LEI holders have not complied with the continuing requirement to update reference data as currently required by § 45.6(e), and imposing an annual renewal requirement may increase the accuracy of their reference data. The Commission also recognizes that other LEI holders are in compliance with the continuing requirement to update reference data, and imposing an annual renewal requirement may impose costs on those LEI holders without necessarily increasing the accuracy of their reference data. The Commission has participated in the Global Legal Entity Identifier System since its inception, and values the functionality of the LEI reference data collected, including the introduction of level two reference data.

The Commission considers the activities of SDs, MSPs, SEFs, DCMs, DCOs, and SDRs to have the most systemic impact affecting the Commission's ability to fulfill its regulatory mandates and, in light of the introduction of LEI level two reference data, the Commission preliminarily believes that requiring each SD, MSP, SEF, DCM, DCO, and

SDR to maintain and renew its LEI in accordance with the standards set by the Global Legal Entity Identifier System in new § 45.6(d)(2) strikes the appropriate balance between the Commission's interest in accurate LEI reference data and cost to LEI holders.

Third, the Commission proposes a new § 45.6(d)(3) that would obligate each DCO and each financial entity reporting counterparty executing a swap with a counterparty that does not have an LEI but is eligible for one to cause, prior to reporting any required swap creation data for such swap, an LEI to be assigned to the counterparty, including if necessary, through third-party registration.

The Commission is aware that some counterparties currently have not obtained an LEI. While proposed amendments to § 45.6 discussed above clarify that a counterparty required to be identified with an LEI in swap data reporting also has an associated affirmative requirement to obtain an LEI, the Commission anticipates that a small percentage of counterparties nonetheless will not have obtained an LEI before executing a swap. Swap data that does not identify eligible counterparties with an LEI hinders the Commission's fulfillment of its regulatory mandates, including monitoring systemic risk, market monitoring, and market abuse prevention. The Commission preliminarily believes that proposing new § 45.6(d)(3) to require each DCO and each financial entity reporting counterparty executing a swap with a counterparty that does not have an LEI to cause an LEI to be assigned to the non-reporting counterparty will further the objective of identifying each counterparty to a swap with an LEI.

New § 45.6(d)(3) would not prescribe the initial manner in which a DCO or financial entity reporting counterparty causes an LEI to be assigned to the non-reporting

counterparty, though if initial efforts are unsuccessful, new § 45.6(d)(3) requires the DCO or financial entity reporting counterparty to obtain an LEI for the non-reporting counterparty. The Commission preliminarily believes that having a DCO or financial entity reporting counterparty serving as a backstop under new § 45.6(d)(3) to ensure the identification of the non-reporting counterparty with an LEI is appropriate because: (i) each DCO and financial entity reporting counterparty already has obtained, via its "know your customer" and anti-money laundering compliance processes, all identification and relationship reference data of the non-reporting counterparty required by a local operating unit to issue an LEI for the non-reporting counterparty; (ii) multiple local operating units offer expedited issuance of LEI in sufficient time to allow reporting counterparties to meet their new extended deadline in § 45.3(a)-(b) for reporting required swap creation data; and (iii) the Commission anticipates that third-party registration in these instances will be infrequent, as the Commission expects most non-reporting counterparties to be mindful of their direct obligation to obtain their own LEIs pursuant to § 45.6.[160]

Therefore, in light of the above proposed amendments, § 45.6(d)(1) would require that each SEF, DCM, DCO, SDR, entity reporting pursuant to § 45.9, and swap counterparty use an LEI to identify itself and swap counterparties in all recordkeeping and all swap data reporting pursuant to part 45. If a swap counterparty is not eligible to receive an LEI as determined by the Global Legal Entity Identifier System, such counterparty would be identified in all recordkeeping and all swap data reporting

[160] ESMA also issued temporary relief to investment firms transacting with a client without an LEI on the condition that they "[obtain] the necessary documentation from this client to apply for an LEI code on his behalf," *available at https://www.esma.europa.eu/press-news/esma-news/esma-issues-statement-lei-implementation-under-mifid-ii.*

pursuant to part 45 with an alternate identifier as prescribed by the Commission pursuant to § 45.13(a).

Proposed § 45.6(d)(2) would provide that each SD, MSP, SEF, DCM, DCO, and SDR shall maintain and renew its LEI in accordance with the standards set by the Global Legal Entity Identifier System. Proposed § 45.6(d)(3) would require that each DCO and each financial entity reporting counterparty executing a swap with a counterparty that is eligible to receive an LEI, but has not been assigned an LEI, prior to reporting any required swap creation data for such swap, cause an LEI to be assigned to the counterparty, including if necessary, through third-party registration.

Proposed § 45.6(d)(4) would require that for swaps previously reported pursuant to part 45 using substitute counterparty identifiers assigned by an SDR prior to Commission designation of an LEI system, each SDR map the LEIs for the counterparties to the substitute counterparty identifiers in the record for each such swap.

Request for Comment

The Commission requests comment on all aspects of the proposed changes to § 45.6. The Commission also invites specific comment on the following:

(8) Should the Commission expand requiring LEIs to be renewed annually beyond SDs, MSPs, SEFs, DCMs, DCOs, and SDRs? Please explain why or why not, including specification of any material costs or benefits.

(9) Are there other ways to ensure that an LEI is obtained and reported for a counterparty without an LEI, but is eligible for an LEI, other than each DCO and each financial entity reporting counterparty potentially being required to obtain an LEI on behalf of the counterparty through third-party registration?

G. § 45.8[161] *– Determination of Which Counterparty Shall Report*

The Commission is proposing to amend the introductory text to the § 45.8 reporting counterparty determination regulations. The current introductory text states that determination of which counterparty is the reporting counterparty for all swaps, except clearing swaps, shall be made as provided in § 45.8(a)-(h), and that the determination of which counterparty is the reporting counterparty for all clearing swaps shall be made as provided in § 45.8(i).

The Commission believes that much of the introductory text is superfluous, given that the scope of what § 45.8 covers is clear from the operative provisions of § 45.8. The Commission is proposing to amend the introductory text to § 45.8 to state that the determination of which counterparty is the reporting counterparty for each swap shall be made as provided in § 45.8.

H. § 45.10[162] *– Reporting to a Single SDR*

The Commission is proposing to revise the § 45.10 regulations for reporting swap data to a single SDR. As part of these revisions, the Commission is proposing to amend and remove current regulations, and add new regulations to § 45.10. In particular, new § 45.10(d) would permit reporting counterparties to change the SDR to which they report swap data and swap transaction and pricing data.

1. Introductory Text

The Commission is proposing to amend the introductory text to the § 45.10 regulations for reporting to a single SDR. The current introductory text states that all

[161] The Commission is proposing minor, non-substantive amendments to § 45.7.
[162] The Commission is proposing minor, non-substantive amendments to § 45.9.

swap data for a given swap, which shall include all swap data required to be reported pursuant to parts 43 and 45, must be reported to a single SDR, which shall be the SDR to which the first report of required swap creation data is made pursuant to part 45.

First, the Commission is proposing to remove the reference to parts 43 and 45. In its place, the Commission is proposing to clarify in the beginning of the introductory text that all "swap transaction and pricing data and swap data" (both terms that the Commission proposes to newly define and add to § 45.1(a))[163] for a given swap must be reported. As newly defined, "swap transaction and pricing data" and "swap data" would expressly refer, respectively, to data subject to part 43 and part 45, making the current § 45.10 introductory text's express reference to the two parts redundant.

Second, the Commission is proposing to add a qualifier to the end of the introductory text. The qualifier would specify that all swap data and swap transaction and pricing data for a swap must be reported to a single SDR "unless the reporting counterparty changes the [SDR] to which such data is reported" pursuant to the new regulations proposed in § 45.10(d). New § 45.10(d) would permit reporting counterparties to change the SDR to which they report swap data and swap transaction and pricing data.[164]

Finally, the Commission is proposing ministerial language amendments in the introductory text to improve readability.

Therefore, the introductory text to § 45.10 would state that all swap transaction and pricing data and swap data for a given swap shall be reported to a single SDR, which

[163] The Commission's proposed addition of defined terms for "swap data" and "swap transaction and pricing data" to § 45.1(a) is discussed in section II.A.1 above.
[164] New § 45.10(d) is discussed in section II.H.5 below.

shall be the SDR to which the first report of such data is made, unless the reporting counterparty changes the SDR to which such data is reported pursuant to § 45.10(d).

2. § 45.10(a) – Swaps Executed On or Pursuant to the Rules of a SEF or DCM

The Commission is proposing to amend the § 45.10(a) regulations for reporting swaps executed on or pursuant to the rules of a SEF or DCM to a single SDR. Current § 45.10(a) requires that to ensure that all swap data, including all swap data required to be reported pursuant to parts 43 and 45, for a swap executed on or pursuant to the rules of a SEF or DCM is reported to a single SDR: (i) the SEF or DCM that reports required swap creation data as required by § 45.3 shall report all such data to a single SDR, and ASATP after execution shall transmit to both counterparties to the swap, and to any DCO, the identity of the SDR and the USI for the swap; and (ii) thereafter, all required swap creation data and all required swap continuation data reported for the swap reported by any registered entity or counterparty shall be reported to that same SDR (or to its successor in the event that it ceases to operate, as provided in part 49).

First, the Commission is proposing to remove the phrase "(or to its successor in the event that it ceases to operate, as provided in part 49)" in § 45.10(a)(2). This phrase would no longer be necessary with the proposed regulations in § 49.10(d) that would permit reporting counterparties to change SDRs.[165]

Second, the Commission is proposing to update all references to swap data throughout § 45.10(a). The Commission is proposing to replace all references to "swap data" with all "swap transaction and pricing data and swap data."

[165] New § 45.10(d) is discussed in section II.H.5 below.

Third, the Commission is proposing to remove § 45.10(a)(1)(ii). As discussed above, § 45.10(a)(1)(ii) requires SEFs and DCMs to transmit the USI to both counterparties to the swap, and to any DCO. This requirement is already located in § 45.5(a)(2). Since the Commission is proposing to remove § 45.10(a)(1)(ii), the Commission is also proposing to combine the text of §§ 45.10(a) and (a)(i) into a single provision in § 45.10(a).

Finally, the Commission is proposing to add the qualifier to the end of § 45.10(a)(2) that all swap data and swap transaction and pricing data for a swap must be reported to a single SDR "unless the reporting counterparty changes the [SDR] to which such data is reported" pursuant to the new regulations proposed in § 45.10(d). New § 45.10(d) would permit reporting counterparties to change the SDR to which they report swap data and swap transaction and pricing data.[166]

Therefore, § 45.10(a) would require that to ensure that all swap transaction and pricing data and swap data for a swap executed on or pursuant to the rules of a SEF or DCM is reported to a single SDR: (i) the SEF or DCM shall report all swap transaction and pricing data and required swap creation data for a swap to a single SDR, and ASATP after execution of the swap shall transmit to both counterparties to the swap, and to any DCO, the identity of the SDR to which such data is reported; and (ii) thereafter, all swap transaction and pricing data, required swap creation data, and required swap continuation data for the swap shall be reported to that same SDR, unless the reporting counterparty changes the SDR to which such data is reported pursuant to § 45.10(d).

[166] New § 45.10(d) is discussed in section II.H.5 below.

3. § 45.10(b) – Off-Facility Swaps with an SD or MSP Reporting Counterparty

The Commission is proposing to amend the § 45.10(b) regulations for reporting swaps executed off-facility with an SD/MSP reporting counterparty to a single SDR. Section 45.10(b)(1) requires that to ensure that all swap data, including all swap data required to be reported pursuant to parts 43 and 45, for off-facility swaps with an SD or MSP reporting counterparty is reported to a single SDR: (i) if the reporting counterparty reports PET data to an SDR as required by § 45.3, the reporting counterparty shall report PET data to a single SDR and ASATP after execution, but no later than as required pursuant to § 45.3, shall transmit to the other counterparty to the swap both the identity of the SDR to which PET data is reported by the reporting counterparty, and the USI for the swap created pursuant to § 45.5; and (ii) if the swap will be cleared, the reporting counterparty shall transmit to the DCO at the time the swap is submitted for clearing both the identity of the SDR to which PET data is reported by the reporting counterparty, and the USI for the swap created pursuant to § 45.5.

Thereafter, § 45.10(b)(2) requires that all required swap creation data and all required swap continuation data reported for the swap, by any registered entity or counterparty, shall be reported to the SDR to which swap data has been reported pursuant to § 45.10(b)(1) or (2) (or to its successor in the event that it ceases to operate, as provided in part 49).

First, the Commission is proposing to combine the requirements for SD/MSP reporting counterparties in § 45.10(b) for off-facility swaps with the requirements for non-SD/MSP reporting counterparties in § 45.10(c) for off-facility swaps. Revised § 45.10(b) would be retitled "Off-facility swaps that are not clearing swaps." The

Commission believes that the requirements for SD/MSP reporting counterparties and non-SD/MSP reporting counterparties could be combined to simplify the regulations in § 45.10. The requirements of current § 45.10(c) are discussed in section II.H.4 below.

Second, the Commission is proposing to remove the phrase "(or to its successor in the event that it ceases to operate, as provided in part 49)" from § 45.10(b)(2). This phrase would no longer be necessary with the proposed regulations in § 49.10(d) that would permit reporting counterparties to change SDRs.

Third, the Commission is proposing to update all references to swap data throughout § 45.10(b). The Commission is proposing to replace all references to "swap data" with all "swap transaction and pricing data and swap data."

Fourth, the Commission is proposing to remove § 45.10(b)(1). Current § 45.10(b) contains the condition that § 45.10(b)(1)(i)-(iii) apply "[i]f the reporting counterparty reports [PET data] to a [SDR] as required by § 45.3." This condition is unnecessary, as all reporting counterparties must report required swap creation data to an SDR pursuant to § 45.3 for off-facility swaps. As a result, the Commission is proposing to remove § 45.10(b)(1) and combine and move the regulations in § 45.10(b)(1)(i)-(iii) into § 45.10(b)(1).

Fifth, the Commission is proposing to remove the requirement in current § 45.10(b)(1)(ii) for the reporting counterparty to transmit the USI to the non-reporting counterparty to the swap. This requirement is already located in §§ 45.5(b)(2) and (c)(2), depending on the type of counterparty.

Finally, the Commission is proposing to add the qualifier to the end of § 45.10(b)(2) that all swap data and swap transaction and pricing data for a swap must be

reported to a single SDR "unless the reporting counterparty changes the [SDR] to which such data is reported" pursuant to the new regulations proposed in § 45.10(d). New § 45.10(d) would permit reporting counterparties to change the SDR to which they report swap data and swap transaction and pricing data.[167]

Therefore, proposed § 45.10(b)(1) would require that to ensure that all swap transaction and pricing data and swap data for an off-facility swap that is not a clearing swap is reported to a single SDR: (i) the reporting counterparty shall report all swap transaction and pricing data and required swap creation data to an SDR, and ASATP after execution, shall transmit to the other counterparty to the swap, and to any DCO that will clear the swap, the identity of the SDR to which such data is reported. Thereafter, proposed § 45.10(b)(2) would require that all swap transaction and pricing data, required swap creation data, and required swap continuation data for the swap shall be reported to the same SDR, unless the reporting counterparty changes the SDR to which such data is reported pursuant to § 45.10(d).

4. § 45.10(c) – Off-Facility Swaps with a Non-SD/MSP Reporting Counterparty

As discussed in section II.H.3 above, the Commission is proposing to move the § 45.10(c) requirements for non-SD/MSP reporting counterparties to report off-facility swaps to a single SDR to revised § 45.10(b). The requirements in current §§ 45.10(b) and (c) would be combined to create revised § 45.10(b), which would contain the requirements for reporting counterparties to report off-facility swaps that are not clearing swaps. As a result, the Commission is proposing to move the requirements in current §

[167] New § 45.10(d) is discussed in section II.H.5 below.

45.10(d) to § 45.10(c). The requirements of current § 45.10(d) are discussed in the following section II.H.5.

Current § 45.10(c)(1) requires that to ensure that all swap data, including all swap data required to be reported pursuant to parts 43 and 45, for such swaps is reported to a single SDR: (i) if the reporting counterparty reports PET data to an SDR as required by § 45.3, the reporting counterparty reports PET data to a single SDR, and ASATP after execution, but no later than as required pursuant to § 45.3, the reporting counterparty shall transmit to the other counterparty to the swap the identity of the SDR to which PET data was reported by the reporting counterparty; and (ii) if the swap will be cleared, the reporting counterparty shall transmit to the DCO at the time the swap is submitted for clearing the identity of the SDR to which PET data was reported by the reporting counterparty.

Current § 45.10(c)(2) requires that the SDR to which the swap is reported as provided in § 45.10(c) shall transmit the USI created pursuant to § 45.5 to both counterparties and to any DCO, ASATP after creation of the USI. Thereafter, § 45.10(c)(3) requires that all required swap creation data and all required swap continuation data reported for the swap, by any registered entity or counterparty, shall be reported to the SDR to which swap data has been reported pursuant to § 45.10(c)(1) (or to its successor in the event that it ceases to operate, as provided in part 49 of the Commission's regulations).

As discussed above, the Commission preliminarily believes that the requirements for SD/MSP reporting counterparties and non-SD/MSP reporting counterparties are nearly identical. Therefore, the Commission is proposing to move the requirements for

non-SD/MSP reporting counterparties to revised § 45.10(b). The discussion of § 45.10(b), including the Commission's proposed revisions to the new combined section, are discussed in section II.H.3 above.

5. § 45.10(d) – Clearing Swaps

As discussed above, the Commission is proposing to move the requirements for reporting clearing swaps to a single SDR from § 45.10(d) to § 45.10(c). As proposed, newly re-designated § 45.10(c) also would amend the current requirements for reporting clearing swaps to a single SDR now located in § 45.10(d). The Commission is proposing to replace current § 45.10(d) with new requirements for reporting counterparties to change SDRs. Below is a discussion of the proposed amendments to the regulatory requirements for reporting clearing swaps to a single SDR in newly re-designated § 45.10(c) (currently § 45.10(d)), followed by a discussion of the new regulations permitting reporting counterparties to change SDRs.

a. Amendments to Current § 45.10(d) (Re-designated as § 45.10(c))

Current § 45.10(d)(1) requires that to ensure that all swap data for a given clearing swap, and for clearing swaps that replace a particular original swap or that are created upon execution of the same transaction and that do not replace an original swap, is reported to a single SDR: the DCO that is a counterparty to such clearing swap shall report all required swap creation data for that clearing swap to a single SDR, and ASATP after acceptance of an original swap by a DCO for clearing or execution of a clearing swap that does not replace an original swap, the DCO shall transmit to the counterparty to each clearing swap the LEI of the SDR to which the DCO reported the required swap creation data for that clearing swap.

Thereafter, § 45.10(d)(2) requires that all required swap creation data and all required swap continuation data reported for that clearing swap shall be reported by the DCO to the SDR to which swap data has been reported pursuant to § 45.10(d)(1) (or to its successor in the event that it ceases to operate, as provided in part 49). Current § 45.10(d)(3) requires that for clearing swaps that replace a particular original swap, and for equal and opposite clearing swaps that are created upon execution of the same transaction and that do not replace an original swap, the DCO shall report all required swap creation data and all required swap continuation data for such clearing swaps to a single SDR.

As proposed, newly re-designated § 45.10(c) would include several amendments to the requirements now found in § 45.10(d). First, the Commission is proposing to remove the phrase "(or to its successor in the event that it ceases to operate, as provided in part 49)" as now used in § 45.10(d)(2) from re-designated § 49.10(c)(2). This phrase would no longer be necessary with the proposed regulations in new § 49.10(d) that would permit reporting counterparties to change SDRs.

Second, the Commission is proposing in re-designated § 45.10(c) to update all references to swap data now found throughout § 45.10(d). The Commission is proposing to replace all references to "swap data" with all "swap transaction and pricing data and swap data."

Third, the Commission is proposing in re-designated § 45.10(c)(2) to add the following qualifier to the requirement now found in § 45.10(d)(2) for reporting all swap data and swap transaction and pricing data for a swap to a single SDR: "unless the reporting counterparty changes the [SDR] to which such data is reported" pursuant to the

new regulations proposed in § 45.10(d). Finally, the Commission is also proposing numerous language edits to improve readability, and to update certain cross-references.

Therefore, § 45.10(c)(1) would require that to ensure that all swap transaction and pricing data and swap data for a given clearing swap, including clearing swaps that replace a particular original swap or that are created upon execution of the same transaction and that do not replace an original swap, is reported to a single SDR: (i) the DCO that is a counterparty to such clearing swap report all swap transaction and pricing data and required swap creation data for that clearing swap to a single SDR; and (ii) ASATP after acceptance of an original swap for clearing, or execution of a clearing swap that does not replace an original swap, the DCO transmit to the counterparty to each clearing swap the identity of the SDR to which such data is reported.

Thereafter, § 45.10(c)(2) would require that all swap transaction and pricing data, required swap creation data and required swap continuation data for that clearing swap shall be reported by the DCO to the same SDR to which swap data has been reported pursuant to § 45.10(c)(1), unless the reporting counterparty changes the SDR to which such data is reported pursuant to § 45.10(d).

Proposed § 45.10(c)(3) would require that for clearing swaps that replace a particular original swap, and for equal and opposite clearing swaps that are created upon execution of the same transaction and that do not replace an original swap, the DCO report all swap transaction and pricing data, required swap creation data, and required swap continuation data for such clearing swaps to a single SDR.

b. New Regulations for Changing SDRs

The Commission is proposing new regulations in § 45.10(d) to permit reporting counterparties to change the SDR to which they report swap data and swap transaction and pricing data. Current § 45.10 provides that all swaps must be reported to a "single [SDR]."[168]

As background, when the Commission adopted § 45.10 in 2012, it believed that regulators' ability to see necessary information concerning swaps could be impeded if data concerning a swap was spread over multiple SDRs.[169] However, since then: (i) the Commission has come to recognize that swap data from different SDRs can be aggregated and made available for Commission analysis and (ii) the Commission has received requests to permit reporting counterparties to change SDRs.[170]

However, the ability to change SDRs cannot frustrate the Commission's ability to use swap data due to duplicative swap reports housed at multiple SDRs. Therefore, the Commission is proposing to permit reporting to change SDRs, subject to certain procedures described below to ensure swaps are properly transferred between SDRs.

The Commission is proposing new regulations in § 45.10(d), titled "Change of [SDR] for swap transaction and pricing data and swap data reporting." The introductory text to § 45.10(d) would state that a reporting counterparty may change the SDR to which swap transaction and pricing data and swap data is reported as set forth in this § 45.10(d).

Proposed § 45.10(d)(1) would require that at least five business days prior to changing the SDR to which the reporting counterparty reports swap transaction and pricing data and swap data for a swap, the reporting counterparty shall provide notice of

[168] 17 CFR 45.10(a)-(d).
[169] Swap Data Recordkeeping and Reporting Requirements, 77 FR 2136, 2168.
[170] *See, e.g.*, Joint SDR Letter at 15.

such change to the other counterparty to the swap, the SDR to which swap transaction and pricing data and swap data is currently reported, and the SDR to which swap transaction and pricing data and swap data will be reported going forward. Such notification would include the UTI of the swap and the date on which the reporting counterparty will begin reporting such swap transaction and pricing data and swap data to a different SDR.

Proposed § 45.10(d)(2) would require that after providing notification, the reporting counterparty shall: (i) report the change of SDR to the SDR to which the reporting counterparty is currently reporting swap transaction and pricing data and swap data as a life cycle event for such swap pursuant to § 45.4; (ii) on the same day that the reporting counterparty reports required swap continuation data as required by § 45.10(d)(2)(i), the reporting counterparty shall also report the change of SDR to the SDR to which swap transaction and pricing data and swap data will be reported going forward, as a life cycle event for such swap pursuant to § 45.4, and the report shall identify the swap using the same UTI used to identify the swap at the previous SDR; (iii) thereafter, all swap transaction and pricing data, required swap creation data, and required swap continuation data for the swap shall be reported to the same SDR, unless the reporting counterparty for the swap makes another change to the SDR to which such data is reported pursuant to § 45.10(d).

Request for Comment

The Commission requests comment on all aspects of the proposed changes to § 45.10. The Commission also invites specific comment on the following:

(10) Would the Commission's proposal to permit reporting counterparties to change SDRs raise any operational issues for reporting counterparties, SDRs, or non-reporting counterparties?

(11) Should the Commission adopt additional requirements to ensure that a reporting counterparty's choice to change SDRs does not result in the loss of any data or information?

I. § 45.11 – Data Reporting for Swaps in a Swap Asset Class Not Accepted by Any SDR

The Commission is proposing non-substantive amendments to the § 45.11 regulations for reporting swaps in an asset class not accepted by any SDR. Current § 45.11(a) requires that should there be a swap asset class for which no SDR registered with the Commission currently accepts swap data, each registered entity or counterparty required by part 45 to report any required swap creation data or required swap continuation data with respect to a swap in that asset class must report that same data to the Commission.

For instance, the Commission is proposing to remove the phrase "registered with the Commission" following the term SDR. The Commission believes this phrase could create confusion, as the three SDRs are provisionally registered with the Commission pursuant to § 49.4(b). The Commission also believes this phrase is unnecessary, as provisionally registered SDRs and fully registered SDRs are subject to the same requirements in the CEA and the Commission's regulations. The Commission is also proposing to replace "each registered entity or counterparty" with SEFs, DCMs, and DCOs, and the term "reporting counterparty." The list of entities would be more precise.

Therefore, proposed § 45.11(a) would require that should there be a swap asset class for which no SDR registered currently accepts swap data, each SEF, DCM, DCO, or reporting counterparty required by part 45 to report any required swap creation data or required swap continuation data with respect to a swap in that asset class shall report that same data to the Commission.

Current §§ 45.11(c) and (d) contain a delegation of authority to the Chief Information Officer of the Commission concerning the requirements in §§ 45.11(a) and (b). The Commission is proposing to move this delegation to a new section, § 45.15, specifically for delegations of authority. This delegation of authority, including the Commission's proposed amendments to it, is discussed in section II.L below.

Request for Comment

The Commission requests comment on all aspects of the proposed changes to § 45.11.

J. § 45.12 – Voluntary Supplemental Reporting

The Commission is proposing to remove the § 45.12 regulations for voluntary supplemental reporting from part 45. Current § 45.12 permits the submission of voluntary supplemental swap data reports by swap counterparties.[171] Voluntary supplemental swap data reports are defined as "any report of swap data to a [SDR] that is not required to be made pursuant to [part 45] or any other part in this chapter."[172]

[171] 17 CFR 45.12(b)-(e). Current § 45.12(d) requires that voluntary supplemental reports contain an indication the report is voluntary, a USI, the identity of the SDR to which required swap creation data and required swap continuation data were reported, if different from the SDR to which the voluntary supplemental report was reported, the LEI of the counterparty making the voluntary supplemental report, and an indication the report is made pursuant to laws of another jurisdiction, if applicable.
[172] 17 CFR 45.12(a).

As background, when the Commission adopted § 45.12 in 2012, it believed that voluntary supplemental reporting could have benefits for data accuracy and counterparty business processes, especially for counterparties that were not the reporting counterparty to a swap.[173] The Commission recognized that § 45.12 would lead to the submission of duplicative reports for the same swap.[174] In response, the Commission believed that requiring an indication that voluntary supplemental reports were voluntary would help prevent double-counting of the same swaps within SDRs.[175]

In practice, the Commission is concerned that these reports compromise data quality and provide no clear regulatory benefit. In analyzing reports that have been marked as "voluntary reports," it is not immediately apparent to the Commission why reporting parties mark them as being voluntary. In some cases, it appears these reports can be related to products outside the Commission's jurisdiction. The Commission believes it should not accept duplicative or non-jurisdictional reports at the expense of the CFTC's technical and staffing resources with no clear regulatory benefit.

The Commission adopted § 45.12 in 2012 without the benefit of having swap data available to consider the practical implications of § 45.12. However, after years of use by Commission staff, the Commission now believes that § 45.12 has led to swap data reporting that inhibits the Commission's use of the swap data. Therefore, the Commission is proposing to eliminate the § 45.12 regulations for voluntary supplemental reporting.

Request for Comment

[173] Swap Data Recordkeeping and Reporting Requirements, 77 FR 2136, 2169.
[174] *Id*.
[175] *Id*.

The Commission requests comment on all aspects of the proposed changes to § 45.12.

K. § 45.13 – Required Data Standards

1. § 45.13(a) – Data Maintained and Furnished to the Commission by SDRs

The Commission is proposing to revise the § 45.13(a) regulations for data maintained and furnished to the Commission by SDRs. As part of these revisions, the Commission is proposing to remove and replace § 45.13(a)'s current language, including by moving current § 45.13(b) to amended § 45.13(a)(3). Current § 45.13(a) requires that each SDR maintain all swap data reported to it in a format acceptable to the Commission, and transmit all swap data requested by the Commission to the Commission in an electronic file in a format acceptable to the Commission.

The 2019 Part 49 NPRM proposed moving the requirements of § 45.13(a) to § 49.17(c).[176] Proposed amended § 49.17(c) would contain the requirements for SDRs to provide Commission access to swap data.[177] The Commission did not propose corresponding modifications to current § 45.13 in that release.[178] Therefore, the Commission is now proposing to amend § 45.13(a) by removing language that the 2019 Part 49 NPRM proposed for incorporation in § 49.17(c). The revisions to § 45.13(b), proposed to be moved to § 45.13(a)(3), are discussed in the following section.

Proposed § 45.13(a)(1) would require that in reporting required swap creation data and required swap continuation data to an SDR, each reporting counterparty, SEF,

[176] 2019 Part 49 NPRM at 21060.
[177] *Id.*
[178] *Id.* at 21060 n. 132 (noting the Commission's expectation to modify § 45.13 in a subsequent Roadmap rulemaking).

DCM, and DCO, shall report the swap data elements in appendix 1 in the form and manner provided in the technical specifications published by the Commission.

Proposed § 45.13(a)(2) would require that in reporting required swap creation data and required swap continuation data to an SDR, each reporting counterparty, SEF, DCM, and DCO making such report satisfy the swap data validation procedures of the SDR receiving the swap data. The Commission is proposing companion requirements for SDRs to validate swap data in § 49.10. The proposed validation requirements for SDRs in § 49.10 are discussed in section IV.C below. Proposed § 45.13(a)(2) would establish the regulatory requirement for reporting counterparties, SEFs, DCMs, and DCOs to satisfy the data validation procedures established by SDRs pursuant to § 49.10. The Commission is also proposing to specify the requirements for the validation messages in § 45.13(b). These requirements are discussed in the following discussion.

2. § 45.13(b) – Data Reported to SDRs

a. Amendments to Current § 45.13(b) (Re-designated as § 45.13(a)(3))

The Commission is proposing to re-designate the regulations for data reported to SDRs currently located in § 45.13(b). Current § 45.13(b) requires that in reporting swap data to an SDR as required by part 45, each reporting entity or counterparty shall use the facilities, methods, or data standards provided or required by the SDR to which the entity or counterparty reports the data. Current § 45.13(b) further provides that an SDR may permit reporting entities and counterparties to use various facilities, methods, or data standards, provided that its requirements in this regard enable it to meet the requirements of § 45.13(a) with respect to maintenance and transmission of swap data.

The Commission is also proposing to amend the requirements of current § 45.13(b), as re-designated in new § 45.13(a)(3). First, the Commission is proposing to replace "each reporting entity or counterparty" with "each reporting counterparty [SEF, DCM, and DCO]." The Commission believes a list of entities would be more precise.

Second, the Commission is proposing to remove the second sentence in current § 45.13(b). The second sentence in § 45.13(b) pertains to the requirements of § 45.13(a), which the Commission has proposed to move to part 49. Therefore, the Commission is proposing to remove the outdated reference.

As a result, new § 45.13(a)(3) would require that in reporting swap data to an SDR as required by part 45, each reporting counterparty, SEF, DCM, and DCO use the facilities, methods, or data standards provided or required by the SDR to which the entity or counterparty reports the swap data.

b. New Regulations for Data Validation Acceptance Messages

The Commission is proposing to specify the requirements for data validation acceptance messages for SDRs, SEFs, DCMs, DCOs, and reporting counterparties. As proposed § 45.13(b)(1) would require that for each required swap creation data or required swap continuation data report submitted to an SDR, an SDR notify the reporting counterparty, SEF, DCM, DCO or third-party service provider submitting the report whether the report satisfied the swap data validation procedures of the SDR. The SDR would be required to provide such notification ASATP after accepting the required swap creation data or required swap continuation data report. An SDR would satisfy these requirements by transmitting data validation acceptance messages as required by proposed § 49.10.

Proposed § 45.13(b)(2) would require that if a required swap creation data or required swap continuation data report to an SDR does not satisfy the data validation procedures of the SDR, the reporting counterparty, SEF, DCM, or DCO required to submit the report has not yet satisfied its obligation to report required swap creation or continuation data in the manner provided by paragraph (a) within the timelines set forth in §§ 45.3 and 45.4. The reporting counterparty, SEF, DCM, or DCO has not satisfied its obligation until it submits the required swap data report in the manner provided by paragraph (a), which includes the requirement to satisfy the data validation procedures of the SDR, within the applicable time deadline set forth in §§ 45.3 and 45.4.

3. § 45.13(c) – Delegation of Authority to the Chief Information Officer

Current §§ 45.13(c) and (d) contain a delegation of authority to the Chief Information Officer of the Commission concerning the requirements in § 45.13(a). The Commission is proposing to remove the delegation, delegate authority to the Director of the Division of Market Oversight, and move the delegation to new § 45.15. New § 45.15 is discussed in the next section.

Request for Comment

The Commission requests comment on all aspects of the proposed changes to § 45.13. The Commission also invites specific comment on the following:

(12) Should the Commission provide a limited exception to the validation requirements for swaps that, for instance, may be a new type of swaps that may fall within one of the five asset classes, but for which swap data reporting standards have not yet been adopted?

(13) Even with technical standards published by the Commission, there is a risk of inconsistent data across SDRs if the Commission allows the SDRs to specify the

facilities, methods or data standards for reporting. In order to ensure data quality, should the Commission mandate a certain standard for reporting to the SDRs? If so, what standard would you propose and what would be the benefits? If not, why not?

(14) The CPMI-IOSCO Governance Arrangements for critical OTC derivatives data elements (other than UTI and UPI) ("CDE Governance Arrangements"),[179] assigned ISO to execute the maintenance functions for the CDE data elements included in the CDE Technical Guidance. Some of the reasons include that almost half of the CDE data elements are already tied to an ISO standard and because ISO has significant experience maintaining data standards, specifically in financial services. CPMI and IOSCO, in the CDE Governance Arrangements, also decided that the CDE data elements should be included in the ISO 20022 data dictionary and supported the development of an ISO 20022-compliant message for CDE data elements. Given these factors, should the Commission consider mandating ISO 20022 message scheme for reporting to SDRs? Please comment on the advantages and disadvantages of mandating ISO 20022 for swap transaction reporting.

L. § 45.15[180] *– Delegation of Authority*

The Commission is proposing to add a new section to its regulations for delegations of authority. As proposed, § 45.15 would be titled "Delegation of authority," and would contain the delegation of authority currently in §§ 45.11 and add a new delegation of authority to the Director of the Division of Market Oversight regarding the reporting under § 45.13.

[179] https://www.iosco.org/library/pubdocs/pdf/IOSCOPD642.pdf.
[180] The Commission has proposed amendments to § 45.14 in the 2019 Part 49 NPRM. Therefore, § 45.14 will not be discussed in this release. *See* 2019 Part 49 NPRM at 21067.

Current § 45.11(c) delegates to the Chief Information Officer of the Commission, or other such employee he or she designates, with respect to swaps in an asset class not accepted by any SDR, the authority to determine: the manner, format, coding structure, and electronic data transmission standards and procedures acceptable to the Commission; whether the Commission may permit or require use by reporting entities or counterparties in reporting pursuant to § 45.11 of one or more particular data standards (such as FIXML, FpML, ISO 20022, or some other standard), in order to accommodate the needs of different communities of users; and the dates and times at which required swap creation data or required swap continuation data shall be reported to the Commission.

Current § 45.11(d) requires the Chief Information Officer to publish from time to time in the *Federal Register* and on the website of the Commission the format, data schema, electronic data transmission methods and procedures, and dates and times for reporting acceptable to the Commission with respect to swap data reporting pursuant to § 45.11.

Separately, current § 45.13I delegates to the Chief Information Officer, until the Commission orders otherwise, the authority to establish the format by which SDRs maintain swap data reported to it, and the format by which SDRs transmit the data to the Commission. The authority includes the authority to determine the manner, format, coding structure, and electronic data transmission standards and procedures acceptable to the Commission for the purposes of § 45.13(a); and the authority to determine whether the Commission may permit or require use by reporting entities or counterparties, or by SDRs, of one or more particular data standards (such as FIX, FpML, ISO 20022, or some

other standard), in order to accommodate the needs of different communities of users, or to enable SDRs to comply with § 45.13(a).

Current § 45.13(d) requires the Chief Information Officer to publish from time to time in the *Federal Register* and on the website of the Commission the format, data schema, and electronic data transmission methods and procedures acceptable to the Commission.

The Commission is proposing to move the delegations in §§ 45.11(c)-(d) and 45.13(c)-(d) to §§ 45.15(a) and (b). The Commission is also proposing to update the delegations to reflect the changes to the cross-references resulting from the Commission's amendments to part 45. Proposed § 45.15(b) would therefore delegate to the Director of DMO, until the Commission orders otherwise, the authority set forth in § 45.13(a)(1), to be exercised by the Director of DMO or by such other employee or employees of the Commission as may be designated from time to time by the Director of DMO. The DMO Director would be able to submit to the Commission for its consideration any matter which has been delegated pursuant to § 45.13(b). Nothing in § 45.15(b) would prohibit the Commission, at its election, from exercising the authority delegated in § 45.15(b).

The authority delegated to the Director of DMO would continue to include, subject to the above-mentioned updates: (1) the authority to publish the technical specifications providing the form and manner for reporting the swap data elements in appendix 1 to SDRs as provided in § 45.13(a)(1); (2) the authority to determine whether the Commission may permit or require use by SEFs, DCMs, DCOs, or reporting counterparties in reporting pursuant to § 45.13(a)(1) of one or more particular data

standards (such as FIX, FpML, ISO 20022, or some other standard), in order to accommodate the needs of different communities of users; and (3) the dates and times at which required swap creation data or required swap continuation data shall be reported pursuant to § 45.13(a)(1). Section 45.15(b)(4) would continue to provide, with updates, that (4) the DMO director publish from time to time in the Federal Register and on the website of the Commission the technical specifications for swap data reporting pursuant to § 45.13(a)(1).

Request for Comment

The Commission requests comment on all aspects of the proposed changes to § 45.15.

III. Proposed Amendments to Part 46

Part 46 of the Commission's regulations establishes the requirements for reporting pre-enactment and transition swaps to SDRs. In some instances, the proposed revisions to part 45 described in section II above would necessitate corresponding revisions and amendments to the regulations in part 46. The Commission describes any substantive revisions and amendments in this section.

A. § 46.1 – Definitions

Current § 46.1 contains the definitions for terms used throughout the regulations in part 46. Current § 46.1 does not contain any subsections. The Commission is proposing to separate § 46.1 into two subsections: § 46.1(a) for definitions and § 46.1(b), which would state that terms not defined in part 46 have the meanings assigned to the terms in § 1.3.

The Commission is proposing to add a definition of "historical swaps" to § 46.1(a). As proposed, "historical swaps" would mean pre-enactment swaps or transition swaps. This term is already used in part 46.

The Commission is proposing to add a definition of "substitute counterparty identifier" to § 46.1(a). As proposed, "substitute counterparty identifier" would mean a unique alphanumeric code assigned by an SDR to a swap counterparty prior to the Commission designation of an LEI identifier system on July 23, 2012. The term "substitute counterparty identifier" is already used throughout § 46.4.

The Commission is proposing non-substantive minor technical changes to "asset class" and "required swap continuation data."

The Commission is proposing to amend the definition of "non-SD/MSP counterparty" in § 46.1(a) to conform to the amendments proposed to the corresponding term in § 45.1(a).[181] The Commission is proposing to update the term throughout part 46.

The Commission is proposing to amend the definition of "reporting counterparty" to update the reference to "swap data." Currently, "reporting counterparty" means the counterparty required to report swap data pursuant to part 46, selected as provided in § 46.5. As discussed in section II.A.1 above, the Commission is proposing to define "swap data" to mean swap data reported pursuant to part 45. As a result, the Commission is proposing to change the reference to "data for a pre-enactment swap or transition swap" to reflect that the reference is to part 46 data.

[181] The proposed amendments to the term in § 45.1(a) are discussed in section II.A.2 above.

The Commission is proposing to remove the following definitions from § 46.1. The Commission has determined that the following definitions are redundant because the terms are already defined in either § 1.3 or CEA section 1a: "credit swap;" "foreign exchange forward;" "foreign exchange instrument;" "foreign exchange swap;" "interest rate swap;" "major swap participant;" "other commodity swap;" "swap data repository;" and "swap dealer."

The Commission is proposing to remove the definition of "international swap," as there are no regulations for international swaps in part 46.

Request for Comment

The Commission requests comment on all aspects of the proposed changes to § 46.1.

B. § 46.3 – Data Reporting for Pre-Enactment Swaps and Transition Swaps

Current § 46.3(a)(2)(i)[182] requires that for each uncleared pre-enactment or transition swap in existence on or after April 25, 2011, throughout the existence of the swap following the compliance date, the reporting counterparty must report all required swap continuation data required to be reported pursuant to part 45, with the exception that when a reporting counterparty reports changes to minimum PET data for a pre-enactment or transition swap, the reporting counterparty is required to report only changes to the minimum PET data listed in appendix 1 to part 46 and reported in the initial data report made pursuant to § 46(a)(1), rather than changes to all minimum PET data listed in appendix 1 to part 45.

[182] The Commission is not proposing substantive amendments outside of § 46.3(a)(2)(i).

The Commission is proposing to amend § 46.3(a)(2)(i) to remove the exception from PET data reporting for pre-enactment and transition swaps to specify that reporting counterparties would report updates to pre-enactment and transition swaps according to part 45. The Commission believes this is current practice and would not result in any significant change for the entities reporting updates to historical swaps.

Therefore, proposed § 46.3(a)(2)(i) would require that for each uncleared pre-enactment swap or transition swap in existence on or after April 25, 2011, throughout the existence of the swap following the compliance date, the reporting counterparty shall report all required swap continuation data as required by part 45.

Request for Comment

The Commission requests comment on all aspects of the proposed changes to § 46.3.

C. 46.10 – Required Data Standards

Current § 46.10 requires that in reporting swap data to an SDR as required by part 46, each reporting counterparty use the facilities, methods, or data standards provided or required by the SDR to which counterparty reports the data.

The Commission is proposing to add a provision that "[i]n reporting required swap continuation data as required by this part, each reporting counterparty shall comply with the required data standards set forth in part 45 of this chapter, including those set forth in § 45.13(a) of this chapter." As discussed above in the previous section, the Commission believes this is current practice for reporting counterparties and should not result in any significant change for reporting counterparties.

Request for Comment

The Commission requests comment on all aspects of the proposed changes to § 46.10.

D. § 46.11 – Reporting of Errors and Omissions in Previously Reported Data

Consistent with the Commission's proposal to remove the option to report required swap continuation data by the state data reporting method, discussed in section II.D.2 above, the Commission proposes to remove the option in § 46.11(b) for pre-enactment/transition swaps reporting. Specifically, § 46.11(b) currently provides that for pre-enactment or transition swaps for which part 46 requires reporting of continuation data, reporting counterparties reporting state data as provided in part 45 may fulfill the requirement to report errors or omissions by making appropriate corrections in their next daily report of state data pursuant to part 45. Further to the proposed removal of current § 46.11(b), the Commission is also proposing to re-designate current §§ 46.11(c) and (d) as new §§ 46.11(b) and (c), respectively.

Request for Comment

The Commission requests comment on all aspects of the proposed changes to § 46.11.

IV. Proposed Amendments to Part 49

A. § 49.2 – Definitions

The Commission is proposing to add four definitions to § 49.2(a): "Data validation acceptance message," "Data validation error," "Data validation error message," and "Data validation procedures."[183] The four definitions are explained in a

[183] The Commission has also proposed to define the term "SDR data" in the 2019 Part 49 NPRM. As proposed, "SDR data" would mean the specific data elements and information required to be reported to an

discussion of the proposed § 49.10 regulations for the acceptance and validation of data in section IV.C below.

B. § 49.4 – Withdrawal from Registration

The Commission is proposing to amend the § 49.4 regulations for SDR withdrawals from registration. Current § 49.4(a)(1)(iv) requires that a request to withdraw filed pursuant to § 49.4(a)(1) shall specify, among other items, a statement that the custodial SDR is authorized to make such data and records available in accordance with § 1.44.[184]

Current § 49.4(a)(2) requires that prior to filing a request to withdraw, a registered SDR shall file an amended Form SDR to update any inaccurate information. A withdrawal of registration shall not affect any action taken or to be taken by the Commission based upon actions, activities or events occurring during the time that the facility was designated by the Commission.

First, the Commission is proposing to remove the § 49.4(a)(1)(iv) requirement for SDRs to submit a statement to the Commission that the custodial SDR is authorized to make the withdrawing SDR's data and records available in accordance with § 1.44. The reference to § 1.44 is erroneous. Section 1.44 requires" depositories" to maintain all "books, records, papers, and memoranda relating to the storage and warehousing of commodities in such warehouse, depository or other similar entity for a period of 5 years

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SDR or disseminated by an SDR, pursuant to two or more of parts 43, 45, 46, and/or 49, as applicable. *See* 2019 Part 49 NPRM at 21047. The term "SDR data" is also used in the proposed amendments to § 49.10 in this release.

[184] The Commission is not proposing substantive amendments to § 49.4(a)(1)-(iii). The Commission is limiting the discussion in this release to § 49.4(a)(1)(iv).

from the date thereof."[185] The recordkeeping requirements for SDRs are located in § 49.12.[186] The Commission is proposing to remove erroneous § 49.4(a)(1)(iv) to avoid confusion.

Second, the Commission is proposing to remove the § 49.4(a)(2) requirement that prior to filing a request to withdraw, a registered SDR file an amended Form SDR to update any inaccurate information.[187] The Commission believes that this requirement is unnecessary and does not help the Commission confirm the successful transfer of data and records to a custodial SDR. The Commission has a significant interest in ensuring that the data and records of an SDR withdrawing from registration are successfully transferred to a custodial SDR. In addition, the Commission needs confirmation that the custodial SDR will retain the data and records for at least the remainder of the time that records are required to be retained according to the Commission's recordkeeping rules. When an SDR is withdrawing from registration, the Commission would no longer have a regulatory need for the information in Form SDR to be updated.

The Commission is proposing to instead create a new requirement in § 49.4(a)(2) for SDRs to execute an agreement with the custodial SDR governing the custody of the withdrawing SDR's data and records prior to filing a request to withdraw with the

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[185] 17 CFR 1.44(d).

[186] The Commission has proposed amendments to § 49.12 in the 2019 Part 49 NPRM. However, these amendments do not impact the substance of the SDR recordkeeping requirements. *See* 2019 Part 49 NPRM at 21055. Pursuant to § 49.12(b), SDRs must maintain swap data, including historical positions, throughout the existence of the swap and for five years following final termination of the swap, during which time the records must be readily accessible to the Commission via real-time electronic access; and in archival storage for which the swap data is retrievable by the SDR within three business days.

[187] Current § 49.4(a)(2) further provides that a withdrawal of registration shall not affect any action taken or to be taken by the Commission based upon actions, activities or events occurring during the time that the facility was designated by the Commission. The Commission is proposing to remove this part of § 49.4(a)(2) as well.

Commission. Proposed § 49.4(a)(2) would also specify that the custodial SDR retain such records for at least as long as the remaining period of time the SDR withdrawing from registration would have been required to retain such records pursuant to part 49. The Commission believes that proposed § 49.4(a)(2) would better address the Commission's primary concerns in an SDR withdrawal from registration.

Therefore, § 49.4(a)(2) would require that prior to filing a request to withdraw, an SDR shall execute an agreement with the custodial SDR governing the custody of the withdrawing SDR's data and records. The custodial SDR shall retain such records for at least as long as the remaining period of time the SDR withdrawing from registration would have been required to retain such records pursuant to part 49.

Request for Comment

The Commission requests comment on all aspects of the proposed changes to § 49.4.

C. § 49.10 – Acceptance and Validation of Data

The Commission is proposing to revise the §§ 49.10(a)-(d)[188] and (f) requirements for the acceptance of data. As part of these revisions, the Commission is proposing to retitle the section to reflect new requirements for SDRs to validate data proposed in § 49.10(c) as "Acceptance and validation of data."

1. § 49.10(a) – General Requirements

The Commission is proposing to amend the general requirements in § 49.10(a) for SDRs to have policies and procedures to accept swap data and swap transaction and

[188] The Commission has proposed amendments to the § 49.10(e) requirements for correction of errors and omissions in SDR data in the 2019 Part 49 NPRM. *See* 2019 Part 49 NPRM at 21050.

pricing data. Section 49.10(a) requires that registered SDRs establish, maintain, and enforce policies and procedures for the reporting of swap data to the registered SDR and shall accept and promptly record all swap data in its selected asset class and other regulatory information that is required to be reported pursuant to parts 43 and 45 by DCMs, DCOs, SEFs, SDs, MSPs, or non-SD/MSP counterparties.

First, the Commission is proposing to title § 49.10(a) "General requirements" to distinguish it from the rest of the requirements in § 49.10. Second, the Commission is proposing to number the requirement in § 49.10(a) as § 49.10(a)(1), and renumber § 49.10(a)(1) as § 49.10(a)(2).

Third, the Commission is proposing to revise the first sentence to specify that SDRs shall maintain and enforce policies and procedures reasonably designed to facilitate the complete and accurate reporting of SDR data.

Fourth, the Commission is proposing to remove the last phrase of § 49.10(a) beginning with "all swap data in its selected asset class" and create a second sentence requiring SDRs to promptly accept, validate, and record SDR data.

Finally, the Commission is proposing non-substantive edits to § 49.10(a)(1), renumbered as § 49.10(a)(2), to correct references to defined terms and improve consistency in use of terminology. Together, the amendments to § 49.10(a)(1)-(2) would improve the readability of § 49.10(a) while updating the terminology to use the proposed "SDR data" term for the data SDRs are required to accept, validate, and record pursuant to § 49.10.[189]

[189] The background for the proposed validations regulations is discussed in section IV.C.3 below.

Therefore, § 49.10(a)(1) would require that an SDR shall establish, maintain, and enforce policies and procedures reasonably designed to facilitate the complete and accurate reporting of SDR data. Proposed § 49.10(a)(1) would further provide that an SDR shall promptly accept, validate, and record SDR data.

Proposed § 49.10(a)(2) would require that for the purpose of accepting SDR data, the SDR shall adopt policies and procedures, including technological protocols, which provide for electronic connectivity between the SDR and DCMs, DCOs, SEFs, SDs, MSPs, and non-SD/MSP/DCO reporting counterparties who report such data. Proposed § 49.10(a)(2) would further provide that the technological protocols established by an SDR shall provide for the receipt of SDR data. The SDR shall ensure that its mechanisms for SDR data acceptance are reliable and secure.

2. § 49.10(b) – Duty to Accept SDR Data

The Commission is proposing to amend the § 49.10(b) requirements for SDRs to accept SDR data. Current § 49.10(b) requires that a registered SDR shall set forth in its application for registration as described in § 49.3 the specific asset class or classes for which it will accept swaps data. If an SDR accepts swap data of a particular asset class, then it shall accept data from all swaps of that asset class, unless otherwise prescribed by the Commission.

First, the Commission is proposing to title § 49.10(b) "Duty to accept SDR data" to distinguish it from the other requirements of § 49.10. Second, the Commission is proposing to update references to data in § 49.10(b) to "SDR data" to use the correct defined term. These amendments would not change the substantive requirements of § 49.10(b).

Therefore, § 49.10(b) would require that an SDR shall set forth in its application for registration as described in § 49.3 the specific asset class or classes for which it will accept SDR data. If an SDR accepts SDR data of a particular asset class, then it shall accept SDR data from all swaps of that asset class, unless otherwise prescribed by the Commission.

3. § 49.10(c) – Duty to Validate SDR Data

As part of the revisions to § 49.10, the Commission is proposing to add new regulations for the SDR validation of SDR data in § 49.10(c). The Commission is proposing to move the requirements in current § 49.10(c) to § 49.10(d).[190]

SDRs currently check each swap report for compliance with a list of rules specific to each SDR. However, the Commission is concerned that SDRs apply different validation rules that could be making it difficult for SDR data to either be reported to the SDR or the SDRs' real-time public data feeds. The SDRs applying different validations to swap reports creates numerous challenges for the Commission and market participants. While one SDR may reject a report based on an incorrect value in a particular swap data element, another SDR may accept reports containing the same erroneous value in the same data element. Further, the Commission is concerned that responses to SDR validation messages vary across reporting counterparties, given the lack of current standards.

The Commission received several comments on data validations in response to the Roadmap. Commenters were broadly supportive[191] of including swap data validations

[190] The amendments to the current requirements of § 49.10(c), proposed to be moved to § 49.10(d), are discussed in section IV.C.4 below.

in revisions to the Commission's data reporting regulations.[192] Commenters recommended that the requirements for data validation be implemented at the same time or after the Commission harmonized and updated the data elements to be reported[193] and that the validations be implemented all at once.[194] Many commenters also requested that the Commission provide specific guidance and requirements for the validations, including, for example, a defined list of minimum validations, form and manner specifications, mapping, and allowable values.[195]

Commenters diverged in some instances in regards to continuing the SDRs' current validation practices. The SDRs advocated for leveraging existing SDR validation processes in order to minimize the costs associated with system changes.[196] The SDRs also argued that the SDRs should not be required to implement the exact same validations and that the SDRs should have the flexibility to design their own validations, as long as the data is provided to the Commission in the mandated format.[197] In contrast, one commenter advocated for the Commission to ensure that data element collection and validations are consistent across all SDRs.[198] The commenter also advocated for limiting the data SDRs may request to the data required under the Commission's regulations.[199]

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[191] No comment letters directly opposed data validations, though not all letters addressed the topic.
[192] Joint SDR Letter at 1-4, 6, 9; Letter from Chatham at 3; Letter from CME at 2; Letter from DTCC at 2-3; Letter from Eurex Clearing AG ("Eurex") (Aug. 21, 2017) at 3; Letter from GFMA at 5-6; Joint ISDA-SIFMA Letter at 3, 6; Letter from LCH at 3.
[193] Joint SDR Letter at 1-3, 9; Letter from CME at 2; Letter from GFMA at 5-6; Joint ISDA-SIFMA Letter at 3, 6.
[194] Joint SDR Letter at 9.
[195] Joint SDR Letter at 4, 6; Letter from DTCC at 2-3; Joint ISDA-SIFMA Letter at 3, 6; Letter from LCH at 3.
[196] Joint SDR Letter at 2; Letter from CME at 2; Letter from DTCC at 2.
[197] Joint SDR Letter at 3; Letter from DTCC at 2-3.
[198] Joint ISDA-SIFMA Letter at 6.
[199] *Id.* at 5.

Commenters also raised other specific validation-related issues. The SDRs suggested that data should be required to be validated against public sources, to the extent possible, such as the GLEIF database for LEIs.[200] One commenter stated that the Commission should resolve any uncertainty regarding what a reporting counterparty must report when a data element may not apply to the reported swap and/or data may not be available at the time of reporting.[201]

ESMA has published specific validations for TRs to perform to ensure that derivatives data meets the requirements set out in the technical standards pursuant to EMIR.[202] ESMA's validations, for instance, set forth when data elements are mandatory, conditional, optional, or must be left blank, and specify conditions for data elements along with the format and content of allowable values for almost 130 data elements.[203]

The Commission believes that similarly consistent SDR validations would help improve data quality. Therefore, the Commission is proposing to require SDRs to apply validations and inform the entity submitting the swap report of any associated rejections. SDRs would be required to apply the validations approved in writing by the Commission. The Commission is also proposing regulations for SDRs to send validation messages to SEFs, DCMs, and reporting counterparties.[204] The Commission believes that the

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[200] Joint SDR Letter at 4.
[201] Joint ISDA-SIFMA Letter at 6. The Commission has requested specific comment on this issue above in connection with § 45.13.
[202] *See* https://www.esma.europa.eu/policy-rules/post-trading/trade-reporting.
[203] *See id.*
[204] The Commission is also proposing regulations for reporting counterparties, SEFs, and DCMs to address the validations messages sent by SDRs and to resubmit any rejected swap reports in time to meet their obligations to report creation and continuation data. The requirements for reporting counterparties, SEFs, and DCMs to comply with SDR validations are proposed in § 45.13(b).

consistent application of validation rules across SDRs would lead to an improvement in the quality of swap data maintained at SDRs.

Proposed § 49.10(c)(1) would provide that SDRs shall validate each SDR data report submitted and notify the reporting counterparty, SEF, DCM, or third party service provider submitting the report whether the report satisfied[205] the data validation procedures[206] of the SDR ASATP after accepting the SDR data report.

Proposed § 49.10(c)(2) would provide that if SDR data contains one or more data validation errors,[207] the SDR shall distribute a data validation error message[208] to the DCM, SEF, reporting counterparty, or third-party service provider that submitted such SDR data ASATP after acceptance of such data. Each data validation error message shall indicate which specific data validation error(s) was identified in the SDR data.

Proposed § 49.10(c)(3) would require that if an SDR allows for the joint submission of swap transaction and pricing data and swap data, the SDR validate the swap transaction and pricing data and swap data separately. Swap transaction and pricing data that satisfies the data validation procedures applied by an SDR shall not be deemed to contain a data validation error because it was submitted to the SDR jointly with swap data that contained a data validation error.

4. § 49.10(d) – Policies and Procedures to Prevent Invalidation or Modification

[205] The Commission is proposing to define "data validation acceptance message" to mean a notification that SDR data satisfied the data validation procedures applied by an SDR.
[206] The Commission is proposing to define "data validation procedures" to mean procedures established by an SDR pursuant to § 49.10 to validate SDR data reported to the SDR.
[207] The Commission is proposing to define "data validation error" to mean that a specific data element of SDR data did not satisfy the data validation procedures applied by an SDR.
[208] The Commission is proposing to define "data validation error message" to mean a notification that SDR data contained one or more data validation error(s).

As described above, the Commission is proposing to move the requirement currently in § 49.10(c) for SDRs to have policies and procedures to prevent invalidations or modifications of swaps to an amended § 49.10(d). As a result, the Commission is also proposing to redesignate § 49.10(d) as new § 49.10(f).[209] Section 49.10(c) currently requires registered SDRs to establish policies and procedures reasonably designed to prevent any provision in a valid swap from being invalidated or modified through the confirmation or recording process of the SDR.[210]

The Commission is also proposing non-substantive amendments to the current language of § 49.10(c), proposed to be moved to § 49.10(d). For instance, the Commission is proposing to title § 49.10(c) "Policies and procedures to prevent invalidation or modification" to distinguish it from the other requirements in § 49.10.

In light of the above proposed amendments, § 49.10(d) would require SDRs to establish policies and procedures reasonably designed to prevent provision in a valid swap from being invalidated or modified through the verification or recording process of the SDR. The policies and procedures shall ensure that the SDR's user agreements are designed to prevent any such invalidation or modification.

5. § 49.10(f) – Policies and Procedures for Resolving Disputes Regarding Data Accuracy

As described above, the Commission is proposing to redesignate § 49.10(d) as § 49.10(f).[211] The Commission is also proposing non-substantive amendments to the

[209] The amendments to the current requirements of § 49.10(d), proposed to be redesignated as § 49.10(f), are discussed in section IV.C.5 below.
[210] Current § 49.10(c) further provides that the policies and procedures must ensure that the SDR's user agreements must be designed to prevent any such invalidation or modification. 17 CFR 49.10(c).
[211] The Commission's proposed revisions to § 49.10(e) are discussed in the 2019 Part 49 NPRM. *See* 2019 Part 49 NPRM at 21050.

requirements currently set out in § 49.10(d), proposed to be redesignated as new § 49.10(f). Current § 49.10(d) requires that registered SDRs establish procedures and provide facilities for effectively resolving disputes over the accuracy of the swap data and positions that are recorded in the SDR.

First, the Commission is proposing to title § 49.10(f) "Policies and procedures for resolving disputes regarding data accuracy" to distinguish it from the other requirements of § 49.10. Second, the Commission is proposing to update terminology in the regulation. These updates include replacing "swap" with the correct term "SDR data, and removing the term "registered" before references to SDRs.

Therefore, in light of the above proposed amendments, § 49.10(f) would require SDRs to establish procedures and provide facilities for effectively resolving disputes over the accuracy of the SDR data and positions that are recorded in the SDR.

Request for Comment

The Commission requests comment on all aspects of the proposed changes to § 49.10.

V. Swap Data Elements Reported to Swap Data Repositories

A. General

The Commission is proposing to revise appendix 1 to part 45 to update and further standardize the swap data being reported to SDRs and the swap data SDRs make available to the Commission. The Commission's current minimum primary economic terms for swaps in each swap asset class are found in appendix 1 to part 45. The current primary economic terms for swaps contain a set of "data categories and fields" followed by "comments" instead of specifications such as allowable values, formats, and

conditions.[212] In some cases, these comments include directions, such as to use "yes/no" indicators for certain data elements (e.g., an indication whether the reporting counterparty is an SD).[213] In others, the comments reference Commission regulations (e.g., to report the LEI of the non-reporting counterparty "[a]s provided in § 45.6").[214]

In adopting part 45, the Commission intended that the primary economic terms would ensure uniformity in "essential data" concerning swaps across all of the asset classes and across SDRs to ensure the Commission had the necessary information to characterize and understand the nature of reported swaps.[215] However, in practice, this approach permitted a degree of discretion in reporting swap data that led to a lack of standardization, and therefore a reduction in data quality, which makes it more difficult for the Commission to analyze and aggregate swap data. The Commission recognizes that each SDR has worked to standardize the data within each SDR over recent years, and Commission staff has noted the improvement in data quality. The Commission however believes a significant effort must be made to standardize swap data across SDRs. As a result, the Commission decided to revisit the data elements currently required to be reported to SDRs in appendix 1 to part 45.

In the Roadmap, DMO announced an intention to propose detailed technical specifications once the CPMI-IOSCO harmonization efforts had sufficiently progressed.[216] In the Roadmap, DMO also signaled its intention to match foreign

[212] *See generally* 17 CFR 45 appendix 1.
[213] *Id.*
[214] *Id.*
[215] *See* 77 FR at 2149.
[216] *See* Roadmap at 9.

regulators as closely as possible in the technical specifications, but noted that some data elements may be different depending on Commission's needs.[217]

In response to the Roadmap, DMO received many comments on swap data elements. Commenters broadly supported efforts to reduce the number of reportable data elements and to remove the requirement to report "any other term(s) of the swap matched or affirmed" by the counterparties (commonly known as the "catchall" provision).[218] Commenters were also broadly supportive of the CPMI-IOSCO harmonization efforts to standardize critical data elements,[219] as both reducing burdens on reporters[220] and as increasing the utility of the data for regulators and the users of public data.[221]

Several commenters asked for precise definitions for required data elements.[222] Several commenters acknowledged that the Commission may require some data elements beyond the final CDE Technical Guidance data elements,[223] but cautioned the Commission to be careful when making that determination.[224] One commenter, while supporting harmonization generally, opposed expanding reporting to cover any additional data elements.[225] Two commenters noted that differences between the CFTC and other

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[217] *Id.*
[218] Joint SDR Letter at 8; Letter from Chatham at 5; Letter from CME at 3; Letter from NRECA-APPA at 3; Letter from LCH at 2; Joint ISDA-SIFMA Letter at 7; Letter from the Natural Gas Supply Association ("NGSA") at 1.
[219] Letter from ACLI at 2; Joint SDR Letter at 7; Letter from Chatham at 5; Letter from CEWG at 3; Letter from the Coalition for Derivatives End Users ("CDEU") (Aug. 21, 2017) at 5; Letter from DTCC at 2; Letter from Eurex at 3-4; Letter from GFMA at 3; Joint ISDA-SIFMA Letter at 5; Letter from Japanese Bankers Association ("JBA") (Aug. 21, 2017) at 2; Letter from SIFMA Asset Management Group ("AMG") (Aug. 18, 2017) at 2.
[220] Letter from GFMA at 3; Letter from JBA at 2; Joint SDR Letter at 8.
[221] Letter from Better Markets (Aug. 21, 2017) at 7; Letter from DTCC at 2; Letter from GFMA at 3; Joint ISDA-SIFMA Letter at 5.
[222] Letter from GFMA at 4; Letter from CEWG at 3; Letter from CME at 3; Letter from Eurex at 3-4.
[223] Joint SDR Letter at 9.
[224] Letter from GFMA at 4.
[225] Letter from CEWG 3.

regulators, including the SEC, were not only in the data elements that must be reported, but also in what transactions must be reported.[226]

Several commenters indicated potential opposition to individual CDE Technical Guidance data elements.[227] Another commenter recommended using the final CDE Technical Guidance as a "tool" rather than a "mandate," and to only implement those data elements that the Commission needs for its oversight obligations.[228] One commenter suggested not pursuing the data elements proposed in DMO's December 2015 Request for Comment on Draft Technical Specifications for Certain Swap Data Elements, as they would unnecessarily increase costs without benefits.[229]

In the course of revisiting which swap data elements should be reported to SDRs, the Commission reviewed the swap data elements currently in appendix 1 to part 45 to determine if any currently required data elements should be eliminated and if any additional data elements should be added. The Commission then reviewed the CDE Technical Guidance to determine which data elements the Commission could adopt according to the CDE Technical Guidance.

As a general matter, the Commission believes that the implementation of the CDE Technical Guidance will further improve the harmonization of SDR data across FSB member jurisdictions. This international harmonization, when widely implemented, would allow market participants to report swap data to several jurisdictions in the same format, allowing for potential cost-savings. This harmonization, when widely

[226] Letter from CDEU at 6; Letter from GFMA at 3.
[227] Letter from GFMA at 4; Joint ISDA-SIFMA Letter at 4, 9; Letter from SIFMA AMG at 2.
[228] Joint ISDA-SIFMA Letter at 4.
[229] *Id.* at 8.

implemented, would also allow the Commission to potentially receive more standardized information regarding swaps reported to TRs regulated by other authorities. For instance, such standardization across SDRs and TRs could support data aggregation for the analysis of global systemic risk in swaps markets.

As part of this process, the Commission also reviewed the part 43 swap transaction and pricing data and part 45 swap data elements to determine whether any differences could be reconciled.[230] Having completing this assessment, the Commission is proposing to list the swap data elements required to be reported to SDRs pursuant to part 45 in appendix 1 to part 45. In a separate NPRM, the Commission is proposing to list the swap transaction and pricing data elements required to be reported to, and then publicly disseminated by, SDRs pursuant to part 43 in appendix C to part 43. The swap transaction and pricing data elements would be a harmonized subset of the swap data elements in appendix 1 to part 45.

At the same time as the Commission is proposing to update the swap data elements in appendix 1, DMO is publishing draft technical specifications for reporting the swap data elements in appendix 1 to part 45 to SDRs, as specified in § 45.13(a)(1), and for reporting and publicly disseminating the swap transaction pricing and data elements in appendix C to part 43 described in a separate NPRM. DMO would then publish the technical specifications in the Federal Register pursuant to the delegation of authority proposed in § 45.15(b).

[230] The Commission intended that the data elements in appendix A to part 43 would be harmonized with the data elements required to be reported to an SDR for regulatory purposes pursuant to part 45. *See* 77 FR at 1226 (noting that "it is important that the data fields for both the real-time and regulatory reporting requirements work together"). However, there is no current regulatory requirement linking the two sets of data elements.

DMO is proposing to establish technical standards for certain swap data elements according to the CDE Technical Guidance, where possible. Commenters are invited to comment on both the technical standards and the swap data elements proposed in appendix 1.

The swap data elements proposed to be reported to SDRs would therefore consist of: (i) the data elements implementing the CDE Technical Guidance; and (ii) additional CFTC-specific data elements that support the Commission's regulatory responsibilities.[231] While, as explained below, much of this swap data is already being reported to SDRs according to each SDR's technical standards, the technical standards and validation conditions that the Commission is proposing for the SDRs to implement would be new. A discussion of the swap data elements and requests for comment the technical standards follows below. Data elements specific to part 43 are discussed in the separate part 43 NPRM.

B. Swap Data Elements to be Reported to SDRs

DMO's proposed technical standards contains an extensive introduction to help reviewers. As a preliminary matter, the Commission notes that the swap data elements in appendix 1 do not include swap data elements specific to swap product terms. The Commission is currently heavily involved in separate international efforts to introduce UPIs.[232] The Commission preliminarily expects UPIs will be available within the next

[231] The proposed update of appendix 1 and technical standards are expected to represent a significant reduction in the number of swap data elements that could be reported to an SDR by market participants.
[232] *See* FSB, Governance arrangements for the UPI: Conclusions, implementation plan and next steps to establish the International Governance Body (Oct. 9, 2019), *available at https://www.fsb.org/2019/10/governance-arrangements-for-the-upi*/.

two years.[233] Until the Commission designates a UPI pursuant to § 45.7, the Commission is proposing SDRs continue to accept, and reporting counterparties continue to report, the product-related data elements unique to each SDR. The Commission believes this temporary solution would have SDRs change their systems only once when UPI becomes available, instead of twice if the Commission proposes standardized product data elements in this release before UPIs are available and then later designates UPIs pursuant to § 45.7.

In addition, the Commission notes that it has endeavored to propose adopting the CDE Technical Guidance data elements as closely as possible. Where the Commission proposes adopting a CDE Technical Guidance data element, the Commission has proposed adopting the terms used in the CDE Technical Guidance. This means that some terms may be different for certain concepts. For instance, "derivatives clearing organization" is the Commission's term for registered entities that clear swap transactions, but the CDE Technical Guidance uses the term "central counterparty."

To help clarify, DMO has proposed footnotes in the technical standards to explain these differences as well as provide examples and jurisdiction-specific requirements. However, the Commission has not included these footnotes in appendix 1. In addition, the definitions from CDE Technical Guidance data elements included in appendix 1 sometimes include references to allowable values in the CDE Technical Guidance, which may not be included in appendix 1, but can be found in the technical standards.

[233] *See id.* The FSB recommends that jurisdictions undertake necessary actions to implement the UPI Technical Guidance and that these take effect no later than the third quarter of 2022.

Finally, the CDE Technical Guidance did not harmonize many fields that would be particularly relevant for commodity and equity swap asset classes (e.g., unit of measurement for commodity swaps). CPMI and IOSCO, in the CDE Governance Arrangements, address both implementation and maintenance of CDE, together with their oversight. One area of the CDE Governance Arrangements includes updating the CDE Technical Guidance, including the harmonization of certain data elements and allowable values that were not included in the CDE Technical Guidance (e.g., data elements related to events and allowable values for the following data elements: Price unit of measure, Quantity unit of measure, and Custom basket constituents' unit of measure).

The Commission invites comment on any of the swap data elements proposed in appendix 1. The Commission briefly discusses the swap data elements below by category to simplify the topics for market participants to comment on. To the extent any comment involves data elements adopted according to the CDE Technical Guidance, however, the Commission anticipates raising issues according to the CDE Governance Arrangements procedures to help ensure that authorities follow the established processes for doing so. In addition, the Commission anticipates updating its rules to adopt any new or updated CDE Technical Guidance, as necessary.

1. Category: Clearing

The Commission is proposing to require reporting counterparties report twelve clearing data elements.[234] Nearly all of this information is currently being reported to

[234] In appendix 1, these data elements are: Cleared (1); Central counterparty (2); Clearing account origin (3); Clearing member (4); Clearing swap USIs (5); Clearing swap UTIs (6); Original swap USI (7); Original swap UTI (8); Original swap SDR identifier (9); Clearing receipt timestamp (10); Clearing exemptions - Counterparty 1 (11); and Clearing exemptions – Counterparty 2 (12).

SDRs. Three of these data elements are consistent with the CDE Technical Guidance. Four of these data elements would transition clearing swap and original swap USIs to UTIs. All of these data elements help the Commission monitor the cleared swaps market.

The Commission requests specific comment on the following related to the clearing data elements:

(15) The Commission is considering including a data element called "Mandatory clearing indicator" to indicate whether a swap is subject to the clearing requirement in part 50 of the Commission's regulations. The Commission requests specific comment on whether commenters believe this data element could be reported to SDRs.

2. Category: Counterparty

The Commission is proposing to require reporting counterparties report ten counterparty data elements.[235] Nearly all of this information is currently being reported to SDRs. Six of these data elements are consistent with the CDE Technical Guidance.

The Commission requests specific comment on the following related to the counterparty data elements:

(16) The CFTC needs the ability to link swap counterparties to their parent entities to aggregate swap data to be able to monitor risk. Given the complicated nature of how some entities are structured within a larger legal entity, the CFTC also needs information related to the ultimate parent entity. The Commission believes this information is necessary to collect for both swap counterparties. The Commission requests specific

[235] In appendix 1, these data elements are: Counterparty 1 (reporting counterparty) (13); Counterparty 2 (14); Counterparty 2 identifier source (15); Counterparty 1 financial entity indicator (16); Counterparty 2 financial entity indicator (17); Buyer identifier (18); Seller identifier (19); Payer identifier (20); Receiver identifier (21); and Submitter identifier (22).

comment on whether commenters believe this data could be reported as part of swap data reporting.[236] Given the static nature of these relationships, the Commission requests comment on whether reporting counterparties should report parent and ultimate parent information for each swap trade or in a regularly updated (e.g., monthly or quarterly) reference file maintained by SDRs.

3. Category: Events

The Commission is proposing to require reporting counterparties report four event data elements.[237] Nearly all of this information is currently being reported to SDRs. Event data elements were not included in the CDE Technical Guidance. This information is, however, critical for the Commission to be able to properly utilize swap data. Without it, the Commission would be unable to discern why each swap event is reported following the initial required swap creation data report.

The Commission requests specific comment on the following related to the event data elements:

(17) Are there ways in which the Commission could harmonize the event model with ESMA's? Would harmonization in this area reduce burdens for SDRs and reporting counterparties? The Commission proposes to require reporting transactions for simultaneous clearing and allocation at a DCO using a new event type of "Clearing and Allocation" in the events model. Is there a more efficient method to report related transactions when a DCO simultaneously clears and allocates transactions?

[236] The SEC has rules providing for SBSDR participants to provide SBSDRs with information sufficient to identify their ultimate parent(s) and any affiliate(s) that are also participants of the SBSDR using ultimate parent identifiers and counterparty identifiers. *See* 17 CFR 242.906(b).
[237] In appendix 1, these data elements are: Action type (24); Event type (25); Event identifier (26); and Event timestamp (27).

4. Category: Notional Amounts and Quantities

The Commission is proposing to require reporting counterparties report twelve notional data elements.[238] Nearly all of this information is currently being reported to SDRs. Nine of these data elements are consistent with the CDE Technical Guidance. Exposure information, in conjunction with valuation information, is critical for, and currently used extensively by, the Commission to monitor activity and risk in the swaps market.

The Commission requests specific comment on the following related to the notional data elements:

(18) The Commission is considering including the notional schedule data elements from the CDE Technical Guidance.[239] The Commission has learned through experience with swap data that notional data elements are applicable to a substantial number of swaps within certain product areas such as energy swaps and amortizing interest rate swaps. Does such concentration exist and, if so, what gaps would exist in the Commission's ability to evaluate and monitor market activity in these areas if notional schedule data elements are inadequately or improperly represented? The Commission requests comment on whether SDRs and reporting counterparties would be able to both accept and report this information.

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[238] In appendix 1, these data elements are: Notional amount (28); Notional currency (29); Delta (30); Call amount (31); Call currency (32); Put amount (33); Put currency (34); Notional quantity (35); Quantity frequency (36); Quantity frequency multiplier (37); Quantity unit of measure (38); and Total notional quantity (39).

[239] The notional schedule data elements in the CDE Technical Guidance are: 2.78.1 (Effective date of the notional amount); 2.78.2 (End date of the notional amount); 2.78.3 (Notional amount in effect on the associated effective date); 2.80.1 (Effective date of the notional quantity); 2.80.2 (End date of the notional quantity); and 2.80.3 (Notional quantity in effect on the associated effective date).

(19) The Commission requests specific comment on how SDRs would implement these CDE data elements for reporting counterparties to report notional schedule-related data. Should the Commission mandate a specific reporting structure for reporting notional schedule-related data elements to the SDRs? If so, what standard would you propose and what would be the benefits? If not, why not?

(20) The Commission is considering requiring reporting counterparties to provide a USD equivalent notional amount that represents the entire overall transaction for tracking notional volume (in addition to leg-by-leg notional data reported pursuant to other proposed data elements). The Commission believes that this additional data element could allow staff to more effectively assess compliance with CFTC regulations, including but not limited to SD registration and uncleared margin requirements, and help staff more efficiently monitor swap market risk. The Commission specifically requests comment on the frequency with which reporting counterparties should report USD equivalent notional.

5. Category: Packages

The Commission is proposing to require reporting counterparties to report four package transaction data elements.[240] The Commission believes some of this information is currently being reported to SDRs. Each of these data elements are consistent with the CDE Technical Guidance. The Commission anticipates using this information to better understand risk in the swaps market, as the Commission understands that many swaps are executed as part of packages.

[240] In appendix 1, these data elements are: Package identifier (40); Package transaction price (41); Package transaction price currency (42); and Package transaction price notation (43).

The Commission requests specific comment on the following related to the package data elements in appendix 1:

(21) The Commission is considering including the additional package transaction data elements from the CDE Technical Guidance.[241] The Commission requests comment on whether SDRs and reporting counterparties would be able to both accept and report this information. The Commission requests specific comment on how SDRs would implement these CDE data elements for reporting counterparties to report the data.

6. Category: Payments

The Commission is proposing to require reporting counterparties report twelve data elements related to payments.[242] Nine of these data elements are consistent with the CDE Technical Guidance. Nearly all of this information is currently being reported to SDRs.

7. Category: Prices

The Commission is proposing to require reporting counterparties report eighteen data elements related to swap prices.[243] Nearly all of this information is currently being reported to SDRs. Seventeen of these data elements are consistent with the CDE

[241] In the CDE Technical Guidance, the additional package data elements are: Package transaction spread (2.93); Package transaction spread currency (2.94); and Package transaction spread notation (2.95).
[242] In appendix 1, these data elements are: Day count convention (44); Fixing date (45); Floating rate reset frequency period (46); Floating rate reset frequency period multiplier (47); Other payment type (48); Other payment amount (49); Other payment currency (50); Other payment date (51); Other payment payer (52); Other payment receiver (53); Payment frequency period (54); and Payment frequency period multiplier (55).
[243] In appendix 1, these data elements are: Exchange rate (56); Exchange rate basis (57); Fixed rate (58); Post-priced swap indicator (59); Price (60); Price currency (61); Price notation (62); Price unit of measure (63); Spread (64); Spread currency (65); Spread notation (66); Strike price (67); Strike price currency/currency pair (68); Strike price notation (69); Option premium amount (70); Option premium currency (71); Option premium payment date (72); and First exercise date (73).

Technical Guidance. This information is critical for, and currently used by, the Commission in understanding pricing in the swaps market.

The Commission requests specific comment on the following related to the price data elements:

(22) The Commission is considering including the price schedule data elements from the CDE Technical Guidance.[244] The Commission has learned through experience with swap data that price data elements are applicable to a substantial number of swaps within certain product areas such as energy swaps and amortizing interest rate swaps. Does such concentration exist and, if so, what gaps would exist in the Commission's ability to evaluate and monitor market activity in these areas if schedule data elements are inadequately or improperly represented? The Commission requests comment on whether SDRs and reporting counterparties would be able to both accept and report this information. The Commission requests specific comment on how SDRs would implement these CDE data elements for reporting counterparties to report the data. Should the Commission mandate a specific reporting structure for reporting schedule-related data elements to the SDRs? If so, what standard would you propose and what would be the benefits? If not, why not?

8. Category: Product

[244] The price schedule data elements in the CDE Technical Guidance are: 2.54.1 (Unadjusted effective date of the price); 2.54.2 (Unadjusted end date of the price); 2.54.3 (Price in effect between the unadjusted effective date and unadjusted end date inclusive); 2.63.1 (Unadjusted effective date of the strike price); 2.63.2 (Unadjusted end date of the strike price); and 2.63.3 (Strike price in effect between the unadjusted effective date and unadjusted end date inclusive).

The Commission is proposing to require reporting counterparties report five product-related data elements.[245] The Commission believes some of this information is currently being reported to SDRs. Two of these data elements are in the CDE Technical Guidance. The Commission has preliminarily determined these data elements are critical for monitoring risk in the swaps market, even though the Commission expects any additional product data elements to remain unstandardized until the UPI is introduced.

The Commission requests specific comment on the following related to the other product data elements:

(23) The CFTC intends to collect sufficient granular detail on the economic terms of swaps to conduct independent valuation and stress testing analysis. The CFTC will rely on UPI for many product related data elements, but forthcoming UPI standards may not describe some swaps with enough detail to allow the CFTC to independently value the transaction. Are there additional product data elements the CFTC should collect outside of UPI to ensure the CFTC may independently value swaps with sufficient accuracy?

9. Category: Settlement

The Commission is proposing to require reporting counterparties report two settlement data elements.[246] The Commission believes this information is currently being reported to SDRs. These data elements are consistent with the CDE Technical Guidance.

The Commission requests specific comment on the following related to the settlement data elements:

[245] In appendix 1, these data elements are: CDS index attachment point (74); CDS index detachment point (75); Index factor (76); Embedded option type (77); and Unique product identifier (78).
[246] In appendix 1, these data elements are: Final contractual settlement date (79) and Settlement currency (80).

(24) Should the Commission include the additional swap data element related to settlement included in the CDE Technical Guidance?[247] Please comment on alternative methods to report offshore currencies that are not included in ISO 4217 currency code list.

10. Category: Transaction-Related

The Commission is proposing to require reporting counterparties report fifteen data elements that provide information about each swap transaction.[248] The Commission believes this information is currently being reported to SDRs. Six of these data elements are consistent with the CDE Technical Guidance.

The Commission requests specific comment on the following transaction-related data elements:

(25) Should the Commission include the additional swap data elements related to transaction included in the CDE Technical Guidance? Are there additional transaction-related data elements the Commission should include beyond the CDE Technical Guidance?

(26) Should the Commission expand the Non-standardized term indicator (82) data element to apply to any non-standard term, regardless of impact on price? Should the Commission instead create a part 45-specific data element for non-standard terms that

[247] The settlement data element in the CDE Technical Guidance is 2.21 (Settlement location).

[248] In appendix 1, these data elements are: Allocation indicator (81); Non-standardized term indicator (82); Block trade election indicator (83); Effective date (84); Expiration date (85); Execution timestamp (86); Reporting timestamp (87); Platform identifier (88); Prime brokerage transaction identifier (89); Prime brokerage transaction indicator (90); Prior USI (for one-to-one and one-to-many relations between transactions) (91); Prior UTI (for one-to-one and one-to-many relations between transactions) (92); Unique swap identifier (USI) (93); Unique transaction identifier (UTI) (94); and Jurisdiction indicator (95).

would not be publicly disseminated, and still have Non-standardized term indicator (82) for real-time public reporting?

(27) The Commission is considering including a data element called "Trade execution requirement indicator" to indicate whether a swap is subject to the Commission's trade execution mandate. The Commission requests specific comment on whether commenters believe this data element could be reported.

11. Category: Transfer

The Commission is proposing to require reporting counterparties to report one data element related to changing SDRs.[249] This data element would be necessary if the Commission adopts proposed § 45.10(d) permitting reporting counterparties to change the SDR to which they report data for a given swap. Without this data element, the Commission is concerned there would be swaps in the SDR that would appear open but not updated because the reporting counterparty reports to a different SDR.

12. Category: Valuation

The Commission is proposing to require reporting counterparties report six valuation data elements.[250] Nearly all of this information is currently being reported to SDRs. Four data elements are consistent with the CDE Technical Guidance. Valuation information is critical for, and currently used by, the Commission to monitor risk in the swaps market.

[249] In appendix 1, this data element is: New SDR identifier (96).
[250] In appendix 1, these data elements are: Last floating reference value (97); Last floating reference reset date (98); Valuation amount (99); Valuation currency (100); Valuation method (101); and Valuation timestamp (102).

The Commission requests specific comment on the following related to the valuation data elements:

(28) The Commission is considering including the following valuation data elements that were not included in the CDE Technical Guidance: discount index; discount index tenor period; discount index tenor period multiplier; next floating reference reset date; underlying spot or reference rate. Would reporting counterparties be able to report this information to SDRs each day? Could the Commission obtain this information from different source? Could the Commission require this information less frequently? Is reporting reset dates more efficient than reporting the full calendar generation logic (including business day calendars and reset lookback terms) of swaps?

(29) The CFTC intends to collect information to independently validate individual swap values (also known as "mark-to-market" or "fair value"), portfolio aggregated values, and the value of collateral posted to meet initial and variation margin requirements. One method is to require parties to report the aggregate valuations of all financial instruments (including swaps and other cross margined products) associated with a Collateral Portfolio Code. What other validation and cross referencing information should the Commission collect in addition to the proposed data elements? Is there a more efficient way to collect data on the value of individual swaps, portfolios, and the margin posted and collected against these positions?

13. Category: Collateral and Margins

The Commission is proposing to require reporting counterparties report fourteen collateral and margins data elements.[251] This information is not currently being reported to SDRs. Twelve of these data elements are consistent with the CDE Technical Guidance. One data element, Affiliated counterparty for margin and capital indicator (103), will help the Commission monitor compliance with the uncleared margin requirements. The two remaining CFTC-specific data elements are indicators and codes that will help the Commission understand how the margin and collateral data is being reported by reporting counterparties. Margin and collateral information is critical for the Commission to monitor risk in the swaps market. When other jurisdictions implement the CDE Technical Guidance, sharing this information with other regulators will permit regulators to create a global picture of swaps risk.

The Commission requests specific comment on the following related to the collateral and margin data elements:

(30) The Commission is interested in determining the quality of collateral posted. Comparing pre- and post-haircut values is one way to gain this information. Should the Commission consider other ways, such as collecting specific information on the contents of the collateral portfolio?

[251] In appendix 1, these data elements are: Affiliated counterparty for margin and capital indicator (103); Collateralisation category (104); Collateral portfolio code (105); Portfolio containing non-reportable component indicator (106); Initial margin posted by the reporting counterparty (post-haircut) (107); Initial margin posted by the reporting counterparty (pre-haircut) (108); Currency of initial margin posted (109); Initial margin collected by the reporting counterparty (post-haircut) (110); Initial margin collected by the reporting counterparty (pre-haircut) (111); Currency of initial margin collected (112); Variation margin posted by the reporting counterparty (pre-haircut) (113); Currency of variation margin posted (114); Variation margin collected by the reporting counterparty (pre-haircut) (115); and Currency of variation margin collected (116).

(31) The proposed swap data elements allow for single collateral portfolio ID for both initial margin and variation margin. Should the Commission consider other approaches to collecting this information to account for when variation margin cash flows are separated between swaps that may not all be subject to initial margin?

(32) The Commission is proposing to collect new margin and collateral information from reporting counterparties that are SDs, MSPs, and DCOs. Some of this information could be reported at the portfolio level, rather than the transaction level. Do reporting counterparties or SDRs have feedback for the Commission on how portfolio level, as opposed to transaction level, reporting would work in practice? Are there challenges the Commission should consider? What are alternatives or solutions for collecting this information?

Request for Comment

The Commission additionally requests comment on all aspects of the proposed swap data elements in appendix 1. The Commission requests specific comment on the following:

(33) Are there any data elements not included in appendix 1 that commenters feel should be prioritized for standardization? Please explain why and provide relevant information that would assist with standardizing any suggested data elements.

(34) The Commission is not proposing data elements by leg for multi-leg products where some data elements are reported more than once per leg. The Commission thinks that it is best to leave the implementation details to market conventions and SDR requirements. Should the Commission consider another approach for leg-level reporting? If so, please provide details on the suggested approach.

(35) The Commission has not proposed any specific implementation requirement to report multiple values for the same data element when applicable. The Commission thinks that it is best to leave the implementation details to market conventions and SDR requirements. Should the Commission consider a set approach to report multiple values? If so, please provide details on the suggested approach.

(36) The Commission is considering requiring reporting counterparties to indicate whether a specific swap: (1) was entered into for dealing purposes (as opposed to hedging, investing, or proprietary trading); and/or (2) need not be considered in determining whether a person is a swap dealer or need not be counted towards a person's de minimis threshold as described in paragraph (4) of the "swap dealer" definition in § 1.3 pursuant to one of the exclusions or exceptions in the swap dealer definition (e.g., the insured depository institution provision in paragraph (4)(C) or exclusion in paragraph (5) of the "swap dealer" definition in § 1.3, the inter-affiliate exclusion in paragraph (6)(i) of the "swap dealer" definition, etc.). In the past, the Commission staff has identified the lack of these fields as limiting constraints on the usefulness of SDR data to identify which swaps should be counted towards a person's de minimis threshold, and the ability to precisely assess the current de minimis threshold or the impact of potential changes to current exclusions.[252] Given the Commission's ongoing surveillance for compliance with

[252] *See* De Minimis Exception to the Swap Dealer Definition, 83 FR 27444, 27449 (proposed June 12, 2018); Swap Dealer De Minimis Exception Final Staff Report at 19 (Aug. 15, 2016); (Nov. 18, 2015), *available at* https://www.cftc.gov/sites/default/files/idc/groups/public/@swaps/documents/file/dfreport_sddeminis081516.pdf ; Swap Dealer De Minimis Exception Preliminary Report at 15 (Nov. 18, 2015), *available at* https://www.cftc.gov/sites/default/files/idc/groups/public/@swaps/documents/file/dfreport_sddeminis_1115.pdf.

the swap dealer registration requirements, the Commission requests comment on this potential field.

VI. Compliance Date

Market participants raised questions in the Roadmap comment letters about the compliance schedules for the Commission's proposed reporting rules amendments. Commenters raised various concerns about the compliance schedule. For instance, the SDRs requested that system updates that would result from any rule changes happen all at once.[253] Others suggested phasing in any SDR obligations before requiring reporting counterparty changes.[254] Multiple market participants requested that the rulemakings take place simultaneously to inform one another.[255] Commenters also cautioned against artificial deadlines,[256] requested avoiding compliance dates at the end of the calendar year during holidays and code freezes,[257] and requested that the Commission consider deadlines for changes in foreign jurisdictions when setting compliance dates.[258]

The Commission understands that market participants will need a sufficient implementation period to accommodate any of the changes proposed in the three NPRMs that are adopted by the Commission. The Commission expects to finalize all rules at the same time, even though the proposals were approved separately. The Commission also expects that the compliance date for the Roadmap rules that the Commission adopts other

[253] Joint SDR Letter at 12.
[254] Letter from Chatham at 5-6; Joint NRECA-APPA Letter at 3.
[255] Joint SDR Letter at 1; Letter from GFXD of the GFMA at 5; Joint ISDA-SIFMA Letter at 2-3; Letter from LCH at 2.
[256] Letter from Chatham at 5.
[257] Joint SDR Letter at 12.
[258] *Id.*

than the rules on UTIs in § 45.5 would be one year from the date the final rulemakings are published in the *Federal Register*.

The Commission expects that the compliance date for the rules on UTIs in § 45.5 would be December 31, 2020, in accordance with the UTI implementation deadline recommended by the FSB.[259] As a participant in the international swaps data harmonization initiatives described in section 1.C above, the Commission fully supports the adoption of UTIs and its role in facilitating the aggregation of swaps data reported to SDRs. While the Commission recognizes that the expected compliance date of December 31, 2020 for § 45.5 will be sooner than the other changes proposed in the three NPRMs, the Commission believes that this earlier compliance date will not pose any substantial difficulties due to the limited nature of the proposed changes in § 45.5.[260]

The Commission requests comment on all aspects of the proposed compliance data. The Commission requests specific comment on the following:

(37) Part 20 of the Commission's regulations ("Large Trader Reporting for Physical Commodity Swaps") contains a "sunset provision" in § 20.9 that would take effect upon "a Commission finding that, through the issuance of an order, operating [SDRs] are processing positional data and that such processing will enable the Commission to effectively surveil trading in paired swaps and swaptions and paired swap and swaption markets."[261] The Commission can now analyze swap data from the SDRs for various

[259] *See* Financial Stability Board, Governance Arrangements for the Unique Transaction Identifier (UTI), Conclusions and Implementation Plan (Dec. 2017), Section 5.2.
[260] The Commission recognizes commenters' concerns about end-of-year code freezes. The Commission encourages market participants to make the necessary code changes to comply with § 45.5 earlier than the end-of-year deadline.
[261] 17 CFR 20.9.

purposes, such as re-evaluating the current swap categories and determine appropriate minimum block and cap sizes in part 43. In addition, the same physical commodity swaps reported to the Commission directly through part 20 reporting are being reported to SDRs under part 45. In conjunction with the Commission's proposals to update its swap reporting regulations, should the Commission review part 20 to determine whether it would be appropriate to sunset part 20 reporting according to the § 20.9?

VII. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA") requires federal agencies, in promulgating rules, to consider the impact of those rules on small entities.[262] The Commission has previously established certain definitions of "small entities" to be used by the Commission in evaluating the impact of its rules on small entities in accordance with the RFA.[263] The amendments to parts 45, 46, and 49 proposed herein would have a direct effect on the operations of DCMs, DCOs, MSPs, reporting counterparties, SDs, SDRs, and SEFs. The Commission has previously certified that DCMs,[264] DCOs,[265] MSPs,[266] SDs,[267] SDRs[268], and SEFs[269] are not small entities for purpose of the RFA.

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[262] *See* 5 U.S.C. 601 et seq.
[263] *See* Policy Statement and Establishment of "Small Entities" for purposes of the Regulatory Flexibility Act, 47 FR 18618 (Apr. 30, 1982).
[264] *See id.*
[265] *See* Derivatives Clearing Organization General Provisions and Core Principles, 76 FR 69334, 69428 (Nov. 8, 2011).
[266] *See* Swap Dealer and Major Swap Participant Recordkeeping, Reporting, and Duties Rules, 77 FR 20128, 20194 (Apr. 3, 2012) (basing determination in part on minimum capital requirements).
[267] *See* Swap Trading Relationship Documentation Requirements for Swap Dealers and Major Swap Participants76 FR 6715 (Feb. 8, 2011).
[268] *See* Swap Data Repositories; Proposed Rule, 75 FR 80898, 80926 (Dec. 23, 2010) (basing determination in part on the central role of SDRs in swaps reporting regime, and on the financial resource obligations imposed on SDRs).

Various proposed amendments to parts 45, 46, and 49 would have a direct impact on all reporting counterparties. These reporting counterparties may include SDs, MSPs, DCOs, and non-SD/MSP/DCO counterparties. Regarding whether non-SD/MSP/DCO reporting counterparties are small entities for RFA purposes, the Commission notes that CEA section 2(e) prohibits a person from entering into a swap unless the person is an eligible contract participant ("ECP"), except for swaps executed on or pursuant to the rules of a DCM.[270] The Commission has previously certified that ECPs are not small entities for purposes of the RFA.[271]

The Commission has analyzed swap data reported to each SDR[272] across all five asset classes to determine the number and identities of non-SD/MSP/DCOs that are reporting counterparties to swaps under the Commission's jurisdiction. A recent Commission staff review of swap data, including swaps executed on or pursuant to the rules of a DCM, identified nearly 1,600 non-SD/MSP/DCO reporting counterparties. Based on its review of publicly available data, the Commission believes that the overwhelming majority of these non-SD/MSP/DCO reporting counterparties are either ECPs or do not meet the definition of "small entity" established in the RFA. Accordingly,

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[269] Core Principles and Other Requirements for Swap Execution Facilities, 78 FR 33476, 33548 (June 4, 2013).
[270] *See* 7 U.S.C. 2(e).
[271] *See* Opting Out of Segregation, 66 FR 20740, 20743 (Apr. 25, 2001). The Commission also notes that this determination was based on the definition of ECP as provided in the Commodity Futures Modernization Act of 2000. The Dodd-Frank Act amended the definition of ECP as to the threshold for individuals to qualify as ECPs, changing "an individual who has total assets in an amount in excess of" to "an individual who has amounts invested on a discretionary basis, the aggregate of which is in excess of…." Therefore, the threshold for ECP status is currently higher than was in place when the Commission certified that ECPs are not small entities for RFA purposes, meaning that there are likely fewer entities that could qualify as ECPs than when the Commission first made the determination.
[272] The sample data sets varied across SDRs and asset classes based on relative trade volumes. The sample represents data available to the Commission for swaps executed over a period of one month. These sample data sets captured 2,551,907 FX swaps, 98,145 credit swaps, 357,851 commodities swaps, 603,864 equities swaps, and 276,052 interest rate swaps.

the Commission does not believe the proposed rule would affect a substantial number of small entities.

Based on the above analysis, the Commission does not believe that this proposal will have a significant economic impact on a substantial number of small entities. Therefore, the Chairman, on behalf of the Commission, pursuant to 5 U.S.C. 605(b), hereby certifies that the proposed rules will not have a significant economic impact on a substantial number of small entities.

B. Paperwork Reduction Act

The Paperwork Reduction Act ("PRA")[273] 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. This proposed rulemaking would result in the collection of information within the meaning of the PRA, as discussed below. The proposed rulemaking contains collections of information for which the Commission has previously received control numbers from the Office of Management and Budget ("OMB"): OMB Control Numbers 3038-0096 (relating to swap data recordkeeping and reporting); 3038-0089 (relating to pre-enactment swaps and transition swaps); and 3038-0086 (relating to SDRs).

The Commission is proposing to amend the above information collections to accommodate newly proposed and revised information collection requirements for swap market participants and SDRs that require approval from OMB under the PRA. The amendments described herein are expected to modify the existing annual burden for

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

complying with certain requirements of parts 45 and 46. The Commission proposed amendments to the annual burden for complying with certain requirements of part 49 in the 2019 Part 49 NPRM. As discussed below, the Commission believes the estimates for the regulations in part 49 proposed to be amended in this NPRM accurately estimate the burdens and do not require updates based on what is proposed in this NPRM.

The Commission therefore is submitting this proposal to the OMB for its review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. Responses to this collection of information would be mandatory. The Commission will protect proprietary information according to the FOIA and 17 CFR 145, "Commission Records and Information." In addition, CEA section 8(a)(1) strictly prohibits the Commission, unless specifically authorized by the CEA, from making public "data and information that would separately disclose the business transactions or market positions of any person and trade secrets or names of customers."[274] The Commission is also required to protect certain information contained in a government system of records according to the Privacy Act of 1974.[275]

1. Revisions to Collection 3038-0096 (Swap Data Recordkeeping and Reporting Requirements)

The Commission proposes to revise collection 3038-0096 to account for changes proposed to the requirements in part 45 for reporting swap data to SDRs. Most of the estimated hours burdens and costs provided below would be in addition to or subtracted from the existing hours burdens and costs in collection 3038-0096, with the exception that the proposed § 45.10(d) notification requirements for changing SDRs would be a

[274] 7 U.S.C. 12(a)(1).
[275] 5 U.S.C. 552a.

new burden within collection 3038-0096. As discussed in this section as well, the Commission is also proposing to update and correct some estimates in collection 3038-0096.

a. Swap Creation Data Reporting Amendments

The Commission is proposing to amend § 45.3, which requires SEFs, DCMs, and reporting counterparties to report swap data to SDRs when entering into new swaps. Some of these amendments will result in changes to the burden calculations. As an initial matter, the Commission is proposing to correct the "total annual burden hour cost of all responses" in the supporting statement from $7,248 (which was the total average hour burden cost per respondent) to $12,553,536.

The Commission estimates that SDRs, SEFs, DCMs, and reporting counterparties would incur a one-time initial burden of 10 hours per entity to modify their systems to adopt the changes described below, for a total estimated hours burden of 17,320 hours. This burden should be mitigated by the fact that these entities currently have systems in place to provide this information to the Commission. The Commission additionally estimates 5 hours per entity annually to perform any needed maintenance or adjustments to reporting systems.

Currently, § 45.3 requires SEFs, DCMs, and reporting counterparties to report confirmation data reports and PET data reports when entering into new swaps. The Commission is proposing to remove the requirement for SEFs, DCMs, and reporting counterparties to report confirmation data reports. These entities would report a single swap creation data report instead of separate PET data reports and confirmation data reports. As described above in section II.C.a, the Commission anticipates removing this

requirement will reduce the number of swap creation data reports being sent to SDRs. Commission staff estimates that across the range of entities, the change could result in a 30% reduction in the number of swap creation data reports being sent to SDRs.

This change would not decrease the hourly burden, but would decrease the number of reports from 10,000 reports per 1,732 respondents to 7,000 reports per respondent, or a reduction of 5,196,000 reports in the aggregate.

The Commission is also proposing to remove the requirement for SEFs, DCMs, and reporting counterparties to report TR identifiers and swap identifiers for international swaps. This proposed amendment would remove the requirement to report two pieces of information within a required swap creation data report, without impacting the number of reports themselves. The requirement to report swap identifiers is duplicative, and would not change the burden estimate, as SEFs, DCMs, and reporting counterparties are required to report swap identifiers for all swap pursuant to § 45.5. However, the removal of the requirement to report TR identifiers would slightly reduce the amount of time required to make each report, as SEFs, DCMs, and reporting counterparties would not need to report this information anymore. Therefore, the Commission estimates the removal of this requirement would lower the burden hours by .01 hour per report.

However, at the same time, the Commission is proposing to require the reporting of UTIs instead of USIs, which are currently being reported in every required swap creation data report. As described below in the section discussing amendments to § 45.5, as this information is reported in required swap creation data reports, the Commission estimates the new rules requiring SEFs, DCMs, SDRs, and reporting counterparties to change from reporting USIs to UTIs would impact the burden calculations for § 45.3 by

increasing the burden hours by .01 hour per report. As a result, the Commission estimates there will be no change to the burden hours for § 45.3 required swap creation data reporting.

The new aggregate proposed estimate for § 45.3, as amended by the proposal is as follows:

Estimated number of respondents: 1,732

Estimated number of reports per respondent: 7,000

Average number of hours per report: .01

Estimated gross annual reporting burden: 121,240

b. Swap Continuation Data Reporting Amendments

The Commission is proposing to amend § 45.4, which requires reporting counterparties to report data to SDRs when swap terms change and daily swap valuation data. As an initial matter, the Commission is proposing to correct the estimated number of respondents in the supporting statement from 1,732 to 1,705, to reflect the fact that SEFs and DCMs do not report required swap continuation data under § 45.4.

The Commission estimates that SDRs and reporting counterparties would incur a one-time initial burden of 10 hours per entity to modify their systems to adopt the changes described below, for a total estimated hours burden of 17,050 hours. This burden should be mitigated by the fact that these entities currently have systems in place to provide this information to the Commission. The Commission additionally estimates 5 hours per entity annually to perform any needed maintenance or adjustments to reporting systems.

Currently, § 45.4 permits reporting counterparties to report changes to swap terms when they occur (life cycle reporting), or to provide a daily report of all of the swap terms (state data reporting). The Commission is proposing to remove the option for state data reporting. Reporting counterparties would report data to SDRs only when swap terms change. As discussed above in section II.D, the Commission believes this would significantly reduce the number of required swap continuation data reports being sent to SDRs. Commission staff estimates that across asset class for each respondent, the number of reports would decrease by approximately 50%, reducing the number of reports from 207,543 reports per respondent to 103,772 reports per respondent, and a decrease of 176,930,408 reports in the aggregate.

Currently, § 45.4 requires SD/MSP/DCO reporting counterparties to report valuation data for swaps daily, and non-SD/MSP/DCO reporting counterparties to report valuation data quarterly. The Commission is proposing to remove the requirement for non-SD/MSP/DCO reporting counterparties to report quarterly valuation data. For the 1,585 non-SD/MSP/DCO reporting counterparties, the Commission believes this change would further reduce the number of required swap continuation data reports being sent by 4 quarterly reports per 1,585 non-SD/MSP/DCO reporting counterparties, from 107,772 reports per respondent to 97,431 reports per respondent, and a decrease of 6,340 reports in the aggregate.

Separately, the Commission is proposing to expand the daily valuation data reporting requirement for SD/MSP/DCO reporting counterparties to report margin and collateral data in addition to valuation data. The frequency of the report would not change, but the Commission expects SD/MSP/DCO reporting counterparties would

require more time to prepare each report. However, since all of this information is reported electronically, the Commission expects the increase per report to be small. The burden associated with these changes is anticipated to result in an increase from .003 to .004 hours per report, or 166,119 hours in the aggregate.

The estimated aggregate burden for swap continuation data, as amended by the proposal is as follows:

Estimated number of respondents: 1,705

Estimated number of reports per respondent: 97,431

Average number of hours per report: .004

Estimated gross annual reporting burden: 664,479

c. Unique Swap Identifiers

The Commission is proposing to amend § 45.5, which requires SEFs, DCMs, reporting counterparties, and SDRs to generate and transmit USIs. As an initial matter, the Commission is proposing to correct the estimated number of respondents and the estimated number of reports per each respondent. Currently, SDRs, SDs, MSPs, SEFs, and DCMs are required to generate USIs, but the Commission inadvertently had included the 1,585 non-SD/MSP/DCO reporting counterparties. The Commission is proposing to therefore update the number or respondents to 147 SDs, MSPs, SEFs, DCMs, DCOs, and SDRs. However, these entities generate USIs on behalf of non-SD/MSP/DCO reporting counterparties for all swaps, so the estimated number of reports per each respondents would increase to 115,646 reports per 147 respondents to account for the 17,000,000 new swaps reported each year with USIs.

The Commission estimates that SDRs and reporting counterparties required to generate UTIs would incur a one-time initial burden of 1 hour per entity to modify their systems to adopt the changes described below, for a total estimated hours burden of 940 hours. This burden should be mitigated by the fact that these entities currently have systems in place to provide this information to the Commission, and UTIs are, in most cases, less burdensome to generate than USIs. The Commission additionally estimates 1 hour per entity annually to perform any needed maintenance or adjustments to reporting systems.

Currently, § 45.5 requires SDRs to generate and transmit USIs for off-facility swaps with a non-SD/MSP reporting counterparty. The Commission is proposing to amend § 45.5 to require non-SD/MSP/DCO reporting counterparties that are financial entities to generate and transmit UTIs for off-facility swaps. The Commission estimates that approximately half of non-SD/MSP/DCO reporting counterparties are financial entities. Therefore, the Commission estimates that the number of respondents would increase from 147 SDs, MSPs, SEFs, DCMs, DCOs, and SDRs to 940 with the addition of financial entities.

At the same time, however, this would lower the number of UTIs generated per respondent to account for the increase in the number of respondents generating UTIs. The Commission estimates the estimated number of reports per respondent would decrease from 115,646 reports from 147 respondents to 18,085 reports from 940 respondents.

The estimated aggregate burden for unique transaction identifiers, as amended by the proposal is as follows:

Estimated number of respondents: 940

Estimated number of reports per respondent: 18,085

Average number of hours per report: .01

Estimated gross annual reporting burden: 169,999

d. Legal Entity Identifier Amendments

The Commission is proposing to amend § 45.6, which requires reporting entities to have LEIs. As an initial matter, the Commission is proposing to revise the burden estimate for § 45.6. LEIs are reported in required swap creation data and required swap continuation data reports, which are separately accounted for in the estimates for §§ 45.3 and 45.4. The current estimate for § 45.6 double-counts the estimates for §§ 45.3 and 45.4 by calculating the burden per data report. Instead, the burden for § 45.6 should be based on the requirement for each counterparty to obtain an LEI. The Commission is proposing to revise the estimate to state that there are 1,732 entities required to have one LEI per respondent, and revise the burden hours based on this change.[276]

Currently, § 45.6 requires all entities to have LEIs. The Commission is proposing to amend § 45.6 to require SDs, MSPs, SEFs, DCMs, DCOs, and SDRs to renew their LEIs annually. The proposed change would increase the hour burden for these entities, but would not affect the burden for the majority of entities required to have LEIs. Nonetheless, the Commission expects the burden associated with these changes is anticipated to result in an increase from .01 to .02 hours per report, and 17 hours in the aggregate.

[276] The Commission is similarly revising the estimate for § 45.7, which requires reporting counterparties to use UPIs. Until the Commission designates a UPI, reporting counterparties use the product fields unique to each SDR. As a result, until the Commission designates a UPI, the burden estimates for the product fields are accounted for in §§ 45.3 and 45.4. To avoid double-counting until there is a UPI, the Commission is proposing to remove the burden estimate for § 45.7 until the Commission designates a UPI.

The estimated aggregate burden for LEIs, as amended by the proposal is as follows:

Estimated number of respondents: 1,732

Estimated number of reports per respondent: 1

Average number of hours per report: .02

Estimated gross annual reporting burden: 35

e. New Notifications for Changing SDRs

The Commission is proposing amendments to § 49.10(d) to require reporting counterparties to notify SDRs and non-reporting counterparties if they change the SDR to which they report swap data and swap transaction and pricing data. This is a new burden that is not covered in the collection. Reporting counterparties would be required to send notifications to non-reporting counterparties and SDRs if they elect to change the SDR to which they report data pursuant to parts 43 and 45.

The Commission believes this would not require reporting counterparties or SDRs to build any new systems or update technology. Reporting counterparties would continue to report, and SDRs would continue to accept, swap data according to current processes and infrastructures. The Commission estimates that no more than 15 reporting counterparties would choose to change the SDR to which they report data.

The burden applicable to reporting counterparties is estimated as follows:

Estimated number of respondents: 15

Estimated number of reports per respondent: 1

Average number of hours per report: .01

Estimated gross annual reporting burden: .15

2. Revisions to Collection 3038-0086 (Swap Data Access Provisions of Part 49 and Certain Other Matters)

a. SDR Withdrawal from Registration Amendments

The Commission is proposing to amend § 49.4, which requires SDRs to follow certain requirements when withdrawing from registration with the Commission. These requirements involve filing paperwork with the Commission. The Commission does not believe these changes would require any one-time or ongoing system updates for SDRs.

Currently, § 49.4 requires that a request to withdraw specify, among other items, a statement that the custodial SDR is authorized to make such data and records available in accordance with § 1.44 of the Commission's regulations. The Commission is proposing to remove this requirement from § 49.4 because § 1.44 does not apply to SDRs or swap data. Currently, § 49.4(a)(2) requires that prior to filing a request to withdraw, a registered SDR shall file an amended Form SDR to update any inaccurate information. The proposal would eliminate the requirement for SDRs to file an amended Form SDR prior to filing a request to withdraw. The burden associated with these changes to the paperwork requirements for an SDR withdrawing from registration would result in a decrease of 5 hours per report.

However, separately, the Commission is proposing amendments to § 49.4(a)(2) to require SDRs to execute an agreement with the custodial SDR governing the custody of the withdrawing SDR's data and records prior to filing a request to withdraw with the Commission. The Commission believes this is current practice for SDRs, yet it would nonetheless be a new requirement. As a result, the Commission believes this would result in an increase of 5 hours per report for a withdrawing SDR.

Overall, the proposed amendments to § 49.4 result in no change to the estimated burdens for § 49.4.

The estimated aggregate burden for requirements for withdrawing from SDR registration, remains as follows:

Estimated number of respondents: 1

Estimated number of reports per respondent: 1

Average number of hours per report: 40

Estimated gross annual reporting burden: 40

b. SDR Data Validation Requirement Amendments

The Commission is proposing to amend § 49.10, which provides the requirements for SDRs in accepting SDR Data. As an initial matter, the Commission notes that the burden estimate for § 49.10 already accounts for the messages SDRs send and receive in accepting swap data.

The Commission estimates that SDRs would incur a one-time initial burden of 100 hours per entity to modify their systems to adopt the changes described below, for a total estimated hours burden of 300 hours. This burden should be mitigated by the fact that these entities currently have systems in place to validate data that each SDR takes in. The Commission additionally estimates 100 hours per entity annually to perform any needed maintenance or adjustments to reporting systems.

Currently, § 49.10(a) requires SDRs to accept and promptly record all swap data. In the 2019 Part 49 NPRM, the Commission proposed amending the requirements in § 49.10 by detailing separate § 49.10(e) requirements for correcting swap errors. In this release, the Commission is proposing separate § 49.10(c) requirements for validating

swap messages. This proposal would further specify that SDRs must send validation acceptance and rejection messages after validating SDR data. The Commission believes this would increase the number of reports SDRs would need to send reporting entities. The current burden estimate for § 49.10, which right now includes § 49.10(a), estimates each SDR sends 5,652,000 messages, for a total of almost 17,000,000. This estimate includes the 2,626,000 messages the Commission estimates SDRs would be required to send to process swap corrections. The Commission believes this burden was estimated correctly in the 2019 Part 49 NPRM and already accurately accounts for the validation messages proposed in § 49.10(c).

The estimated aggregate burden for requirements for validating SDR Data, remains as follows:

Estimated number of respondents: 3

Estimated number of reports per respondent: 5,652,000

Average number of hours per report: .00055

Estimated gross annual reporting burden: 9,750

3. Revisions to Collection 3038-0089 (Pre-Enactment Swaps and Transition Swaps)

Current § 46.11 provides that for pre-enactment or transition swaps for which part 46 requires reporting of continuation data, reporting counterparties reporting state data as provided in part 45 may fulfill the requirement to report errors or omissions by making appropriate corrections in their next daily report of state data pursuant to part 45. Since the Commission is proposing to remove this requirement from § 45.4, the Commission is also proposing to remove the option for state data reporting from § 46.11.

The Commission does not believe this proposed amendment would require any system updates by SDRs or reporting counterparties. To the extent they did, these updates would be covered under the estimates above for entities making updates to comply with the change proposed in § 45.4.

The Commission believes the proposed change would reduce the number of continuation data reports reporting counterparties send SDRs for historical swaps by 50%. The Commission has not previously calculated the burden estimates for part 46 by regulatory requirement. As such, the Commission now estimates that to comply with proposed amended § 46.11, the 500 SD, MSP, and non-SD/MSP reporting counterparties that the Commission estimates are reporting historical swaps would each report 200 reports with an average burden of .01 hours per report, for a burden of 2 hours per respondent or 1,000 burden hours in the aggregate.

The estimated aggregate burden for requirements for reporting continuation data for historical swaps would be as follows:

Estimated number of respondents: 500

Estimated number of reports per respondent: 200

Average number of hours per report: .01

Estimated gross annual reporting burden: 1,000

Request for Comment

The Commission invites the public and other Federal agencies to comment on any aspect of the proposed information collection requirements discussed above. The Commission will consider public comments on this proposed collection of information in:

1. evaluating whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have a practical use;
2. evaluating the accuracy of the estimated burden of the proposed collection of information, including the degree to which the methodology and the assumptions that the Commission employed were valid;
3. enhancing the quality, utility, and clarity of the information proposed to be collected; and
4. minimizing the burden of the proposed information collection requirements on registered entities, including through the use of appropriate automated, electronic, mechanical, or other technological information collection techniques, e.g., permitting electronic submission of responses.

Copies of the submission from the Commission to OMB are available from the CFTC Clearance Officer, 1155 21st Street NW, Washington, DC 20581, (202) 418–5160 or from http://RegInfo.gov. Organizations and individuals desiring to submit comments on the proposed information collection requirements should send those comments to:

- The Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, Attn: Desk Officer of the Commodity Futures Trading Commission;
- (202) 395–6566 (fax); or
- OIRAsubmissions@omb.eop.gov (email).

Please provide the Commission with a copy of submitted comments so that all comments can be summarized and addressed in the final rulemaking, and please refer to

the **ADDRESSES** section of this rulemaking for instructions on submitting comments to the Commission. OMB is required to make a decision concerning the proposed information collection requirements between 30 and 60 days after publication of this Release in the *Federal Register*. Therefore, a comment to OMB is best assured of receiving full consideration if OMB receives it within 30 calendar days of publication of this Release. Nothing in the foregoing affects the deadline enumerated above for public comment to the Commission on the proposed rules.

C. Cost-Benefit Considerations

1. Introduction

Since issuing the first swap reporting rules in 2012, the Commission has gained a significant amount of experience with swaps markets and products based on studying and monitoring data reported to SDRs.[277] As a result of this work, the Commission has also identified areas for improvement in the current swap data reporting rules. Current limitations with the regulations have, in some cases, encouraged the reporting of swap data in a way that has made it difficult for the Commission to aggregate and analyze. As a result, the Commission is proposing a number of rule amendments intended to improve data quality and standardization to achieve the G20 goal for trade reporting to improve transparency, mitigate systemic risk, and prevent market abuse.[278]

[277] The Commission has used swap data in various rulemakings, research, and reports. *See, e.g.*, "Introducing ENNS: A Measure of the Size of Interest Rate Swap Markets," Haynes R., Roberts J. Sharma R., and Tuckman B., January 2018; CFTC Weekly Swaps Report, *available at* www.cftc.gov/MarketReports/SwapsReports/index.htm.
[278] *See* https://www.treasury.gov/resource-center/international/g7-g20/Documents/pittsburgh_summit_leaders_statement_250909.pdf.

While the Commission believes the proposed amendments would create meaningful benefits for market participants, SDRs, and the public, these changes could also result in costs. 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 or issuing certain orders.[279] 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) the efficiency, competitiveness and financial integrity of markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations.[280] The Commission considers the costs and benefits resulting from its discretionary determinations with respect to the section 15(a) factors.

In this release, the Commission is proposing revisions to existing regulations in parts 45, 46, and 49. The Commission also is proposing new requirements in parts 45, 46, and 49. Together, these proposed revisions and additions are intended to further specify and streamline swap data reporting workflows and to improve the quality of data reporting generally. It is important to note that most of these regulatory changes are being made to existing systems and processes, therefore nearly all costs considered are incremental additions or updates to systems already in place. Some of the proposed amendments are substantive. A number of amendments, however, are non-substantive or technical, and therefore are not expected to have material cost-benefits implications.[281]

[279] 7 U.S.C. 19(a)(1).
[280] 7 U.S.C. 19(a)(2).
[281] The Commission believes there are no cost-benefit implications for amendments proposed to §§ 45.1, 45.2, 45.7, 45.8, 45.9, 45.11, 45.15, 46.1, 46.2, 46.4, 46.5, 46.8, 46.9, and 49.2.

The changes proposed in this release that would result in costs to implement are in many cases intended to harmonize the Commission's reporting regulations with those of other regulators where doing so will not impact the Commission's ability to fulfill its regulatory mandates. As the FSB and CPMI-IOSCO harmonization efforts have incorporated many rounds of industry feedback and the Commission has been vocal about its support and participation,[282] the Commission expects that many market participants have, to the extent possible, been planning and preparing for system updates to accommodate these important changes in the most efficient, cost-effective manner.

The Commission notes that many jurisdictions have committed to these harmonization efforts for which the Commission is proposing adopting standards in this NPRM. If the Commission did not adopt these standards, but other jurisdictions do according to the implementation deadlines recommended by the FSB, unnecessary costs could be created by SDRs and reporting entities having to maintain unharmonized reporting infrastructures for CFTC reporting while other jurisdictions harmonize and recognize efficiencies from harmonization.

To the extent costs and benefits are reasonably quantifiable, they are discussed below in this section; where they are not, they are discussed qualitatively. Throughout this release, the Commission has used the swap data currently available to estimate the expected quantifiable cost-benefit impact of proposed changes on certain types of registrants, such as the extent of state data reporting and duplicative creation data reports.

[282] *See, e.g.*, https://www.cftc.gov/PressRoom/SpeechesTestimony/opagiancarlo50 ("I believe the CFTC needs to be a leading participant in IOSCO and other international bodies. The CFTC currently chairs the following international committees and groups and serves as a member of many other ones: … Co-Chair, CPMI-IOSCO Data Harmonization Group[, and] Co-Chair, FSB Working Group on UTI and UPI Governance").

Most of the changes proposed in this release alter reporting requirements for reporting counterparties, SDRs, SEFs, and DCMs. As a result, there will likely be some quantifiable costs related to either: (a) creating new data reporting systems; (b) re-programming data reporting systems to meet the new reporting requirements; or (c) cancelling data streams, which might lead to archiving data and maintaining legacy systems.

These costs are quantifiable to the extent reporting entities covered by the proposed regulations are able to price-out the changes to the IT architecture to meet the reporting requirement changes. These quantifiable costs, however, will likely vary because reporting entities vary in terms of the sophistication of their data reporting systems. For example, some reporting entities operate their own data reporting systems where they employ in-house developers and analysts to plan, design, code, test, establish, and monitor systems. Other reporting entities pay fees to third-party vendors who handle reporting obligations. Because reporting systems differ, the Commission recognizes that the quantitative costs associated with these proposed reporting rules in this release will vary depending on the reporting entities' operations and number of swaps that they execute.

Given this understanding, the Commission has tried to provide a monetary range for quantifiable costs as they relate to each proposed reporting change discussed below. The Commission also specifically requests comments to help quantify the costs of changes to reporting systems and infrastructures that would be required to comply with the regulatory changes proposed in this rulemaking.

This consideration of costs and benefits is based on the understanding that the swaps market functions internationally. Many swaps transactions involving U.S. firms occur across international borders, and some Commission registrants are organized outside of the U.S., including many SDs. Many of the largest market entities often conduct operations both within and outside the U.S. Where the Commission does not specifically refer to matters of location, the discussion of costs and benefits refers to the proposed rules' effects on all swaps activity, whether by virtue of the activity's physical location in the U.S. or by virtue of the activity's connection with or effect on U.S. commerce under CEA section 2(i).[283]

2. Background

The Commission has issued several rulemakings related to swaps reporting and, in those, considered the benefits and costs.[284] Among others, the Commission has generally identified benefits such as increased transparency to both the marketplace and to regulators; improved regulatory understanding of risk distributions and concentrations in derivatives markets; more effective monitoring of risk profiles by regulators and regulated entities through the use of unique identifiers; improved regulatory oversight,

[283] *See* 7 U.S.C. 2(i). CEA section 2(i) limits the applicability of the CEA provisions enacted by the Dodd-Frank Act, and Commission regulations promulgated under those provisions, to activities within the U.S., unless the activities "have a direct and significant connection with activities in, or effect on, commerce of the [U.S.]; or contravene such rules or regulations as the Commission may prescribe or promulgate as are necessary or appropriate to prevent the evasion of any provision of [the CEA] enacted by [Dodd-Frank Act]." Application of section 2(i)(1) to the existing regulations under part 45 with respect to SDs/MSPs and non-SD/MSP counterparties is discussed in the Commission's Interpretive Guidance and Policy Statement Regarding Compliance With Certain Swap Regulations, 78 FR 45292 (July 26, 2013).

[284] In 2021, the Commission provided a detailed cost-benefit discussion on its final swap reporting rules to ensure that market participants reported cleared and uncleared swaps to SDRs. *See* 77 FR at 2176-2193. In 2012, the Commission also issued final rules for reporting pre-enactment and transition swaps. *See generally* Swap Data Recordkeeping and Reporting Requirements: Pre-Enactment and Transition Swaps, 77 FR 35200 (June 12, 2012). In 2016, the Commission amended its regulations to clarify the reporting obligations for DCOs and swap counterparties with respect to cleared swaps. *See generally* Amendments to Swap Data Recordkeeping and Reporting Requirements for Cleared Swaps, 81 FR 41736 (June 27, 2016).

and more robust data management systems.[285] The Commission also identified two main areas where costs may be incurred: recordkeeping and reporting.[286]

Since establishing swap data reporting requirements, the Commission gained experience with swap data reported to, and held by, SDRs. Based on this experience, along with extensive feedback received from market participants, the Commission believes that improving data quality would significantly enhance the data's usefulness, allow the Commission to realize the objectives of the original rule (e.g., market risk monitoring in furtherance of the G20 commitments discussed above), but also reduce the burden on reporting entities and SDRs through harmonizing, streamlining and clarifying data requirements. In this release, the Commission has focused on the swap data reporting workflows, the swap data elements reporting counterparties report to SDRs, and the validations SDRs apply to help ensure the swap data they receive is accurate. The Commission is also proposing to modify a number of other regulations for clarity and consistency.

Prior to discussing the proposed rule changes, the Commission describes below the current environment that would be impacted by these changes. Three SDRs are currently provisionally registered with the Commission: CME, DDR, and ICE. The changes proposed should apply equally to all three SDRs.

The current reporting environment also involves third-party service providers. These entities assist market participants with fulfilling the applicable data reporting requirements, though the reporting requirements do not apply to third-party service

[285] *See, e.g.*, 77 FR at 2176-2193; 77 FR at 35217-35225; 81 FR at 41758-41770.
[286] *See, e.g., id.*

providers directly. From looking at current data, the Commission estimates that third-party service providers do not account for a large portion of the overall record submissions to SDRs, but provide an important service for firms that choose to outsource their reporting needs.

Finally, the current reporting environment depends on reporting counterparties that report swap data to SDRs. The Commission currently estimates reporting counterparties include 107 provisionally-registered SDs, 24 SEFs, 3 DCMs, 14 DCOs, and 1,585 non-SD/MSP/DCO reporting counterparties. There is considerable variation within each of these reporting counterparty types as to size and swaps market activity. The Commission understands that most SDs and nearly all SEFs, DCMs, DCOs, and SDRs have sophisticated technology dedicated to data reporting because of the frequency with which they either enter into or facilitate the execution of swaps, or accept swap data from reporting entities. The Commission also believes that these entities have greater access to resources to update these systems as regulatory requirements change. Further, the Commission's data analysis implies that much of the cost and benefit of the proposed changes will be incurred by SDs—the most sophisticated participants in the market with the most experience reporting under the E.U. and U.S. reporting regimes—that accounted for over 70% of records submitted to SDRs in December 2019.[287]

As to non-SD/MSP/DCO reporting counterparties—a category accounting for a small fraction of SDR reports—the Commission believes there is wide variation in the reporting systems maintained by and resources available to them. Many of these

[287] Analyzing SDR data from December 2019, CFTC staff found over 70% of all records submitted to the SDRs came from SDs. Between 15% and 20% came from DCOs, 4% came from SEFs, and the remaining came from non-SD reporting counterparties.

reporting counterparties are large, sophisticated financial entities, including banks, hedge funds, and asset management firms that the Commission believes have devoted resources and systems similar to those available to SDs, SEFs, DCMs, DCOs, and SDRs. However, the Commission recognizes that a significant number of these reporting counterparties are smaller, less-sophisticated swap end-users entering into swaps less frequently to hedge commercial risk.

For these entities, for which the Commission has a significant interest in ensuring access to the U.S. swaps market without unnecessary costs or burdens, the Commission has difficulty accurately estimating the cost impact of the changes to its regulations proposed in this NPRM. The challenge stems from the wide range of complexity firms in this group face in their reporting burdens—a large asset manager with billions of dollars in assets under management and a large swaps portfolio could have a reporting system as complex and sophisticated as an SD while a small hedge fund with a limited swaps portfolio might rely on third-party providers to handle its reporting obligations.

As discussed in the Roadmap, the Commission is in the process of improving data reporting requirements, including modifying the requirements to be more specific and more consistent with other regulators' requirements. The amendments proposed in this rulemaking are one part of this larger effort to ensure that better-quality data is available to market participants and the Commission.

Current regulations have led to swap data reports that do not fully meet the Commission's needs for data quality. For example, the current appendix to part 45 provides no standards, formats, or allowable values for the swap data that reporting counterparties report to SDRs and there is no technical specification or other guidance

associated with the current rule. Since the industry has not identified a standard for all market participants to use, market participants have reported information in many different ways, often creating difficulties in data harmonization, or even identification, within and across SDRs.

It is not uncommon for Commission staff to find discrepancies between open swaps information available to the Commission and swap transaction data reported for the same swaps. In the processing of swap data to generate the CFTC's Weekly Swaps Report,[288] for example, there are instances when the notional amount differs between the Commission's open swaps information and the swap transaction data reported for the same swap. While infrequent errors can be expected, the wide variation in standards among SDRs has increased the challenge of swap data analysis and often has required significant data cleaning and data validation prior to any data analysis effort. This has meant that the Commission has, in some but not all cases, determined that certain data analyses were not feasible, harming its ability to oversee market activity.

In addition to the lack of standardization across SDRs, the Commission is concerned that the current timeframes for reporting swap data may have contributed to the prevalence of errors. Common examples of errors include incorrect references to underlying currencies, such as a notional value incorrectly linked to U.S. dollars instead of Japanese Yen. Among others, these examples strongly suggest a need for standardized, validated swap data as well as additional time to review the accuracy of the data report.

[288] *See* CFTC's Weekly Swaps Report, *available at* https://www.cftc.gov/MarketReports/SwapsReports/index.htm.

Based on its experience with data reporting, the Commission believes that certain regulations, particularly in parts 45, 46, and 49, should be amended to improve swap data accuracy and completeness. This release also includes one amendment to part 49 to improve the process for an SDR's withdrawal from registration. Many of the proposed regulations have costs and benefits that must be considered. These will be discussed individually below.

For each proposed amendment discussed below, the Commission summarizes the changes,[289] and identifies and discusses the costs and benefits attributable to the proposed changes. Since many of the changes require technical updates to reporting systems, where significant, CFTC staff estimated the hourly wages market participants will likely pay software developers to implement each change to be between $47 and $100 per hour.[290] Relevant amendments below will list a low-to-high range of potential cost as determined by the number of developer hours estimated by technical subject matter experts ("SMEs") in the Commission's Office of Data and Technology; amendments where this type of cost estimate is not relevant will not. Finally, the Commission considers the costs and benefits

[289] As described throughout this release, the Commission is also proposing a number of non-substantive, conforming rule amendments in this release, such as renumbering certain provisions and modifying the wording of existing provisions. Non-substantive amendments of this nature may be described in the cost-benefit portion of this release, but the Commission will note that there are no costs or benefits to consider.

[290] Hourly wage rates came from the Software Developers and Programmers category of the May 2018 National Occupational Employment and Wage Estimates Report produced by the U.S. Bureau of Labor Statistics, *available at* https://www.bls.gov/oes/current/oes_nat.htm. The 25th percentile was used for the low range and the 90th percentile was used for the upper range ($36.07 and $76.78, respectively). Each number was multiplied by an adjustment factor of 1.3 for overhead and benefits (rounded to the nearest whole dollar) which is in line with adjustment factors the CFTC has used for similar purposes in other final rules adopted under the Dodd-Frank Act. *See, e.g.*, 77 FR at 2173 (using an adjustment factor of 1.3 for overhead and other benefits). These estimates are intended to capture and reflect U.S. developer hourly rates market participants are likely to pay when complying with the proposed changes. We recognize that individual entities may, based on their circumstances, incur costs substantially greater or less than the estimated averages and encourage commenters to share relevant cost information if it differs from the numbers reported here.

of all of the proposed rules jointly in light of the five public interest considerations in CEA section 15(a).

3. Baselines

There are multiple baselines for the costs and benefits that might arise from the proposed regulations in this release. The Commission believes that the baseline for the proposed amendments to §§ 45.3, 45.4, 45.5, 45.6, 45.10, 45.12, 45.13, 46.3, 46.10, 46.11, and 49.4 are the current regulations, as discussed above in sections II, III, and IV. The baseline for proposed § 49.10 is current practice, which is that SDRs may be performing validations according to their own specifications, as discussed above in section IV.C.

4. Costs and Benefits of Proposed Amendments to Part 45

a. § 45.3 – Swap Data Reporting: Creation Data

The Commission is proposing to amend § 45.3 to: (i) remove the requirement for SEFs, DCMs, and reporting counterparties to report separate PET and confirmation data reports; (ii) extend the deadline for reporting required swap creation data and allocations to T+1 or T+2, depending on the reporting counterparty; (iii) remove the requirement for SDRs to map allocations; and (iv) remove the international swap reporting requirements.

The Commission believes: (i) reporting a single required creation data report would reduce complexity for reporting counterparties, as well as for the Commission; (ii) extending the deadline to report required swap creation data and allocations would improve data quality without impacting the Commission's ability to perform its regulatory responsibilities; (iii) the requirements for SDRs to map allocations and the international swap requirements are unnecessary.

(A) Costs and Benefits

Requiring a single confirmation data report for SEFs, DCMs, and reporting counterparties would benefit SDRs, SEFs, DCMs, and reporting counterparties by reducing the number of swap data reports being sent to and stored by SDRs. Extending the deadline to report required swap creation data would benefit SDRs, SEFs, DCMs, and reporting counterparties by giving SEFs, DCMs, and reporting counterparties more time to report swap data to SDRs, likely reducing the number of errors SDRs would need to follow-up on with reporting entities. Since reporting data ASATP requires reporting systems to monitor activity and report in real-time, the proposed time will also benefit SDRs, SEFs, DCMs, and reporting counterparties by allowing them to implement a simpler data reporting workflow that assembles and submits data once per day.

Removing the requirements to map allocations and international swaps would benefit SDRs by removing the need to manage separate processes to maintain this information. In addition, SEFs, DCMs, and reporting counterparties would benefit from reporting allocations directly via swap data reporting, and would no longer have to report information about international swaps that would be rendered unnecessary given the UTI standards.

The initial cost of updating systems to adopt the changes proposed in § 45.3, as well as reporting-related changes that will be discussed below, are expected to be small. The Commission expects that many SEFs, DCMs, and reporting counterparties have systems designed to report swap data to SDRs ASATP after execution, as well as systems that report separate PET and confirmation swap reports as well as information about international swaps. SDRs likewise have systems to accept both PET and confirmation

swap data reports, possibly separate or combined, as well as systems to map allocations and intake information about international swaps.

In both cases, this is a reduction in complexity and software functionality. Reporting counterparties no longer have to generate and submit multiple messages, which will require limited cost and effort to implement. SDRs will also require few, if any, updates to ingest fewer messages.

The Commission expects costs associated with the changes proposed in this release would be further mitigated by the fact that they involve updates to current systems, rather than having to create new reporting systems as most firms had to do when ESMA and the CFTC first required swaps reporting. CFTC SMEs estimate the cost of these changes to be small, but not zero for large reporting entities and SDRs due to the reduction in complexity and system features. However, over time, after these one-time system updates are implemented, the Commission expects SDRs, SEFs, DCMs, and reporting counterparties would recognize significant benefits through reduced costs and complexity associated with reporting streamlined data to SDRs over an extended time frame.

The Commission preliminarily believes that on balance the expected benefits justify the proposed rule amendments notwithstanding their expected mitigated costs.

(B) Request for Comment

The Commission requests comment on its considerations of the costs and benefits of the proposed amendments to § 45.3. Are there additional costs or benefits that the Commission should consider that have not yet been highlighted? Commenters are encouraged to include both qualitative and quantitative assessments of these benefits.

Are there any other alternatives that may provide preferable costs or benefits than the costs and benefits related to the proposed amendments? Specific areas of interest include the following:

(38) The Commission has noted benefits of providing extended timeframes for regulatory reporting, including improved data quality and reduced number of reports for SDRs to maintain. Are there additional benefits the Commission has not identified given the revised structure? Are these benefits likely to be especially notable for certain types of reporting entities?

(39) The Commission has noted that the revised reporting framework should, over time and after initial outlays, reduce costs for all reporting entities, given the ability of an entity to retain but update their current reporting systems. Are there costs the Commission has not anticipated in these revisions? Are there specific types of reporters that are more likely to adjust their current reporting systems? What would be the reason for these adjustments, and the costs/benefits associated with these adjustments?

(40) The Commission has outlined two revised reporting frameworks, depending on the type of the reporting entity (e.g., T+1 for SDs, MSPs and DCOs). Does this division into two reporting categories make sense given the current or anticipated reporting systems of the entities? Would reporting be improved if any entity types were moved from one to the other category?

(41) The Commission requests comment on the range of costs SDRs, SEFs, DCMs, DCOs, SDs, MSPs, and non-SD/MSP/DCO reporting counterparties would have to spend to comply with the amendments proposed in § 45.3.

b. § 45.4 – Swap Data Reporting: Continuation Data

The Commission is proposing to amend § 45.4 to: (i) remove the option for reporting counterparties to report state data as required swap continuation data; (ii) extend the deadline for reporting required swap continuation data to T+1 or T+2, depending on the reporting counterparty; (iii) remove the requirement for non-SD/MSP/DCO reporting counterparties to report valuation data quarterly; and (iv) require SD/MSP/DCO reporting counterparties to report margin and collateral data daily.

The Commission believes: (i) removing the option for state data reporting would reduce the number of messages being sent to and stored by SDRs; (ii) extending the deadline to report required swap continuation data would improve data quality without impacting the Commission's ability to perform its regulatory responsibilities; (iii) removing the valuation requirement for non-SD/MSP/DCO reporting counterparties would reduce burdens for these counterparties, which tend to be smaller and less-active in the swaps market, without sacrificing any important information; and (iv) requiring SD/MSP/DCO reporting counterparties to report margin and collateral daily is essential for the Commission to monitor risk in the swaps market.

(A) Costs and Benefits

Removing state data reporting would benefit reporting counterparties by significantly reducing the number of messages they report to SDRs. Relatedly, this would benefit SDRs by significantly reducing the number of messages they need to ingest, validate, process, and store In 2019, CFTC staff estimates that the Commission received over 557,000,000 swap messages from CME, DDR, and ICE. Staff analysis from December 2019 showed over 50% of all records submitted were state data messages.

Extending the deadline to report required swap continuation data would benefit SDRs and reporting counterparties by likely reducing the number of errors SDRs would need to notify reporting counterparties about. Removing the requirement for non-SD/MSP/DCO reporting counterparties to report quarterly valuation data would reduce reporting costs for these estimated 1,585 counterparties, which tend to be smaller and less-active in the swaps market. Because these entities are small relative to the swaps market as a whole, the lack of quarterly valuation data is not anticipated to greatly inhibit the market oversight responsibilities of the Commission. Requiring SD/MSP/DCO reporting counterparties to report margin and collateral daily would benefit the swaps market by improving the Commission's ability to monitor risk in the swaps market, particularly for uncleared swaps. Because current part 45 reports do not include collateral information, the Commission is often able to identify the level of risk inherent to a swap (or set of swaps), but not fully understand the amount of collateral protection a counterparty holds to mitigate this risk.

The initial costs of updating systems to adopt the changes proposed in § 45.4 are expected to range from low for many impacted parties to moderate for others, and would be offset by the lessened reporting burden. For instance, the Commission understands that many reporting counterparties already have systems designed to report swap data, including snapshot data, to SDRs according the current timelines – extending the timeline for reporting reduces the complexity of the reporting system and removing a message type that accounts for over 50% of the existing message traffic is a significant reduction in reporting burden. SDRs likewise have systems to accept snapshot data which would

require minimal updates (based on the experience of CFTC SMEs with similar systems) and reduced data storage costs.

Non-SD/MSP/DCO reporting counterparties would need to update their systems to stop sending valuation data to SDRs. In contrast, SD/MSP/DCO reporting counterparties would need to program systems to begin reporting margin and collateral data in addition to current valuation data. The T+1 reporting timeline greatly mitigates this cost by allowing end-of-day data integration and validation processes, which according to CFTC SMEs and staff conversations with industry participants provides flexibility in exactly how and when system resources are used to produce the reports and better aligns trade and collateral and margin data reporting streams.

Additionally, over time, after these one-time system updates, the Commission expects SDRs, SEFs, DCMs, and reporting counterparties would recognize the full benefits of the reduced costs associated with reporting streamlined data to SDRs in a more reasonable time frame. While the Commission understands reporting margin and collateral data to SDRs could involve considerable expense for the estimated 121 SD/MSP/DCO reporting counterparties, the Commission notes that ESMA currently requires the reporting of much of the same information to E.U.-registered TRs. The Commission expects this to mitigate the costs for SDRs that serve multiple jurisdictions.

The Commission expects this could also mitigate the costs for most of the 121 SD/MSP/DCO reporting counterparties given that they are likely active in the European swap markets and thus already fall under similar requirements. The Commission also expects that, for the other relevant reporting entities, collateral and margin information is already known by the entity. The primary cost would be in integrating existing collateral

data streams into SDR reporting workflows. CFTC SMEs estimate the cost of these changes to be small to moderate for large reporting entities and SDRs due to the reduction in complexity and system features, as well as the extended timeline to integrate potentially disparate data streams.

The Commission preliminarily believes that on balance the expected benefits justify the proposed rule amendments notwithstanding their expected mitigated costs.

(B) Request for Comment

The Commission requests comment on its considerations of the costs and benefits of the proposed amendments to § 45.4, given that there might be different transaction reporting and risk reporting systems. Are there additional costs or benefits that the Commission should consider? Commenters are encouraged to include both qualitative and quantitative assessments of these benefits.

Are there any other alternatives that may provide preferable costs or benefits than the costs and benefits related to the proposed amendments? Specific areas of interest include the following:

(42) The Commission requests comment on the range of costs SDRs, SEFs, DCMs, DCOs, SDs, MSPs, and non-SD/MSP/DCO reporting counterparties would have to spend to comply with the amendments proposed in § 45.4.

c. § 45.5 – Unique Swap Identifiers

The Commission is proposing to amend § 45.5 to: (i) require reporting counterparties use UTIs instead of USIs for new swaps; (ii) require SD/MSP entities that are financial entities to generate UTIs for off-facility swaps; and (iii) permit non-

SD/MSP/DCO reporting counterparties that are not financial entities to ask their SDR to generate UTIs for swaps.

In general, as described in section II.E, the Commission believes transitioning to the globally-standardized UTI system will benefit SDRs, SEFs, DCMs, and reporting counterparties by reducing the complexity associated with reporting swaps to or in multiple jurisdictions.

(A) Costs and Benefits

The Commission believes that proposed § 45.5 would benefit SDRs by providing one standard that multiple regulators should adopt to reduce the burdens associated with multiple jurisdictions with different, and possibly conflicting, standards. The Commission believes that requiring SD/MSP and financial entity reporting counterparties to generate UTIs for off-facility swaps would benefit non-financial entities by reducing the frequency with which they would be responsible for UTI generation, as compared to the current frequency with which they generate USIs.

The Commission believes permitting non-SD/MSP/DCO reporting counterparties that are not financial entities to ask their SDR to generate UTIs for swaps would benefit smaller, less-active swaps market participants by relieving them of the burden to create UTIs. While non-financial entities account for a small portion of total swaps traded as noted above, this group is mostly comprised of end-users that often don't maintain systems that automatically generate UTIs. Therefore, this group will benefit proportionally more from this change.

Permitting these reporting counterparties to ask the SDRs to generate UTIs would maintain, but lower, an ancillary cost for the three SDRs that are currently required to

generate USIs for non-SD/MSP/DCO reporting counterparties. The Commission believes that giving these reporting counterparties, which should be a minority of the 1,585 non-SD/MSP reporting counterparties, the option, rather than a mandate, strikes the appropriate balance between avoiding undue costs for SDRs and significant burdens for the least-sophisticated market participants.

In general, the Commission expects the initial costs of updating systems to adopt UTIs could be significant. For instance, the Commission expects that reporting counterparties and SDRs have systems that create, report, accept, validate, process, and store USIs. CFTC SMEs estimate the cost of these changes to be small for large reporting entities and small to moderate for SDRs. However, over time, after these one-time system updates, the Commission expects market participants would recognize the full benefits of the reduced costs associated with reporting a globally-standardized UTI.

In addition, the Commission understands that ESMA already mandates UTIs. The Commission expects that this should mitigate burdens for SDRs serving multiple jurisdictions as well as reporting counterparties active in the European markets since they have likely already updated their systems to meet the European standards.

The Commission preliminarily believes that on balance the expected benefits justify the proposed rule amendments notwithstanding their expected mitigated costs.

(B) Request for Comment

The Commission requests comment on its considerations of the costs and benefits of the proposed amendments to § 45.5. Are there additional costs or benefits that the Commission should consider? Commenters are encouraged to include both qualitative and quantitative assessments of these benefits.

Are there any other alternatives that may provide preferable costs or benefits than the costs and benefits related to the proposed amendments?

d. § 45.6 – Legal Entity Identifiers

The Commission is proposing to amend § 45.6 to: (i) require SDs, MSPs, DCOs, SEFs, DCMs, and SDRs to maintain and renew LEIs; (ii) required registered entities and financial entities to obtain LEIs for swap counterparties that do not have one; and (iii) update unnecessary and outdated regulatory text. The Commission believes accurate LEIs are essential for the Commission to use swap data to fulfill its regulatory responsibilities.

(A) Costs and Benefits

Mandating LEI renewal will benefit the swaps market by improving the Commission's ability to analyze activity in the swaps market. Reference data provides valuable identification and relationship information about swap counterparties. Accurate reference data allows for robust analysis of swaps risk concentration within and across entities, as well as a way to identify the distribution or transfer of risk across different legal entities under the same parent. The Commission also believes accurate reference data is essential for it to satisfy its regulatory responsibilities because it clearly identifies entities involved in the swaps market, as well as how these entities relate to one another – both key requirements for monitoring systemic risk and promoting fair and efficient markets. In addition, LEIs have already been broadly adopted in swaps markets and their widespread use has shown promise by reducing ambiguity engendered by market participants previously using a variety of non-standard reporting identifiers.

However, the Commission recognizes LEI renewals impose some costs. Currently, the Commission understands that LEI renewals cost each holder $50 per year.

To limit burdens for counterparties that are smaller or less-active in the swaps market, the Commission has proposed limiting the renewal requirement to the estimated 151 SDs, MSPs, SEFs, DCMs, DCOs, and SDRs, resulting in an aggregate cost of approximately $7,550 for this requirement. The Commission believes the activities of these entities have the most systemic impact on the Commission's ability to fulfill its regulatory mandates and thus warrant this small additional cost.

Requiring each DCO and financial entity reporting counterparty to obtain an LEI for their counterparties that do not have LEIs would both further the Commission's objective of monitoring risk in the swaps market and incentivize LEI registration for counterparties that have not yet obtained LEIs. However, the Commission recognizes this requirement imposes some costs either on the entity obtaining an LEI for its counterparty, or the entity incentivized to register on its own.

The number of current swap counterparties without LEIs is difficult to estimate because of the lack of standardization of non-LEI identifiers. The Commission cannot therefore determine whether non-LEI identifiers represent an entity that has already been assigned an LEI or whether two non-LEI identifiers are two different representations of the same entity. However, the Commission expects the number of counterparties currently without LEIs to be small, given the results of an analysis of swap data from December 2019 that showed 90% of all records reported had LEIs for both counterparties. More generally, any swap data that does not identify eligible counterparties with an LEI hinders the Commission's fulfillment of its regulatory mandates, including systemic risk monitoring.

The Commission preliminarily believes that on balance the expected benefits justify the proposed rule amendments notwithstanding their expected mitigated costs.

(B) Request for Comment

The Commission requests comment on its considerations of the costs and benefits of the proposed amendments to § 45.6. Are there additional costs or benefits that the Commission should consider? Commenters are encouraged to include both qualitative and quantitative assessments of these benefits.

Are there any other alternatives that may provide preferable costs or benefits than the costs and benefits related to the proposed amendments? Specific areas of interest include the following:

(43) The Commission requests comment on the range of costs for DCO and financial entity reporting counterparties to obtain LEIs via third-party registration for counterparties that have not obtained LEIs to comply with proposed § 45.6(d)(3).

e. § 45.10 – Reporting to a Single SDR

The Commission is proposing to amend § 45.10 to permit reporting counterparties to transfer swap data and swap transaction and pricing data between SDRs in revised § 45.10(d). To do so, reporting counterparties would need to notify the current SDR, new SDR, and non-reporting counterparty of the UTIs for the swaps being transferred and the date of transfer at least five business days before the transfer. Reporting counterparties would then need to report the change of SDR to the current SDR and the new SDR, and then begin reporting to the new SDR.

The Commission believes the ability to change SDRs will benefit reporting counterparties by permitting them to choose the SDR that best fits their business needs.

(A) Costs and Benefits

Proposed § 45.10(d) would benefit reporting counterparties by giving them the freedom to select the SDR that provides the best services, pricing, and functionality to serve their business needs instead of having to use the same SDR for the entire life of the swap. The Commission believes reporting counterparties could benefit through reduced costs if they had the ability to change to an SDR that provided services better calibrated to their business needs.

The Commission recognizes the proposal would impose costs on the three SDRs. SDRs would need to update their systems to permit reporting counterparties to transfer swap data and swap transaction pricing data in the middle of a swap's lifecycle, rather than at the point of swap initiation. However, the Commission believes that after the initial system updates, SDRs should be able to accommodate these changes since they are only slightly more burdensome than most of the current on-boarding practices for new clients in place at each SDR. In addition, SDRs would benefit from attracting new clients that choose to move their reporting to their SDR.

The Commission preliminarily believes that on balance the expected benefits justify the proposed rule amendments notwithstanding their expected mitigated costs.

(B) Request for Comment

The Commission requests comment on its considerations of the costs and benefits of the proposed amendments to § 49.10. Are there additional costs and benefits that the Commission should consider? Commenters are encouraged to include both qualitative and quantitative assessments of these costs and benefits.

Are there any other alternatives that may provide preferable costs or benefits than the costs and benefits related to the proposed amendments?

f. § 45.12 – Data Reporting for Swaps in a Swap Asset Class Not Accepted by Any SDR

The Commission is proposing to remove the § 45.12 regulations that permit voluntary supplemental reporting. Current § 45.12 permits voluntary supplemental reporting to SDRs and specifies counterparties must report USIs, LEIs, and an indication of jurisdiction as part of the supplementary report. Section 45.12 also requires counterparties correct errors in voluntary supplemental reports.

The Commission believes removing voluntary supplemental swap reports will reduce unnecessary messages in the SDR that do not provide a clear regulatory benefit to the Commission.

(A) Costs and Benefits

Removing the option for voluntary supplemental reporting would benefit SDRs to the extent that they would no longer need to take in, process, validate, and store the reports. This should reduce costs and any unnecessary complexities for SDRs with respect to these reports that provide little benefit to the Commission.

The Commission recognizes the proposal would impose initial costs on SDRs. The three SDRs would need to update their systems to stop accepting these reports. However, the Commission expects these costs would be minimal and after the initial system updates, SDRs should see reduced costs by not having to accommodate these reports. CFTC SMEs estimate the cost of these changes to be small for large reporting entities and SDRs.

The Commission preliminarily believes that on balance the expected benefits justify the proposed rule amendments notwithstanding their expected mitigated costs.

(B) Request for Comment

The Commission requests comment on its considerations of the costs and benefits of the proposed amendments to § 45.12. Are there additional costs and benefits that the Commission should consider? Commenters are encouraged to include both qualitative and quantitative assessments of these costs and benefits.

Are there any other alternatives that may provide preferable costs or benefits than the costs and benefits related to the proposed amendments?

g. § 45.13 – Required Data Standards.

The Commission is proposing to amend § 45.13 to (i) require reporting counterparties, SEFs, DCMs, and DCOs to report required swap creation and continuation data to SDRs using the technical standards, as instructed by the Commission, for each swap data element required to be reported; (ii) require reporting counterparties, SEFs, DCMs, and DCOs to satisfy SDR validation rules; and (iii) require SDRs to send reporting counterparties, SEFs, DCMs, DCOs, and third party service providers validation messages.

(A) Costs and Benefits

Through updating and further specifying the swap data elements required to be reported to SDRs, the Commission would benefit from having swap data that is more standardized, accurate, and complete across SDRs. As discussed in section V above, the Commission's use of the data to fulfill its regulatory responsibilities has been

complicated by varying compliance with swap data standards both within and across SDRs.

The Commission recognizes that the changes proposed in § 45.13 would require SDRs, SEFs, DCMs, and reporting counterparties to update their reporting systems. The three SDRs would need to update their systems to accept swap data according to new technical standards and validation conditions. SEFs, DCMs, and reporting counterparties would need to update their systems as well to report swap data to SDRs according to the technical standards. These entities would also need to update systems to validate swap data. The costs of these updates are likely to differ from entity to entity but, depending on current systems, could be high.

However, if the Commission believes some factors would mitigate the costs to these entities. First, most of the swap data the Commission is proposing to further standardize with the updates in appendix 1 is currently being reported to SDRs. Commission staff recognize that data quality has improved over the past years as SDRs adopted more technical standards on their own. However, for certain assets classes, the Commission expects the changes could be more pronounced. Costs to standardize data elements that had not been standardized, in certain asset classes like commodities, or adding new data elements would be more costly but could be mitigated if the reporting entity already saves this information but does not currently then send it to the SDR.

Second, to the extent SDRs operate in multiple jurisdictions, ESMA already requires many of the swap data elements and many of the technical standards and validation conditions the Commission is proposing. An SDR may have to spend fewer resources updating its systems for the proposed changes in § 45.13 if it has already made

these changes for European market participants. Similarly, SEFs, DCMs, and reporting counterparties reporting to European TRs may have to spend fewer resources.

Additionally, after the updates would be made, the Commission expects SDRs, SEFs, DCMs, and reporting counterparties would see a reduction in costs through reporting a more streamlined data set than what is currently being reported to SDRs. In addition, entities reporting in multiple jurisdictions would be able to report more efficiently as jurisdictions adopt the CDE Technical Guidance data elements.

Finally, this NPRM is proposed to have the part 43 swap transaction and pricing data be a subset of the part 45 swap data. This means proposed changes to parts 43 and 45 would largely require technological changes that could merge two different data streams into one. For example, SDRs will have to make adjustments to their extraction, transformation, and loading (ETL) process in order to accept feeds that comply with new technical standards and validation conditions.

Because many of the changes SDRs would make to comply with part 45 will likely also allow it to comply with part 43, the Commission anticipates significantly lower aggregate costs relative to the costs for parts 43 and 45 separately. For this reason, the costs described below may most accurately represent the full technological cost of satisfying the requirements for both proposed rules.

Based on conversations with CFTC staff experienced in designing data reporting, ingestion, and validation systems, Commission staff estimates the cost per SDR to be in a range of $141,000 to $500,000.[291] This staff cost estimate is based on a number of

[291] To generate the included estimates, a bottom-up estimation method was used based on internal CFTC expertise. In brief, and as seen in the estimates, the Commission anticipates that the task for the SDR's will

assumptions and covers the set of tasks required for the SDR to design, test, and implement a data system based on the proposed list of swap data elements in appendix 1 and the technical standards.[292] These numbers assume that each SDR will spend approximately 3,000-5,000 hours to establish ETL into a relational database on such a data stream.[293]

For reporting entities, the Commission estimates the cost per reporting entity to be in a range of $23,500 to $72,500.[294] This cost estimate is based on a number of assumptions and covers a number of tasks required by the reporting entities to design, test, and implement an updated data system based on the proposed swap data elements, technical standards, and validation conditions.[295] These tasks include defining

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be significantly more complex than it is for reporters. On several occasions, the CFTC has developed an ETL data stream similar to the anticipated parts 43 and 45 data streams. These data sets consist of 100-200 fields, similar to the number of fields in proposed appendix 1. This past Commission experience has been used to derive the included estimates.

[292] These assumptions include: (1) at a minimum, the SDRs will be required to establish a data extraction transformation and loading (ETL) process. This implies that either the SDR is using a sophisticated ETL tool, or will be implementing a data staging process from which the transformation can be implemented. (2) It is assumed that the SDR would require the implementation of a new database or other data storage vehicle from which their business processes can be executed. (3) While the proposed record structure is straight forward, the implementation of a database representing the different asset classes may be complex. (4) It is assumed that the SDR would need to implement a data validation regime typical of data sets of this size and magnitude. (5) It is reasonable to expect that the cost to operate the stream would be lower due to the standardization of incoming data, and the opportunity to automatically validate the data may make it less labor intensive.

[293] The lower estimate of $141,000 represents 3,000 working hours at the $47 rate. The higher estimate of $500,000 represents 5,000 working hours at the $100 rate.

[294] To generate the included estimates, a bottom-up estimation method was used based on internal CFTC expertise. On several occasions, the CFTC has created data sets that are transmitted to outside organizations. These data sets consist of 100-200 fields, similar to the number of fields in the proposed appendix 1. This past experience has been used to derive the included estimates.

[295] These assumptions include: (1) the data that will be provided to the SDRs from this group of reporters largely exists in their environment. The back end data is currently available; (2) the data transmission connection from the firms that provide the data to the SDR currently exists. The assumption for the purposes of this estimate is that reporting firms do not need to set up infrastructure components such as FTP servers, routers, switches, or other hardware; it is already in place; (3) implementing the requirement does not cause reporting firms to create back end systems to collect their data in preparation for submission. It is assumed that firms that submit this information have the data available on a query-able environment today, (4) reporting firms are provided with clear direction and guidance regarding form and

requirements, developing an extraction query, developing of an interim extraction format (e.g., CSV), developing validations, developing formatting conversions, developing a framework to execute tasks on a repeatable basis, and finally, integration and testing. Staff estimates that it would take a reporting entity 200 to 325 hours to implement the extraction. Including validations and conversions would add another 300 to 400 hours, resulting in an estimated total of 500 to 725 hours per reporting entity.[296] The Commission preliminarily believes that on balance the expected benefits justify the proposed rule amendments notwithstanding their expected mitigated costs.

(B) Request for Comment

The Commission requests comment on its considerations of the costs and benefits of the proposed amendments to § 45.13. Are there additional costs and benefits that the Commission should consider? Commenters are encouraged to include both qualitative and quantitative assessments of these costs and benefits.

Are there any other alternatives that may provide preferable costs or benefits than the costs and benefits related to the proposed amendments?

5. Costs and Benefits of Proposed Amendments to Part 46

a. § 46.3 – Swap Data Reporting for Pre-Enactment Swaps and Transition Swaps

The Commission is proposing to amend § 46.3 to remove an exception for required swap continuation data reporting for pre-enactment and transition swaps. Currently, § 46.3(a)(2) provides that reporting counterparties need to report only a subset

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manner of submission. A lack of clear guidance will significantly increase costs for each reporter; and (5) there is no cost to disable reporting streams that will be made for obsolete by the proposed change in part 43.

[296] The lower estimate of $23,500 represents 500 working hours at the $47 rate. The higher estimate of $72,500 represent 725 working hours at the $100 rate.

of part 45 swap data fields when reporting updates to pre-enactment and transition swaps. The Commission is removing that exception to specify that reporting counterparties would report updates to pre-enactment and transition swaps according to part 45.

(A) Costs and Benefits

The Commission believes that this should be current practice for SDRs and reporting counterparties, and should therefore not impact costs or benefits to SDRs and reporting counterparties.

(B) Request for Comment

Is the Commission's understanding correct that the proposed change to § 46.3(a)(2) would have no practical impact on reporting counterparties and SDRs for pre-enactment and transition swap continuation data reporting? Are there additional costs and benefits that the Commission should consider? Commenters are encouraged to include both qualitative and quantitative assessments of these costs and benefits.

Are there any other alternatives that may provide preferable costs or benefits than the costs and benefits related to the proposed amendments?

b. § 46.10 – Required Data Standards

The Commission is proposing to update § 46.10 to require reporting counterparties to use the required data standards set forth in § 45.13(a) for reporting historical swaps to SDRs. The Commission believes reporting counterparties currently use the same data standards for both parts 45 and 46 reporting. This change would ensure that reporting counterparties continue to do so under the proposed updated list of swap data elements in appendix 1 and the new technical standards.

(A) Costs and Benefits

SDRs and reporting counterparties would both incur costs in updating their part 46 reporting systems to report according to any of the proposed changes to part 45 reporting. However, given the diminishing number of historical swaps that have not yet matured or been terminated, the Commission expects that these costs would be negligible compared to the costs associated with complying with new § 45.13.

(B) Request for Comment

The Commission requests comment on its considerations of the costs and benefits of the proposed amendments to § 46.10. Are there additional costs and benefits that the Commission should consider? Are there factors that would raise costs for reporting historical swaps according to the standards in § 45.13? Commenters are encouraged to include both qualitative and quantitative assessments of these costs and benefits.

Are there any other alternatives that may provide preferable costs or benefits than the costs and benefits related to the proposed amendments?

c. § 46.11 – Reporting of Errors and Omissions in Previously Omitted Data

The Commission is proposing to remove § 46.11(b) to remove the option for state data reporting. This would be consistent with the Commission's proposal to eliminate state data reporting in § 45.4.

(A) Costs and Benefits

SDRs and reporting counterparties would both incur costs in updating their part 46 reporting systems to eliminate state data reporting. However, given the dwindling

number of historical swaps that have not yet matured or been terminated, the Commission expects that these costs would be negligible.[297]

(B) Request for Comment

The Commission requests comment on its considerations of the costs and benefits of the proposed amendments to § 46.11. Are there additional costs and benefits that the Commission should consider? Commenters are encouraged to include both qualitative and quantitative assessments of these costs and benefits.

Are there any other alternatives that may provide preferable costs or benefits than the costs and benefits related to the proposed amendments?

6. Costs and Benefits of Proposed Amendments to Part 49

a. § 49.4 – Withdrawal from Registration

The Commission is proposing to amend § 49.4 to: (i) remove the erroneous requirement for SDRs to submit a statement to the Commission that the custodial SDR is authorized to make the withdrawing SDR's data and records available in accordance with § 1.44; and (ii) remove the § 49.4(a)(2) requirement that prior to filing a request to withdraw, a registered SDR file an amended Form SDR to update any inaccurate information and replace it with a new requirement for SDRs to execute an agreement with the custodial SDR governing the custody of the withdrawing SDR's data and records prior to filing a request to withdraw with the Commission.

[297] For instance, in reviewing credit default swap data, the Commission found that there were 153,563 open pre-enactment swaps and transition swaps in 2013. In 2019, that number had decreased to 2,048.

The Commission believes the amendments would simplify the regulations and help ensure that swap data is properly transferred to a different SDR when one SDR withdraws from registration.

(A) Costs and Benefits

The Commission believes SDRs would benefit from the removal of the unnecessary requirement to update Form SDR prior to withdrawing from registration. The Commission would benefit from having a clear regulatory requirement for an SDR withdrawing from registration to have an agreement with the custodial SDR regarding the withdrawing SDR's data and records.

The Commission believes SDRs would not incur any material costs associated with the proposed changes. SDRs would execute a custodial agreement to transfer the data as a matter of due course. The changes concerning timing and removing the erroneous reference would not result in costs for the SDRs.

(B) Request for Comment

The Commission requests comment on its considerations of the costs and benefits of the proposed amendments to § 46.11. Are there additional costs and benefits that the Commission should consider? Commenters are encouraged to include both qualitative and quantitative assessments of these costs and benefits.

Are there any other alternatives that may provide preferable costs or benefits than the costs and benefits related to the proposed amendments?

b. § 49.10 – Acceptance of Data

Most of the amendments the Commission is proposing to § 49.10 are non-substantive minor technical amendments. However, the Commission is proposing to add

a new requirement in § 49.10(c) to require SDRs to validate SDR data. Proposed § 49.10(c) would require that SDRs establish data validations. SDRs would also be required to send SEFs, DCMs, and reporting counterparties data validation acceptance and error messages that identify the validation errors. The Commission is also proposing to require that SDRs cannot reject a swap transaction and pricing data message if it was submitted jointly with a swap data message that contained a validation error.

(A) Costs and Benefits

SDRs, SEFs, DCMs, and reporting counterparties would benefit by having a single set of validation rules in the technical standards instead of each SDR applying different validations.

SDRs, SEFs, DCMs, and reporting counterparties would incur costs in updating their reporting systems apply these validation rules. To the extent SDRs operate in multiple jurisdictions, ESMA is already requiring many of the data validations that DMO is proposing in the technical standards to be published on cftc.gov. An SDR may have to spend fewer resources updating its systems for the proposed changes in § 49.10(c) if it has already made these changes for European market participants. Similarly, SEFs, DCMs, and reporting counterparties reporting to European TRs may have to spend fewer resources making these updates.

(B) Request for Comment

The Commission requests comment on its considerations of the costs and benefits of the proposed amendments to § 49.10(c). Are there additional costs and benefits that the Commission should consider? Commenters are encouraged to include both qualitative and quantitative assessments of these costs and benefits.

Are there any other alternatives that may provide preferable costs or benefits than the costs and benefits related to the proposed amendments?

7. Reporting in Light of CEA Section 15(a)

The Dodd-Frank Act sought to promote the financial stability of the U.S., in part, by improving financial system accountability and transparency. More specifically, Title VII of the Dodd-Frank Act directs the Commission to promulgate regulations to increase swaps markets' transparency and thereby reduce the potential for counterparty and systemic risk.[298] Transaction-based reporting is a fundamental component of the legislation's objectives to increase transparency, reduce risk, and promote market integrity within the financial system generally, and the swaps market in particular. The SDRs and the SEFs, DCMs, and other reporting entities that submit data to SDRs are central to achieving the legislation's objectives related to swap reporting.

CEA section 15(a) requires the Commission to consider the costs and benefits of the proposed amendments to parts 23, 43, 45, and 49 with respect to the following factors:

- Protection of market participants and the public;
- Efficiency, competitiveness, and financial integrity of markets;
- Price discovery;
- Sound risk management practices; and
- Other public interest considerations.

[298] *See* Congressional Research Service Report for Congress, The Dodd-Frank Wall Street Reform and Consumer Protection Act: Title VII, Derivatives, by Mark Jickling and Kathleen Ann Ruane (August 30, 2010); Department of the Treasury, Financial Regulatory Reform: A New Foundation: Rebuilding Financial Supervision and Regulation (June 17, 2009) at 47-48.

A discussion of these proposed amendments in light of CEA section 15(a) factors is set out immediately below.

a. Protection of Market Participants and the Public

The Commission believes that the reporting changes under parts 45, 46, and 49 would enhance protections already in place for market participants and the public. By lengthening reporting timeframes and standardizing data formats, the Commission believes that it would be provided a more cohesive, more standardized, and, ultimately, more accurate data without sacrificing the ability to oversee the markets in a robust fashion. Higher-quality swap data would improve the Commission's oversight and enforcement capabilities, and, in turn, would aid it in protecting markets, participants, and the public in general.

b. Efficiency, Competitiveness, and Financial Integrity

The Commission believes the proposed rules would streamline reporting and improve efficiencies given the improved data standardization. By identifying reporting entities and by making DCO reporting duties clearer, the proposed rules strive to improve reliability and consistency of swap data. This reliability might further lead to bolstering the financial integrity of swaps markets. Finally, the validation of swap data would improve the accuracy and completeness of swap data available to the Commission and would assist the Commission with, among other things, improved monitoring of risk exposures of individual counterparties, monitoring concentrations of risk exposure, and evaluating systemic risk.

c. Price Discovery

The Commission does not believe the proposed rules would have a significant impact on price discovery.

d. Risk Management Practices

The Commission believes that the proposed rules would improve the quality of swap data reported to SDRs and, hence, improve the Commission's ability to monitor the swaps market, react to changes in market conditions, and fulfill its regulatory responsibilities generally. The Commission believes that regulator access to high-quality swap data is essential for regulators' to monitor the swaps market for systemic risk, or unusually large concentrations of risk in individual swaps markets or asset classes.

e. Other Public Interest Considerations

The Commission believes that the increased accuracy resulting from improvements to data entry by market participants and validation efforts by SDRs via the proposed rules has other public interest considerations including:

- Increased understanding for the public, market participants, and the Commission of the interaction between the swaps market, other financial markets, and the overall economy;
- Improved regulatory oversight and enforcement capabilities; and
- Enhanced information for the Commission and other regulators so that they may establish more effective public policies to monitor and, where necessary, reduce overall systemic risk.

8. General Request for Comment

The Commission requests comment on all aspects of the proposed rules. Beyond specific questions interspersed throughout this discussion, the Commission generally requests

comment on all aspects of its consideration of costs and benefits, including: identification and assessment of any costs and benefits not discussed therein; the potential costs and benefits of alternatives; data and any other information (including proposed methodology) to assist or otherwise inform the Commission's ability to quantify or qualitatively describe the benefits and costs of the proposed rules; and substantiating data, statistics, and any other information to support statements by commenters with respect to the Commission's consideration of costs and benefits. Commenters also may suggest other alternatives to the proposed approach where the commenters believe that the alternatives would be appropriate under the CEA and provide a superior cost-benefit profile. Commenters are encouraged to include both qualitative and quantitative assessments of these benefits and costs.

D. Antitrust Considerations

CEA section 15(b) 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 part 45 would result in anti-competitive behavior. The Commission expects the proposed amendments to § 45.10(d) that would permit reporting counterparties to change SDRs would promote competition by encouraging SDRs to offer competitive pricing and services to encourage reporting counterparties to either stay customers or come to their SDR. The Commission encourages comments from the public on any aspect of the

proposal that may have the potential to be inconsistent with the antitrust laws or anti-competitive in nature.

VIII. Text of Proposed Rules

List of Subjects

17 CFR Part 45

Swaps; data recordkeeping requirements; data reporting requirements

17 CFR Part 46

Swaps, data recordkeeping requirements and data reporting requirements

17 CFR Part 49

Swap data repositories; registration and regulatory requirements

For the reasons stated in the preamble, the Commodity Futures Trading Commission proposes to amend 17 CFR parts 45, 46, and 49 as set forth below:

PART 45 – SWAP DATA RECORDKEEPING AND REPORTING REQUIREMENTS

Authority and Issuance

1. The authority citation for part 45 continues to read as follows:

Authority: 7 U.S.C. 6r, 7, 7a-1, 7b-3, 12a, and 24a, as amended by Title VII of the Wall Street Reform and Consumer Protection Act of 2010, Pub. L. 111-203, 124 Stat. 1376 (Jul. 21, 2010), unless otherwise noted.

2. In part 45:

a. Remove the phrase “unique swap identifier” and add in its place “unique transaction identifier;” and

b. Remove the phrase "non-SD/MSP" and add in its place "non-SD/MSP/DCO."

3. In the table below, for each section and paragraph indicated in the left column, remove the term indicated in the middle column from wherever it appears in the section or paragraph, and add in its place the term indicated in the right column:

Section	Remove	Add
45.2(a)	major swap participant subject to the jurisdiction of the Commission	major swap participant
45.2(b)	counterparties subject to the jurisdiction of the Commission	counterparties
45.2(b)	the clearing requirement exception	any clearing requirement exception or exemption
45.2(b)	in CEA section 2(h)(7)	pursuant to section 2(h)(7) of the Act or part 50 of this chapter
45.2(h)	counterparty subject to the jurisdiction of the Commission	counterparty
45.5 (introductory text)	swap subject to the jurisdiction of the Commission	swap
45.5 (introductory text)	(f)	(h)
45.5(a)(1)	single data field	single data element with a maximum length of 52 characters
45.5(b)	swap dealer or major swap participant	financial entity
45.5(b)(1)	transmission of data	transmission of swap data

45.5(b)(1)	single data field	single data element with a maximum length of 52 characters
45.5(b)(1)(ii)	swap dealer or major swap participant	reporting counterparty
45.5(d)(1)	single data field	single data element with a maximum length of 52 characters
45.5(e)(1)	(c)	(d)
45.5(e)(1)	of this section	of this section, as applicable
45.5(e)(2)(i)	question.	question;
45.5(e)(2)(ii)	agent.	agent; and
45.7 (introductory text)	swap subject to the jurisdiction of the Commission	swap
45.8(h)	swap creation data	required swap creation data
45.8(h)(1)	achieve this	comply with paragraph (h) of this section
45.8(h)(2)	achieve this	comply with paragraph (h) of this section
45.9	swap counterparties	reporting counterparties
45.11(a)	swap data repository registered with the Commission	swap data repository
45.11(a)	registered entity or counterparty	swap execution facility, designated contract market, derivatives clearing organization, or reporting counterparty

4. Revise § 45.1 to read as follows:

§ 45.1 Definitions.

(a) As used in this part:

Allocation means the process by which an agent, having facilitated a single swap transaction on behalf of several clients, allocates a portion of the executed swap to the clients.

As soon as technologically practicable means as soon as possible, taking into consideration the prevalence, implementation, and use of technology by comparable market participants.

Asset class means a broad category of commodities, including, without limitation, any "excluded commodity" as defined in section 1a(19) of the Act, with common characteristics underlying a swap. The asset classes include interest rate, foreign exchange, credit, equity, other commodity, and such other asset classes as may be determined by the Commission.

Business day means each twenty-four hour day, on all days except Saturdays, Sundays, and Federal holidays.

Business hours means consecutive hours during one or more consecutive business days.

Clearing swap means a swap created pursuant to the rules of a derivatives clearing organization that has a derivatives clearing organization as a counterparty, including any swap that replaces an original swap that was extinguished upon acceptance of such original swap by the derivatives clearing organization for clearing.

Collateral data means the data elements necessary to report information about the money, securities, or other property posted or received by a swap counterparty to margin, guarantee, or secure a swap, as specified in appendix 1 to this part.

Derivatives clearing organization means a derivatives clearing organization, as defined by § 1.3 of this chapter, that is registered with the Commission.

Electronic reporting ("report electronically") means the reporting of data normalized in data elements as required by the data standard or standards used by the swap data repository to which the data is reported. Except where specifically otherwise provided in this chapter, electronic reporting does not include submission of an image of a document or text file.

Execution means an agreement by the parties, by any method, to the terms of a swap that legally binds the parties to such swap terms under applicable law.

Execution date means the date, determined by reference to eastern time, on which swap execution occurred. The execution date for a clearing swap that replaces an original swap is the date, determined by reference to eastern time, on which the original swap has been accepted for clearing.

Financial entity has the meaning set forth in CEA section 2(h)(7)(C).

Global Legal Entity Identifier System means the system established and overseen by the Legal Entity Identifier Regulatory Oversight Committee for the unique identification of legal entities and individuals.

Legal entity identifier or *LEI* means a unique code assigned to swap counterparties and entities in accordance with the standards set by the Global Legal Entity Identifier System.

Legal Entity Identifier Regulatory Oversight Committee means the group charged with the oversight of the Global Legal Entity Identifier System that was established by the Finance Ministers and the Central Bank Governors of the Group of Twenty nations

and the Financial Stability Board, under the Charter of the Regulatory Oversight Committee for the Global Legal Entity Identifier System dated November 5, 2012, or any successor thereof.

Life cycle event means any event that would result in a change to required swap creation data previously reported to a swap data repository in connection with a swap. Examples of such events include, without limitation, a counterparty change resulting from an assignment or novation; a partial or full termination of the swap; a change to the end date for the swap; a change in the cash flows or rates originally reported; availability of a legal entity identifier for a swap counterparty previously identified by some other identifier; or a corporate action affecting a security or securities on which the swap is based (e.g., a merger, dividend, stock split, or bankruptcy).

Life cycle event data means all of the data elements necessary to fully report any life cycle event.

Mixed swap has the meaning set forth in CEA section 1a(47)(D), and refers to an instrument that is in part a swap subject to the jurisdiction of the Commission, and in part a security-based swap subject to the jurisdiction of the SEC.

Multi-asset swap means a swap that does not have one easily identifiable primary underlying notional item, but instead involves multiple underlying notional items within the Commission's jurisdiction that belong to different asset classes.

Non-SD/MSP/DCO counterparty means a swap counterparty that is not a swap dealer, major swap participant, or derivatives clearing organization.

Non-SD/MSP/DCO reporting counterparty means a reporting counterparty that is not a swap dealer, major swap participant, or derivatives clearing organization.

Novation means the process by which a party to a swap legally transfers all or part of its rights, liabilities, duties, and obligations under the swap to a new legal party other than the counterparty to the swap under applicable law.

Off-facility swap means any swap transaction that is not executed on or pursuant to the rules of a swap execution facility or designated contract market.

Original swap means a swap that has been accepted for clearing by a derivatives clearing organization.

Reporting counterparty means the counterparty required to report swap data pursuant to this part, selected as provided in § 45.8.

Required swap continuation data means all of the data elements that must be reported during the existence of a swap to ensure that all swap data concerning the swap in the swap data repository remains current and accurate, and includes all changes to the required swap creation data occurring during the existence of the swap. For this purpose, required swap continuation data includes:

(1) All life cycle event data for the swap; and

(2) All swap valuation, margin, and collateral data for the swap.

Required swap creation data means all data for a swap required to be reported pursuant to § 45.3 for the swap data elements in appendix 1 to this part.

Swap means any swap, as defined by § 1.3 of this chapter, as well as any foreign exchange forward, as defined by section 1a(24) of the Act, or foreign exchange swap, as defined by section 1a(25) of the Act.

Swap data means the specific data elements and information in appendix 1 to this part required to be reported to a swap data repository pursuant to this part or made available to the Commission pursuant to part 49 of this chapter, as applicable.

Swap data validation procedures means procedures established by a swap data repository pursuant to § 49.10 of this chapter to accept, validate, and process swap data reported to the swap data repository pursuant to part 45 of this chapter.

Swap execution facility means a trading system or platform that is a swap execution facility as defined in CEA section 1a(50) and in § 1.3 of this chapter and that is registered with the Commission pursuant to CEA section 5h and § 37 of this chapter.

Swap transaction and pricing data means all data for a swap in appendix C to part 43 required to be reported or publicly disseminated pursuant to part 43.

Unique transaction identifier means a unique alphanumeric identifier with a maximum length of 52 characters constructed solely from the upper-case alphabetic characters A to Z or the digits 0 to 9, inclusive in both cases, generated for each swap pursuant to § 45.5.

Valuation data means the data elements necessary to report information about the daily mark of the transaction, pursuant to section 4s(h)(3)(B)(iii) of the Act, and to § 23.431 of this chapter, if applicable, as specified in appendix 1 to this part.

(b) *Other defined terms*. Terms not defined in this part have the meanings assigned to the terms in § 1.3 of this chapter.

5. Revise § 45.3 to read as follows:

§ 45.3 Swap data reporting: Creation data.

(a) *Swaps executed on or pursuant to the rules of a swap execution facility or designated contract market*. For each swap executed on or pursuant to the rules of a swap execution facility or designated contract market, the swap execution facility or designated contract market shall report required swap creation data electronically to a swap data repository in the manner provided in § 45.13(a) not later than 11:59 p.m. eastern time on the next business day following the execution date.

(b) *Off-facility swaps*. For each off-facility swap, the reporting counterparty shall report required swap creation data electronically to a swap data repository as provided by paragraph (b)(1) or (b)(2) of this section, as applicable.

(1) If the reporting counterparty is a swap dealer, major swap participant, or derivatives clearing organization, the reporting counterparty shall report required swap creation data electronically to a swap data repository in the manner provided in § 45.13(a) not later than 11:59 p.m. eastern time on the next business day following the execution date.

(2) If the reporting counterparty is a non-SD/MSP/DCO counterparty, the reporting counterparty shall report required swap creation data electronically to a swap data repository in the manner provided in § 45.13(a) not later than 11:59 p.m. eastern time on the second business day following the execution date.

(c) *Allocations*. For swaps involving allocation, required swap creation data shall be reported electronically to a single swap data repository as follows.

(1) *Initial swap between reporting counterparty and agent*. The initial swap transaction between the reporting counterparty and the agent shall be reported as required

by paragraphs (a) or (b) of this section, as applicable. A unique transaction identifier for the initial swap transaction shall be created as provided in § 45.5.

(2) *Post-allocation swaps*—(i) *Duties of the agent*. In accordance with this section, the agent shall inform the reporting counterparty of the identities of the reporting counterparty's actual counterparties resulting from allocation, as soon as technologically practicable after execution, but not later than eight business hours after execution.

(ii) *Duties of the reporting counterparty*. The reporting counterparty shall report required swap creation data, as required by paragraph (b) of this section, for each swap resulting from allocation to the same swap data repository to which the initial swap transaction is reported. The reporting counterparty shall create a unique transaction identifier for each such swap as required in § 45.5.

(d) *Multi-asset swaps*. For each multi-asset swap, required swap creation data and required swap continuation data shall be reported to a single swap data repository that accepts swaps in the asset class treated as the primary asset class involved in the swap by the swap execution facility, designated contract market, or reporting counterparty reporting required swap creation data pursuant to this section.

(e) *Mixed swaps*.

(1) For each mixed swap, required swap creation data and required swap continuation data shall be reported to a swap data repository and to a security-based swap data repository registered with the Securities and Exchange Commission. This requirement may be satisfied by reporting the mixed swap to a swap data repository or security-based swap data repository registered with both Commissions.

(2) The registered entity or reporting counterparty reporting required swap creation data pursuant to this section shall ensure that the same unique transaction identifier is recorded for the swap in both the swap data repository and the security-based swap data repository.

(f) *Choice of swap data repository*. The entity with the obligation to choose the swap data repository to which all required swap creation data for the swap is reported shall be the entity that is required to make the first report of all data pursuant to this section, as follows:

(1) For swaps executed on or pursuant to the rules of a swap execution facility or designated contract market, the swap execution facility or designated contract market shall choose the swap data repository;

(2) For all other swaps, the reporting counterparty, as determined in § 45.8, shall choose the swap data repository.

6. Revise § 45.4 to read as follows:

§ 45.4 Swap data reporting: Continuation data.

(a) *Continuation data reporting method generally*. For each swap, regardless of asset class, reporting counterparties and derivatives clearing organizations required to report required swap continuation data shall report life cycle event data for the swap electronically to a swap data repository in the manner provided in § 45.13(a) within the applicable deadlines set forth in this section.

(b) *Continuation data reporting for original swaps*. For each original swap, the derivatives clearing organization shall report required swap continuation data, including

terminations, electronically to the swap data repository to which the swap that was accepted for clearing was reported pursuant to § 45.3 in the manner provided in § 45.13(a) and in this section, and such required swap continuation data shall be accepted and recorded by such swap data repository as provided in § 49.10 of this chapter.

(1) The derivatives clearing organization that accepted the swap for clearing shall report all life cycle event data electronically to a swap data repository in the manner provided in § 45.13(a) not later than 11:59 p.m. eastern time on the next business day following the day, as determined according to eastern time, that any life cycle event occurs with respect to the swap.

(2) In addition to all other required swap continuation data, life cycle event data shall include all of the following:

(i) The legal entity identifier of the swap data repository to which all required swap creation data for each clearing swap was reported by the derivatives clearing organization pursuant to § 45.3(b);

(ii) The unique transaction identifier of the original swap that was replaced by the clearing swaps; and

(iii) The unique transaction identifier of each clearing swap that replaces a particular original swap.

(c) *Continuation data reporting for swaps other than original swaps.* For each swap that is not an original swap, including clearing swaps and swaps not cleared by a derivatives clearing organization, the reporting counterparty shall report all required swap continuation data electronically to a swap data repository in the manner provided in § 45.13(a) as provided in this paragraph (c).

(1) *Life cycle event data reporting*.

(i) If the reporting counterparty is a swap dealer, major swap participant, or derivatives clearing organization, the reporting counterparty shall report life cycle event data electronically to a swap data repository in the manner provided in § 45.13(a) not later than 11:59 p.m. eastern time on the next business day following the day, as determined according to eastern time, that any life cycle event occurred, with the sole exception that life cycle event data relating to a corporate event of the non-reporting counterparty shall be reported in the manner provided in § 45.13(a) not later than 11:59 p.m. eastern time on the second business day following the day, as determined according to eastern time, that such corporate event occurred.

(ii) If the reporting counterparty is a non-SD/MSP/DCO counterparty, the reporting counterparty shall report life cycle event data electronically to a swap data repository in the manner provided in § 45.13(a) not later than 11:59 p.m. eastern time on the second business day following the day, as determined according to eastern time, that any life cycle event occurred.

(2) *Valuation, margin, and collateral data reporting*. If the reporting counterparty is a swap dealer, major swap participant, or derivatives clearing organization, swap valuation data and collateral data shall be reported electronically to a swap data repository in the manner provided in § 45.13(b) each business day.

7. Amend § 45.5 by:

a. Revising paragraphs (a)(1)(i) and (b)(1)(i);

b. Revising the introductory text of paragraph (c) and paragraphs (c)(1) and (c)(1)(i);

c. Revising the introductory text of paragraph (d) and paragraph (d)(1)(i);

d. Revising paragraph (f); and

e. Adding paragraphs (g) and (h).

The revisions read as follows:

§ 45.5 Unique transaction identifiers.

* * * * *

(a) * * *

(1) * * *

(i) The legal entity identifier of the swap execution facility or designated contract market; and

* * * * *

(b) * * *

(1) * * *

(i) The legal entity identifier of the reporting counterparty; and

* * * * *

(c) *Off-facility swaps with a non-SD/MSP/DCO reporting counterparty that is not a financial entity*. For each off-facility swap for which the reporting counterparty is a non-SD/MSP/DCO counterparty that is not a financial entity, the reporting counterparty shall either: (i) create and transmit a unique transaction identifier as provided in paragraphs (b)(1) and (2) of this section; or (ii) request that the swap data repository to which required swap creation data will be reported create and transmit a unique transaction identifier as provided in paragraphs (c)(1) and (2) of this section.

(1) *Creation*. The swap data repository shall generate and assign a unique transaction identifier as soon as technologically practicable following receipt of the request from the reporting counterparty. The unique transaction identifier shall consist of a single data element with a maximum length of 52 characters that contains two components:

(i) The legal entity identifier of the swap data repository; and

* * * * *

(d) *Off-facility swaps with a derivatives clearing organization reporting counterparty*. For each off-facility swap where the reporting counterparty is a derivatives clearing organization, the reporting counterparty shall create and transmit a unique transaction identifier as provided in paragraphs (d)(1) and (2) of this section.

(1) * * *

(i) The legal entity identifier of the derivatives clearing organization; and

* * * * *

(f) *Use*. Each registered entity and swap counterparty shall include the unique transaction identifier for a swap in all of its records and all of its swap data reporting concerning that swap, from the time it creates or receives the unique transaction identifier as provided in this section, throughout the existence of the swap and for as long as any records are required by the Act or Commission regulations to be kept concerning the swap, regardless of any life cycle events concerning the swap, including, without limitation, any changes with respect to the counterparties to the swap.

(g) *Third-party service provider*. If a registered entity or reporting counterparty required by this part to report required swap creation data or required swap continuation

data contracts with a third-party service provider to facilitate reporting pursuant to § 45.9, the registered entity or reporting counterparty shall ensure that such third-party service provider creates and transmits the unique transaction identifier as otherwise required for such category of swap by paragraphs (a) through (e) of this section. The unique transaction identifier shall consist of a single data element with a maximum length of 52 characters that contains two components:

(1) The legal entity identifier of the third-party service provider; and

(2) An alphanumeric code generated and assigned to that swap by the automated systems of the third-party service provider, which shall be unique with respect to all such codes generated and assigned by that third-party service provider.

(h) *Cross-jurisdictional swaps*. Notwithstanding the provisions of paragraphs (a) through (g) of this section, if a swap is also reportable to one or more other jurisdictions with a regulatory reporting deadline earlier than the deadline set forth in § 45.3, the same unique transaction identifier generated according to the rules of the jurisdiction with the earliest regulatory reporting deadline shall be transmitted pursuant to paragraphs (a) through (g) of this section and used in all recordkeeping and all swap data reporting pursuant to this part.

8. Revise § 45.6 to read as follows:

§ 45.6 Legal entity identifiers.

Each swap execution facility, designated contract market, derivatives clearing organization, swap data repository, entity reporting pursuant to § 45.9, and counterparty to any swap that is eligible to receive a legal entity identifier shall obtain and be

identified in all recordkeeping and all swap data reporting pursuant to this part by a single legal entity identifier as specified in this section.

(a) *Definitions*. As used in this section:

Local operating unit means an entity authorized under the standards of the Global Legal Entity Identifier System to issue legal entity identifiers.

Reference data means all identification and relationship information, as set forth in the standards of the Global Legal Entity Identifier System, of the legal entity or individual to which a legal entity identifier is assigned.

Self-registration means submission by a legal entity or individual of its own reference data.

Third-party registration means submission of reference data for a legal entity or individual that is or may become a swap counterparty, made by an entity or organization other than the legal entity or individual identified by the submitted reference data. Examples of third-party registration include, without limitation, submission by a swap dealer or major swap participant of reference data for its swap counterparties, and submission by a national numbering agency, national registration agency, or data service provider of reference data concerning legal entities or individuals with respect to which the agency or service provider maintains information.

(b) *International standard for the legal entity identifier*. The legal entity identifier used in all recordkeeping and all swap data reporting required by this part shall be issued under, and shall conform to, ISO Standard 17442, Legal Entity Identifier (LEI), issued by the International Organization for Standardization.

(c) *Reference data reporting*. Reference data for each swap execution facility, designated contract market, derivatives clearing organization, swap data repository, entity reporting pursuant to § 45.9, and counterparty to any swap shall be reported, by means of self-registration, third-party registration, or both, to a local operating unit in accordance with the standards set by the Global Legal Entity Identifier System. All subsequent changes and corrections to reference data previously reported shall be reported, by means of self-registration, third-party registration, or both, to a local operating unit as soon as technologically practicable following occurrence of any such change or discovery of the need for a correction.

(d) *Use of the legal entity identifier*.

(1) Each swap execution facility, designated contract market, derivatives clearing organization, swap data repository, entity reporting pursuant to § 45.9, and swap counterparty shall use legal entity identifiers to identify itself and swap counterparties in all recordkeeping and all swap data reporting pursuant to this part. If a swap counterparty is not eligible to receive a legal entity identifier as determined by the Global Legal Entity Identifier System, such counterparty shall be identified in all recordkeeping and all swap data reporting pursuant to this part with an alternate identifier as prescribed by the Commission pursuant to § 45.13(a).

(2) Each swap dealer, major swap participant, swap execution facility, designated contract market, derivatives clearing organization, and swap data repository shall maintain and renew its legal identity identifier in accordance with the standards set by the Global Legal Entity Identifier System.

(3) Each derivatives clearing organization and each financial entity reporting counterparty executing a swap with a counterparty that is eligible to receive a legal entity identifier, but has not been assigned a legal entity identifier, shall, prior to reporting any required swap creation data for such swap, cause a legal entity identifier to be assigned to the counterparty, including if necessary, through third-party registration.

(4) For swaps previously reported pursuant to this part using substitute counterparty identifiers assigned by a swap data repository prior to Commission designation of a legal entity identifier system, each swap data repository shall map the legal entity identifiers for the counterparties to the substitute counterparty identifiers in the record for each such swap.

9. Amend § 45.8 by revising the introductory text to read as follows:

§ 45.8 Determination of which counterparty shall report.

The determination of which counterparty is the reporting counterparty for each swap shall be made as provided in this section.

* * * * *

10. Revise § 45.10 to read as follows:

§ 45.10 Reporting to a single swap data repository.

All swap transaction and pricing data and swap data for a given swap shall be reported to a single swap data repository, which shall be the swap data repository to which the first report of such data is made, unless the reporting counterparty changes the

swap data repository to which such data is reported pursuant to paragraph (d) of this section.

(a) *Swaps executed on or pursuant to the rules of a swap execution facility or designated contract market*. To ensure that all swap transaction and pricing data and swap data for a swap executed on or pursuant to the rules of a swap execution facility or designated contract market is reported to a single swap data repository:

(1) The swap execution facility or designated contract market shall report all swap transaction and pricing data and required swap creation data for a swap to a single swap data repository. As soon as technologically practicable after execution of the swap, the swap execution facility or designated contract market shall transmit to both counterparties to the swap, and to the derivatives clearing organization, if any, that will clear the swap, the identity of the swap data repository to which such data is reported.

(2) Thereafter, all swap transaction and pricing data, required swap creation data, and required swap continuation data for the swap shall be reported to that same swap data repository, unless the reporting counterparty changes the swap data repository to which such data is reported pursuant to paragraph (d) of this section.

(b) *Off-facility swaps that are not clearing swaps*. To ensure that all swap transaction and pricing data and swap data for an off-facility swap that is not a clearing swap is reported to a single swap data repository:

(1) The reporting counterparty shall report all swap transaction and pricing data and required swap creation data to a single swap data repository. As soon as technologically practicable after execution, the reporting counterparty shall transmit to the other counterparty to the swap, and to the derivatives clearing organization, if any,

that will clear the swap, the identity of the swap data repository to which such data is reported.

(2) Thereafter, all swap transaction and pricing data, required swap creation data, and required swap continuation data for the swap shall be reported to the same swap data repository, unless the reporting counterparty changes the swap data repository to which such data is reported pursuant to paragraph (d) of this section.

(c) *Clearing swaps.* To ensure that all swap transaction and pricing data and swap data for a given clearing swap, including clearing swaps that replace a particular original swap or that are created upon execution of the same transaction and that do not replace an original swap, is reported to a single swap data repository:

(1) The derivatives clearing organization that is a counterparty to such clearing swap shall report all swap transaction and pricing data and required swap creation data for that clearing swap to a single swap data repository. As soon as technologically practicable after acceptance of an original swap for clearing, or execution of a clearing swap that does not replace an original swap, the derivatives clearing organization shall transmit to the counterparty to each clearing swap the identity of the swap data repository to which such data is reported.

(2) Thereafter, all swap transaction and pricing data, required swap creation data and required swap continuation data for that clearing swap shall be reported by the derivatives clearing organization to the same swap data repository to which swap data has been reported pursuant to paragraph (c)(1) of this section, unless the reporting counterparty changes the swap data repository to which such data is reported pursuant to paragraph (d) of this section.

(3) For clearing swaps that replace a particular original swap, and for equal and opposite clearing swaps that are created upon execution of the same transaction and that do not replace an original swap, the derivatives clearing organization shall report all swap transaction and pricing data, required swap creation data, and required swap continuation data for such clearing swaps to a single swap data repository.

(d) *Change of swap data repository for swap transaction and pricing data and swap data reporting*. A reporting counterparty may change the swap data repository to which swap transaction and pricing data and swap data is reported as set forth in this paragraph.

(1) *Notifications*. At least five business days prior to changing the swap data repository to which the reporting counterparty reports swap transaction and pricing data and swap data for a swap, the reporting counterparty shall provide notice of such change to the other counterparty to the swap, the swap data repository to which swap transaction and pricing data and swap data is currently reported, and the swap data repository to which swap transaction and pricing data and swap data will be reported going forward. Such notification shall include the unique transaction identifier of the swap and the date on which the reporting counterparty will begin reporting such swap transaction and pricing data and swap data to a different swap data repository.

(2) *Procedure*. After providing the notifications required in paragraph (d)(1) of this section, the reporting counterparty shall follow paragraphs (d)(2)(i)-(iii) of this section to complete the change of swap data repository.

(i) The reporting counterparty shall report the change of swap data repository to the swap data repository to which the reporting counterparty is currently reporting swap

transaction and pricing data and swap data as a life cycle event for such swap pursuant to § 45.4.

(ii) On the same day that the reporting counterparty reports required swap continuation data as required by paragraph (d)(2)(i) of this section, the reporting counterparty shall also report the change of swap data repository to the swap data repository to which swap transaction and pricing data and swap data will be reported going forward, as a life cycle event for such swap pursuant to § 45.4. The required swap continuation data report shall identify the swap using the same unique transaction identifier used to identify the swap at the previous swap data repository.

(iii) Thereafter, all swap transaction and pricing data, required swap creation data, and required swap continuation data for the swap shall be reported to the same swap data repository, unless the reporting counterparty for the swap makes another change to the swap data repository to which such data is reported pursuant to paragraph (d) of this section.

11. Remove paragraphs (c) and (d) of § 45.11 to read as follows:

§ 45.11 Data reporting for swaps in a swap asset class not accepted by any swap data repository.

(a) Should there be a swap asset class for which no swap data repository currently accepts swap data, each swap execution facility, designated contract market, derivatives clearing organization, or reporting counterparty required by this part to report any required swap creation data or required swap continuation data with respect to a swap in that asset class must report that same data to the Commission.

(b) Data reported to the Commission pursuant to this section shall be reported at times announced by the Commission and in an electronic file in a format acceptable to the Commission.

12. Remove and reserve § 45.12.

§ 45.12 [Reserved]

13. Revise § 45.13 to read as follows:

§ 45.13 Required data standards.

(a) *Data reported to swap data repositories*. (1) In reporting required swap creation data and required swap continuation data to a swap data repository, each reporting counterparty, swap execution facility, designated contract market, and derivatives clearing organization, shall report the swap data elements in appendix 1 to this part in the form and manner provided in the technical specifications published by the Commission pursuant to § 45.15.

(2) In reporting required swap creation data and required swap continuation data to a swap data repository, each reporting counterparty, swap execution facility, designated contract market, and derivatives clearing organization making such report shall satisfy the swap data validation procedures of the swap data repository.

(3) In reporting swap data to a swap data repository as required by this part, each reporting counterparty, swap execution facility, designated contract market, and derivatives clearing organization shall use the facilities, methods, or data standards

provided or required by the swap data repository to which the entity or counterparty reports the data.

(b) *Data Validation Acceptance Message*.

(1) For each required swap creation data or required swap continuation data report submitted to a swap data repository, a swap data repository shall notify the reporting counterparty, swap execution facility, designated contract market, derivatives clearing organization, or third-party service provider submitting the report whether the report satisfied the swap data validation procedures of the swap data repository. The swap data repository shall provide such notification as soon as technologically practicable after accepting the required swap creation data or required swap continuation data report. A swap data repository may satisfy the requirements of this paragraph by transmitting data validation acceptance messages as required by § 49.10 of this chapter.

(2) If a required swap creation data or required swap continuation data report to a swap data repository does not satisfy the data validation procedures of the swap data repository, the reporting counterparty, swap execution facility, designated contract market, or derivatives clearing organization, required to submit the report has not yet satisfied its obligation to report required swap creation or continuation data in the manner provided by paragraph (a) of this section within the timelines set forth in §§ 45.3 and 45.4. The reporting counterparty, swap execution facility, designated contract market, or derivatives clearing organization has not satisfied its obligation until it submits the required swap data report in the manner provided by paragraph (a) of this section, which includes the requirement to satisfy the data validation procedures of the swap data repository, within the applicable time deadline set forth in §§ 45.3 and 45.4.

14. Add § 45.15 to read as follows:

§ 45.15 Delegation of authority.

(a) *Delegation of authority to the Chief Information Officer*. The Commission hereby delegates to its chief information officer, until the Commission orders otherwise, the authority set forth in paragraph (a) of this section, to be exercised by the chief information officer or by such other employee or employees of the Commission as may be designated from time to time by the chief information officer. The chief information officer may submit to the Commission for its consideration any matter which has been delegated in this paragraph. Nothing in this paragraph prohibits the Commission, at its election, from exercising the authority delegated in this paragraph. The authority delegated to the chief information officer by this paragraph (a) shall include:

(1) The authority to determine the manner, format, coding structure, and electronic data transmission standards and procedures acceptable to the Commission for the purposes of § 45.11;

(2) The authority to determine whether the Commission may permit or require use by swap execution facilities, designated contract markets, derivatives clearing organizations, or reporting counterparties in reporting pursuant to § 45.11 of one or more particular data standards (such as FIX, FpML, ISO 20022, or some other standard), in order to accommodate the needs of different communities of users;

(3) The dates and times at which required swap creation data or required swap continuation data shall be reported pursuant to § 45.11; and

(4) The chief information officer shall publish from time to time in the *Federal Register* and on the website of the Commission the format, data schema, electronic data transmission methods and procedures, and dates and times for reporting acceptable to the Commission with respect to swap data reporting pursuant to § 45.11.

(b) *Delegation of authority to the Director of the Division of Market Oversight*. The Commission hereby delegates to the Director of the Division of Market Oversight, until the Commission orders otherwise, the authority set forth in § 45.13(a)(1), to be exercised by the Director of the Division of Market Oversight or by such other employee or employees of the Commission as may be designated from time to time by the Director of the Division of Market Oversight. The Director of the Division of Market Oversight may submit to the Commission for its consideration any matter which has been delegated pursuant to this paragraph. Nothing in this paragraph prohibits the Commission, at its election, from exercising the authority delegated in this paragraph. The authority delegated to the Director of the Division of Market Oversight by this paragraph (b) shall include:

(1) The authority to publish the technical specifications providing the form and manner for reporting the swap data elements in appendix 1 to this part to swap data repositories as provided in § 45.13(a)(1);

(2) The authority to determine whether the Commission may permit or require use by swap execution facilities, designated contract markets, derivatives clearing organizations, or reporting counterparties in reporting pursuant to § 45.13(a)(1) of one or more particular data standards (such as FIX, FpML, ISO 20022, or some other standard), in order to accommodate the needs of different communities of users;

(3) The dates and times at which required swap creation data or required swap continuation data shall be reported pursuant to § 45.13(a)(1); and

(4) The Director of the Division of Market Oversight shall publish from time to time in the Federal Register and on the website of the Commission the technical specifications for swap data reporting pursuant to § 45.13(a)(1).

15. Revise appendix 1 to part 45 to read as follows:

Appendix 1 to Part 45 – Swap Data Elements

	Data Element Name	Definition for Data Element	Asset Class				
			CR	IR	FX	EQ	CO
	Category: Clearing						
1	Cleared	Indicator of whether the transaction has been cleared, or is intended to be cleared, by a central counterparty.	✓	✓	✓	✓	✓
2	Central counterparty	Identifier of the central counterparty (CCP) that cleared the transaction. This data element is not applicable if the value of the data element "Cleared" is "N" ("No, not centrally cleared") or "I" ("Intent to clear").	✓	✓	✓	✓	✓
3	Clearing account origin	Indicator of whether the clearing member acted as principal for a house trade or an agent for a customer trade.	✓	✓	✓	✓	✓
4	Clearing member	Identifier of the clearing member through which a derivative transaction was cleared at a central counterparty. This data element is applicable to cleared transactions under both the agency clearing model and the principal clearing model. • In the case of the principal clearing model, the clearing member is identified as clearing member and also as a counterparty in both transactions resulting from clearing: (i) in the transaction between the central counterparty and the clearing member; and (ii) in the transaction between the clearing member and the counterparty to the original alpha transaction. • In the case of the agency clearing model, the clearing member is identified as clearing member but not as the counterparty to transactions resulting from clearing. Under this model, the counterparties are the central counterparty and the client. This data element is not applicable if the value of the	✓	✓	✓	✓	✓

	Data Element Name	Definition for Data Element	Asset Class				
			CR	IR	FX	EQ	CO
		data element "Cleared" is "N" ("No, not centrally cleared") or "I" ("Intent to clear").					
5	Clearing swap USIs	The unique swap identifiers (USI) of each clearing swap that replaces the original swap that was submitted for clearing to the derivatives clearing organization, other than the USI for the swap currently being reported (as "USI" data element below).	✓	✓	✓	✓	✓
6	Clearing swap UTIs	The unique transaction identifiers (UTI) of each clearing swap that replaces the original swap that was submitted for clearing to the derivatives clearing organization, other than the UTI for the swap currently being reported (as "UTI" data element below).	✓	✓	✓	✓	✓
7	Original swap USI	The unique swap identifier (USI) of the original swap submitted for clearing to the derivatives clearing organization that is replaced by clearing swaps.	✓	✓	✓	✓	✓
8	Original swap UTI	The unique transaction identifier (UTI) of the original swap submitted for clearing to the derivatives clearing organization that is replaced by clearing swaps.	✓	✓	✓	✓	✓
9	Original swap SDR identifier	Identifier of the swap data repository (SDR) to which the original swap was reported.	✓	✓	✓	✓	✓
10	Clearing receipt timestamp	The date and time, expressed in UTC, the original swap was received by the derivatives clearing organization (DCO) for clearing and recorded by the DCO's system.	✓	✓	✓	✓	✓
11	Clearing exceptions and exemptions - Counterparty 1	Identifies the type of clearing exception or exemption that the Counterparty 1 has elected. All applicable exceptions and exemptions must be selected. The values may be repeated as applicable.	✓	✓	✓	✓	✓
12	Clearing exceptions and exemptions – Counterparty 2	Identifies the type of the clearing exception or exemption that the Counterparty 2 has elected. All applicable exceptions and exemptions must be selected. The values may be repeated as applicable.	✓	✓	✓	✓	✓
	Category: Counterparty						
13	Counterparty 1 (reporting counterparty)	Identifier of the counterparty to an OTC derivative transaction who is fulfilling its reporting obligation via the report in question. In jurisdictions where both parties must report the transaction, the identifier of Counterparty 1 always identifies the reporting counterparty. In the case of an allocated derivative transaction executed by a fund manager on behalf of a fund, the fund and not the fund manager is reported as the counterparty.	✓	✓	✓	✓	✓
14	Counterparty 2	Identifier of the second counterparty to an OTC derivative transaction.	✓	✓	✓	✓	✓

	Data Element Name	Definition for Data Element	Asset Class				
			CR	IR	FX	EQ	CO
		In the case of an allocated derivative transaction executed by a fund manager on behalf of a fund, the fund and not the fund manager is reported as the counterparty.					
15	Counterparty 2 identifier source	Source used to identify the Counterparty 2.	✓	✓	✓	✓	✓
16	Counterparty 1 financial entity indicator	Indicator of whether Counterparty 1 is a financial entity as defined in CEA § 2(h)(7)(C).	✓	✓	✓	✓	✓
17	Counterparty 2 financial entity indicator	Indicator of whether Counterparty 2 is a financial entity as defined in CEA § 2(h)(7)(C).	✓	✓	✓	✓	✓
18	Buyer identifier	Identifier of the counterparty that is the buyer, as determined at the time of the transaction. A non-exhaustive list of examples of instruments for which this data element could apply are: • most forwards and forward-like contracts (except for foreign exchange forwards and foreign exchange non-deliverable forwards) • most options and option-like contracts including swaptions, caps and floors • credit default swaps (buyer/seller of protection) • variance, volatility and correlation swaps • contracts for difference and spreadbets This data element is not applicable to instrument types covered by data elements Payer identifier and Receiver identifier.	✓	✓	✓	✓	✓
19	Seller identifier	Identifier of the counterparty that is the seller as determined at the time of the transaction. A non-exhaustive list of examples of instruments for which this data element could apply are: • most forwards and forward-like contracts (except for foreign exchange forwards and foreign exchange non-deliverable forwards) • most options and option-like contracts including swaptions, caps and floors • credit default swaps (buyer/seller of protection) • variance, volatility and correlation swaps • contracts for difference and spreadbets This data element is not applicable to instrument types covered by data elements Payer identifier and Receiver identifier.	✓	✓	✓	✓	✓
20	Payer identifier	Identifier of the counterparty of the payer leg as determined at the time of the transaction. A non-exhaustive list of examples of instruments for	✓	✓	✓	✓	✓

	Data Element Name	Definition for Data Element	Asset Class				
			CR	IR	FX	EQ	CO
		which this data element could apply are: • most swaps and swap-like contracts including interest rate swaps, credit total return swaps, and equity swaps (except for credit default swaps, variance, volatility, and correlation swaps) • foreign exchange swaps, forwards, non-deliverable forwards This data element is not applicable to instrument types covered by data elements Buyer identifier and Seller identifier.					
21	Receiver identifier	Identifier of the counterparty of the receiver leg as determined at the time of the transaction. A non-exhaustive list of examples of instruments for which this data element could apply are: • most swaps and swap-like contracts including interest rate swaps, credit total return swaps, and equity swaps (except for credit default swaps, variance, volatility, and correlation swaps) • foreign exchange swaps, forwards, non-deliverable forwards This data element is not applicable to instrument types covered by data elements Buyer identifier and Seller identifier.	✓	✓	✓	✓	✓
22	Submitter identifier	Identifier of the entity submitting the data to the swap data repository (SDR). The Submitter identifier will be the same as the reporting counterparty or swap execution facility (SEF), unless they use a third-party service provider to submit the data to SDR in which case, report the identifier of the third-party service provider.	✓	✓	✓	✓	✓
	Category: Custom baskets						
23	Custom basket indicator	Indicator that the swap is based on a custom basket.	✓	✓	✓	✓	✓
	Category: Events						
24	Action type	Type of action taken on the transaction reporting or end of day reporting. **New**: An action that reports a new swap transaction. It applies to the first message relating to a new USI or UTI. **Modify**: An action that modifies the state of a previously submitted transaction (e.g., credit event) or changes a term of a previously submitted transaction due to a newly negotiated modification (amendment) or updates previously missing information (e.g., post price swap). It does not include correction of a previous transaction. **Correct**: An action that corrects erroneous data of a	✓	✓	✓	✓	✓

	Data Element Name	Definition for Data Element	Asset Class				
			CR	IR	FX	EQ	CO
		previously submitted transaction. **Error**: An action of cancellation of a wrongly submitted entire transaction in case it never came into existence or was not subject to part 43/part 45 reporting requirements but was reported erroneously. **Terminate**: An action that closes an existing transaction because of a new event (e.g., Compression, Novation). This does not apply to transactions that terminate at contractual maturity date. **Port out**: An action that transfers swap transaction from one SDR to another SDR (change of swap data repository). **Valuation**: An update to valuation data. There will be no corresponding Event type. **Collateral**: An update to collateral margin data. There will be no corresponding Event type. Refer to appendix F for event model sample scenarios.					
25	Event type	Explanation or reason for the action being taken on the transaction reporting. **Trade**: A creation, modification, or termination of a transaction. **Novation**: A novation legally moves partial or all of the financial risks of a swap from a transferor to a transferee and has the effect of terminating/modifying the original transaction and creating a new transaction to identify the exposure between the transferor/transferee and remaining party. **Compression or Risk Reduction Exercise**: Compressions and risk reduction exercises generally have the effect of terminating or modifying (i.e., reducing the notional value) a set of existing transactions and of creating a set of new transaction(s). These processes result in largely the same exposure of market risk that existed prior to the event for the counterparty. **Early termination**: Termination of an existing swap transaction prior to scheduled termination or maturity date. **Clearing**: Central clearing is a process where a derivatives clearing organization interposes itself between counterparties to contracts, becoming the buyer to every seller and the seller to every buyer. It has the effect of terminating an existing transaction between the buyer and the seller and thereby ensuring the performance of open contracts. **Exercise**: The process by which a counterparty fully or partially exercises their rights specified in the contract of an option or a swaption. **Allocation**: The process by which an agent, having facilitated a single swap transaction on behalf of several clients, allocates a portion of the executed swap to the clients.	✓	✓	✓	✓	✓

	Data Element Name	Definition for Data Element	Asset Class				
			CR	IR	FX	EQ	CO
		Clearing and Allocation: A simultaneous clearing and allocation event in a derivatives clearing organization. **CDS Credit**: An event or trigger that results in the modification of the state of a previously submitted credit derivative transaction. Applies only to credit derivatives. **Porting**: The process by which a swap is transferred to another SDR that r has the effect of the closing of the swap transaction at one SDR or opening of the same swap transaction using the same UTI/USI in a different SDR (new).					
26	Event identifier	Unique identifier to link transactions resulting when Event type is either COMP (Compression) or CRDT (CDS Credit). The unique identifier may be assigned by the reporting counterparty or a service provider.	✓	✓	✓	✓	✓
27	Event timestamp	Date and time of occurrence of the event as determined by the reporting counterparty or a service provider. In the case of a clearing event, date and time when the original swap is accepted by the derivatives clearing organization (DCO) for clearing and recorded by the DCO's system should be reported in this data element. The time element is as specific as technologically practicable.	✓	✓	✓	✓	✓
	Category: Notional amounts and quantities						
28	Notional amount	For each leg of the transaction, where applicable: - for OTC derivative transactions negotiated in monetary amounts, amount specified in the contract. - for OTC derivative transactions negotiated in non-monetary amounts, refer to appendix B for converting notional amounts for non-monetary amounts. In addition: • For OTC derivative transactions with a notional amount schedule, the initial notional amount, agreed by the counterparties at the inception of the transaction, is reported in this data element. • For OTC foreign exchange options, in addition to this data element, the amounts are reported using the data elements Call amount and Put amount. For amendments or lifecycle events, the resulting outstanding notional amount is reported; (steps in notional amount schedules are not considered to be amendments or lifecycle events); • Where the notional amount is not known when a new transaction is reported, the notional amount is updated as it becomes available.	✓	✓	✓	✓	✓
29	Notional currency	For each leg of the transaction, where applicable: currency in which the notional amount is denominated.	✓	✓	✓	✓	✓
30	Delta	The ratio of the absolute change in price of an OTC	✓	✓	✓	✓	✓

	Data Element Name	Definition for Data Element	Asset Class				
			CR	IR	FX	EQ	CO
		derivative transaction to the change in price of the underlier, at the time a new transaction is reported or when a change in the notional amount is reported.					
31	Call amount	For foreign exchange options, the monetary amount that the option gives the right to buy.			✓		
32	Call currency	For foreign exchange options, the currency in which the Call amount is denominated.			✓		
33	Put amount	For foreign exchange options, the monetary amount that the option gives the right to sell.			✓		
34	Put currency	For foreign exchange options, the currency in which the Put amount is denominated.			✓		
35	Notional quantity	For each leg of the transaction, where applicable, for swap transactions negotiated in non-monetary amounts with fixed notional quantity for each schedule period (i.e., 50 barrels per month). The frequency is reported in Quantity frequency and the unit of measure is reported in Quantity unit of measure.					✓
36	Quantity frequency	The rate at which the quantity is quoted on the swap. e.g., hourly, daily, weekly, monthly.					✓
37	Quantity frequency multiplier	The number of time units for the Quantity frequency					✓
38	Quantity unit of measure	For each leg of the transaction, where applicable: unit of measure in which the Total notional quantity and Notional quantity are expressed.				✓	✓
39	Total notional quantity	For each leg of the transaction, where applicable: aggregate Notional quantity of the underlying asset for the term of the transaction. Where the Total notional quantity is not known when a new transaction is reported, the Total notional quantity is updated as it becomes available.				✓	✓
	Category: Packages						
40	Package identifier	Identifier (determined by the reporting counterparty) in order to connect • two or more transactions that are reported separately by the reporting counterparty, but that are negotiated together as the product of a single economic agreement. • two or more reports pertaining to the same transaction whenever jurisdictional reporting requirement does not allow the transaction to be reported with a single report to TRs. A package may include reportable and non-reportable transactions. This data element is not applicable • if no package is involved, or • to allocations Where the Package identifier is not known when a new transaction is reported, the Package identifier is	✓	✓	✓	✓	✓

	Data Element Name	Definition for Data Element	Asset Class				
			CR	IR	FX	EQ	CO
		updated as it becomes available.					
41	Package transaction price	Traded price of the entire package in which the reported derivative transaction is a component. This data element is not applicable if no package is involved. Prices and related data elements of the transactions (Price currency, Price notation, Price unit of measure) that represent individual components of the package are reported when available. The Package transaction price may not be known when a new transaction is reported but may be updated later.	✓	✓	✓	✓	✓
42	Package transaction price currency	Currency in which the Package transaction price is denominated. This data element is not applicable if: • no package is involved, or • Package transaction price notation = 3	✓	✓	✓	✓	✓
43	Package transaction price notation	Manner in which the Package transaction price is expressed. This data element is not applicable if no package is involved	✓	✓	✓	✓	✓
	Category: Payments						
44	Day count convention	For each leg of the transaction, where applicable: day count convention (often also referred to as day count fraction or day count basis or day count method) that determines how interest payments are calculated. It is used to compute the year fraction of the calculation period, and indicates the number of days in the calculation period divided by the number of days in the year.	✓	✓	✓	✓	✓
45	Fixing date	Describes the specific date when a non-deliverable forward as well as various types of FX OTC options such as cash-settled options that will "fix" against a particular exchange rate, which will be used to compute the ultimate cash settlement.			✓		
46	Floating rate reset frequency period	For each floating leg of the transaction, where applicable, time unit associated with the frequency of resets, e.g., day, week, month, year or term of the stream.	✓	✓	✓	✓	✓
47	Floating rate reset frequency period multiplier	For each floating leg of the transaction, where applicable, number of time units (as expressed by the Floating rate reset frequency period) that determines the frequency at which periodic payment dates for reset occur. For example, a transaction with reset payments occurring every two months is represented with a Floating rate reset frequency period of "MNTH" (monthly) and a Floating rate reset frequency period multiplier of 2. This data element is not applicable if the Floating rate reset frequency period is "ADHO." If Floating rate reset frequency period is "TERM," then the Floating rate reset frequency period multiplier is 1. If the reset	✓	✓	✓	✓	✓

	Data Element Name	Definition for Data Element	Asset Class				
			CR	IR	FX	EQ	CO
		frequency period is intraday, then the Floating rate reset frequency period is "DAIL" and the Floating rate reset frequency period multiplier is 0.					
48	Other payment type	Type of Other payment amount. Option premium payment is not included as a payment type as premiums for option are reported using the option premium dedicated data element.	✓	✓	✓	✓	✓
49	Other payment amount	Payment amounts with corresponding payment types to accommodate requirements of transaction descriptions from different asset classes.	✓	✓	✓	✓	✓
50	Other payment currency	Currency in which Other payment amount is denominated.	✓	✓	✓	✓	✓
51	Other payment date	Unadjusted date on which the Other payment amount is paid.	✓	✓	✓	✓	✓
52	Other payment payer	Identifier of the payer of Other payment amount.	✓	✓	✓	✓	✓
53	Other payment receiver	Identifier of the receiver of Other payment amount.	✓	✓	✓	✓	✓
54	Payment frequency period	For each leg of the transaction, where applicable: time unit associated with the frequency of payments, e.g., day, week, month, year or term of the stream.	✓	✓		✓	✓
55	Payment frequency period multiplier	For each leg of the transaction, where applicable: number of time units (as expressed by the Payment frequency period) that determines the frequency at which periodic payment dates occur. For example, a transaction with payments occurring every two months is represented with a Payment frequency period of "MNTH" (monthly) and a Payment frequency period multiplier of 2. This data element is not applicable if the Payment frequency period is "ADHO." If Payment frequency period is "TERM," then the Payment frequency period multiplier is 1. If the Payment frequency is intraday, then the Payment frequency period is "DAIL" and the Payment frequency multiplier is 0.	✓	✓		✓	✓
	Category: Prices						
56	Exchange rate	Exchange rate between the two different currencies specified in the OTC derivative transaction agreed by the counterparties at the inception of the transaction, expressed as the rate of exchange from converting the unit currency into the quoted currency. In the example 0.9426 USD/EUR, USD is the unit currency and EUR is the quoted currency; USD 1 = EUR 0.9426.			✓		
57	Exchange rate basis	Currency pair and order in which the exchange rate is denominated, expressed as unit currency/quoted currency. In the example 0.9426 USD/EUR, USD is the unit currency and EUR is the quoted currency, USD 1 = EUR 0.9426.			✓		
58	Fixed rate	For each leg of the transaction, where applicable: for OTC derivative transactions with periodic payments,	✓	✓			✓

	Data Element Name	Definition for Data Element	Asset Class				
			CR	IR	FX	EQ	CO
		per annum rate of the fixed leg(s).					
59	Post-priced swap indicator	An indication of whether a transaction satisfies the definition of "post-priced swap" in § 43.2(a) of the Commission's regulations.	✓	✓	✓	✓	✓
60	Price	Price specified in the OTC derivative transaction. It does not include fees, taxes or commissions. For commodity fixed/float swaps and similar products with periodic payments, this data element refers to the fixed price of the fixed leg(s). For commodity and equity forwards and similar products, this data element refers to the forward price of the underlying or reference asset. For equity swaps, portfolios swaps, and similar products, this data element refers to the initial price of the underlying or reference asset. For contracts for difference and similar products, this data element refers to the initial price of the underlier. This data element is not applicable to: • Interest rate swaps and forward rate agreements, as it is understood that the information included in the data elements Fixed rate and Spread may be interpreted as the price of the transaction. • Interest rate options and interest rate swaptions as it is understood that the information included in the data elements Strike price and Option premium may be interpreted as the price of the transaction. • Commodity basis swaps and the floating leg of commodity fixed/float swaps as it is understood that the information included in the data element Spread may be interpreted as the price of the transaction. • Foreign exchange swaps, forwards and options, as it is understood that the information included in the data elements Exchange rate, Strike price, and Option premium may be interpreted as the price of the transaction. • Equity options as it is understood that the information included in the data elements Strike price and Option premium may be interpreted as the price of the transaction. • Credit default swaps and credit total return swaps, as it is understood that the information included in the data elements Fixed rate, Spread and Upfront payment (Other payment type: Upfront payment) may be interpreted as the price of the transaction. • Commodity options, as it is understood that the information included in the data elements Strike price and Option premium may be interpreted as the price of the transaction. Where the price is not known when a new transaction is reported, the price is updated as it becomes available.				✓	✓

	Data Element Name	Definition for Data Element	Asset Class				
			CR	IR	FX	EQ	CO
		For transactions that are part of a package, this data element contains the price of the component transaction where applicable.					
61	Price currency	Currency in which the price is denominated. Price currency is only applicable if Price notation = 1.				✓	✓
62	Price notation	Manner in which the price is expressed.				✓	✓
63	Price unit of measure	Unit of measure in which the price is expressed.				✓	✓
64	Spread	For each leg of the transaction, where applicable: for OTC derivative transactions with periodic payments (e.g., interest rate fixed/float swaps, interest rate basis swaps, commodity swaps), • spread on the individual floating leg(s) index reference price, in the case where there is a spread on a floating leg(s). For example, USD-LIBOR-BBA plus .03 or WTI minus USD 14.65; or • difference between the reference prices of the two floating leg indexes. For example, the 9.00 USD "Spread" for a WCS vs. WTI basis swap where WCS is priced at 43 USD and WTI is priced at 52 USD.	✓	✓		✓	✓
65	Spread currency	For each leg of the transaction, where applicable: currency in which the spread is denominated. This data element is only applicable if Spread notation = 1.	✓	✓		✓	✓
66	Spread notation	For each leg of the transaction, where applicable: manner in which the spread is expressed.	✓	✓		✓	✓
67	Strike price	• For options other than FX options, swaptions and similar products, price at which the owner of an option can buy or sell the underlying asset of the option. • For foreign exchange options, exchange rate at which the option can be exercised, expressed as the rate of exchange from converting the unit currency into the quoted currency. In the example 0.9426 USD/EUR, USD is the unit currency and EUR is the quoted currency; USD 1 = EUR 0.9426. Where the strike price is not known when a new transaction is reported, the strike price is updated as it becomes available. • For volatility and variance swaps and similar products, the volatility strike price is reported in this data element.	✓	✓	✓	✓	✓
68	Strike price currency/currency pair	For equity options, commodity options, and similar products, currency in which the strike price is denominated. For foreign exchange options: Currency pair and order in which the strike price is expressed. It is expressed as unit currency/quoted currency. In the example 0.9426 USD/EUR, USD is the unit currency and EUR is the quoted currency, USD 1 = EUR 0.9426 Strike price currency/currency pair is only applicable if Strike price notation = 1.	✓	✓	✓	✓	✓

	Data Element Name	Definition for Data Element	Asset Class				
			CR	IR	FX	EQ	CO
69	Strike price notation	Manner in which the strike price is expressed.	✓	✓	✓	✓	✓
70	Option premium amount	For options and swaptions of all asset classes, monetary amount paid by the option buyer. This data element is not applicable if the instrument is not an option or does not embed any optionality.	✓	✓	✓	✓	✓
71	Option premium currency	For options and swaptions of all asset classes, currency in which the option premium amount is denominated. This data element is not applicable if the instrument is not an option or does not embed any optionality.	✓	✓	✓	✓	✓
72	Option premium payment date	Unadjusted date on which the option premium is paid.	✓	✓	✓	✓	✓
73	First exercise date	First unadjusted date during the exercise period in which an option can be exercised. For European-style options, this date is same as the Expiration date. For American-style options, the first possible exercise date is the unadjusted date included in the Execution timestamp. For knock-in options, where the first exercise date is not known when a new transaction is reported, the first exercise date is updated as it becomes available. This data element is not applicable if the instrument is not an option or does not embed any optionality.	✓	✓	✓	✓	✓
	Category: Product						
74	CDS index attachment point	Defined lower point at which the level of losses in the underlying portfolio reduces the notional of a tranche. For example, the notional in a tranche with an attachment point of 3% will be reduced after 3% of losses in the portfolio have occurred. This data element is not applicable if the transaction is not a CDS tranche transaction (index or custom basket).	✓				
75	CDS index detachment point	Defined point beyond which losses in the underlying portfolio no longer reduce the notional of a tranche. For example, the notional in a tranche with an attachment point of 3% and a detachment point of 6% will be reduced after there have been 3% of losses in the portfolio. 6% losses in the portfolio deplete the notional of the tranche. This data element is not applicable if the transaction is not a CDS tranche transaction (index or custom basket).	✓				
76	Index factor	The index version factor or percent, expressed as a decimal value, that multiplied by the Notional amount yields the notional amount covered by the seller of protection for credit default swap.	✓				
77	Embedded option type	Type of option or optional provision embedded in a contract.	✓	✓	✓	✓	✓
78	Unique product identifier	A unique set of characters that represents a particular OTC derivative. The Commission will designate a UPI pursuant to § 45.7.	✓	✓	✓	✓	✓
	Category: Settlement						

	Data Element Name	Definition for Data Element	Asset Class				
			CR	IR	FX	EQ	CO
79	Final contractual settlement date	Unadjusted date as per the contract, by which all transfer of cash or assets should take place and the counterparties should no longer have any outstanding obligations to each other under that contract. For products that may not have a final contractual settlement date (e.g., American options), this data element reflects the date by which the transfer of cash or asset would take place if termination were to occur on the expiration date.	✓	✓	✓	✓	✓
80	Settlement currency	Currency for the cash settlement of the transaction when applicable. For multi-currency products that do not net, the settlement currency of each leg. This data element is not applicable for physically settled products (e.g., physically settled swaptions).	✓	✓	✓	✓	✓
	Category: Transaction related						
81	Allocation indicator	Indicator of whether the swap transaction is intended to be allocated, will not be allocated, or is a post allocation transaction.	✓	✓	✓	✓	✓
82	Non-standardized term indicator	Indicator of whether the swap has one or more additional term(s) or provision(s), other than those disseminated to the public pursuant to part 43, that materially affect(s) the price of the swap.	✓	✓	✓	✓	✓
83	Block trade election indicator	Indicator of whether an election has been made to report the swap as a block swap either by the reporting counterparty or as calculated by the swap data repository acting as a third party for the reporting counterparty.	✓	✓	✓	✓	✓
84	Effective date	Unadjusted date at which obligations under the OTC derivative transaction come into effect, as included in the confirmation.	✓	✓	✓	✓	✓
85	Expiration date	Unadjusted date at which obligations under the swap transaction stop being effective, as included in the confirmation. Early termination does not affect this data element.	✓	✓	✓	✓	✓
86	Execution timestamp	Date and time a transaction was originally executed, resulting in the generation of a new UTI. This data element remains unchanged throughout the life of the UTI.	✓	✓	✓	✓	✓
87	Reporting timestamp	Date and time of the submission of the report to the trade repository.	✓	✓	✓	✓	✓
88	Platform identifier	Identifier of the trading facility (e.g., exchange, multilateral trading facility, swap execution facility) on which the transaction was executed.	✓	✓	✓	✓	✓
89	Prime brokerage transaction identifier	Identifier in order to connect the prime broker executing broker ("PB-ED") swap and the prime-broker counterparty(ies) swap(s) ("PB-CP") in a Prime Brokerage transaction. The reporting counterparty to a PB-CP swap(s) shall identify that swap as part of a Prime Brokerage transaction by reporting the USI or UTI of the "PB-	✓	✓	✓	✓	✓

	Data Element Name	Definition for Data Element	Asset Class				
			CR	IR	FX	EQ	CO
		ED" swap in the Prime brokerage transaction identifier data element.					
90	Prime brokerage transaction indicator	Indicator of whether the swap is a Prime Brokerage transaction.	✓	✓	✓	✓	✓
91	Prior USI (for one-to-one and one-to-many relations between transactions)	Unique swap identifier (USI) assigned to the predecessor transaction that has given rise to the reported transaction due to a lifecycle event, in a one-to-one relation between transactions (e.g., in the case of a novation, when a transaction is terminated, and a new transaction is generated) or in a one-to-many relation between transactions (e.g., in clearing or if a transaction is split into several different transactions). This data element is not applicable when reporting many-to-one and many-to-many relations between transactions (e.g., in the case of a compression).	✓	✓	✓	✓	✓
92	Prior UTI (for one-to-one and one-to-many relations between transactions)	UTI assigned to the predecessor transaction that has given rise to the reported transaction due to a lifecycle event, in a one-to-one relation between transactions (e.g., in the case of a novation, when a transaction is terminated, and a new transaction is generated) or in a one-to-many relation between transactions (e.g., in clearing or if a transaction is split into several different transactions). This data element is not applicable when reporting many-to-one and many-to-many relations between transactions (e.g., in the case of a compression).	✓	✓	✓	✓	✓
93	Unique swap identifier (USI)	The USI is a unique identifier assigned to all swap transactions which identifies the transaction (the swap and its counterparties) uniquely throughout its duration. It consists of a namespace and a transaction identifier.	✓	✓	✓	✓	✓
94	Unique transaction identifier (UTI)	See Technical Guidance - Harmonisation of the Unique Transaction Identifier.	✓	✓	✓	✓	✓
95	Jurisdiction indicator	The jurisdiction(s) that is requiring the reporting of the transaction.	✓	✓	✓	✓	✓
	Category: Transfer						
96	New SDR identifier	Identifier of the new swap data repository where the transaction is transferred to.	✓	✓	✓	✓	✓
	Category: Valuation						
97	Last floating reference value	The most recent sampling of the value of the floating reference for the purposes of determining cashflow. Ties to Last floating reference reset date data element.	✓	✓	✓	✓	✓
98	Last floating reference reset date	The date of the most recent sampling of the floating reference for the purposes of determining cashflow. Ties to Last floating reference value data element.	✓	✓	✓	✓	✓
99	Valuation amount	Current value of the outstanding contract. Valuation amount is expressed as the exit cost of the contract or components of the contract, i.e., the price that would be received to sell the contract (in the	✓	✓	✓	✓	✓

	Data Element Name	Definition for Data Element	Asset Class				
			CR	IR	FX	EQ	CO
		market in an orderly transaction at the valuation date).					
100	Valuation currency	Currency in which the valuation amount is denominated.	✓	✓	✓	✓	✓
101	Valuation method	Source and method used for the valuation of the transaction by the reporting counterparty. If at least one valuation input is used that is classified as mark-to-model in appendix D, then the whole valuation is classified as mark-to-model. If only inputs are used that are classified as mark-to-market in appendix D, then the whole valuation is classified as mark-to-market.	✓	✓	✓	✓	✓
102	Valuation timestamp	Date and time of the last valuation marked to market, provided by the central counterparty (CCP) or calculated using the current or last available market price of the inputs. If for example a currency exchange rate is the basis for a transaction's valuation, then the valuation timestamp reflects the moment in time that exchange rate was current.	✓	✓	✓	✓	✓
	Category: Collateral and margins						
103	Affiliated counterparty for margin and capital indicator	Indicator of whether the current counterparty is deemed an affiliate for the purposes of U.S. margin and capital rules (as per § 23.159).	✓	✓	✓	✓	✓
104	Collateralisation category	Indicator of whether a collateral agreement (or collateral agreements) between the counterparties exists (uncollateralised/partially collateralised/one-way collateralised/fully collateralised). This data element is provided for each transaction or each portfolio, depending on whether the collateralisation is performed at the transaction or portfolio level, and is applicable to both cleared and uncleared transactions.	✓	✓	✓	✓	✓
105	Collateral portfolio code	If collateral is reported on a portfolio basis, unique code assigned by the reporting counterparty to the portfolio.	✓	✓	✓	✓	✓
106	Portfolio containing non-reportable component indicator	If collateral is reported on a portfolio basis, indicator of whether the collateral portfolio includes transactions exempt from reporting.	✓	✓	✓	✓	✓
107	Initial margin posted by the reporting counterparty (post-haircut)	Monetary value of initial margin that has been posted by the reporting counterparty, including any margin that is in transit and pending settlement unless inclusion of such margin is not allowed under the jurisdictional requirements. If the collateralisation is performed at portfolio level, the initial margin posted relates to the whole portfolio; if the collateralisation is performed for single transactions, the initial margin posted relates to such single transaction. This refers to the total current value of the initial	✓	✓	✓	✓	✓

	Data Element Name	Definition for Data Element	Asset Class				
			CR	IR	FX	EQ	CO
		margin after application of the haircut (if applicable), rather than to its daily change. The data element refers both to uncleared and centrally cleared transactions. For centrally cleared transactions, the data element does not include default fund contributions, nor collateral posted against liquidity provisions to the central counterparty, i.e., committed credit lines. If the initial margin posted is denominated in more than one currency, those amounts are converted into a single currency chosen by the reporting counterparty and reported as one total value.					
108	Initial margin posted by the reporting counterparty (pre-haircut)	Monetary value of initial margin that has been posted by the reporting counterparty, including any margin that is in transit and pending settlement unless inclusion of such margin is not allowed under the jurisdictional requirements. If the collateralisation is performed at portfolio level, the initial margin posted relates to the whole portfolio; if the collateralisation is performed for single transactions, the initial margin posted relates to such single transaction. This refers to the total current value of the initial margin, rather than to its daily change. The data element refers both to uncleared and centrally cleared transactions. For centrally cleared transactions, the data element does not include default fund contributions, nor collateral posted against liquidity provisions to the central counterparty, i.e., committed credit lines. If the initial margin posted is denominated in more than one currency, those amounts are converted into a single currency chosen by the reporting counterparty and reported as one total value.	✓	✓	✓	✓	✓
109	Currency of initial margin posted	Currency in which the initial margin posted is denominated. If the initial margin posted is denominated in more than one currency, this data element reflects one of those currencies into which the reporting counterparty has chosen to convert all the values of posted initial margins.	✓	✓	✓	✓	✓
110	Initial margin collected by the reporting counterparty (post-haircut)	Monetary value of initial margin that has been collected by the reporting counterparty, including any margin that is in transit and pending settlement unless inclusion of such margin is not allowed under the jurisdictional requirements. If the collateralisation is performed at portfolio level, the initial margin collected relates to the whole portfolio; if the collateralisation is performed for single transactions, the initial margin collected relates to such single transaction.	✓	✓	✓	✓	✓

	Data Element Name	Definition for Data Element	Asset Class				
			CR	IR	FX	EQ	CO
		This refers to the total current value of the initial margin after application of the haircut (if applicable), rather than to its daily change. The data element refers both to uncleared and centrally cleared transactions. For centrally cleared transactions, the data element does not include collateral collected by the central counterparty as part of its investment activity. If the initial margin collected is denominated in more than one currency, those amounts are converted into a single currency chosen by the reporting counterparty and reported as one total value.					
111	Initial margin collected by the reporting counterparty (pre-haircut)	Monetary value of initial margin that has been collected by the reporting counterparty, including any margin that is in transit and pending settlement unless inclusion of such margin is not allowed under the jurisdictional requirements. If the collateralisation is performed at portfolio level, the initial margin collected relates to the whole portfolio; if the collateralisation is performed for single transactions, the initial margin collected relates to such single transaction. This refers to the total current value of the initial margin, rather than to its daily change. The data element refers both to uncleared and centrally cleared transactions. For centrally cleared transactions, the data element does not include collateral collected by the central counterparty as part of its investment activity. If the initial margin collected is denominated in more than one currency, those amounts are converted into a single currency chosen by the reporting counterparty and reported as one total value.	✓	✓	✓	✓	✓
112	Currency of initial margin collected	Currency in which the initial margin collected is denominated. If the initial margin collected is denominated in more than one currency, this data element reflects one of those currencies into which the reporting counterparty has chosen to convert all the values of collected initial margins.	✓	✓	✓	✓	✓
113	Variation margin posted by the reporting counterparty (pre-haircut)	Monetary value of the variation margin posted by the reporting counterparty (including the cash-settled one), and including any margin that is in transit and pending settlement unless inclusion of such margin is not allowed under the jurisdictional requirements. Contingent variation margin is not included. If the collateralisation is performed at portfolio level, the variation margin posted relates to the whole portfolio; if the collateralisation is performed for single transactions, the variation margin posted relates to such single transaction.	✓	✓	✓	✓	✓

	Data Element Name	Definition for Data Element	Asset Class				
			CR	IR	FX	EQ	CO
		This data element refers to the total current value of the variation margin, cumulated since the first reporting of variation margins posted for the portfolio/transaction If the variation margin posted is denominated in more than one currency, those amounts are converted into a single currency chosen by the reporting counterparty and reported as one total value.					
114	Currency of variation margin posted	Currency in which the variation margin posted is denominated. If the variation margin posted is denominated in more than one currency, this data element reflects one of those currencies into which the reporting counterparty has chosen to convert all the values of posted variation margins.	✓	✓	✓	✓	✓
115	Variation margin collected by the reporting counterparty (pre-haircut)	Monetary value of the variation margin collected by the reporting counterparty (including the cash-settled one), and including any margin that is in transit and pending settlement unless inclusion of such margin is not allowed under the jurisdictional requirements. Contingent variation margin is not included. If the collateralisation is performed at portfolio level, the variation margin collected relates to the whole portfolio; if the collateralisation is performed for single transactions, the variation margin collected relates to such single transaction. This refers to the total current value of the variation margin, cumulated since the first reporting of collected variation margins for the portfolio/ transaction. If the variation margin collected is denominated in more than one currency, those amounts are converted into a single currency chosen by the reporting counterparty and reported as one total value.	✓	✓	✓	✓	✓
116	Currency of variation margin collected	Currency in which the variation margin collected is denominated. If the variation margin collected is denominated in more than one currency, this data element reflects one of those currencies into which the reporting counterparty has chosen to convert all the values of collected variation margins.	✓	✓	✓	✓	✓

PART 46 - SWAP DATA RECORDKEEPING AND REPORTING REQUIREMENTS

Authority and Issuance

16. The authority citation for part 46 continues to read as follows:

Authority: Title VII, sections 723 and 729, Pub. L. 111-203, 124 Stat. 1738.

17. In part 46, remove the phrase "non-SD/MSP" and add in its place "non-SD/MSP/DCO."

18. In the table below, for each section and paragraph indicated in the left column, remove the term indicated in the middle column from wherever it appears in the section or paragraph, and add in its place the term indicated in the right column:

Section	Remove	Add
46.3(a)(1)(iii)(A).....	counterparty; and	counterparty.
46.3(a)(3)	first report of required swap creation data	first report of such data
46.4 (introductory text)	swap data reporting	data reporting
46.4(a)	substitute counterparty identifier as provided in §45.6(f) of this chapter	substitute counterparty identifier
46.4(d)	unique swap identifier and unique product identifier	unique swap identifier, unique transaction identifier, and unique product identifier
46.5(a)	swap data	data
46.6 (introductory text)	report swap data	report data
46.8(a)	accepts swap data	accepts data for pre-enactment and transition swaps

46.8(a)	required swap creation data or required swap continuation data	such data
46.8(c)(2)(ii)	reporting entities	registered entities
46.8(d)	swap data reporting	reporting data for pre-enactment and transition swaps
46.9(a)	any report of swap data	any report of data
46.9(f)	errors in the swap data	errors in the data for a pre-enactment or a transition swap
46.10	reporting swap data	reporting data for a pre-enactment or a transition swap
46.11(a)	report swap data	report data for a pre-enactment or a transition swap
46.11(b)	any swap data	any data for a pre-enactment or a transition swap

19. Amend § 46.1 by:

a. Adding new paragraphs (a) and (b);

b. Adding the definitions of “historical swaps” and “substitute counterparty identifier;”

c. Revising the definitions of “asset class,” “non-SD/MSP counterparty,” “reporting counterparty,” “required swap continuation data;” and

d. Removing the definitions of “credit swap,” “foreign exchange forward,” “foreign exchange instrument,” “foreign exchange swap,” “interest rate swap,” “international

swap," "major swap participant," "other commodity swap," "swap data repository," and "swap dealer."

The revisions read as follows:

§ 46.1 Definitions.

(a) As used in this part:

Asset class means a broad category of commodities, including, without limitation, any "excluded commodity" as defined in section 1a(19) of the Act, with common characteristics underlying a swap. The asset classes include interest rate, foreign exchange, credit, equity, other commodity, and such other asset classes as may be determined by the Commission.

* * * * *

Historical swap means pre-enactment swaps and transition swaps.

* * * * *

Non-SD/MSP/DCO counterparty means a swap counterparty that is not a swap dealer, major swap participant, or derivatives clearing organization.

* * * * *

Reporting counterparty means the counterparty required to report data for a pre-enactment swap or a transition swap pursuant to this part, selected as provided in § 46.5.

Required swap continuation data means all of the data elements that shall be reported during the existence of a swap as required by part 45 of this chapter.

Substitute counterparty identifier means a unique alphanumeric code assigned by a swap data repository to a swap counterparty prior to the Commission designation of a legal entity identifier system on July 23, 2012.

* * * * *

(b) *Other defined terms*. Terms not defined in this part have the meanings assigned to the terms in § 1.3 of this chapter.

20. Amend § 46.3 by revising paragraph (a)(2) to read as follows:

§ 46.3 Data reporting for pre-enactment swaps and transition swaps.

(a) * * *

(2) *Reporting of required swap continuation data*. (i) For each uncleared pre-enactment or transition swap in existence on or after April 25, 2011, throughout the existence of the swap following the compliance date, the reporting counterparty must report all required swap continuation data as required by part 45 of this chapter.

* * * * *

21. Amend § 46.10 by adding a sentence to read as follows:

§ 46.10 Required data standards.

* * * * *

In reporting required swap continuation data as required by this part, each reporting counterparty shall comply with the required data standards set forth in part 45 of this chapter, including those set forth in § 45.13(a) of this chapter.

22. Amend § 46.11 by removing paragraph (b) and redesignating paragraphs (c) and (d) as (b) and (c).

§ 46.11 Reporting of errors and omissions in previously reported data.

* * * * *

(b) Each counterparty to a pre-enactment or transition swap that is not the reporting counterparty as determined pursuant to section 46.5, and that discovers any error or omission with respect to any data for a pre-enactment or transition swap reported to a swap data repository for that swap, shall promptly notify the reporting counterparty of each such error or omission. As soon as technologically practicable after receiving such notice, the reporting counterparty shall report a correction of each such error or omission to the swap data repository.

(c) Each swap counterparty reporting corrections to errors or omissions in data previously reported as required by this part shall report such corrections in the same format as it reported the erroneous or omitted data.

PART 49 – SWAP DATA REPOSITORIES

Authority and Issuance

23. The authority citation for part 49 is revised to read as follows:

Authority: 7 U.S.C. 1a, 2(a), 6r, 12a, and 24a, as amended by Title VII of the Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, 124 Stat. 1376 (Jul. 21, 2010), unless otherwise noted.

24. In the table below, for each section and paragraph indicated in the left column, remove the term indicated in the middle column from wherever it appears in the section or paragraph, and add in its place the term indicated in the right column:

Section	Remove	Add
49.4(a)(1)	registered swap data repository	swap data repository
49.4(a)(1)	registrant	swap data repository
49.4(a)(1)	withdrawn, which notice	withdrawn. Such
49.4(a)(1)	sixty	60
49.4(a)(1)(i)	registrant	swap data repository
49.4(a)(1)(ii)	registrant;	swap data repository; and
49.4(a)(1)(iii)	located; and	located.
49.4(c)	registered swap data repository	swap data repository

25. Amend § 49.2(a) by adding the definitions of "data validation acceptance message," "data validation error," "data validation error message," and "data validation procedures" to read as follows:

§ 49.2 Definitions.

* * * * *

Data validation acceptance message. The term "data validation acceptance message" means a notification that SDR data satisfied the data validation procedures applied by a swap data repository.

Data validation error. The term "data validation error" means that a specific data element of SDR data did not satisfy the data validation procedures applied by a swap data repository.

Data validation error message. The term "data validation error message" means a notification that SDR data contained one or more data validation error(s).

Data validation procedures. The term "data validation procedures" means procedures established by a swap data repository pursuant to § 49.10 to validate SDR data reported to the swap data repository.

* * * * *

26. Amend § 49.4 by:

a. Removing paragraph (a)(1)(iv); and

b. Revising paragraph (a)(2).

The amendments read as follows:

§ 49.4 Withdrawal from registration.

* * * * *

(a) * * *

(2) Prior to filing a request to withdraw, a swap data repository shall execute an agreement with the custodial swap data repository governing the custody of the withdrawing swap data repository's data and records. The custodial swap data repository shall retain such records for at least as long as the remaining period of time the swap data repository withdrawing from registration would have been required to retain such records pursuant to this part.

* * * * *

27. Amend § 49.10 by revising paragraphs (a)-(d) and adding paragraph (f) to read as follows:

§ 49.10 Acceptance and validation of data.

(a) *General requirements*.

(1) A swap data repository shall establish, maintain, and enforce policies and procedures reasonably designed to facilitate the complete and accurate reporting of SDR data. A swap data repository shall promptly accept, validate, and record SDR data.

(2) *Electronic connectivity*. For the purpose of accepting SDR data, the swap data repository shall adopt policies and procedures, including technological protocols, which provide for electronic connectivity between the swap data repository and designated contract markets, derivatives clearing organizations, swap execution facilities, swap dealers, major swap participants and non-SD/MSP/DCO reporting counterparties who report such data. The technological protocols established by a swap data repository shall provide for the receipt of SDR data. The swap data repository shall ensure that its mechanisms for SDR data acceptance are reliable and secure.

(b) *Duty to accept SDR data*. A swap data repository shall set forth in its application for registration as described in § 49.3 the specific asset class or classes for which it will accept SDR data. If a swap data repository accepts SDR data of a particular asset class, then it shall accept SDR data from all swaps of that asset class, unless otherwise prescribed by the Commission.

(c) *Duty to validate SDR data*. A swap data repository shall validate SDR data as soon as technologically practicable after such data is accepted according to the validation conditions approved in writing by the Commission. A swap data repository shall validate

SDR data by providing data validation acceptance messages, data validation messages, as provided below.

(1) *Data validation acceptance message.* A swap data repository shall validate each SDR data report submitted to the swap data repository and notify the reporting counterparty, swap execution facility, designated contract market, or third party service provider submitting the report whether the report satisfied the data validation procedures of the swap data repository as soon as technologically practicable after accepting the SDR data report.

(2) *Data validation error message*. If SDR data contains one or more data validation errors, the swap data repository shall distribute a data validation error message to the designated contract market, swap execution facility, reporting counterparty, or third-party service provider that submitted such SDR data as soon as technologically practicable after acceptance of such data. Each data validation error message shall indicate which specific data validation error(s) was identified in the SDR data.

(3) *Swap transaction and pricing data submitted with swap data*. If a swap data repository allows for the joint submission of swap transaction and pricing data and swap data, the swap data repository shall validate the swap transaction and pricing data and swap data separately. Swap transaction and pricing data that satisfies the data validation procedures applied by a swap data repository shall not be deemed to contain a data validation error because it was submitted to the swap data repository jointly with swap data that contained a data validation error.

(d) *Policies and procedures to prevent invalidation or modification.* A swap data repository shall establish policies and procedures reasonably designed to prevent any

provision in a valid swap from being invalidated or modified through the verification or recording process of the swap data repository. The policies and procedures shall ensure that the swap data repository's user agreements are designed to prevent any such invalidation or modification.

* * * * *

(f) *Policies and procedures for resolving disputes regarding data accuracy*. A swap data repository shall establish procedures and provide facilities for effectively resolving disputes over the accuracy of the SDR data and positions that are recorded in the swap data repository.

Issued in Washington, DC on __, 2020, by the Commission.

Christopher J. Kirkpatrick

Secretary of the Commission