COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 45, 46, and 49

RIN 3038-AE31

Swap Data Recordkeeping and Reporting Requirements

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rule.

SUMMARY: The Commodity Futures Trading Commission ("Commission" or "CFTC") is amending certain regulations setting 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 amendments, 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 neither SDs nor MSPs.

DATES: *Effective date:* The effective date for this final rule is [insert date that is 60 days after publication in the Federal Register].

Compliance Date: SDRs, SEFs, DCMs, reporting counterparties, and non-reporting counterparties must comply with the amendments to the rules by [Compliance Date].

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SUPPLEMENTARY INFORMATION:

I. Background
II. Amendments to Part 45
  A. § 45.1 – Definitions
  B. § 45.2 – Swap Recordkeeping
  C. § 45.3 – Swap Data Reporting: Creation Data
  D. § 45.4 – Swap Data Reporting: Continuation Data
  E. § 45.5 – Unique Transaction Identifiers
  F. § 45.6 – Legal Entity Identifiers
  G. § 45.8 – Determination of Which Counterparty Shall Report
  H. § 45.10 – Reporting to a Single Swap Data Repository
  I. § 45.11 – Data Reporting for Swaps in a Swap Asset Class Not Accepted by Any Swap Data Repository
  J. § 45.12 – Voluntary Supplemental Reporting
  K. § 45.13 – Required Data Standards
  L. § 45.15 – Delegation of Authority
III. Amendments to Part 46
  A. § 46.1 – Definitions
  B. § 46.3 – Data Reporting for Pre-Enactment Swaps and Transition Swaps
  C. § 46.10 – Required Data Standards
  D. § 46.11 – Reporting of Errors and Omissions in Previously Reported Data

IV. Amendments to Part 49
A. § 49.2 – Definitions
B. § 49.4 – Withdrawal from Registration
C. § 49.10 – Acceptance and Validation of Data
V. Swap Data Elements Reported to Swap Data Repositories
A. Proposal
B. Comments on the Proposal and Commission Determination
VI. Compliance Date
VII. Related Matters
A. Regulatory Flexibility Act
B. Paperwork Reduction Act
C. Cost-Benefit Considerations
D. Antitrust Considerations
VIII. Text of the Final Rules

I. Background

Pursuant to section 2(a)(13)(G) of the Commodity Exchange Act ("CEA"), all swaps, whether cleared or uncleared, must be reported to SDRs.[1] CEA section 21(b) directs the Commission to prescribe standards for swap data recordkeeping and reporting.[2] Part 45 of the Commission's regulations implements the swap data reporting rules.[3] The part 45 regulations require SEFs, DCMs, and reporting counterparties to report swap data to SDRs. SDRs collect and maintain data related to swap transactions, keeping such data electronically available for regulators or the public.[4]

Since the Commission adopted the part 45 regulations, Commission staff has worked with SDRs, SEFs, DCMs, reporting counterparties, and non-reporting counterparties to interpret and implement of the requirements established in the

[1] 7 U.S.C. 2(a)(13)(G) (2020).
[2] *See* 7 U.S.C. 24a(b)(1)-(3).
[3] Commission regulations referred to herein are found at 17 CFR chapter I.
[4] 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. *See* 7 U.S.C. 1a(48). Regulations governing core principles and registration requirements for, and duties of, SDRs are in part 49. *See generally* 17 CFR part 49.

regulations. Several years ago, the Division of Market Oversight ("DMO") announced[5] its Roadmap to Achieve High Quality Swaps Data ("Roadmap"),[6] consisting of a comprehensive review to, among other things: (i) ensure the CFTC receives accurate, complete, and high-quality data on swap transactions for its regulatory oversight role; and (ii) streamline reporting, reduce messages that must be reported, and right-size the number of data elements reported to meet the agency's priority use-cases for swap data.[7]

In February 2020, the Commission proposed certain changes to its parts 45, 46, and 49 regulations ("Proposal")[8] to simplify the requirements for reporting swaps, require SDRs to validate swap reports, permit the transfer of swap data between SDRs, alleviate reporting burdens for non-SD/MSP reporting counterparties, and harmonize the swap data elements counterparties report to SDRs with international technical guidance.

The Commission received 26 comment letters on the Proposal.[9] After considering the comments, the Commission is adopting parts of the rules as proposed,

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[5] *See* Commission 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 https://www.cftc.gov/idc/groups/public/@lrlettergeneral/documents/letter/17-33.pdf*.

[6] The Roadmap is available at *https://www.cftc.gov/sites/default/files/idc/groups/public/@newsroom/documents/file/dmo_swapdataplan071017.pdf*. Comment letters related to the Roadmap are available at *https://comments.cftc.gov/PublicComments/CommentList.aspx?id=1824*.

[7] *See* Commission Letter 17-33, *supra* at n.5; Roadmap, *supra* at n.6.

[8] *See* Swap Data Recordkeeping and Reporting Requirements, 85 FR 21578.

[9] The following entities submitted comment letters: American Public Gas Association ("APGA"); BP Energy Company ("BP"); Chatham Financial ("Chatham"); Chris Barnard; CME Group ("CME"); Coalition of Physical Energy Companies ("COPE"); Commercial Energy Working Group ("CEWG"); Credit Suisse ("CS"); The Data Coalition ("Data Coalition"); DTCC Data Repository (U.S.) LLC ("DTCC"); Edison Electric Institute ("EEI") and Electric Power Supply Association ("EPSA") (collectively, "EEI-EPSA"); Eurex Clearing AG ("Eurex"); Foreign Exchange Professionals Association ("FXPA"); Futures Industry Association ("FIA"); Global Foreign Exchange Division of the Global Financial Markets Association (collectively, "GFXD"); Global Legal Entity Identifier Foundation ("GLEIF"); ICE Clear Credit LLC and ICE Clear Europe Limited ("ICE DCOs"); ICE Trade Vault, LLC ("ICE SDR"); IHS Markit ("Markit"); International Energy Credit Association ("IECA"); International Swaps and Derivatives Association, Inc. ("ISDA") and Securities Industry and Financial Markets

although there are proposed changes the Commission has determined to either revise or decline to adopt. The Commission believes the rules it is adopting herein will provide clarity and lead to more effective swap data reporting by SEFs, DCMs, and reporting counterparties.

Before discussing the changes to the regulations, the Commission highlights the important role international data harmonization efforts have played in this rulemaking. As discussed in the Proposal, 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 over-the-counter ("OTC") derivatives data elements ("Harmonisation Group") to develop global guidance regarding the definition, format, and usage of key OTC derivatives data elements reported to trade repositories ("TRs"), including the Unique Transaction Identifier ("UTI"), the Unique Product Identifier ("UPI"), and critical data elements other than UTI and UPI ("CDE").[10]

The Commission has played an active role in the development and publication of each of the Harmonisation Group's technical guidance documents. For the CDE Technical Guidance in particular, as part of the Harmonisation Group, Commission staff

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Association ("SIFMA") (collectively, "ISDA-SIFMA"); Japanese Bankers Association ("JBA"); Japan Securities Clearing Corporation ("JSCC"); LCH Ltd and LCH SA (collectively, "LCH"); National Rural Electric Cooperative Association and American Public Power Association ("NRECA-APPA"); and XBRL US, Inc. ("XBRL").

[10] In February 2017 and September 2017, respectively, the Harmonisation Group published *Guidance on the Harmonisation of the Unique Transaction Identifier* ("UTI Technical Guidance") and *Technical Guidance on the Harmonisation of the Unique Product Identifier* ("UPI Technical Guidance"). 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").

worked alongside representatives from Canada, France, Germany, Hong Kong, Japan, Singapore, and the United Kingdom, among others, to provide feedback regarding the data elements, taking into account the Commission's experience with swap data reporting thus far. 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.[11]

The Commission's sustained, active role in the Harmonisation Group in developing global guidance on key OTC derivatives data elements reported to TRs is part of the Commission's broader, long-range goal of continued efforts to achieve international harmony in the area of swaps reporting. The Commission has co-led efforts to design ongoing international regulatory oversight of these standards in the Financial Stability Board ("FSB") Working Group on UPI and UTI Governance ("GUUG") and the Commission's efforts to achieve international harmonization in the entire clearing ecosystem, including swap data reporting, will continue.

In particular, the Commission continues to be open to further ways to cooperate with our foreign regulatory counterparts in the supervision of TRs. An example is the consideration of when and how the Commission should grant swap data reporting substituted compliance determinations for SDs and DCOs domiciled in non-U.S. jurisdictions with similar swap data reporting requirements, permitting reporting of swap data to a foreign TR to satisfy Commission swap data requirements under appropriate circumstances. Efficiencies in cross-border reporting are critical to the smooth operation

[11] *See* CDE Technical Guidance at 9.

of transatlantic clearing and trading. To the degree the Commission can work with its international counterparts to thus increase interoperability between jurisdictions, this will enhance cross-border trading efficiency. Moreover, with appropriate tailoring and protections, and due access to foreign TR data, deference to foreign jurisdictions will reduce expensive redundancies in trade reporting.

II. Amendments to Part 45

A. § 45.1 – Definitions

The paragraph of existing § 45.1 is not lettered. The Commission is lettering the existing paragraph as "(a)" and adding (b) to § 45.1. Paragraph (a) will contain all of the definitions in existing § 45.1, as the Commission is modifying them. New paragraph (b) provides the terms not defined in part 45 have the meanings assigned to the terms in Commission regulation § 1.3, which was implied in the existing regulation but will now be explicit.[12]

The Commission is adding new definitions, amending certain existing definitions, and removing certain existing definitions. Within each of these categories, the Commission discusses the changes in alphabetical order, except as otherwise noted.

1. New Definitions

The Commission is adding a definition of "allocation" to § 45.1(a). "Allocation" means 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. Existing § 45.3(f) contains regulations for reporting allocations without defining the term. The

[12] 17 CFR 1.3.

definition will help market participants comply with the regulations for reporting allocations in § 45.3.

The Commission is adding a definition of "as soon as technologically practicable" ("ASATP") to § 45.1(a). "As soon as technologically practicable" means 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 undefined but used throughout part 45. The Commission is adopting the same definition of "as soon as technologically practicable" as is defined in § 43.2 for swap transaction and pricing data.[13]

The Commission is adding a definition of "collateral data" to § 45.1(a). "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 part 45. The Commission explains this definition in a discussion of collateral data reporting in section II.D.4 below.

The Commission is adding definitions of "execution" and "execution date" to § 45.1(a). "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.[14] In the Proposal, the Commission proposed "execution date" to 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

[13] *See* 17 CFR 43.2 (definition of "as soon as technologically practicable").
[14] The definition of "execution" is functionally identical to the part 23 definition of execution. *See* 17 CFR 23.200(e) (definition of "execution").

reference to Eastern Time, on which the DCO accepts the original swap for clearing. The term "execution" is currently undefined but used throughout part 45, and the Commission is adding regulations referencing "execution date."[15]

The Commission received three comments supporting the definition of "execution date."[16] In particular, ISDA-SIFMA believe the definition is more practical than the referencing the "day of execution," because the latter would require a more complex build for industry participants, including requiring reporting counterparties to compare against the non-reporting counterparty to determine the party with the calendar day that ends latest, on a swap-by-swap basis.[17]

The Commission received three comments opposing the reference to Eastern Time in the proposed definition of "execution date." CME and Chatham both believe the definition should use a coordinated universal time ("UTC") standard.[18] CME notes Eastern Time could make the reporting entity convert data between three time zones—local time zone, Eastern Time, and UTC—and also account for daylight savings time.[19] Chatham notes reporting counterparties build systems using UTC and it would be time-consuming and costly to convert to Eastern Time, as well as inconsistent with other regulatory reporting frameworks.[20] JBA suggests the Commission use UTC to globally harmonize and follow the CDE Technical Guidance, and points out the January 2020

[15] *See* § 45.3(a) and (b), discussed in sections II.C.2.a and II.C.2.b, respectively, below.
[16] GXFD at 21; Eurex at 2; ISDA-SIFMA at 5.
[17] ISDA-SIFMA at 5.
[18] CME at 12; Chatham at 1.
[19] CME at 12.
[20] Chatham at 1.

CPMI-IOSCO "Clock Synchronization" report recommends business clocks synchronize to UTC.[21]

The Commission agrees the reference to Eastern Time in "execution date" would create unnecessary operational complexities and be inconsistent with the approach taken by other regulators. In addition, the Commission's updated swap data elements in appendix 1 reference UTC. In response, the Commission is removing the references to Eastern Time in the definition of "execution date," and the swap data elements in appendix 1 will clarify that SEFs, DCMs, and reporting counterparties should report the specific data elements using UTC. As such, the new definition of "execution date" means the date of execution of a particular swap. The execution date for a clearing swap that replaces an original swap is the date on which the original swap has been accepted for clearing.

The Commission is adding the following three definitions to § 45.1(a): "Global Legal Entity Identifier System," "legal entity identifier" or "LEI," and "Legal Entity Identifier Regulatory Oversight Committee" ("LEI ROC"). "Global Legal Entity Identifier System" means the system established and overseen by the LEI ROC 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

[21] JBA at 4.

the central bank governors of the Group of Twenty nations and the FSB, under the Charter of the Regulatory Oversight Committee for the Global Legal Entity Identifier System dated November 5, 2012, or any successor thereof.[22] These definitions are all associated with, and further explained in the context of, the § 45.6 regulations for LEI, in section II.F below.[23]

The Commission is adding a definition of "non-SD/MSP/DCO reporting counterparty" to § 45.1(a). "Non-SD/MSP/DCO reporting counterparty" means a reporting counterparty that is not an SD, MSP, or DCO. The existing definition of "non-SD/MSP reporting counterparty" does not explicitly include DCOs. This creates problems when, for instance, the Commission did not intend DCOs 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 nor MSPs. Instead, DCOs follow § 45.3(e) for clearing swaps. The definition of "non-SD/MSP/DCO reporting counterparty" addresses this unintended gap.

The Commission is adding a definition of "novation" to § 45.1(a). "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. The term "novation" is currently

[22] *See* Charter of the Regulatory Oversight Committee For the Global Legal Entity Identifier System, *available at https://www.leiroc.org/publications/gls/roc_20190130-1.pdf*.
[23] GLEIF supports adding these definitions, but also suggests moving definitions to § 45.1(a) from § 45.6(a) for "local operating unit" and "legal entity reference data." The Commission is declining to adopt this suggestion, as the definitions in § 45.6(a) are only used in § 45.6.

undefined but used in the definition of "life cycle event", as well as the existing § 45.8(g) regulations for determining which counterparty must report.

The Commission is adding a definition of "swap" to § 45.1(a). "Swap" means 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).[24] The term "swap" is currently undefined but used throughout part 45 and the definition codifies the meaning of the term as it is currently used throughout part 45.[25]

The Commission is adding definitions of "swap data" and "swap transaction and pricing data" to § 45.1(a). In the Proposal, the Commission proposed "swap data" to 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. The Commission received a comment from DTCC suggesting deleting the phrase "and information" from the definition of "swap data," because it is unclear to what "and information" refers.[26] The Commission agrees and is modifying the

[24] 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").

[25] NRECA-APPA believe the Commission should incorporate the "swap" definition in CEA section 1a into its interpretations, exemptions, and other guidance, as well as remove from the definition: guarantees of a swap, commodity options meeting the conditions in § 32.3, and other types of agreements, contracts, and transactions the Commission has determined Congress did not intend to regulate as "swaps." NRECA-APPA at 5. The Commission notes its interpretations, exemptions, and guidance are outside of the scope of this rulemaking, as is removing certain types of agreements, contracts, and transactions from the CEA definition of "swap." The Commission emphasizes the definition of "swap" in § 45.1 is for swap data reporting purposes only, and does not impact any regulations outside of part 45.

[26] DTCC at 4.

definition to remove "and information."[27] The Commission is adopting the rest of the definition of "swap data" as proposed.

Separately, the Commission is adopting the definition of "swap transaction and pricing data," with minor changes from the proposed definition. "Swap transaction and pricing data" will mean all data elements for a swap in appendix A[28] to part 43 that are required to be reported or publicly disseminated pursuant to part 43. Having "swap data" apply to part 45 data, and "swap transaction and pricing data" apply to part 43 data, will provide clarity across the reporting regulations.

The Commission is adding a definition of "swap data validation procedures" to § 45.1(a). "Swap data validation procedures" means procedures established by an SDR pursuant to § 49.10 to accept, validate, and process swap data reported to an SDR pursuant to part 45. The Commission discusses this definition in section IV.C.3 below.

The Commission is adding a definition of "unique transaction identifier" to § 45.1(a). "Unique transaction identifier" means 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. The Commission received a comment from DTCC supporting the definition

[27] The Commission notes certain swap-related information may be required to be reported to a SDR pursuant to other CFTC regulations which are not included in the definition of "swap data." Market participants should be aware of other applicable reporting requirements. For example, counterparties electing an exception to or exemption from the swap clearing requirement under § 50.4 are required to report specific information to a SDR, or if no SDR is available to receive the information, to the Commission, under § 50.50(b).

[28] The Commission is changing the reference to appendix C in the proposed definition of "swap transaction and pricing data" to appendix A due to changes to the part 43 appendices the Commission is adopting in a separate release.

because it is consistent with UTI Technical Guidance.[29] The Commission explains this definition in a discussion of the regulations to transition from using unique swap identifiers ("USIs") to UTIs in section II.E below.

2. Changes to Existing Definitions[30]

The Commission is making non-substantive technical changes to the existing definitions of "asset class," "derivatives clearing organization," and "swap execution facility."

The Commission is changing the definition of "business day" in § 45.1. Existing § 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."[31] In the Proposal, the Commission proposed replacing "the twenty-four hour day" with "each twenty-four-hour day," and "legal holidays, in the location of the reporting counterparty" with "Federal holidays" to simplify the definition by no longer requiring the determination of different legal holidays depending on the reporting counterparty's location.

The Commission received four comments raising concerns with the changes to "business day." CME believes the proposed changes could result in firms keeping some

[29] DTCC at 4, 5.
[30] CEWG comments the "financial entity" definition, which the Commission did not propose changing, is overinclusive for financial energy firms because if a central treasury unit ("CTU") enters into a swap for purposes other than hedging, the CTU cannot qualify for the relief in CEA section 2(h)(7)(D). CEWG at 9. The existing "financial entity" definition in § 45.1 simply references the CEA section 2(h)(7)(C) definition of financial entity. The Commission does not see a connection between the clearing rules in CEA section 2(h)(7)(D) to the reporting rules, and thus declines to adopt CEWG's change to the existing definition.
[31] 17 CFR 45.1 (definition of "business day").

staff in the office on local holidays or reporting before the deadline.[32] JSCC believes the proposed changes would force non-U.S. reporting counterparties to report valuation, margin, and collateral data on local holidays even though the data would be unchanged because their markets would be closed.[33] ISDA-SIFMA request clarification that "federal holidays" include legal holidays in the reporting counterparty's principal place of business so a reporting counterparty located outside the U.S. can take into account legal holidays that are not U.S. federal holidays.[34] DTCC suggests using the same definitions for parts 43 and 45.[35]

The Commission seeks to avoid firms keeping staff in the office on local holidays. as commenters pointed out the changes suggest. As such, the Commission is keeping the current definition of "business day" with one modification: "registered entity" refers to SEFs and DCMs. Therefore, the "business day" will mean the twenty-four-hour day, on all days except Saturdays, Sundays, and legal holidays, in the location of SEF, DCM, or reporting counterparty reporting data for the swap.

The Commission is changing the definition of "life cycle event" in § 45.1. Existing § 45.1 defines "life cycle event" to mean any event that would result in either a change to a primary economic term ("PET") of a swap or to any PET data ("PET data") previously reported to an SDR in connection with a swap.[36] The Commission is

[32] CME at 12-13.
[33] JSCC at 1, 2.
[34] ISDA-SIFMA at 5.
[35] DTCC at 4.
[36] The Commission is not changing the examples the existing definition provides: 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 an LEI for a swap

replacing the reference to PET data with required swap creation data to reflect the Commission's removal of the concept of PET data reporting from § 45.3.[37] The Commission is also replacing a reference to a counterparty being identified in swap data by "name" with "other identifiers" to be more precise in when counterparties are identified by other means.

The Commission is changing the definition of "non-SD/MSP counterparty" in § 45.1. Existing § 45.1 defines "non-SD/MSP counterparty" to mean a swap counterparty that is neither an SD nor an MSP. The Commission is changing the defined term to "non-SD/MSP/DCO counterparty."[38] "Non-SD/MSP/DCO counterparty" means a swap counterparty that is not an SD, MSP, or DCO. This change conforms to the changes to the term "non-SD/MSP/DCO reporting counterparty" explained in section II.A.1 above.

The Commission is changing the definition of "required swap continuation data" in § 45.1. Existing § 45.1 defines "required swap continuation data" to mean all of the data elements that must be reported during the 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 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

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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).

[37] The Commission discusses this change to § 45.3 in section II.C below.

[38] The Commission is updating 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 update of the phrase throughout this release.

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 removing the reference to "[PET] of the swap."[39] Second, the Commission is removing the reference to snapshot reporting to reflect the removal of the concept of snapshot reporting from § 45.4.[40] Third, the Commission is adding a reference to margin and collateral data.[41] As amended, "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 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 changing the definition of "required swap creation data" in § 45.1. Existing § 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 swap. The Commission is replacing the reference to PET data and confirmation data with a reference to the swap data elements in appendix 1 to part 45, to reflect the Commission's update of the swap data elements in existing appendix 1.[42]

The Commission is changing the definition of "valuation data" in § 45.1(a). Existing § 45.1 defines "valuation data" to mean all of the data elements necessary to

[39] As explained above, the Commission is removing the concept of PET data reporting from § 45.3.
[40] The Commission discusses the changes to § 45.4 in section II.D below.
[41] The Commission discussed new margin and collateral data reporting in section II.D below.
[42] The Commission discusses the changes to appendix 1 in section V below.

fully describe the daily mark of the transaction, pursuant to CEA section 4s(h)(3)(B)(iii),[43] and § 23.431 of the Commission's regulations, if applicable. The Commission is adding a reference to the swap data elements in appendix 1 to part 45 to link the definition and the data elements.

3. Removed Definitions

The Commission is removing 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 wants market participants to use the terms as they are already defined in Commission regulation § 1.3 or in CEA section 1a.[44]

The Commission is removing the following definitions from § 45.1: "confirmation;" "confirmation data;" "electronic confirmation;" "non-electronic confirmation;" "primary economic terms;" and "primary economic terms data." The definitions are unnecessary due to the Commission combining PET data and confirmation data into a single data report in § 45.3.[45]

The Commission is removing the definition of "quarterly reporting" from § 45.1 because the Commission is removing the quarterly reporting requirement for non-SD/MSP reporting counterparties from § 45.4(d)(2)(ii).[46]

[43] 7 U.S.C. 6s(h)(3)(B)(iii).
[44] 7 U.S.C. 1a.
[45] The Commission discusses the changes to § 45.3 in section II.C below.
[46] The Commission discusses the changes to § 45.4 in section II.D below.

The Commission is removing the definitions of "electronic verification," "non-electronic verification," and "verification" from § 45.1 because the Commission is changing the deadlines for reporting counterparties to report required swap creation data in § 45.3 to no longer depend on verification.[47]

The Commission is removing the definition of "international swap" from § 45.1. Existing § 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 different TR registered with the other jurisdiction. The Commission is removing the definition because the Commission is removing the international swap regulations in § 45.3(i).[48]

B. § 45.2 – Swap Recordkeeping

The Commission is adopting technical changes to the § 45.2 swap recordkeeping regulations.[49] For instance, the Commission is removing the phrase "subject to the jurisdiction of the Commission" from § 45.2. The Commission is also removing this phrase from all of part 45.[50] 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.

The Commission received three comments on § 45.2 unrelated to the technical changes. COPE requests the Commission confirm recordkeeping requirements for physical energy companies that use swaps for hedging purposes are limited to

[47] The Commission discusses the changes to § 45.3 in section II.C below.
[48] The Commission discusses the changes to § 45.3(i) in section II.C.6 below.
[49] In a separate release, the Commission is relocating the recordkeeping requirements for SDRs from § 45.2(f) and (g) to § 49.12. 84 FR at 21103.
[50] To limit repetition, the Commission will not discuss each removal in this release.

recordkeeping in the normal course of business, as is customary for the hedger's particular industry.[51] As the requirement does not specify records outside of the normal course of business, the Commission is unsure of what else the regulation could require.

EEI-EPSA request the Commission clarify no additional recordkeeping is mandated to avoid injecting regulatory uncertainty into recordkeeping requirements.[52] The Commission confirms its changes to § 45.2 in this release are technical and do not create new requirements. Chris Barnard opposes retaining the current substantive requirement of keeping records for "at least five years," following the final termination of the swap.[53] The Commission declines to substantively amend the five-year requirement as requested by Chris Barnard. The Commission believes five years is reasonable for the Commission to access records if it has concerns about particular swaps.

The Commission did not receive any comments on the non-substantive changes to § 45.2. For the reasons discussed above, the Commission is adopting the changes as proposed.

C. § 45.3 – Swap Data Reporting: Creation Data

Existing § 45.3 requires SEFs, DCMs, and reporting counterparties to report swap data to SDRs upon swap execution. As discussed in the sections below, the Commission is adopting four significant changes to the regulations for reporting new swaps: (i) requiring a single data report at execution instead of two separate reports; (ii) extending the time SEFs, DCMs, and reporting counterparties have to report new swaps to SDRs;

[51] COPE at 2.
[52] EEI-EPSA at 3.
[53] Chris Barnard at 2.

(iii) removing the requirement for SDRs to map allocations; and (iv) removing the regulations for international swaps. The remaining changes to § 45.3 discussed below are non-substantive clarifying, cleanup, or technical changes.

1. Introductory Text

The Commission is removing the introductory text to § 45.3. The existing introductory text to § 45.3 provides a broad overview of the swap data reporting regulations for registered entities and swap counterparties. The Commission believes the introductory text is superfluous because the scope of § 45.3 is clear from the operative provisions of § 45.3.[54] Removing the introductory text does not impact any regulatory requirements, including those referenced in the existing introductory text.

The Commission did not receive any comments on the proposal to remove the introductory text to § 45.3.

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

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

The Commission is adopting 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. Existing § 45.3(a) requires that SEFs and DCMs report all PET data[55] for swaps ASATP after execution. If the swap is not intended to be cleared at a DCO,

[54] The Commission is moving the reference in the introductory text to required data standards for SDRs in § 45.13(b) to the regulatory text of § 45.3(a) and (b) and renumbering § 45.13(b) as § 45.13(a).
[55] PET data reporting includes the reporting of approximately sixty swap data elements, varying by asset class, enumerated in appendix 1 to part 45. *See* 17 CFR 45.1 (definition of "primary economic terms"). The Commission discusses the removal of the definition of "primary economic terms" from § 45.1 in section II.A.3 above.

existing § 45.3(a) requires the SEF or DCM also report confirmation data[56] for the swap ASATP after execution.

First, the Commission is changing § 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. While the Commission intended the initial PET report would ensure SDRs have sufficient data on each swap for the Commission to perform its regulatory functions while the more complete confirmation data is not yet available, [57] the Commission is concerned the separate reports may be encouraging the reporting of duplicative information to SDRs. The Commission believes this will streamline reporting, remove uncertainty, and reduce instances of duplicative required swap creation data reports.

One of the PET data elements in existing appendix 1 to part 45 is "[a]ny other term(s) . . . matched or affirmed by the counterparties in verifying the swap."[58] The Commission believes this catchall has obscured the difference between PET data and confirmation data. The Commission is concerned reporting counterparties, SEFs, and DCMs are submitting duplicative reports to meet the distinct, yet seemingly indistinguishable, regulatory requirements at the expense of data quality.[59]

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[56] Confirmation data reporting includes reporting all of the terms of a swap matched and agreed upon by the counterparties in confirming a swap. *See* 17 CFR 45.1 (definition of "confirmation data"). The Commission discusses removing the definition of "confirmation data" from § 45.1 in section II.A.3 above.
[57] *See* 77 FR at 2142, 2148.
[58] The comment associated with this "catch-all" data element in existing appendix 1 to part 45 instructs reporting counterparties, SEFs, DCMs, and DCOs to use "as many data elements as required to report each such term." 17 CFR 45 appendix 1.
[59] Other regulators have taken different approaches to required swap creation data reporting. The Securities and Exchange Commission ("SEC") does not have rules for reporting separate confirmation data reports. *See* 17 CFR 242.901. The European Market Infrastructure Regulation ("EMIR") requires reporting of the details of any derivative contract counterparties have concluded and of any modification or termination of the contract. European Securities and Markets Authority ("ESMA") then develops the specific technical standards and requirements for the implementation of reporting. *See* Regulation (EU) No 648/2012 of the

Second, the Commission is changing § 45.3(a) to extend the deadline for SEFs and DCMs to report required swap creation data until the end of the next business day following the execution date (sometimes referred to as "T+1"). Initially, the Commission believed reporting swap data immediately after execution ensured the ability of the Commission and other regulators to fulfill their systemic risk mitigation, market transparency, position limit monitoring, and market surveillance objectives,[60] but the Commission is concerned the ASATP deadline may be causing reporting counterparties to hastily report required swap creation data that has contributed to data quality issues. The Commission believes an extended reporting timeline will help improve data quality while encouraging alignment with reporting deadlines set by other regulators.[61]

The Commission received four comments supporting a single report for PET data and confirmation data in § 45.3(a).[62] In particular, DTCC believes this will streamline reporting, reduce instances of duplicative reports, remove uncertainty regarding which data elements are required to be reported to the SDR, and reduce operational burdens for

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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).

[60] *See* 77 FR 2142 at 2149.

[61] 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 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).

[62] LCH at 2; FIA at 14; CEWG at 2; DTCC at 5.

SDRs and market participants by reducing the number of message types and duplicative data.[63] CEWG believes the existing requirement is duplicative and costly.[64] The Commission agrees with commenters, and for the reasons discussed above, is adopting the changes proposed.

The Commission received seven comments generally supporting extending the deadline for reporting required swap creation data in existing § 45.3(a).[65] In particular, DTCC believes the change will reduce the number of corrections being sent to SDRs because of better quality data, be consistent with the SEC and ESMA, and promote reporting structure consistency concerning timing that would, in turn, create processing efficiencies for SDRs and data submitters.[66] The Commission agrees with commenters, and for the reasons discussed above, is adopting the changes proposed, with one exception explained below.

Markit opposes extending the deadline for reporting because it believes ASATP reporting is already possible and using experienced third-party service providers like Markit helps minimize errors.[67] The Commission understands ASATP reporting is possible and market participants have developed ways to minimize errors, and expects SEFs and DCMs have sophisticated reporting systems that will encourage them to continue reporting ASATP after execution. However, the Commission believes less-sophisticated reporting counterparties, especially for off-facility swaps, will benefit from

[63] DTCC at 5.
[64] CEWG at 2.
[65] GFXD at 21, 22; DTCC at 5; Eurex at 2; ISDA-SIFMA at 5; Chatham at 2; ICE DCOs at 3; LCH at 2.
[66] DTCC at 5.
[67] Markit at 3-4.

having more time to report swap data to SDRs, and a single deadline for all reporting entities will be clearest for market participants.[68]

The Commission received three comments concerning the reference to Eastern Time in the proposed extended deadline. Eurex and Chatham believe the Commission should consider aligning with regulators that reference UTC for global harmonization.[69] ISDA-SIFMA believe a T+1 deadline for required swap creation data is similar to the deadline used by other jurisdictions, and that a specific cutoff time like 11:59 p.m. eastern time is less complex to build than T+24 hours.[70] The Commission agrees with Eurex and Chatham that referencing Eastern Time would be inconsistent with global regulators. The swap data elements in appendix 1 also reference UTC.[71] As a result, the Commission deems it appropriate to adopt a modification from the proposal to remove the reference to 11:59 p.m. eastern time. Instead, § 45.3(a) will extend the deadline for reporting to "not later than the end of the next business day following the execution date." For the same reason, and to be consistent, the Commission is removing the reference to 11:59 p.m. eastern time from all of the proposed regulations in § 43.3 and § 45.4.[72] While ISDA-SIFMA believe a specific cutoff time is less complex to build, the Commission views the complications the deadline would create for reporting counterparties, especially in other countries, as offsetting build-simplicity considerations.

[68] The Commission discusses the extended deadline for off-facility swaps in section II.C.2.b below.
[69] Eurex at 2; Chatham at 2.
[70] ISDA-SIFMA at 5-7.
[71] The Commission discusses the changes to appendix 1 in section V below.
[72] To limit repetition, the Commission will not discuss each removal in this release.

In summary, in light of the above changes, § 45.3(a) will require that for each swap executed on or pursuant to the rules of a SEF or DCM, the SEF or DCM shall report required swap creation data electronically to an SDR in the manner provided in § 45.13(a) not later than the end of the next business day following the execution date.

b. § 45.3(b) through (e) – Off-Facility Swaps

The Commission is making several changes to the § 45.3(b) through (e) required swap creation data reporting regulations for off-facility swaps. Most of these changes conform to the changes in § 45.3(a) because the regulations in § 45.3(b) through (e) for off-facility swaps are analogous to the regulations in § 45.3(a) for swaps executed on SEFs and DCMs.

In general, for off-facility swaps subject to the Commission's clearing requirement, existing § 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.[73] For off-facility swaps not subject to the clearing requirement but have an SD/MSP reporting counterparty, existing § 45.3(c)(1) 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-

[73] 17 CFR 45.3(b)(1)(i), (ii).

hour deadline if not electronic, for credit, equity, foreign exchange, and interest rate swaps.[74]

Existing § 45.3(c)(2) 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 ASATP after confirmation with a 30-minute deadline if confirmation is electronic, or a 24-business-hour deadline if confirmation is not electronic.[75] For off-facility swaps that are not subject to the clearing requirement but have a non-SD/MSP reporting counterparty, existing § 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.[76]

Finally, existing § 45.3(e) requires that ASATP after a DCO accepts an original swap for clearing, or ASATP after execution of a clearing swap that does not replace an original swap, the DCO report all required swap creation data for the clearing swap, which includes all confirmation data and all PET data.

First, the Commission is replacing existing § 45.3(b) through (e) with § 45.3(b), titled "Off-facility swaps," to restructure the regulations.[77] Second, the Commission is changing the existing § 45.3(b) through (e) requirements for reporting counterparties to submit separate PET data and confirmation data reports for all off-facility swaps that are

[74] 17 CFR 45.3(c)(1)(i),(ii).
[75] 17 CFR 45.3(c)(2)(i),(ii).
[76] 17 CFR 45.3(d).
[77] The Commission is replacing § 45.3(c) through (d) with provisions for allocations and multi-asset swaps, respectively, as discussed in the following sections. As part of this change, the Commission is moving the requirements for reporting required swap creation data for clearing swaps from § 45.3(e) to § 45.3(b).

not intended to be cleared at a DCO to report a single required swap creation data report. The Commission discusses its reasoning for this change 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 and improve data quality.

The Commission did not receive any comments beyond those discussed in section II.C.2.a above.[78] The Commission is adopting the new requirement for reporting counterparties to report a single required swap creation data report as proposed.

Third, the Commission is changing the existing § 45.3(b) through (e) requirements for reporting counterparties to report required swap creation data ASATP after execution with different deadlines for off-facility swaps in § 45.3(b)(1) and § 45.3(b)(2). New § 45.3(b)(1) requires SD/MSP/DCO reporting counterparties report swap creation data to an SDR by T+1 following the execution date. New § 45.3(b)(2) requires non-SD/MSP/DCO reporting counterparties report swap creation data to an SDR not later than T+2 following the execution date.

The Commission discusses the background to these changes in section II.C.2.a above. The Commission discusses several comments beyond those discussed in section II.C.2.a in this section. CEWG believes a T+2 deadline for non-SD/MSP/DCO reporting counterparties strikes an appropriate balance between giving end-users enough time to report, incurring a limited compliance burden, and providing the Commission with swap data in a timely manner.[79] The Commission agrees with CEWG and believes the

[78] *See* comments from DTCC, LCH, FIA, and CEWG.
[79] CEWG at 2.

extended deadline reflects the Commission's interest in avoiding placing unnecessary burdens on non-SD/MSP/DCO reporting counterparties.

The Commission received two comments raising issues with the new deadlines for reporting required swap creation data in § 45.3(b). ICE SDR believes including a set time of no later than 11:59 p.m. on T+1 or T+2 could impede the SDR's ability to update its reporting system during its maintenance window.[80] As the Commission discusses in section II.C.2.a above, the Commission is removing 11:59 p.m. eastern time from § 45.3(b)(1) and § 45.3(b)(2). The Commission believes this addresses ICE SDR's timing concern.

CME believes the reporting deadline should be T+1 or T+2 for all entities to avoid a sequencing issue with non-SD/MSP/DCO reporting counterparties that have a T+2 deadline, and the § 45.4(b) deadline for DCOs to report original swap terminations, which would result in DCO terminations being rejected until original swaps are reported.[81] The Commission does not share CME's concern, as it expects SEFs, DCMs, and DCOs will continue to report original swaps and clearing swaps ASATP, which will avoid sequencing issues for original swap terminations. The Commission expects to monitor the data for implementation issues, however, and to work with SDRs in case the deadlines need to be modified.

In summary, § 45.3(b) will require that for each off-facility swap, the reporting counterparty shall report required swap creation data electronically to an SDR as provided by § 45.3(b)(1) or (2), as applicable. If the reporting counterparty is an SD,

[80] ICE SDR at 7.
[81] CME at 14-15.

MSP, or DCO, § 45.3(b)(1) will require the reporting counterparty report required swap creation data electronically to an SDR in the manner provided in § 45.13(a) not later than the end of the next business day following the execution date. 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 the end of the second business day following the execution date.

3. § 45.3(f) – Allocations[82]

The Commission is making several changes to the existing § 45.3(f) regulations for reporting allocations, re-designated as § 45.3(c). The Commission is making most of the changes to § 45.3(f) to conform to the changes in § 45.3(a)-(e). Existing § 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, existing § 45.3(f)(2)(i) provides that the agent tells the reporting counterparty the identities of the actual counterparties ASATP after execution, with a deadline of eight business hours. Existing § 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. Existing § 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.

First, the Commission is making non-substantive changes, including specifying required swap creation data for allocations must be reported "electronically" to SDRs in §

[82] The Commission is re-designating existing § 45.3(f) as § 45.3(c) to reflect the consolidation of § 45.3(b) through (e) into § 45.3(b).

45.3(c), (c)(1), and (c)(2)(ii), and replacing the reference in existing § 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) through (e). However, because the Commission is extending the time to report required swap creation data in § 45.3(a) and (b), reporting counterparties will have additional time to report required swap creation data for the initial swaps for allocations as well.

Second, the Commission is changing existing § 45.3(f)(2)(ii) (re-designated as § 45.3(c)(2)(ii))[83] 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 gives reporting counterparties until T+1 or T+2, depending on their status, to report required swap creation data for the allocated swaps. Failing to extend the deadline for allocations would result in reporting counterparties unnecessarily reporting allocations faster than creation and continuation data swap reports.

Finally,[84] the Commission is removing § 45.3(f)(2)(iii) without re-designation. The Commission is requiring an event data element in appendix 1.[85] One of the events in this data element is "allocation," which requires reporting counterparties indicate whether a swap is associated with an allocation. The Commission believes this will simplify the

[83] The Commission is not changing 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 would 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).

[84] The Commission is adopting several non-substantive and technical language edits, but is limiting discussion in this section to substantive amendments.

[85] The swap data elements required to be reported to SDRs are discussed in section V below.

current process involving SDRs mapping data elements by having reporting counterparties report the information about allocations themselves.

The Commission received one question from two commenters on the proposed changes to § 45.3(f).[86] GFXD and ISDA-SIFMA request the Commission clarify for allocations, T+1 begins on receipt of the allocations, rather than on execution, given that allocations may not be provided for up to eight hours.[87] In response, the Commission clarifies T+1 begins on receipt of the allocation notification, rather than execution. However, the Commission notes it is retaining the requirement for the agent to inform the reporting counterparties of the allocation ASATP after execution, with an eight-business-hour deadline. As such, in the majority of cases, the Commission expects the deadline to effectively remain T+1 following execution.

The Commission did not receive additional comments on the proposed changes to § 45.3(f), re-designated as § 45.3(c). For the reasons discussed above, the Commission is adopting the changes to § 45.3(f).

4. § 45.3(g) – Multi-Asset Swaps[88]

The Commission is making non-substantive changes to the § 45.3(g) regulations for reporting multi-asset swaps to conform to the changes in § 45.3(a)-(f). Existing § 45.3(g) 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

[86] GFXD separately responded to a request for comment on whether the changes create issues for SDRs stating it believes the changes do not create issues for SDRs. GXFD at 21.
[87] GFXD at 21; ISDA-SIFMA at 6-7.
[88] The Commission is re-designating § 45.3(g) as § 45.3(d) to reflect: the consolidation of § 45.3(b) through (e) into § 45.3(b); and re-designating § 45.3(f) as § 45.3(c).

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. Existing § 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.

First, the Commission is replacing "making the first report" of required swap creation data with "reporting" required swap creation data to reflect the single report for required swap creation data, instead of separate PET data and confirmation data reports. Second, the Commission is removing the last sentence of the regulation concerning all PET data for each asset class involved in the swap. The Commission believes this sentence is unnecessary and no longer relevant with the Commission's removal of PET data from the regulations.

The Commission did not receive any comments on the amendments to § 45.3(g). The Commission is adopting the amendments to § 45.3(g), re-designated as § 45.3(d), as proposed.

5. § 45.3(h) – Mixed Swaps[89]

The Commission is making several non-substantive changes to the § 45.3(h) regulations for mixed swaps to conform to the changes in § 45.3(a)-(g). Existing § 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 requirement may be

[89] The Commission is re-designating § 45.3(h) as § 45.3(e) to reflect: the consolidation of § 45.3(b) through (e) into § 45.3(b); re-designating § 45.3(f) as § 45.3(c); and re-designating § 45.3(g) as § 45.3(d).

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

The Commission is replacing "making the first report" of required swap creation data with "reporting" required swap creation data, among other non-substantive changes. The Commission did not receive any comments on the changes to § 45.3(h), re-designated as § 45.3(e). The Commission is adopting the changes as proposed.

6. § 45.3(i) – International Swaps

The Commission is removing the § 45.3(i) regulations for international swaps. Existing § 45.3(i) requires that for each international swap, the reporting counterparty 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.[90]

When § 45.3(i) was adopted, the Commission believed 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.[91] However, if the same swap is reported to different jurisdictions, the USI or UTI[92] should be the same. If the transaction identifier is the same for the swap, there is no need for the counterparties to send the identifier to other jurisdictions. In addition, in the future, regulators should have access

[90] Existing § 45.1 defines "international swaps" to mean swaps required to be reported by U.S. law and the law of another jurisdiction to be reported to both an SDR and to a different TR registered with the other jurisdiction. The Commission discusses removing the definition of "international swap" from § 45.1 in section II.A above.
[91] Swap Data Recordkeeping and Reporting Requirements, 77 FR 2136, 2151.
[92] The Commission discusses USIs and UTIs in section II.E below.

to each other's TRs, if necessary, further obviating the need for reporting counterparties sending identifiers to multiple jurisdictions. As a result, the Commission believes § 45.3(i) is unnecessary and is removing § 45.3(i) from its regulations. The Commission did not receive any comments on the removal of § 45.3(i).

7. § 45.3(j) – Choice of SDR[93]

The Commission is making non-substantive changes to the § 45.3(j) regulations for reporting counterparties in choosing their SDR. Existing § 45.3(j) requires that the entity with the obligation to choose the SDR to which all required swap creation data for a swap is reported be the entity 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 choose the SDR; (ii) for all other swaps, the reporting counterparty, as determined in § 45.8, choose the SDR.

The Commission is changing the heading of re-designated § 45.3(f) from "Choice of SDR" to "Choice of swap data repository," to be consistent with other headings throughout part 45, among other technical changes. The Commission did not receive any comments on the proposed changes to § 45.3(j), re-designated as § 45.3(f). The Commission is adopting the changes to § 45.3(j) as proposed.

D. § 45.4 – Swap Data Reporting: Continuation Data

Existing § 45.4 requires reporting counterparties to report updates to existing swap data and swap valuations to SDRs. As discussed in the sections below, the

[93] The Commission is re-designating § 45.3(j) as § 45.3(f) to reflect: the consolidation of § 45.3(b) through (e) into § 45.3(b); re-designating § 45.3(f) as § 45.3(c); re-designating § 45.3(g) as § 45.3(d); re-designating § 45.3(h) as § 45.3(d); and removing § 45.3(i).

Commission is adopting four significant changes to these regulations: (i) removing the option for state data reporting; (ii) extending the deadline for reporting required swap continuation data to T+1 or T+2; (iii) removing the requirement for non-SD/MSP/DCO reporting counterparties to report valuation data quarterly; and (iv) requiring SD/MSP reporting counterparties to report margin and collateral data daily. The remaining changes to § 45.4 discussed below are non-substantive clarifying, cleanup, or technical changes.

1. Introductory Text

The Commission is removing the introductory text to existing § 45.4.[94] The existing introductory text to § 45.4 provides a broad overview of the swap continuation data reporting regulations for registered entities and swap counterparties. The Commission believes the introductory text is superfluous because the scope of § 45.4 is clear from the operative provisions of § 45.4. Removing the introductory text would not impact any regulatory requirements, including those referenced in the introductory text.

The Commission did not receive any comments on the proposal to remove the introductory text to § 45.4.

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

The Commission is making several changes to the § 45.4(a) regulations for required swap continuation data reporting. Existing § 45.4(a) requires reporting

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

counterparties and DCOs[95] report required swap continuation data 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. Existing § 45.4(a) further specifies reporting entities and counterparties fulfill their obligations by reporting, within the applicable deadlines outlined 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 changing the first two sentences to state "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.

Second, the Commission is removing state data reporting as an option for reporting changes to swaps from § 45.4. 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.[96] In contrast, life-cycle-event data reporting involves reporting counterparties re-submitting

[95] 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.

[96] 17 CFR 45.1 (definition of "state data"). The Commission discusses removing the definition of "state data" from § 45.1 in section II.A.3 above.

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.[97]

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.[98] However, the Commission believes state data reporting may be contributing to data quality issues by filling SDRs with unnecessary swap messages. As noted in the Proposal, the Commission estimates that state data reporting messages represent the vast majority of swap reports maintained by SDRs and the Commission.[99] The Commission believes eliminating state data reporting will improve data quality without impeding the Commission's ability to fulfill systemic risk mitigation, market transparency, position limit monitoring, and market surveillance objectives.

CME opposes removing state data reporting from § 45.4(a). CME believes the Commission should instead require the reporting of final-state life cycle event changes per swap on the day in question to reduce further submission of unnecessary data, noting that this requirement would be consistent with the requirements of other international regulators.[100] The Commission agrees with CME updates should be limited to final-state life cycle event changes per swap on a day in question, but believes the Commission can clarify this without continuing to permit state data reporting. As a result, the Commission

[97] 17 CFR 45.1 (definition of "life cycle event"). The Commission discusses amending the definition of "life-cycle-event data" in § 45.1 in section II.A.2 above.
[98] *See* 77 FR at 2153.
[99] 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 SDRs have received and made available to the Commission over a billion state data reporting messages.
[100] CME at 15.

declines to keep state data reporting, but does clarify life cycle updates should be limited to end of day updates where multiple take place on a day.

For the reasons discussed above, the Commission is adopting the changes to § 45.4(a) as proposed. Therefore, § 45.4(a) will 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 outlined in § 45.4.

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

The Commission is making several changes to the existing § 45.4(b) regulations for required swap continuation data reporting for clearing swaps. The Commission is moving the § 45.4(b) required swap continuation data reporting regulations for clearing swaps to § 45.4(c) as part of structural changes to the regulations.[101] The Commission is re-designating existing § 45.4(c) as § 45.4(b). Existing § 45.4(c) contains the continuation data reporting regulations for original swaps. Re-designated § 45.4(b) will be titled "Continuation data reporting for original swaps."

The Commission is also making several changes to the continuation data reporting regulations for original swaps in re-designated § 45.4(b). Existing § 45.4(c) requires 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 §

[101] The Commission discusses the revisions to the continuation data requirements for clearing swaps and uncleared swaps in section II.D.4 below.

45.3(a) through (d).[102] For continuation data, existing § 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, existing § 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 under § 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.

First, the Commission is extending the deadline for reporting swap continuation data for original swaps in § 45.4(c)(1) to either T+1 or T+2, depending on the reporting counterparty, to be consistent with the new deadlines for reporting required swap creation data in § 45.3.[103] As the Commission discusses in section II.C.2.a above, though, the Commission is removing the references to 11:59 p.m. eastern time that were in the Proposal. The Commission is thus changing the reference from 11:59 p.m. eastern time to the end of the next business day or the second business day that any life cycle event occurs for the swap. Second, the Commission is removing the references to state data reporting[104] in § 45.4(b) and clarifying that required swap continuation data must be reported "electronically," among other non-substantive changes.

[102] 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).
[103] The Commission discusses these changes in sections II.C.2 above. The Commission also considered the deadlines set by other regulators. The SEC requires that any events that would result in a change in the information reported to a SBSDR be reported within 24 hours of the event taking place. 17 CFR 242.900(g); 17 CFR 242.901(e). EMIR requires that contract modifications be reported no later than the working day following the modification. Reg. 648/2012 Art. 9(1).
[104] The Commission discusses removing state data reporting in section II.D.2 above.

The Commission received three comments supporting extending the deadline for reporting required swap continuation data in § 45.4(b).[105] In particular, GFXD believes T+1 will create a more harmonized global regulatory framework.[106] The Commission agrees with commenters that the proposal extending the deadline for reporting required swap continuation data will streamline reporting and be consistent with the deadlines set by other regulators.

DTCC requests clarification on when "each business day" begins for § 45.4(b) reporting.[107] The Commission believes the definitions of "required swap creation data" and "required swap continuation data" explain that § 45.4 required swap continuation data reporting begins when reporting counterparties need to update information for a swap reported to an SDR under § 45.3. As such, reporting data required by § 45.4 would begin on the "business day" on which a reporting counterparty needs to begin reporting according to § 45.4.

Eurex proposes removing the DCO obligation to report terminations of original swaps for "off facility swaps."[108] Eurex states that in Europe clearing members have no automated reporting line to Eurex and not all multilateral trading facilities ("MTFs") or Approved Trade Sources ("ATSs") transmit USI namespaces and LEIs of the SDR for "off-facility swaps" to the DCO.[109] Eurex states this would be burdensome as SDRs' USI namespaces and LEIs would have to be manually obtained from the MTFs and

[105] GFXD at 22; Chatham at 2; ISDA-SIFMA at 5.
[106] GFXD at 22.
[107] DTCC at 5.
[108] Eurex 2-3.
[109] *Id.*

ATSs.[110] The Commission is not changing DCOs' obligations for reporting original swap terminations, as the Commission does not want to disrupt the reporting workflows for original and clearing swaps the Commission established in a 2016 rulemaking extensively analyzing the process.[111] The Commission declines to adopt Eurex's suggestion at this time.

In summary, § 45.4(b) will require that for each original swap, the DCO shall report required swap continuation data, including terminations, electronically to the 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 such required swap continuation data shall be accepted and recorded by such SDR as provided in § 49.10. New § 45.4(b)(1) will provide 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 the end of the next business day following the day that any life cycle event occurs with respect to the swap. New § 45.4(b)(2) will require that, in addition to all other required swap continuation data, life-cycle-event data shall include 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); the UTI of the original swap that was replaced by the clearing swaps; and the UTI of each clearing swap that replaces a particular original swap.

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

[110] *Id.*
[111] *See* Amendments to Swap Data Recordkeeping and Reporting Requirements for Cleared Swaps, 81 FR 41736 (June 27, 2016).

The Commission is making several changes to the § 45.4(c) regulations for reporting required swap continuation data for original swaps. The Commission is moving the required swap continuation data reporting requirements for original swaps from existing § 45.4(c) to § 45.4(b) as part of structural changes.[112] The Commission is also moving the continuation data reporting requirements for clearing swaps from existing § 45.4(b) to § 45.4(c), and combining them with the continuation data reporting requirements for uncleared swaps in existing § 45.4(d). The Commission is retitling § 45.4(c) "Continuation data reporting for swaps other than original swaps" to reflect the combination.

The Commission is making several changes to the continuation data reporting regulations for clearing swaps and uncleared swaps in § 45.4(b) and (d), respectively, proposed to be re-designated as § 45.4(c). Existing § 45.4(b) requires that for all clearing swaps, DCOs 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. Existing § 45.4(d) requires that for all uncleared swaps, including swaps executed on a SEF or DCM, the reporting counterparty 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

[112] The Commission discusses changes to continuation data requirements for original swaps in section II.D.3 above.

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.[113]

First, the Commission is changing the life cycle event reporting deadlines for these swaps to match other T+1 and T+2 deadlines.[114] The Commission is changing the life cycle event reporting deadline for SD/MSP/DCO reporting counterparties from the same day to T+1 following any life cycle event.[115] The Commission is changing the exception for corporate events of the non-reporting counterparty to T+2. For non-SD/MSP/DCO reporting counterparties, the Commission is changing the life cycle event reporting deadline to T+2 following the life cycle event. As explained in section II.C.2.a above, though, the Commission is removing the references to 11:59 p.m. eastern time from the proposal. As a result, the deadlines will be either the end of the next business day or the second business day following the events.

Second, the Commission is removing the references to state data reporting in new § 45.4(c).[116] Third, the Commission is clarifying that required swap continuation data must be reported "electronically," among other non-substantive edits to improve readability and update cross-references.

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[113] 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).
[114] The Commission discusses the T+1 and T+2 deadlines in § 45.3(b) and § 45.4(b) in sections II.C.2.b and II.D.3, respectively, above.
[115] The Commission is not extending the valuation data reporting deadline for SD/MSP/DCO reporting counterparties. The Commission believes SDs, MSPs, and DCOs are already creating daily valuations and tracking margin and collateral for reasons independent of their swap reporting obligations.
[116] The Commission discusses the removal of state data reporting in section II.D.2 above.

Fourth, the Commission is changing the swap valuation data reporting requirements for all reporting counterparties. DCOs, SDs, and MSPs report valuation data daily, while non-SD/MSP reporting counterparties report the daily mark of transactions quarterly.[117] For DCO, SD, and MSP reporting counterparties, the Commission is keeping the daily reporting requirement. However, the Commission is expanding the requirement to include margin and collateral data.[118] Conversely, the Commission is eliminating the requirement for non-SD/MSP/DCO reporting counterparties to report valuation data and is not requiring them to report margin and collateral data.

The Commission decided against requiring collateral data reporting when it adopted part 45 in 2012. At the time, both the Commission and industry understood collateral data 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.[119] In light of this limitation, the Commission required the daily mark be reported for swaps as valuation data, but not collateral.[120] However, the Commission noted 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

[117] 17 CFR 45.4(b)(2) and (d)(2).
[118] The Commission is adding a definition of "collateral data" to § 45.1(a), as discussed in section II.A.1 above. "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 part 45.
[119] *See* 77 FR 2136, 2153.
[120] 17 CFR 45.1 (definition of "valuation data"). The Commission proposed amending 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.

SDRs develop ways to represent electronically the terms required for reporting collateral.[121]

The Commission is concerned not having margin and collateral data at SDRs impedes its ability to fulfill systemic risk mitigation objectives. As a result, the Commission revisited this issue in the Proposal to determine whether it is now feasible.[122] The Commission believes margin and collateral data is necessary to monitor risk in the swaps market. Given that ESMA is already requiring margin and collateral reporting, and that the Commission is requiring many of the data elements that ESMA requires, the Commission believes certain market participants are ready to report this data to SDRs.

However, the Commission is concerned valuation, margin, and collateral data reporting could create a significant burden for non-SD/MSP/DCO reporting counterparties. These entities include those market participants that, by virtue of size and extent of activity in the swap market, may have fewer resources to devote to reporting this complex data. The Commission also recognizes 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.

[121] *See* 77 FR 2136, 2154.

[122] Other regulators have taken different approaches to margin and collateral data reporting. ESMA, for instance, requires the reporting of many of the same collateral and margin swap data elements the Commission proposed requiring, either on a portfolio basis or by transaction. Reg. 148/2013 Art. 3(5). With respect to valuation data, ESMA requires central counterparties to report valuations for cleared swaps as the Commission does. Reg. 148/2013 Art. 3(4); Reg. 648/2012 Art. 10. EMIR provides an exemption from valuation reporting, as well as reporting margin and collateral data, for non-financial counterparties, unless they exceed a threshold of derivatives activity.

The Commission received 11 comments on expanding daily valuation data reporting to include margin and collateral data reporting in § 45.4(c) for SD/MSP/DCO reporting counterparties. Three commenters support the proposal.[123] In particular, Markit believes it is more efficient for reporting counterparties to submit both cleared and uncleared margin and collateral data together to SDRs, and states that when it comes to valuation or collateral reporting valuation, some systems may have limited information (e.g., trade reference identification but not clearing status), and therefore it is more complex to split valuation or collateral reporting into cleared versus uncleared categories.

Eight commenters oppose the proposal.[124] CME, Eurex, ISDA-SIFMA, and FIA note collateral and margin reporting for DCOs pursuant to part 45 would be redundant for DCOs that have to report similar data to the Commission pursuant to part 39 of the Commission's regulations, which could result in burdens on DCOs with questionable benefits to the Commission.[125] In particular, CME believes the Commission should consider consolidating its collateral reporting obligations for DCOs under part 39.[126]

The Commission received nine comments supporting excluding non-SD/MSP/DCO reporting counterparties from reporting valuation, margin, and collateral data in § 45.4(c).[127] In particular, IECA notes reporting counterparties contract for third-party services to perform quarterly valuations of transactions, and the valuation analysis does not mitigate systemic risk, and offers only tangential value, at best, to the two

[123] Chris Barnard at 1; Markit at 6; LCH at 2.
[124] CME at 15-16; CEWG at 8; Eurex at 3; ICE DCOs at 3-4; ISDA-SIFMA at 8; BP at 3; FXPA at 4-5; FIA at 12.
[125] CME at 15-16; Eurex at 3; ICE DCOs at 3-4; ISDA-SIFMA at 8; FIA at 12.
[126] CME at 15-16.
[127] IECA at 3; Chatham at 2-3; Eurex at 3; JBA at 4; NRECA-APPA at 5; ISDA-SIFMA at 8; FIA at 14; CEWG at 2; COPE at 2.

parties.[128] Similarly, ISDA-SIFMA strongly support the proposal because ISDA-SIFMA do not believe the 2% of swaps reported by non-SD/MSP/DCO reporting counterparties represent systemic risk.[129]

The Commission acknowledges the concerns raised by CME, Eurex, ICE DCOs, ISDA-SIFMA, and FIA about duplicative reporting for DCOs regarding cleared swaps. While collateral and margin data is reported pursuant to part 39 using a different set of data elements than those contained in appendix 1, and collateral and margin data is reported for end-of-day positions pursuant to part 39 as opposed to a more granular transaction-by-transaction basis pursuant to part 45, the Commission believes the collateral and margin data reported by DCOs pursuant to part 39 is sufficiently similar to data reported pursuant to part 45 to meet the Commission's current needs.

However, the Commission is also open to requiring DCO reporting counterparties to report collateral and margin data on a transaction-by-transaction basis pursuant to part 45 at a future date if a Commission need for more granular data emerges in its monitoring of systemic risk or if granular data is needed as a condition for global jurisdictions to grant substituted compliance and TR access to one another. The Commission notes any added costs to DCO reporting counterparties to comply with any such future Commission requirement would be substantially mitigated by DCOs' existing and future systems for transaction-by-transaction reporting of collateral and margin data developed to comply with the requirements of other jurisdictions, including Europe.

[128] IECA at 3.
[129] ISDA-SIFMA at 8.

The Commission received one comment on reporting corporate events. FIA suggests that for the reporting of corporate events of non-reporting counterparties, the Commission measure the reporting deadline from the day the non-reporting counterparty informs the reporting counterparty of the corporate event.[130] The Commission believes corporate events need to be reported in a timely manner, and is concerned FIA's suggestion of leaving the decision of when to inform the reporting counterparty could delay the notification for extended periods of time, resulting in inaccurate or stale data. As such, the Commission declines to adopt FIA's suggestion.

For the reasons discussed above, the Commission is adopting the changes to § 45.4(c) as proposed, except the Commission is excluding DCO reporting counterparties from the requirement to report collateral data. In summary, § 45.4(c) will require that for each swap that is not an original swap, including clearing swaps and swaps not cleared by DCOs, the reporting counterparty shall report all required swap continuation data electronically to an SDR in the manner provided in § 45.13(a) as provided in § 45.4(c). New § 45.4(c)(1) will require that: (i) if the reporting counterparty is a SD, MSP, or DCO, the reporting counterparty shall report life-cycle-event data electronically to an SDR in the manner provided in § 45.13(a) not later than the end of the next business day following the day 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 the end of the second business day following the day that such corporate event occurred; (ii) if the reporting

[130] FIA at 11.

counterparty is a non-SD/MSP/DCO counterparty, the reporting counterparty shall report life-cycle-event data electronically to an SDR in the manner provided in § 45.13(a) not later than the end of the second business day following the day that any life cycle event occurred. New § 45.4(c)(2)(i) will require that if the reporting counterparty is a SD, MSP, or DCO, swap valuation data shall be reported electronically to an SDR in the manner provided in § 45.13(b) each business day. New 45.4(c)(2)(ii) will require that if the reporting counterparty is a SD or MSP, collateral data shall be reported electronically to an SDR in the manner provided in § 45.13(b) each business day.

E. § 45.5 – Unique Transaction Identifiers

The Commission is amending § 45.5 to adopt requirements for UTIs, the globally accepted transaction identifier, replacing USIs in existing § 45.5. In general, the Commission is amending existing § 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 the UTI be comprised of the LEI of the generating entity and a unique alphanumeric code. Before discussing the specific changes to § 45.5(a) through (f) in sections II.E.1 to II.E.7 below, the Commission explains the policy behind adopting UTIs.

In general, existing § 45.5 requires: (i) each swap be identified with a USI in all recordkeeping and all swap data reporting, and (ii) the USI be comprised of a unique alphanumeric code and an identifier the Commission assigns to the generating entity. Each swap retains its USI from execution until, for instance, the swap reaches maturity or the counterparties terminate the contract. USIs allow the Commission to identify new

swaps in SDR data and track changes to swaps by reviewing all reports associated with a USI.

The Commission implemented the existing USI regulations before global consensus was reached on the structure and format for a common swap identifier. For entities reporting swap data to multiple jurisdictions, this has resulting in conflicting or ambiguous generation and transmission requirements across jurisdictions. Practically, the Commission is concerned this has resulted in: (i) conflicting responsibilities for generating identifiers and (ii) entities reporting different identifiers identifying the same swap to different SDRs and TRs.

The Commission believes amending § 45.5 to require each swap 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, which will reduce cross-border reporting complexity and encourage global swap data aggregation.

1. Title and Introductory Text

The Commission proposed several conforming amendments to the § 45.5 title and the introductory text. Existing § 45.5 is titled "Unique swap identifiers." The existing 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) through (f).

The Commission proposed replacing "swap" in the title with "transaction" to reflect the Commission's proposed adoption of the UTI. Accordingly, the Commission proposed updating the reference to USI with UTI in the introductory text.

The Commission also proposed updating the reference to paragraphs (a)-(f) of existing § 45.5 to (a)-(h) of proposed § 45.5. This would reflect the Commission's addition of proposed § 45.5(g) and (h), discussed in sections II.E.8 and II.E.9 below.

The Commission received eight general comments on adopting UTIs in § 45.5. Four commenters generally support adopting UTIs in § 45.5.[131] In particular, BP also supports using the same UTI across jurisdictions and recommends SDRs manage UTI generation and identify and coordinate the use of the earliest regulatory reporting deadline among jurisdictions.[132]

GFXD supports implementing global UTI standards but is concerned the Commission will conflict with the global harmonized generation hierarchy or run on a timeframe that is not coordinated with other jurisdictions, negating the purpose and benefits of a universal UTI standard and creating significant extra cost and complexity, as well as the need to separate UTI systems and logic for each jurisdiction.[133]

Eurex supports harmonizing the UTI and believes it would significantly relieve reporting counterparties. Eurex recommends the Commission align UTI requirements with ESMA and other global regulators on the effective date of UTI and phase in UTI to

[131] Chatham at 3; LCH at 3; GLEIF at 3; BP at 5.
[132] BP at 5.
[133] GFXD at 22-23.

handle existing open swap positions.[134] LCH recommends the Commission apply the factors provided in Table 1 of the UTI Technical Guidance, which contains specific factors authorities should consider for allocating responsibility for UTI generation.[135]

JBA believes not adopting the UTI Technical Guidance precisely could lead to confusion for the UTI generation responsibility for cross-border transactions. JBA asks the Commission consider designing easy-to-implement and flexible rules, such as allowing a change to the UTI generation responsibility in accordance with a bilateral agreement or adopting tiebreaker logic similar to the existing ISDA Tie-Breaker Logic that easily determines the UTI generation responsibility.[136]

The Commission did not receive any comments on the proposals to retitle § 45.5 "Unique Transaction Identifiers," to update the reference to paragraphs (a) through (f) of § 45.5 to (a) through (h) of § 45.5, or to update the reference to USI with UTI in the introductory text and for reasons articulated in the Proposal and reiterated above, is adopting the changes to those portions of the introductory text as proposed. For the reasons articulated in the Proposal and the additional reasons discussed below, the Commission is adopting the changes to the remainder of the introductory text to § 45.5 as proposed.

The Commission acknowledges the comments supportive of the Commission's proposal to adopt UTIs. The Commission agrees with Eurex and GFXD that the promise of UTIs can only be realized if jurisdictions worldwide adopt the UTI, but the

[134] Eurex suggests, for example, continuing use of the old identifier for open swaps until positions are modified. Eurex at 3-4.
[135] LCH at 3.
[136] JBA at 2-3.

Commission shares the FSB's belief that it is not feasible for jurisdictions to have one coordinated global implementation date due to differences in the legislative and regulatory process across jurisdictions.[137] However, as discussed in section VI, the Commission is adopting an 18-month compliance date for UTIs in an effort to be closer aligned with the estimated implementation dates of other jurisdictions and recommends that other jurisdictions adopt UTIs as expeditiously as possible.

As to the comments from LCH, GFXD, and JBA on the importance of following the UTI Technical Guidance for assigning UTI generation responsibilities, the Commission agrees and has cited the specific steps from the UTI Technical Guidance generation flowchart in sections II.E.2 to II.E.5 below to demonstrate the conformity of § 45.5(a) to (d) with the UTI Technical Guidance.

The Commission declines JBA's request for a rule affording flexibility in UTI generation responsibilities, such as allowing bilateral agreement between counterparties to override the UTI generation responsibilities in § 45.5, because it believes clear rules delineating UTI generation responsibilities provide the best assurance that only one unique UTI is generated for a trade, a necessity for swap data reporting integrity. Allowing UTIs to be generated according to bilateral agreement results in the need to reach agreement on a trade-by-trade or counterparty-by-counterparty basis, a scenario the Commission believes will increase the likelihood, due to miscommunication, that no UTI

[137] FSB, Governance arrangements for the unique transaction identifier (UTI) (Dec. 29, 2017) at 16 ("The FSB recognises the challenges in coordinating a synchronised regulatory and technological implementation across jurisdictions and registered entities. As a result, the FSB believes that the most realistic and feasible implementation plan is that jurisdictions globally implement the requirements to report UTIs as expeditiously as possible").

is generated for a swap if each entity believes the other agreed to generate or multiple UTIs are generated for a swap if each entity believes it agreed to generate.

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

The Commission proposed several conforming amendments to § 45.5(a) for the creation and transmission of UTIs for swaps executed on or pursuant to the rules of SEFs and DCMs. Existing § 45.5(a)(1) requires that for swaps executed on or pursuant to the rules of SEFs and DCMs, the 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.[138]

Existing § 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 clearing, as part of the required swap creation data transmitted to the DCO for clearing purposes.[139]

First, the Commission proposed amendments to conform to the Commission's proposed adoption of the UTI. The Commission proposed replacing all references to "USIs" with "UTIs" in proposed § 45.5(a)(1) and (2). In addition, the Commission proposed updating the phrase in existing § 45.5(a)(1) that requires the USI to consist of a

[138] The single data field must contain: (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 is unique with respect to all such codes generated and assigned by that SEF or DCM. 17 CFR 45.5(a)(1)(i),(ii).
[139] 17 CFR 45.5(a)(2)(i)-(iii).

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.[140]

The Commission also proposed amending the § 45.5(a)(1)(i) description of 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.[141] The Commission proposed 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.

The Commission did not receive any comments on the proposed amendments to the requirements for the creation and transmission of UTIs for swaps executed on or pursuant to the rules of SEFs and DCMs in proposed § 45.5(a) and for reasons articulated in the Proposal and reiterated above, is adopting the changes as proposed. The Commission notes assigning UTI generation responsibilities for swaps executed on or pursuant to the rules of SEFs and DCMs to the SEF or DCM adheres to the generation flowchart in the UTI Technical Guidance.[142]

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

[140] UTI Technical Guidance, Section 3.6.
[141] UTI Technical Guidance, Section 3.5.
[142] UTI Technical Guidance at 12 (Step 3: "Was the transaction executed on a trading platform?" "If so, the trading platform").

The Commission proposed several amendments to existing § 45.5(b) for the creation and transmission of UTIs for off-facility swaps by SD/MSP reporting counterparties. Existing § 45.5(b)(1) requires that, for off-facility swaps with SD/MSP reporting counterparties, the reporting counterparty generate and assign a USI consisting of a single data field.[143] The required USI must 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.

Existing § 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 proposed expanding the UTI creation and transmission requirements for SD/MSP reporting counterparties to include reporting counterparties that are financial entities.[144] The Commission explained that it believed extending the responsibility for generating off-facility swap UTIs to reporting counterparties that are financial entities would reduce the UTI generation burden on non-financial entities. The Commission also proposed conforming changes. These changes replaced "swap dealer or

[143] The single data field must 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 the SD or MSP 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. 17 CFR 45.5(b)(1).
[144] 17 CFR 45.1 (definition of "financial entity").

major swap participant reporting counterparty" in the title to proposed § 45.5(b) with "financial entity reporting counterparty" and replaced "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 proposed § 45.5(b) would begin with "For each off-facility swap where the reporting counterparty is a financial entity…."[145] The Commission similarly proposed to replace references to "swap dealer or major swap participant" in § 45.5(b)(1)(i) and (ii) with "reporting counterparty."[146]

Second, the Commission proposed amendments to conform to the Commission's proposed adoption of the UTI. The Commission proposed replacing all references to "USIs" with "UTIs" in proposed § 45.5(b)(1) and (2). In addition, the Commission proposed updating the phrase in proposed § 45.5(b)(1) that requires the USI to 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.[147]

The Commission proposed amending § 45.5(b)(1)(i) to describe the first component of the UTI's single data element by replacing "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

[145] *See* row "45.5(b)" of the table in section VIII.3 below.
[146] *See* row "45.5(b)(1)(ii)" of the table in section VIII.3 below.
[147] UTI Technical Guidance, Section 3.6.

Technical Guidance.[148] The Commission also proposed deleting 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 [SD] or [MSP] with respect to the [USI] creation," because, according to the UTI Technical Guidance, an LEI should be used to identify the UTI generating entity instead of an identifier assigned by individual regulators.

The Commission also believed 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.[149] For example, in an off-facility swap where neither counterparty is an SD nor an MSP and only one counterparty is a financial entity, the counterparty that is a financial entity would be the reporting counterparty,[150] yet the SDR would generate the USI under existing § 45.5(c).[151] The Commission explained that 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 and that the proposal would also reduce the number of swaps for which SDRs would be required to generate the UTI.

The Commission received two comments on the proposed amendments to § 45.5(b). ISDA-SIFMA believe the Commission should delay the requirement to disseminate UTIs to non-reporting counterparties from ASATP to T+1, because the UTI transmission mechanisms generally align with the method of confirmation, such as electronic or paper. ISDA-SIFMA suggest the Commission replace the ASATP

[148] UTI Technical Guidance, Section 3.5.
[149] 17 CFR 45.8.
[150] 17 CFR 45.8(c).
[151] 17 CFR 45.5(c).

requirement for UTI transmission with a deadline of no later than T+1, to correspond with the proposed timeline for reporting creation data to the SDR.[152] DTCC agrees that the reporting counterparty should be responsible for generating off-facility swap UTIs.[153]

The Commission did not receive any comments opposing the proposed amendments to § 45.5(b) expanding the UTI creation and transmission requirements for SD/MSP reporting counterparties to include reporting counterparties that are financial entities, and for reasons articulated in the Proposal and reiterated above, is adopting the proposal with one modification relating to transmission. The Commission agrees with ISDA-SIFMA and believes in light of the proposed changes in § 45.3(b) to the deadline for reporting required swap creation data, that transmission of the UTI to the non-reporting counterparty should be similarly delayed in order to not potentially provide two separate confirmations to the non-reporting counterparty. The Commission therefore is adopting the changes as proposed, except it replaces "To the non-reporting counterparty to the swap, as soon as technologically practicable after execution of the swap; and" with "To the non-reporting counterparty to the swap, no later than the applicable deadline in § 45.3(b) for reporting required swap creation data; and" in final § 45.5(b)(2)(ii).

The Commission notes assigning UTI generation responsibilities for off-facility swaps with a financial entity reporting counterparty to the reporting counterparty adheres to the generation flowchart in the UTI Technical Guidance.[154]

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[152] ISDA-SIFMA at 10.
[153] DTCC at 5.
[154] UTI Technical Guidance at 12 (Step 7: "Does the jurisdiction employ a counterparty-status-based approach (e.g., rule definition or registration status) for determining which entity should have responsibility for generating the UTI?" "If so, see step 8." Step 8: "Do the counterparties have the same regulatory status

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

The Commission proposed several amendments to existing § 45.5(c) for the creation and transmission of USIs for off-facility swaps by non-SD/MSP reporting counterparties. Existing § 45.5(c)(1) requires that, for off-facility swaps with non-SD/MSP reporting counterparties, the SDR generates and assigns the USI ASATP after receiving the first report of PET data, consisting of a single data field.[155]

Existing § 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 proposed replacing "non-SD/MSP reporting counterparty" in the title of proposed § 45.5(c) with "non-SD/MSP/DCO reporting counterparty that is not a financial entity" and replacing "reporting counterparty is a non-SD/MSP counterparty" in the first sentence of proposed § 45.5(c) with "reporting counterparty is a non-SD/MSP/DCO counterparty that is not a financial entity." 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…." The Commission is expanding UTI generation

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for UTI generation purposes under the relevant jurisdiction?" "Otherwise, see step 9." Step 9: "Do the applicable rules determine which entity should have responsibility for generating the UTI?" "If so, the assigned entity").

[155] The single data field must contain: (i) the unique alphanumeric code assigned to the SDR by the Commission at the time of its registration for the purpose of identifying the SDR with respect to USI creation; and (ii) an alphanumeric code generated and assigned to that swap by the automated systems of the SDR, which must be unique with respect to all such codes generated and assigned by that SDR. 17 CFR § 45.5(c)(1).

responsibilities to financial entities,[156] and believes this amendment will clarify that § 45.5(c) will apply only where a reporting counterparty is a non-SD/MSP/DCO counterparty that is not a financial entity.

Second, the Commission proposed amending existing § 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 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-facility swap, the reporting counterparty would follow the creation and transmission requirements for financial entity reporting counterparties in final § 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 generates the UTI, the SDR would follow the creation and transmission requirements for SDRs in proposed § 45.5(c)(1) and (2). The Commission proposed amendments to the requirements for SDRs in proposed § 45.5(c)(1), as discussed below.

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.[157] The UTI Technical Guidance also notes "[n]ot all factors" in the flowchart for allocating responsibility for UTI generation "will be relevant for all jurisdictions."[158]

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[156] 17 CFR 45.1 (definition of "financial entity"). The Commission discusses this change in section II.E.3 above.
[157] UTI Technical Guidance at 12-14.
[158] UTI Technical Guidance at 12.

Because the UTI Technical Guidance was produced with the need to accommodate the different trading patterns and reporting rules in jurisdictions around the world, the Commission explained 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[159] or electronic confirmation platforms),[160] and that therefore the Commission was unable to adopt the UTI Technical Guidance without modification. However, the Commission explained in the Proposal that none of the provisions of proposed § 45.5 would 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 proposed § 45.5(c), the Commission also believed the proposed alignment of the UTI generation and reporting counterparty determination for financial entities in final § 45.5(b) and the proposed reporting option for reporting counterparties that are neither DCOs nor financial entities in proposed § 45.5(c) would result in reduced overall UTI generation and transmission burdens for SDRs.

The Commission explained in the Proposal 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 the SDR to which required swap

[159] 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?").
[160] 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?").

creation data will be reported generate the UTI would 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. Simultaneously, the Commission believed the proposal would reduce the number of swaps where an SDR is assigned 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 proposed amendments to conform to the Commission's proposed adoption of the UTI.[161] The Commission also proposed deleting 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 should be used to identify the UTI generating entity instead of an identifier assigned by individual regulators.

The Commission received four comments supporting expansion of the ability to generate UTIs. CME supports expanding the ability to generate UTIs to non-SD/MSP/DCO reporting counterparties that are not financial entities, because the internal reference identifier used in bookkeeping systems is different than the transaction identifier used in swap data reporting.[162] DTCC agrees that the reporting counterparty should be responsible for generating off-facility swap UTIs, because reporting

[161] The Commission proposed replacing all references to "USIs" with "UTIs" in proposed § 45.5(c)(1) and (2). In addition, the Commission proposed updating the phrase in proposed § 45.5(c)(1) that required the USI to 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. UTI Technical Guidance, Section 3.6. The Commission proposed amending the § 45.5(c)(1)(i) description of 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. UTI Technical Guidance, Section 3.5.
[162] CME at 15.

counterparties are in the best position to collect information from a non-reporting counterparty necessary to generate a UTI, such as LEI.[163] Chatham believes all non-SD/MSP/DCO reporting counterparties should have the option to have the SDR continue to generate the UTI for them, because it is efficient and requires the fewest changes to the current practice.[164] BP supports SDRs continuing to manage UTI generation.[165]

The Commission received four comments opposing the requirement for SDRs to generate UTIs. CME believes the rule changes appear to require SDRs to offer separate parts 43 and 45 messages because of the different reporting deadlines, and that SDRs would not be able to link the parts 43 and 45 messages, necessitating the reporting counterparty to include the UTI from the first message in the second message. CME believes SDRs should not generate UTIs to avoid this situation. CME also notes some reporting counterparties who currently rely on SDRs to generate USIs have swaps with multiple USIs because of an issue when reporting counterparties submit swaps to the SDR in batches but the swaps fail some validations.[166]

DTCC opposes SDRs generating and transmitting UTIs because it would not enable early and automated generation in the transaction's life-cycle, which may be necessary for counterparties.[167] ICE SDR suggests the Commission instead let non-SD/MSP/DCO reporting counterparties choose which counterparty generates the UTI, and highlights that non-SD/MSP/DCOs may have more flexibility with extended

[163] DTCC at 5.
[164] Chatham at 3.
[165] BP at 5.
[166] CME at 16-17.
[167] DTCC at 5.

reporting timelines by electing to have a third-party service provider or confirmation platform generate and assign the UTI. ICE SDR believes allowing a confirmation platform to assign UTIs aligns with the UTI Technical Guidance.[168] ICE SDR recommends that the Commission revise proposed § 45.5(c) to remove the requirement that the SDR transmit the UTI to both counterparties to a swap. ICE SDR contends that, if the reporting counterparty chooses to have the SDR generate the UTI, the SDR should be responsible only for transmitting the UTI to the reporting counterparty requesting UTI generation, because SDRs often has no relationship with the non-reporting counterparties who are not participants of the SDR.[169]

ISDA-SIFMA believe each jurisdiction must align to a global UTI waterfall to the maximum extent possible. ISDA-SIFMA also believe the Commission deviates from the UTI Technical Guidance by assigning SDRs the obligation to generate UTIs for non-SD/MSP/DCOs superior in the hierarchy than the UTI Technical Guidance. As non-SD reporting counterparties can conduct trade reporting and must transmit the UTI to their counterparties, ISDA-SIFMA question whether there is sufficient demand for UTI generation by the SDR to substantiate this deviation from the UTI Technical Guidance.[170]

For reasons articulated in the Proposal and informed by comments and analysis as further discussed below, the Commission is adopting the proposed changes to the § 45.5(c) regulations for the creation and transmission of UTIs for off-facility swaps with a non-SD/MSP/DCO reporting counterparty that is not a financial entity as proposed. The

[168] ICE SDR at 5.
[169] ICE SDR at 5.
[170] ISDA-SIFMA at 9.

Commission notes SDRs have been required to generate USIs pursuant to existing § 45.5(c) since the adoption of part 45 in 2012 and further notes assigning UTI generation responsibility for off-facility swaps with a non-SD/MSP/DCO reporting counterparty that is not a financial entity to the SDR adheres to the generation flowchart in the UTI Technical Guidance.[171]

In addition to adhering to the UTI Technical Guidance, the Commission also believes the adopted rule appropriately balances the burdens between reporting counterparties and SDRs by providing optionality to a non-SD/MSP/DCO reporting counterparty that is not a financial entity to elect to generate a UTI if it so chooses, and lowers costs for both SDRs and non-SD/MSP/DCO reporting counterparties. SDR costs would be lowered due to fewer transaction identifiers that SDRs would be required to generate under final § 45.5(c) compared to existing § 45.5(c). Costs on non-SD/MSP/DCO reporting counterparties who choose not to generate UTIs would be lowered due to their ability to leverage the existing transaction identifier generation infrastructure of SDRs rather than expenditures to develop their own UTI generation systems.

In response to the several comments indicating that the proposed amendments to § 45.5(c) do not follow the UTI Technical Guidance, the Commission notes Commission

[171] UTI Technical Guidance at 12-13 (Step 7: "Does the jurisdiction employ a counterparty-status-based approach…for determining which entity should have responsibility for generating the UTI?" "If so, see step 8." Step 8: "Do the counterparties have the same regulatory status for UTI generation purposes[]?" "If so, see step 11." Step 11: "Do the counterparties have an agreement governing which entity should have responsibility for generating the UTI for this transaction?" "Otherwise, see step 12." Step 12 "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?" "Otherwise, see step 13." Step 13: "Is there a single TR to which reports relating to the transaction have to be made, and is that TR able, willing and permitted to generate UTIs under the applicable rules?" "If so, the TR").

staff was heavily involved in the preparation of the UTI Technical Guidance generation flowchart, and disagrees that assigning UTI generation to SDRs contravenes the UTI Technical Guidance for the following reasons. Section 45.5(c) would apply only for off-facility trades where both counterparties are of equal status (i.e., non-financial entities), and in this scenario, UTI Technical Guidance flowchart step 8 directs to step 11, which instructs inquiring about whether the counterparties have an agreement as to UTI generation. Since no agreement exists, the flowchart leads to step 12, which instructs inquiring about whether electronic confirmation platforms are able, willing, and permitted to generate UTIs, the step ICE SDR suggests the Commission set as the last step in assigning UTI generation responsibilities. However, the Commission is unable to assign electronic confirmation platforms with UTI generation responsibilities, as it has no jurisdiction over such platforms, nor does the Commission deem it desirable to require counterparties who do not use such platforms to specifically contract with platforms or other third parties solely for the purpose of UTI generation. As a result, step 12 is not applicable, leading to step 13 where the SDR is the entity responsible for generating UTIs. As demonstrated above, the Commission believes each step of the UTI Technical Guidance generation flowchart leading up to step 13 matches the conditions under which an SDR is required to generate UTIs pursuant to § 45.5(c).

While the optionality to generate UTIs for non-SD/MSP/DCO reporting counterparties that are not financial entities is not a step in the UTI Technical Guidance generation flowchart, the Commission does not believe the optionality conflicts with an SDR's responsibility for serving as UTI generator of last resort. Under the optionality, an

SDR continues to be the entity that has legal responsibility for UTI generation for this type of off-facility trade should the non-SD/MSP/DCO reporting counterparty that is not a financial entity elect not to, and at no point would a non-SD/MSP/DCO reporting counterparty that is not a financial entity that is unwilling or unable to generate the UTI be forced to generate the UTI. Additionally, no commenters oppose providing non-SD/MSP/DCO reporting counterparties that are not financial entities with the ability to generate UTIs.

The Commission acknowledges ICE SDR's request to remove the requirement to transmit the UTI to the non-reporting counterparty due to a potential lack of relationship between an SDR and the non-reporting counterparty, but declines to adopt the suggestion for two reasons. First, the Commission notes the requirement for an SDR generator to transmit USIs to both counterparties has been in existing § 45.5(c)(2)(i) that SDRs have complied with since part 45 was adopted in 2012, and based on experience with compliance by SDRs since 2012, the Commission has seen no evidence that lack of relationship presents a problem in need of being addressed. In addition, the Commission is adopting three amendments to § 45.5 that will result in SDRs generating fewer UTIs than USIs and mitigate any burden placed on SDRs to transmit the UTIs they generate to non-reporting counterparties, including: (i) all financial entities, not just SD/MSPs, being required to generate UTIs pursuant to final § 45.5(b); (ii) the optionality provided to non-SD/MSP/DCO reporting counterparties that are not financial entities to generate UTIs in final § 45.5(c); and (iii) as described in section II.E.8 below, the requirement in final §

45.5(g) for entities using third-party service providers to ensure that the third-party service providers generate UTIs.

Finally, the Commission declines to adopt the SDRs' suggestion to end the UTI generation responsibilities with the reporting counterparty as the last step of the hierarchy, since this would result in incomplete UTI generation logic. A natural person reporting counterparty, who by definition is a non-SD/MSP/DCO reporting counterparty that is not a financial entity, will highly likely be unable to generate UTIs due to the inability of most natural persons to obtain an LEI[172] that is necessary to generate UTIs. As a result, the SDRs' suggestion would not ensure that an entity capable of generating UTIs is assigned with the responsibility to generate the UTI for every swap.

The Commission also acknowledges—but does not find persuasive—DTCC's comment that reporting counterparties should be the entity responsible for generating UTIs because they are in the best position to collect information such as LEI from a non-reporting counterparty necessary to generate a UTI. The Commission notes no information about the non-reporting counterparty is necessary for an entity to generate UTIs, as the UTI is composed using the LEI *of the UTI generating entity*, not the LEI *of the non-reporting counterparty*. Accordingly, because proposed § 45.5(c)(1)(i) requires the UTI to be composed of the "legal entity identifier of the swap data repository" and SDRs do not need the LEI of any other entity to generate the UTI, the Commission does

[172] CME itself notes the inability of natural person reporting counterparties to obtain LEIs in a separate portion of its comment letter. *See* CME at 25 ("For individuals that qualify as an Eligible Contract Participant, they will not be able to obtain an LEI and hence will be unable to report if [counterparty 1] allowable value is an LEI").

not believe DTCC's reasoning supports its request for the Commission not to assign UTI generation responsibilities to SDRs.

5. § 45.5(d) – Clearing Swaps

The Commission proposed several amendments to the existing § 45.5(d) regulations for the creation and transmission of USIs for clearing swaps. Existing § 45.5(d) requires that for each clearing swap, the DCO that is a reporting 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. Existing § 45.5(d)(1) requires that the USI consist of a single data field.[173]

Existing § 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 the swap does not replace an original swap.

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

[173] The single data field must contain: (i) the unique alphanumeric code assigned to the DCO by the Commission for the purpose of identifying the DCO 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. 17 CFR 45.5(d)(1).

Second, the Commission proposed amendments to conform to the Commission's proposed adoption of the UTI.[174] The Commission also proposed deleting 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 should be used to identify the UTI generating entity instead of an identifier assigned by individual regulators.

The Commission received two comments regarding DCOs in § 45.5(d). LCH supports the proposal that DCOs generate the UTIs for cleared swaps, as it is in line with the UTI Technical Guidance.[175] ISDA-SIFMA suggest that the Commission cover exempt DCOs, SEFs, and DCMs in § 45.5, because it is unclear which entities have part 45 reporting obligations. ISDA-SIFMA recommend that parts 43 and 45 rules specify that the entities with individual exemptive orders assigning reporting obligations have the same reporting and UTI generation responsibilities as their non-exempt equivalents.[176]

The Commission received one supportive comment on the proposed amendments to the § 45.5(d) regulations for the creation and transmission of UTIs for clearing swaps and for reasons articulated in the Proposal and reiterated above, is adopting the changes as proposed. The Commission notes assigning UTI generation responsibilities for

[174] The Commission proposed replacing all references to "USIs" with "UTIs" in proposed § 45.5(d)(1) and (2). In addition, the Commission proposed updating the phrase in proposed § 45.5(d)(1) that requires 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. UTI Technical Guidance, Section 3.6. The Commission proposed amending § 45.5(d)(1)(i) to describe 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 reporting counterparty so that the identifier used to identify the UTI generating entity is consistent with the UTI Technical Guidance. UTI Technical Guidance, § 3.5.
[175] LCH at 3.
[176] ISDA-SIFMA at 9.

clearing swaps to the DCO adheres to the generation flowchart in the UTI Technical Guidance.[177]

The Commission appreciates the comment from ISDA-SIFMA recommending that the Commission issue a clarification that exempt DCOs, SEFs, and DCMs have the same reporting and UTI generation responsibilities as their non-exempt equivalents. The Commission did not propose including exempt DCOs, SEFs, and DCMs in § 45.5 and has not had enough time to study the range of effects that any inclusion of these exempt entities in § 45.5 would have on other provisions of the Act and the Commission's regulations, and as a result, the Commission declines to adopt alternative amendments relating to UTI generation for exempt entities such as exempt DCOs, SEFs, and DCMs at this time. However, the Commission notes despite exempt DCOs, SEFs, and DCMs not being assigned with formal UTI generation responsibilities in § 45.5, exempt entities wishing to generate UTIs on behalf of their clients could do so voluntarily by entering into agreements with their clients to act as their third-party service provider pursuant to § 45.5(g).

6. § 45.5(e) – Allocations

The Commission proposed several amendments to the existing § 45.5(e) regulations for the creation and transmission of USIs for allocations. The Commission proposed replacing references to USIs with UTI throughout proposed § 45.5(e) to conform to the Commission's proposed adoption of the UTI. The Commission also

[177] UTI Technical Guidance at 12 (Step 1: "Is a CCP a counterparty to this transaction?" "If so, the CCP").

proposed non-substantive technical and language edits to update cross-references and improve readability.

The Commission did not receive any comments on the proposed changes to existing § 45.5(e) is adopting the changes to § 45.5(e) as proposed.

7. § 45.5(f) – Use

The Commission proposed several amendments to the existing § 45.5(f) regulations for the use of UTIs by registered entities and swap counterparties. Existing § 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 their records and all of their swap data reporting concerning that swap, from the time they create or receive the USI, throughout the existence of the swap, and for as long as any records concerning the swap are required to be kept by the CEA or Commission regulations, 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.

Existing § 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 proposed amendments to conform proposed § 45.5(f) to the Commission's proposed adoption of the UTI. The Commission proposed replacing all references to "USIs" with "UTIs" in proposed § 45.5(f). The Commission also proposed

removing the reference to state data in part 45, and to 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 proposed removing the existing § 45.5(f) 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 explained this amendment would improve consistency in the swap data reported to SDRs, and further the goal of harmonization of SDR data across FSB member jurisdictions.

Proposed § 45.5(f) would therefore 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 to be kept concerning the swap by the CEA or Commission regulations, regardless of any life cycle events concerning the swap, including, without limitation, any changes to the counterparties to the swap.

The Commission received one request for clarification on the proposal. ISDA-SIFMA believe, due to the requirement for a UTI to persist through "changes with respect to the counterparty," the Commission should be clearer that these counterparty changes, when related to corporate events such as name change, are not considered novations or assignments, as current market practice is to create a new USI for a swap

created through the novation process.[178] The Commission declines to adopt the suggestion, as the Commission notes, in light of the Commission's adoption of the new definition of "novation" in § 45.1(a) described in section II.A above, market participants should refer to the newly adopted definition as to what constitutes a novation.

The Commission received no additional comments on proposed § 45.5(f) and for reasons articulated in the Proposal and reiterated in section II.E.7 above, is adopting § 45.5(f) as proposed.

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

The Commission proposed adding 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—when contracting with third-party service providers to facilitate reporting under § 45.9—to ensure that the third-party service providers create and transmit UTIs.[179]

The Commission explained in the Proposal that it had encountered inconsistencies in the format and standard of USIs for swaps reported using third-party service providers, which is detrimental to the Commission's ability to use swap data for its regulatory purposes. The Commission believed proposed § 45.5(g) would 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 explained that proposed § 45.5(g) would also reinforce that a registered entity or reporting counterparty is responsible for the data reported on its behalf by a third-party service provider.

[178] ISDA-SIFMA at 7.
[179] *See generally* 17 CFR 45.9.

The Commission received one comment supporting the proposal. Markit supports § 45.5(g) UTI generation by third-party service providers and believes this is an important clarification, but advises the Commission to monitor SDRs' implementation of this requirement as some SDRs have struggled to capture third-party service provider LEIs as part of the transaction record, especially when reporting on behalf of SEFs.[180]

The Commission received no additional comments on proposed § 45.5(g) and for reasons articulated in the Proposal and reiterated in section II.E.8 above, is adopting § 45.5(g) as proposed.

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

The Commission proposed adding new § 45.5(h) to its regulations, titled "Cross-jurisdictional swaps." Proposed § 45.5(h) would clarify that, notwithstanding §§ 45.5(a) through (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 is to be transmitted pursuant to §§ 45.5(a) through (g) and used in all recordkeeping and all swap data reporting pursuant to part 45.

The Commission explained in the Proposal 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 to avoid double- or triple-counting of the swap. While the existing requirement in part 45 (for swap creation data to be reported ASATP after execution) results in the Commission having the earliest reporting

[180] Markit at 3.

deadline, changes to the reporting deadline in proposed amendments to § 45.3 may result in the reporting of a cross-jurisdictional swap to another jurisdiction earlier than to the Commission. Further, given the critical importance of a unique UTI used to identify each swap, the Commission proposed 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 explained in the Proposal that the new proposed provision would: (i) ensure consistency with the UTI Technical Guidance;[181] (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.

The Commission received three comments on cross-jurisdictional swaps. Specifically, ISDA-SIFMA highlight several implementation issues.[182] ISDA-SIFMA believe counterparties may not come to the same conclusions regarding each other's jurisdictions, which could cause differing conclusions about who generates the UTI. In this regard, ISDA-SIFMA believe each counterparty's jurisdictional hierarchy would need to readjust each time new reporting jurisdictions go live. Separately, ISDA-SIFMA state that the UTI generating party should be determined separately from any nexus

[181] UTI Technical Guidance at 13 (Step 10: "UTI generation rules of the jurisdiction with the sooner reporting deadline should be followed").
[182] ISDA-SIFMA at 10- 11.

obligations, because nexus reporting (i.e., reporting requirements depending on the location of personnel) is treated differently according to jurisdiction, and it would be challenging for counterparties to communicate nexus obligations on a swap-by-swap basis.[183] Lastly, ISDA-SIFMA note it is important for each reporting jurisdiction to follow a global UTI waterfall.[184]

JBA believes it would be difficult for a counterparty in a jurisdiction to generate a UTI if other jurisdictions with a regulatory reporting deadline earlier than the Commission's do not mandate the UTI or use an identifier different from the UTI required under Commission or global rules.[185] In addition, BP supports imparting responsibility on SDRs to coordinate identification of the jurisdiction with the earliest regulatory reporting deadline and conform to that jurisdiction's UTI requirements.[186]

The Commission is adopting the proposed provisions relating to cross-jurisdictional swaps in § 45.5(h) as proposed, with one clarification relating to the CFTC reporting deadlines to be considered for cross-jurisdictional swaps, as discussed below. In the technical specification, UTIs are required to be reported (but are not publicly disseminated) pursuant to parts 43 and 45 to allow the Commission to link and reconcile the two reports for each swap, requiring the deadline to be measured in terms of both parts 43 and 45. Therefore, the Commission is adopting, in § 45.5(h), the requirement that, notwithstanding §§ 45.5(a) through (g), if a swap is also reportable to one or more other jurisdictions with a regulatory reporting deadline earlier than the deadline set forth

[183] *Id.*
[184] *Id.*
[185] JBA at 2-3.
[186] BP at 5.

in § 45.3 or in part 43, the same UTI generated according to the rules of the jurisdiction with the earliest regulatory reporting deadline is to be transmitted pursuant to §§ 45.5(a) through (g) and used in all recordkeeping and all swap data reporting pursuant to part 45, a modification from the proposal's consideration of only the deadline outlined in § 45.3.

The Commission declines to adopt ISDA-SIFMA's suggestion regarding nexus obligations, as the Commission has no requirements for nexus reporting and how the jurisdictions requiring nexus reporting mandate UTI generation is outside of the Commission's jurisdiction. As discussed above, the Commission expects the vast majority of cross-jurisdictional swaps reportable to both the CFTC and one or more additional jurisdictions will result in the CFTC having the earliest regulatory reporting deadline due to the CFTC being one of the few jurisdictions with real-time reporting requirement and UTIs being required to be generated ASATP for part 43 reporting. However, the Commission recognizes the potential concern that market participants may have in complying with similar rules that other jurisdictions may adopt to ensure consistency with the UTI Technical Guidance, and recommends that market participants and the LEI ROC work collaboratively on additional guidance relating to cross-jurisdictional swaps. The Commission also recognizes that the UTI Technical Guidance did not address which jurisdiction's UTI generation rules to follow if two jurisdictions hypothetically have the same reporting deadline, and similarly recommends that market participants and the LEI ROC work collaboratively on guidance to address this scenario.

The Commission appreciates JBA's comment regarding the potential difficulties if other jurisdictions with a regulatory reporting deadline earlier than the Commission's

do not mandate the UTI, but the Commission does not believe this hypothetical is likely to occur. As discussed above, the Commission's ASATP reporting deadline under part 43 will result in the UTIs for most, if not all, swaps reportable to the Commission and another jurisdiction being generated according to § 45.5. Furthermore, the Commission also acknowledges JBA's concern that other jurisdictions may require an identifier different from the UTI, but the Commission notes authorities in the major swap markets have all indicated through the FSB and CPMI-IOSCO harmonization initiatives of their intention to adopt the UTI and the other harmonized identifiers, and the Commission does not believe inaction by a holdout authority should hinder the Commission's fulfillment of its commitments on UTI.

The Commission also acknowledges BP's desire for SDRs to coordinate identification of the jurisdiction with the earliest regulatory reporting deadline and conform to that jurisdiction's UTI requirements, but the Commission declines to adopt the suggestion. SDRs lack information to determine on their own the jurisdiction(s) that a SEF, DCM, DCO, or counterparty for each swap is subject to, and therefore the Commission believes requiring entities without such information such as SDRs to serve as the entity responsible for determining the earliest regulatory reporting deadline would not serve the Commission's interest in seeing that each swap is identified in all regulatory reporting worldwide with a single UTI.

F. § 45.6 – Legal Entity Identifiers[187]

[187] The Commission is re-numbering the requirements of existing § 45.6 to correct extensive numbering errors.

Existing § 45.6 requires counterparties to be identified in all recordkeeping and swap data reporting under part 45 by an LEI. As discussed in the sections below, the Commission is revising the § 45.6 LEI regulations in two ways: (i) cleanup changes removing unnecessary outdated regulatory text concerning LEIs and (ii) changes to the LEI regulations for SEFs, DCMs, DCOs, SDRs, and reporting and non-reporting counterparties.

1. Introductory Text

The Commission proposed amending the introductory text of the § 45.6 regulations for LEIs. The existing 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 under part 45 through a single LEI as specified in § 45.6.

First, to improve the section's precision, the Commission proposed replacing "each counterparty" with each SEF, DCM, DCO, SDR, entity reporting pursuant to § 45.9, and counterparty to any swap. Second, the Commission proposed revising the introductory text to require each relevant entity (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 received two comments on proposed § 45.6. ISDA-SIFMA, while recognizing that SEF trades are not specifically addressed in § 45.6, suggest clarifying that SEFs must require any entity allowed to execute a trade on a SEF under

part 45 to obtain an LEI prior to reporting by the SEF.[188] The Commission appreciates ISDA-SIFMA's comment; however, the Commission did not propose substantive amendments to regulations relating to SEF trading and has not had enough time to study the range of effects that ISDA-SIFMA's proposal would have on SEF trading or market liquidity. Accordingly, it would be inappropriate to finalize such an amendment at this time.

XBRL agrees with the proposed requirement that counterparties must be identified, not only with their own LEI, but that they must obtain an LEI if they do not have one.[189] The Commission agrees with XBRL. The Commission is aware of uncertainty as to whether the requirement to identify each counterparty with an LEI in existing § 45.6 also included a requirement for the counterparty to obtain an LEI, and the Commission believes clarifying in § 45.6 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 would clarify that identification using LEI necessarily requires the identified person or entity, if eligible to receive an LEI, to obtain an LEI.

The Commission believes 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 under § 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.

[188] ISDA-SIFMA at 13.
[189] XBRL at 2.

For reasons discussed above, the Commission is adopting the proposed changes to the introductory text of the § 45.6 regulations for LEIs as proposed, with one clarification relating to the maintenance of LEI reference data. As discussed in section F.8.c below, the Commission is adding "maintain" to the introductory text of final § 45.6 to clarify that each SEF, DCM, DCO, SDR, entity reporting under § 45.9, and counterparty to any swap that is eligible to receive an LEI is required to "maintain," as well as obtain and be identified in, all recordkeeping and swap data reporting by a single LEI.

2. § 45.6(a) – Definitions

a. Proposal

The Commission proposed several changes to the definitions for the LEI regulations in § 45.6(a). As background, existing § 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 proposed moving certain definitions pertaining to LEIs to § 45.1(a). The Commission explained in the Proposal these definitions should be in § 45.1(a) because they are used in regulations outside of § 45.6. These definitions were: "Global Legal Entity Identifier System,"[190] "legal entity identifier" or "LEI," and "Legal Entity Identifier Regulatory Oversight Committee." These definitions are discussed in section II.A.1 above.

The Commission proposed removing certain definitions pertaining to LEIs from § 45.6(a). The Commission explained that these definitions would no longer be necessary

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

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

The Commission proposed amending certain definitions pertaining to LEIs in § 45.6(a). Specifically, the Commission proposed amending the definition of "self-registration" in several respects. First, the Commission proposed removing the specific reference to "level one or level two" reference data, and the accompanying specifier "as applicable." The amendment reflected the Commission's proposal to remove the definitions of "level one reference data" and "level two reference data."[191]

Second, the Commission proposed adding 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.

Separately, the Commission proposed amending the definition of "third-party registration." In this regard, the Commission proposed removing the specific references to "level one or level two" reference data, and the accompanying specifier "as applicable." This amendment reflected the Commission's proposal to remove the definitions of "level one reference data" and "level two reference data."[192]

Further, the Commission proposed adding references to "individuals," to reflect that swap counterparties may be individuals who need to obtain LEIs. As amended,

[191] Instead, as discussed below, the Commission proposed adding a definition of "reference data." The proposed amendment to "self-registration" would be consistent with the new definition.
[192] Instead, as discussed below, the Commission proposed adding 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 proposed adding two definitions pertaining to LEIs to § 45.6(a). First, the Commission proposed adding 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 proposed adding a definition of "reference data." As proposed, "reference data" would mean all identification and relationship information, as outlined 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.

b. Comments on the Proposal

As also noted in section II.A.1 above, GLIEF suggests moving proposed definitions to § 45.1(a) from § 45.6(a) for "local operating unit" and "legal entity reference data."[193]

i. Definition: "Reference data"

The Commission received one comment on the proposed definition of "reference data." GLEIF suggests an alternative definition: "data as defined by the currently valid common data file formats in the Global [Legal Entity Identifier] System describing business card and relationship information related to corresponding [Legal Entity Identifier] Regulatory Oversight Committee policies." GLEIF, however, does not explain why it believes its suggested alternative is preferable to the Commission's proposal.[194]

ii. Definition: "Self-registration"

The Commission received one comment on the definition of "self-registration." GLEIF supports the proposed definition revisions in § 45.6(a), including removal of references to "level one" and "level two."[195]

c. Final Rule

The Commission did not receive any comments on the proposed definitions for "local operating unit" and "third-party registration" and for reasons articulated in the Proposal and reiterated in section II.F.2.a above, is adopting those two definitions as proposed. The only comment submitted on the proposed definition of "self-registration"

[193] *Id.* The Commission notes the term proposed is "reference data," not "legal entity reference data." *See* 85 FR at 21632.
[194] GLEIF at 2.
[195] *Id.*

supports the proposal and for reasons articulated in the Proposal and reiterated in section II.F.2.a above, the Commission is adopting the definition as proposed.

GLEIF did not explain why its suggested alternative for "reference data" is preferred to the Commission's proposal. Based on the analysis of the proposed text, the Commission believes the GLEIF definition's references to "data as defined by the currently valid common data file formats" and "related to corresponding [LEI ROC] policies" are unnecessarily detailed, and may not account for potential future changes to the Global Legal Entity Identifier System. The Commission believes references in its proposed definition to "all identification and relationship information" and "the standards of the Global Legal Entity Identifier System" are more general and better-suited to account for potential future changes in the Global Legal Entity Identifier System (e.g., a hypothetical future shift away from common data files in setting reference data standards) and is adopting the definition as proposed, rather than the more-specific GLEIF suggestion.

As the four definitions proposed in § 45.6(a) are only used in § 45.6, the Commission declines to adopt GLEIF's suggestion to move the proposed definitions to § 45.1(a).

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

The Commission proposed several changes to § 45.6(b) regulations for the international standards for LEIs. The amendments would reflect changes that have taken place since the Commission adopted the existing LEI regulations in § 45.6 in 2012. Existing § 45.6(b) 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 proposed removing the phrase "following designation of the [LEI] system as provided in [§ 45.6(c)(2)]." The Commission explained in the Proposal that governance of the Global Legal Entity Identifier System was designed by the FSB with the contribution of private sector participants and was fully in place.[196] The Commission further explained that 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 of 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.[197]

The Commission did not receive any comments on the proposed changes to § 45.6(b) and for reasons articulated in the Proposal and reiterated above, is adopting the changes to § 45.6(b) as proposed.

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

[196] 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. 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.*
[197] *Id.*

The Commission proposed removing this redundantly-numbered § 45.6(b) for the technical principles for the LEI.[198] Regulations for LEI reference data are currently located in § 45.6(e), which the Commission proposed moving to § 45.6(c). The Commission discusses revisions to the existing § 45.6(e) reference data regulations in section II.F.7 below.

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

The Commission proposed removing the technical principles from § 45.6(b). The Commission explained in the Proposal that it adopted § 45.6(b) before global technical principles for the LEI were developed. The Commission further explained that it 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 believed removing the technical principles from § 45.6(b) for the LEI to be used in all recordkeeping and all swap data reporting was warranted because the global technical principles that have been developed and adopted by the Global Legal Entity Identifier System already conform to the technical principles in § 45.6(b).

The Commission did not receive any comments on the changes to § 45.6(b) and for reasons articulated in the Proposal and reiterated above, is adopting the changes to § 45.6(b) as proposed.

[198] This § 45.6(b) was numbered in error, as there is already a § 45.6(b), discussed in section II.F.3 above.

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

The Commission proposed removing the existing § 45.6(c) regulations for the governance principles for the LEI.[199] Regulations for the use of the LEI are currently located in § 45.6(f), which the Commission proposed moving to § 45.6(d), which would be correctly renumbered as § 45.6(d). The Commission discusses the revisions to existing § 45.6(f) section II.F.8 below.

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

The Commission proposed removing the governance principles from § 45.6(c). The Commission explained in the Proposal that it adopted § 45.6(c) before global governance principles for the LEI were developed. The Commission further explained that it 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 believed deleting existing § 45.6(c) to remove the governance principles for the legal entity identifier to be used in all recordkeeping and all swap data reporting was warranted because the global governance principles that have been developed and adopted by the Global Legal Entity Identifier System already conform to the governance principles in § 45.6(c).

[199] Existing § 45.6(c) was also numbered in error because of the duplicate § 45.6(b) sections.

The Commission did not receive any comments on the proposed changes to § 45.6(c) and for reasons articulated in the Proposal and reiterated above, is adopting the changes to § 45.6(c) as proposed.

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

The Commission proposed removing the § 45.6(e) regulations for the designation of the legal entity identifier system. Existing § 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 LEIs to be used in all recordkeeping and all swap data reporting.

The Commission explained in the Proposal that it adopted § 45.6(e) before a global legal entity identifier system was developed. The Commission further explained that it 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 believed deleting existing § 45.6(e) to remove the procedures for designating a legal entity identifier system was warranted because such determination and designation procedures were no longer needed due to the establishment of the Global Legal Entity Identifier System and the standards adopted by the Global Legal Entity Identifier System under which a local operating unit is authorized to issue LEIs.

The Commission did not receive any comments on the proposed changes to § 45.6(e) and for reasons articulated in the Proposal and reiterated above, is adopting the changes to § 45.6(e) as proposed.

7. § 45.6(e) – Reference Data Reporting (Re-designated as § 45.6(c))

The Commission proposed changes to the § 45.6(e) regulations for LEI reference data reporting.[200] First, the Commission proposed moving the requirements for reporting LEI reference data in § 45.6(e) to correctly renumbered § 45.5(c).

Second, the Commission proposed changing the requirements for reporting LEI reference data in existing § 45.6(e) to be moved to § 45.6(c). Existing § 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 so, including the requirement to update level one reference data in the event of a change or discovery of the need for a correction. Existing § 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 proposed removing 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 under § 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

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

requirement in existing § 45.6(e) to update the reference data in the event of a change or discovery of the need for a correction.

The Commission explained in the Proposal that it adopted § 45.6(e) before a global legal entity identifier system was developed. The Commission further explained that it 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 to obtain an LEI. The Commission believed amending existing § 45.6(e) to remove the distinction between level one and level two reference data, and proposed 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 was warranted because the establishment of Global Legal Entity Identifier System removes the role of individual authorities in determining the standards governing LEI reference data.

The Commission explained in the Proposal that while existing § 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.

The Commission did not receive any comments on the proposed changes to § 45.6(e) and for reasons articulated in the Proposal and reiterated in section II.F.7 above, is adopting the changes to § 45.6(e) as proposed.

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

The Commission proposed changing the § 45.6(f) regulations for the use of LEIs by registered entities and swap counterparties. Existing § 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. Existing § 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.[201]

Existing § 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. Existing § 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

[201] 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, and the Commission will limit the detail of their discussion in this release.

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).[202]

The Commission proposed retitling 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 proposed moving the requirements for the use of LEIs from existing § 45.6(f) to correctly renumbered § 45.6(d),[203] as a result, the Commission's proposed amendments to the requirements for the use of LEIs in existing § 45.6(f) discussed below will be captured in new § 45.6(d).

The Commission proposed removing the sections of existing § 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 proposed removing existing § 45.6(f)(2) and (4). As a result, the substantive requirements of existing § 45.6(f)(2) and (4) were not proposed to be moved to § 45.6(d).

The Commission explained in the Proposal that while the provisions of existing § 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 before Commission designation of a legal entity identifier system, would be

[202] The regulation specified that this paragraph would have no effect on or after October 15, 2012. 17 CFR 45.6(f)(4).
[203] As previously noted, existing § 45.6(c) was numbered in error because of the duplicate § 45.6(b) sections.

moved to final § 45.6(d)(4). The Commission considered this change to be non-substantive.

The Commission proposed the following substantive changes to the regulations requiring the use of LEIs. First, the Commission proposed revisions to the existing § 45.6(f)(1) regulations for the use of LEIs. The revised regulations would be moved to final § 45.6(d)(1), as discussed below.

The Commission proposed deleting the introductory clause "[w]hen a legal entity identifier system has been designated by the Commission pursuant to paragraph (e) of this section" in existing § 45.6(f)(1) because it was no longer relevant due to the establishment of the Global Legal Entity Identifier System and the LEI ROC in 2013. In addition, while existing § 45.6(f)(1) requires "each registered entity and swap counterparty" to use LEIs in all recordkeeping and swap data reporting pursuant to part 45, the Commission proposed to replace "each registered entity and swap counterparty" with "[e]ach [SEF], [DCM], [DCO], [SDR], entity reporting pursuant to § 45.9, and swap counterparty" 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 proposed 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 proposed 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 all recordkeeping and all swap data reporting pursuant to part 45 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 believed this sentence would provide clarity as to how LEI-ineligible counterparties should be identified.

Second, the Commission proposed § 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 (as opposed to the requirement for other entities to only maintain its LEI). Existing § 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 final § 45.6(c).

The Commission explained in the Proposal that 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. Existing § 45.6 does not require annual LEI renewal because part 45 was drafted and implemented before the establishment of the Global Legal Entity Identifier System. The Commission further explained that since the implementation of existing § 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 explained in the Proposal that it was aware that some LEI holders have not updated reference data as required by existing § 45.6(e), and imposing an annual renewal requirement may increase the accuracy of their reference data. The Commission also recognized that other LEI holders comply 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 further explained that it 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 explained in the Proposal that it 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. Accordingly, in light of the introduction of LEI level two reference data, the Commission believed 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 § 45.6(d)(2) struck the appropriate balance between the Commission's interest in accurate LEI reference data and cost to LEI holders.

Third, the Commission proposed 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, before 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 explained in the Proposal that it was aware that some counterparties have not obtained an LEI. While proposed amendments to § 45.6 clarify the requirement 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 explained that it anticipates a small percentage of counterparties nonetheless will not have obtained an LEI before executing a swap. The Commission further explained that 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 believed 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 would further the objective of identifying each counterparty to a swap with an LEI.

Proposed § 45.6(d)(3) did 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, proposed § 45.6(d)(3) required the DCO or financial entity reporting counterparty to obtain an LEI for the non-reporting counterparty. The Commission explained in the Proposal 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 was appropriate because: (i)

each DCO and financial entity reporting counterparty already had 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 offered expedited issuance of LEI in sufficient time to allow reporting counterparties to meet their new extended deadline in § 45.3(a) through (b) for reporting required swap creation data; and (iii) the Commission anticipated that third-party registration in these instances would be infrequent, as the Commission expected most non-reporting counterparties to be mindful of their direct obligation to obtain their own LEIs pursuant to § 45.6.[204]

The Commission received two comments on the proposed provision relating to use of the LEI in proposed § 45.6(f)(1) and moved to § 45.6(d)(1). CME suggests that the Commission revise the proposal to require a DCO to record the LEIs of all of its swap counterparties in its books and records, instead of "in all recordkeeping" and swap data reporting, to avoid DCOs identifying a swap counterparty by its LEI every time the name of that counterparty is in its records.[205]

GLEIF suggests that, in the interest of clarity, the Commission reformulate § 45.6(d)(1) to state that alternative identifiers pursuant to § 45.13(a) can only be used for

[204] 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.*
[205] CME at 17-18.

natural persons who are not eligible for an LEI, though no explanation was provided as to why it believes the alternative formulation is clearer than the Commission's proposal.[206]

The Commission received six comments, all supporting the LEI maintenance and renewal requirements for SDs, MSPs, SEFs, DCMs, DCOs, and SDRs under proposed § 45.6(d)(2),[207] with two of those commenters supporting additional expansion of the LEI renewal requirement and one commenter opposing additional expansion of the LEI renewal requirement. In particular, GFXD believes reporting counterparties should be required only to renew their LEI and that reporting counterparties should not be responsible for ensuring counterparties renew their LEI.[208] LCH is concerned about the treatment of swap data that contains lapsed LEIs, specifically if that data is rejected by an SDR and recommends language be included to clarify that SDRs would not reject data in an LEI lapse.[209] GLEIF believes the Commission should expand the requirement to include all swap counterparties.[210]

Chatham opposes expanding the requirement to renew LEIs annually beyond SDs, MSPs, SEFs, DCMs, DCOs, and SDRs.[211] Chatham notes many LEI applicants may not have problems with the insignificant cost of application, but often experience significant difficulty with the documentation requirements for some renewals.[212]

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[206] GLEIF at 3.
[207] DTCC at 6; Eurex at 4; LCH at 3; GFXD at 23-24; GLEIF at 1-2; Chatham at 3.
[208] GFXD at 23-24.
[209] LCH at 3.
[210] GLEIF at 1-2. GLEIF mentions that costs related to LEIs continue to decline and today average $60 versus $150 five years ago, and its "validation agent" framework pilot program provides a new operating model where financial institutions, and not registrants, have the responsibility of obtaining and maintaining an LEI, but that the program could take 1-2 years to complete.
[211] Chatham at 3.
[212] *Id.*

Chatham also requests clarification on whether § 45.6(d) requires counterparties to obtain an LEI to report for trades that have already been reported using a substitute identifier.[213]

The Commission received four comments supporting obtaining an LEI for a counterparty that does not have one under proposed § 45.6(d)(3).[214] GLEIF notes performing an LEI registration on behalf of a third-party is considered to satisfy the requirements of self-registration only if the registrant has provided explicit permission for such a registration to be performed.[215] In particular, Chatham believes requiring each DCO and financial entity reporting counterparty to obtain an LEI on behalf of the counterparty through third-party registration is the most logical method to implement requiring an LEI instead of a temporary identifier.[216]

The Commission received four comments opposing obtaining an LEI for a counterparty that does not have one, under proposed § 45.6(d)(3). GFXD believes the proposal disincentivizes smaller counterparties from obtaining their own LEI and places an administrative and financial burden on reporting counterparties.[217] GFXD believes the requirement would "likely" cause unintended operational issues, such as reporting counterparties simultaneously creating an LEI for a counterparty.[218] GFXD recommends following the EU approach, where all counterparties must obtain and maintain their own

[213] *Id.*
[214] GLEIF at 2; Data Coalition at 2; Chatham at 3; Eurex at 4.
[215] GLEIF at 2.
[216] Chatham at 3.
[217] GFXD at 23-24.
[218] *Id.*

LEI ("no LEI, no trade"), with a sufficient implementation period and significant education effort for smaller counterparties.[219]

JBA believes obtaining an LEI on behalf of the counterparty is impractical and costly.[220] JBA requests changing this requirement and suggests that DCO and financial entities "recommend" the counterparty to obtain an LEI, or take other similar actions.[221]

ISDA-SIFMA have concerns about a reporting counterparty's ability to comply with such a requirement because a DCO or financial entity reporting counterparty cannot obtain an LEI on behalf of a non-reporting counterparty without the non-reporting counterparty's permission, and ISDA-SIFMA anticipate that some counterparties would be resistant to obtaining an LEI.[222] ISDA-SIFMA request clarification that a DCO or financial entity reporting counterparty may act as an agent for third-party registration to obtain LEIs on a counterparty's behalf only if it chooses to do so, instead of being mandated to do so.[223] ISDA-SIFMA suggest adding a clarification that the LEI registrant (i.e., the non-reporting counterparty), has the regulatory obligation to obtain and maintain its own LEI, and that the maintenance obligation be placed on the entity to whom the LEI is issued, instead of a third-party.[224] ISDA-SIFMA consider a non-reporting counterparty to include an investment manager executing a transaction for, and on behalf of, a swap counterparty (e.g., funds), and wants the Commission to clarify that an investment manager executing a transaction on behalf of a counterparty is required to obtain and

[219] *Id.*
[220] JBA at 5-6.
[221] *Id.*
[222] ISDA-SIFMA at 14-15.
[223] *Id.*
[224] *Id.*

maintain its own LEI and that an investment manager is required to obtain its own LEI sufficiently in advance of executing pre-allocation swaps, so that the reporting counterparty can report the investment manager LEI within the reporting counterparty's part 45 timing obligations.[225]

ICE DCOs believes it is inappropriate for DCOs to backstop the compliance functions of other participants, especially since this may include clients of clearing members with which a DCO has no relationship, requests the Commission to either remove the LEI backstop entirely or exempt DCOs from the backstop.[226]

For reasons articulated in the Proposal and informed by comments and analysis as further discussed below, the Commission is adopting the changes to § 45.6(f), re-designated as § 45.6(d), largely as proposed, with certain modifications in response to commenters and other considerations.

The Commission did not receive any comments on the proposals to retitle § 45.6(f) "Use of the legal entity identifier" or to remove § 45.6(f)(2) and (4) and for reasons articulated in the Proposal and reiterated above, is adopting the changes as proposed. The Commission also did not receive any comments on the proposals to move the requirements for the use of LEIs from § 45.6(f) to renumbered § 45.6(d) or to move the substantive requirements in § 45.6(f)(3) relating to substitute counterparty identifiers to § 45.6(d)(4) and for reasons articulated in the Proposal and reiterated above, is adopting the changes as proposed.

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[225] *Id.*
[226] ICE DCOs at 4-5.

The Commission is adopting the changes to the § 45.6(f)(1) regulations for the use of LEIs as proposed and the move to § 45.6(d)(1) as proposed. The Commission believes a change to the "all recordkeeping and all swap data reporting" language in § 45.6(f)(1) would only lead to confusion due to the term being used extensively elsewhere in § 45.6 and other sections of part 45, and therefore declines to adopt CME's suggestion. The Commission notes the requirement to identify entities using an LEI in "all recordkeeping and swap data reporting" has existed in § 45.6(f)(1) that all entities have complied with since part 45 was adopted in 2012, and the Commission has seen no evidence that any entity has encountered difficulty complying with this provision. The Commission notes nothing prevents an entity from supplementing the LEI with a human-readable alternative in its records.

The Commission also declines to adopt GLEIF's suggestion to rephrase the second sentence of § 45.6(f)(1) to state that alternative identifiers may only be used for natural persons who are not eligible for an LEI, as the Commission lacks sufficient knowledge of all entity structures and legal systems worldwide to know for certain that every non-natural person is eligible for an LEI.[227] Even though the legal entities that have faced questions regarding their eligibility for LEIs are admittedly very small in number, GLEIF's suggested rephrasing of § 45.6(f)(1) would result in those few legal entities currently ineligible for LEIs to also not be allowed to be identified using

[227] For example, the Commission is aware that certain European banking groups with unconventional legal structures have encountered difficulties obtaining LEIs. The Commission also notes a recent LEI ROC consultation covered, among other topics, "[p]otential difficulties for identification of general government entities in the [Global Legal Entity Identifier System] current framework"; *see* LEI ROC, LEI Eligibility for General Government Entities (Oct. 25, 2019), *available at https://www.leiroc.org/publications/gls/roc_20191025-1.pdf.*

alternative identifiers, and the resulting lack of acceptable identifier would hinder the Commission's ability to aggregate the total exposure of those entities.

The Commission did not receive any comments opposing the proposed requirements in § 45.6(d)(2) for 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 and for reasons articulated in the Proposal and reiterated above, is adopting § 45.6(d)(2) as proposed.

The Commission acknowledges LCH's request to clarify in § 45.6 that SDRs should not reject LEIs that have not been renewed, but declines to adopt this suggestion in the text of § 45.6, as the Commission has delegated to the DMO Director in § 45.15 to issue guidance on the form and manner of the technical specification governing reporting to SDRs. Nevertheless, the Commission notes DMO has not asked SDRs to validate the renewal status of LEIs in the technical specification being published concurrent with adoption of the revisions to part 45.

The Commission acknowledges GFXD's comment regarding the duty to renew should apply to a reporting counterparty's own LEIs and not that of the non-reporting counterparty, but believes GFXD conflates two separate requirements: the LEI renewal requirement for SDs, MSPs, SEFs, DCMs, DCOs, and SDRs in § 45.6(d)(2) and the requirements described in § 45.6(d)(3) below regarding efforts to obtain LEIs for counterparties without LEIs. The Commission believes § 45.6(d)(2) is clear that the renewal requirement applies only to an entity's own LEI. By definition, an LEI has to be issued before it can be renewed, so § 45.6(d)(3) would not apply to LEI renewals.

The Commission also acknowledges the alternative suggestions of expanding the LEI renewal requirement to either all reporting counterparties or all counterparties, but declines to adopt an expansion of the LEI renewal requirement, as the Commission continues to believe requiring each SD, MSP, SEF, DCM, DCO, and SDR to maintain and renew its LEI strikes the appropriate balance between the Commission's interest in accurate LEI reference data and the current cost to LEI holders. The Commission acknowledges and appreciates the reduction in the cost to LEI holders to obtain and renew LEIs since the start of the Global Legal Entity Identifier System, but does not believe further expansion of the renewal requirement and the resulting increased costs on LEI holders *now* premised solely on GLEIF's promises of *future* cost reductions and/or shifts of the LEI renewal fee to financial institutions resulting from Global Legal Entity Identifier System operating model changes is appropriate. Before the Commission mandates such a requirement, it will seek additional information to gain a better understanding what the benefits or costs of such a requirement will be. While the Commission declines to expand the renewal mandate in this release, it is open to considering expansions of the LEI renewal requirement in future releases upon further enhancements in LEI reference data or realized reductions in cost to LEI holders.

In response to Chatham's request for clarification, the Commission notes the requirements of § 45.6 would not apply retroactively to swap data reports previously reported before the adoption of the amendments to part 45, but do apply to creation data and continuation data submitted after the adoption of the amendments to part 45.

For reasons articulated in the Proposal and informed by comments and analysis as further discussed below, the Commission is adopting § 45.6(d)(3) largely as proposed, with certain modifications in response to commenters and other considerations.

Section 45.6(d)(3) of the final rule removes DCOs from the obligation, as DCOs may not have information regarding customers clearing trades through futures commission merchants. Section 45.6(d)(3) of the final rule also reflects the addition of "use best efforts to" before "cause a legal entity identifier to be assigned to the counterparty" to clarify that the obligation relates to actions within a financial entity reporting counterparty's control, instead of the obligation to ensure an outcome that may be outside of a financial entity reporting counterparty's control. Section 45.6(d)(3) of the final rule also removes the phrase "including if necessary, through third-party registration." Finally, as the Commission still has a need to know the identity of the non-reporting counterparty despite the non-reporting counterparty's failure to obtain its own LEI pursuant to § 45.6, the Commission is adopting in § 45.6(d)(3) of the final rule a requirement for the financial entity reporting counterparty to promptly provide to the Commission the identity and contact information of the counterparty for whom the financial entity reporting counterparty's efforts to cause an LEI to be issued were unsuccessful.[228]

[228] The Commission recognizes that if the non-reporting counterparty refuses to obtain an LEI or refuses to provide permission for the reporting counterparty to obtain an LEI on its behalf, the lack of LEI may cause the swap data report to fail an SDR's validations for the "Counterparty 2" data element. To the extent a swap data report would otherwise pass an SDR's validations but for the refusal by an LEI-eligible non-reporting counterparty to obtain an LEI, the Commission will take appropriate steps to address such refusal by the LEI-eligible non-reporting counterparty. The Commission expects this to be an infrequent situation.

As discussed in the Proposal, swap data that does not identify eligible counterparties with an LEI hinders the Commission's fulfillment of its regulatory mandates. However, the Commissioner declines to adopt a "no LEI, no trade" requirement that GFXD suggests due to concerns of the potential impact of such a requirement may have on market liquidity, as a "no LEI, no trade" rule would result in market participants without an LEI not being permitted to transact in the market. The Commission also notes part 45 relates to the reporting of swaps that already have been executed, whereas "no LEI, no trade" relates to who is eligible to engage in swap transactions, a completely different topic than the reporting of executed swaps and outside of the scope of the part 45 swap data reporting rule. With regards to GFXD's operational concerns, the Commission does not believe operational issues such as multiple LEI being issued to a counterparty are likely to arise, as checks in the Global Legal Entity Identifier System prohibit multiple LEIs being issued to an entity. The Commission also does not believe GFXD's concerns that the provision will result in a material shifting of costs for obtaining an LEI onto reporting counterparties are particularly realistic due to: (i) most counterparties having already obtained an LEI due to significant LEI adoption by other authorities whose jurisdictions the counterparties may be subject to, (ii) the relatively sophisticated nature of counterparties in the swaps market, (iii) the financial due diligence that reporting counterparties such as GFXD's members perform on their counterparties, and (iv) the unlikelihood that those relatively sophisticated counterparties with adequate financial resources would willingly and

knowingly disregard their own separate obligation to obtain their own LEIs pursuant to § 45.6 just so they may realize a one-time savings of $65.

The Commission also recognizes the concerns noted by commenters that obtaining an LEI for a counterparty via third-party registration requires the consent of the counterparty, consent that may potentially not be obtained despite a financial entity reporting counterparty's best efforts. The Commission believes § 45.6(d)(3) of the final rule addresses those concerns, as financial entities will only be required to "use best efforts to cause [an LEI] to be assigned to the counterparty," so financial entities would not be required to obtain an LEI for a non-consenting counterparty. It was never the Commission's intent for anyone other than the entity to which an LEI is issued to be responsible for maintaining the reference data for that LEI, and the Commission has, in response to ISDA-SIFMA's suggestion, added a clarification in the introductory text of § 45.6 that each entity is responsible for maintaining its LEI, in addition to obtaining and being identified with an LEI.

G. § 45.8[229] *– Determination of Which Counterparty Shall Report*

The Commission is changing the introductory text to the § 45.8 reporting counterparty determination regulations. The existing introductory text states the determination of which counterparty is the reporting counterparty for all swaps, except clearing swaps, shall be made as provided in § 45.8(a) through (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).

[229] The Commission proposed minor, non-substantive amendments to § 45.7.

The Commission is changing the introductory text to state that the determination of which counterparty is the reporting counterparty for each swap shall be made as provided in § 45.8. The Commission believes this language is clearer, as 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 making non-substantive amendments to the rest of existing § 45.8.

The Commission received two comments beyond the non-substantive changes the Commission proposed. ICE SDR recommends the Commission allow swap counterparties to determine which entity is best suited to report swap data where both counterparties are non-SDs/MSPs and only one counterparty is a financial entity and where both counterparties are non-SDs/MSPs and only one counterparty is a U.S. person.[230] The Commission declines to adopt ICE SDR's recommendation, as financial entities, being more active in the swaps market, are better suited to report swap data to SDRs than non-SD/MSP counterparties. In addition, between two non-SD/MSP/DCO reporting counterparties, the U.S. person counterparty should report swap data to SDRs given their stronger connection to the U.S.

ISDA-SIFMA propose deleting language that seems to address cross-border matters that do not fully align with Commission guidance or no-action letters and request the Commission confirm that, so long as both counterparties incorporate a widely accepted industry practice into their internal policies and procedures, they will have met

[230] ICE SDR at 6.

the requirements of § 45.8.[231] The Commission did not propose any amendments to reflect cross-border guidance or no-action letters, and believes the substantive amendments advocated by ISDA-SIFMA, are beyond the scope of this rulemaking and thus not amenable for adoption absent an notice and an opportunity for comment. The Commission believes the requirements of § 45.8 are clear from their operative provisions, and declines to comment on widely-accepted industry practices in this rulemaking.

For the reasons discussed above, the Commission is adopting the changes to § 45.8 as proposed.

H. § 45.10[232] *– Reporting to a Single Swap Data Repository*

The Commission is changing the § 45.10 regulations for reporting swap data to a single SDR. The Commission is amending and removing existing regulations, and adding new regulations to § 45.10. In particular, new § 45.10(d) will 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 amending the introductory text to § 45.10. The existing introductory text states that all swap data for a given swap, which includes all swap data required to be reported pursuant to parts 43 and 45, must be reported to a single SDR, which must be the SDR to which the first report of required swap creation data is made pursuant to part 45.

[231] ISDA-SIFMA at 15-16.
[232] The Commission is making minor, non-substantive amendments to § 45.9.

First, the Commission is clarifying all "swap transaction and pricing data and swap data" (both terms that the Commission proposed to newly define and add to § 45.1(a))[233] 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 parts 43 and 45, making the existing § 45.10 introductory text's reference to the two parts redundant. Second, the Commission is adding a qualifier to the end of the introductory text specifying 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).[234] Third, the Commission is making non-substantive changes in the introductory text to improve readability.

The Commission did not receive any comments on the changes to the introductory text in § 45.10. The Commission is adopting the changes as proposed.

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

The Commission is amending the § 45.10(a) regulations for reporting swaps executed on or pursuant to the rules of a SEF or DCM to a single SDR. Existing § 45.10(a) requires that to ensure 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

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

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 must be reported to that same SDR (or to its successor in the event that it ceases to operate, as provided in existing part 49).

First, the Commission is removing the phrase "(or to its successor in the event that it ceases to operate, as provided in part 49)" from § 45.10(a)(2).[235] Second, the Commission is updating all references to swap data throughout proposed § 45.10(a) with "swap transaction and pricing data and swap data." The Commission believes using the new defined terms for "swap data" and "swap transaction and pricing data" will provide clarity for market participants.

Third, the Commission is removing § 45.10(a)(1)(ii) and combining the text of § 45.10(a) and (a)(i) into a single provision § 45.10(a) to provide clarity as the requirement in § 45.10(a)(1)(ii) is already located in § 45.5(a)(2). Fourth, the Commission is adding 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 in proposed § 45.10(d).[236]

The Commission did not receive any comments on the changes to § 45.10(a). For the reasons discussed above, the Commission is adopting the changes as proposed.

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[235] This change is due to the new regulations the Commission is adding for changing SDRs in § 45.10(d). The Commission discusses § 45.10(d) in section II.H.5 below.
[236] *Id.*

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

The Commission is amending the § 45.10(b) regulations for reporting swaps executed off-facility with an SD/MSP reporting counterparty to a single SDR. Existing § 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 under § 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 combining 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. The Commission believes

combining the requirements for SD/MSP reporting counterparties and non-SD/MSP reporting counterparties in § 49.10(b) and (c) will simplify the regulations in § 45.10. The Commission is re-titling § 45.10(b) "Off-facility swaps that are not clearing swaps."[237]

Second, the Commission is removing the phrase "(or to its successor in the event that it ceases to operate, as provided in part 49)" from § 45.10(b)(2).[238] Third, the Commission is updating all references to swap data throughout § 45.10(b) by replacing all references to "swap data" with "swap transaction and pricing data and swap data."

Fourth, the Commission is removing existing § 45.10(b)(1) and combining the regulations in existing § 45.10(b)(1)(i) through (iii) into § 45.10(b)(1). The Commission believes existing § 45.10(b)(1) is unnecessary, as all reporting counterparties must report required swap creation data to an SDR pursuant to § 45.3 for off-facility swaps. Fifth, the Commission is removing the requirement in existing § 45.10(b)(1)(ii) for the reporting counterparty to transmit the USI to the non-reporting counterparty to the swap. The requirement in § 45.10(b)(1) is unnecessary, as it is already located in § 45.5(b)(2) and (c)(2), depending on the type of counterparty.

Finally, the Commission is adding 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

[237] The Commission discusses the requirements of existing § 45.10(c) in section II.H.4 below.
[238] This change is due to the new regulations the Commission is adopting for changing SDRs in § 45.10(d). The Commission discusses § 45.10(d) in section II.H.5 below.

SDR "unless the reporting counterparty changes the [SDR] to which such data is reported" pursuant to proposed § 45.10(d).[239]

The Commission did not receive any comments on the proposed changes to § 45.10(b). For the reasons discussed above, the Commission is adopting the changes as proposed.

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

The Commission is moving the requirements in § 45.10(d) to § 45.10(c). The Commission discusses the requirements of existing § 45.10(d) in the following section, II.H.5. The Commission discusses the requirements of existing § 45.10(c) that it proposed moving to § 45.10(b) in section II.H.3 above.

5. § 45.10(d) – Clearing Swaps

a. Amendments to Existing § 45.10(d)[240]

Existing § 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 the clearing swap 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 transmit to the counterparty to each

[239] The Commission discusses new § 45.10(d) in section II.H.5 below.
[240] The Commission is moving the requirements for reporting clearing swaps to a single SDR from § 45.10(d) to § 45.10(c). The Commission is replacing § 45.10(d) with new requirements for reporting counterparties to change SDRs. This section discusses the changes to the requirements for reporting clearing swaps to a single SDR in newly re-designated § 45.10(c) (existing § 45.10(d)), followed by a discussion of the new regulations permitting reporting counterparties to change SDRs.

clearing swap the LEI of the SDR to which the DCO reported the required swap creation data for that clearing swap.

Thereafter, existing § 45.10(d)(2) requires the DCO report all required swap creation data and all required swap continuation data reported for that clearing swap 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). Existing § 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 report all required swap creation data and all required swap continuation data for such clearing swaps to a single SDR.

Newly re-designated § 45.10(c) would include several changes to the requirements in existing § 45.10(d). First, the Commission is removing the phrase "(or to its successor in the event that it ceases to operate, as provided in part 49)" in existing § 45.10(d)(2) from re-designated § 49.10(c)(2).[241]

Second, the Commission is updating all references to swap data now found throughout existing § 45.10(d) with references to "swap transaction and pricing data and swap data." Third, the Commission is adding the following qualifier: "unless the reporting counterparty changes the [SDR] to which such data is reported" pursuant to the new regulations in § 45.10(d). Finally, the Commission is making numerous language edits to improve readability and to update certain cross-references.

[241] This change is due to the new regulations the Commission is adopting for changing SDRs in § 45.10(d). The Commission discusses § 45.10(d) in section II.H.5.b below.

The Commission did not receive any comments on the proposed changes to § 45.10(d), as moved to § 45.10(c). For the reasons discussed above, the Commission is adopting the changes as proposed.

b. New Regulations for Changing SDRs

The Commission is adding new § 45.10(d) to permit reporting counterparties to change the SDR to which they report swap data and swap transaction and pricing data. Existing § 45.10 provides all swaps must be reported to a "single [SDR]."[242]

The Commission is titling new § 45.10(d) "Change of [SDR] for swap transaction and pricing data and swap data reporting." The introductory text to § 45.10(d) states a reporting counterparty may change the SDR to which swap transaction and pricing data and swap data is reported as outlined in § 45.10(d).

New § 45.10(d)(1) will 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 provide notice of 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 will 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.

New § 45.10(d)(2) will require that after providing notification, the reporting counterparty: (i) report the change of SDR to the SDR to which the reporting

[242] 17 CFR 45.10(a)-(d).

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 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 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 be reported to the new 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).

When the Commission adopted § 45.10 in 2012, it believed regulators' ability to see necessary information concerning swaps could be impeded if data concerning a swap was spread over multiple SDRs.[243] However, since then, the Commission has come to recognize it can aggregate swap data from different SDRs, and the Commission has received requests to permit reporting counterparties to change SDRs.[244]

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. For this reason, the Commission is permitting reporting counterparties to change SDRs in § 49.10(d), subject to certain notification procedures described below to ensure swaps are properly transferred between SDRs.

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[243] *See* 77 FR 2136, 2168.
[244] *See, e.g.*, Joint letter from Bloomberg SDR LLC, Chicago Mercantile Exchange Inc., and ICE Trade Vault, LLC (Aug. 21, 2017) at 15.

The Commission received five comments supporting new § 45.10(d).[245] In particular, GFXD does not believe counterparties changing SDRs raises any operational issues and does not believe any additional requirements should be adopted.[246]

The Commission did not receive any comments opposing § 45.10(d), but did receive comments seeking clarification or commenting on some aspects of the new regulation. Markit supports § 45.10(d), but does not believe the notice period and other formal procedures are necessary, and notes a swap transaction that has been moved will be evident from the "Events" data elements in appendix 1.[247] The Commission agrees with Markit that data elements showing a swap has been moved to a different SDR will be beneficial, but as explained above, the Commission needs to ensure swaps are properly transferred. The Commission believes it has kept the notification requirements simple enough to provide the Commission the notification it needs without placing an unreasonable burden on the parties involved in the transfer.

ISDA-SIFMA suggest the § 45.10(d)(1) notification obligation could be satisfied via an email notification, reporting counterparty portal, or the reporting counterparty's public-facing website.[248] The Commission agrees with ISDA-SIFMA and clarifies the aforementioned methods could satisfy the notification requirements in § 49.10(d).

ISDA-SIFMA and DTCC have questions relating to transferring historical swap data. ISDA-SIFMA believe, where a reporting counterparty elects to transfer from an SDR due to the deregistration of the SDR, the deregistering SDR should be required to

[245] GFXD at 24; Eurex at 4; JBA at 5; DTCC at 7; Markit at 6.
[246] GFXD at 24.
[247] Markit at 6.
[248] ISDA-SIFMA at 16.

bear the reporting counterparty's costs of porting.[249] DTCC requests confirmation that the transferability requirement will only apply to trades that are live at the time of the transfer, not historical trades.[250] Transferring historical data in the context of SDR withdrawals from registration is covered by § 49.4 regulations (Withdrawal from registration). New § 45.10(d) does not apply to that process, with respect to costs or the process itself, among other things. The Commission believes ISDA-SIFMA and DTCC's comments are addressed by § 49.4.

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

The Commission is making non-substantive changes to the § 45.11 regulations for reporting swaps in an asset class not accepted by any SDR. Existing § 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 report that same data to the Commission.

For instance, the Commission is removing the phrase "registered with the Commission" following the term SDR. The Commission believes this phrase is confusing, as the three SDRs are provisionally registered with the Commission pursuant to § 49.4(b) of the Commission's regulations. 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

[249] *Id*.
[250] DTCC at 7.

is also replacing "each registered entity or counterparty" with a reference to SEFs, DCMs, and DCOs, and the term "reporting counterparty." The list of entities is more precise and does not modify the types of entities to which the requirements of § 49.11 would apply.

Existing § 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 moving this delegation to a new section, § 45.15, for delegations of authority. The Commission discusses § 45.15 in section II.L below.

The Commission did not receive any comments on the proposed changes to existing § 45.11. For the reasons discussed above, the Commission is adopting the changes as proposed.

J. § 45.12 – Voluntary Supplemental Reporting

The Commission is removing the § 45.12 regulations for voluntary supplemental reporting from part 45. Existing § 45.12 permits the submission of voluntary supplemental swap data reports by swap counterparties.[251] 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."[252]

When it adopted § 45.12 in 2012, the Commission believed voluntary supplemental reporting could have benefits for data accuracy and counterparty business

[251] 17 CFR 45.12(b)-(e). Existing § 45.12(d) requires 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.
[252] 17 CFR 45.12(a).

processes, especially for counterparties that were not the reporting counterparty to a swap.[253] The Commission recognized § 45.12 would lead to the submission of duplicative reports for the same swap,[254] but believed an indication voluntary supplemental reports were voluntary would prevent double-counting of the same swaps within SDRs.[255]

In practice, the Commission is concerned voluntary supplemental 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 counterparties mark the reports as 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 Commission's technical and staffing resources with no clear regulatory benefit. The Commission adopted existing § 45.12 in 2012 without the benefit of having swap data available to consider the practical implications of existing § 45.12. However, after years of use by Commission staff, the Commission now believes existing § 45.12 has led to swap data reporting that inhibits the Commission's use of the swap data. The Commission believes eliminating § 45.12 will help improve data quality.

The Commission received three comments on the removal of § 45.12. NRECA-APPA and ISDA-SIFMA support removing § 45.12.[256] Eurex believes this removal would lead non-U.S. DCOs to only report part 45 data for swap transactions involving

[253] 77 FR at 2169.
[254] *Id.*
[255] *Id.*
[256] NRECA-APPA at 5; ISDA-SIFMA at 16.

SDs, MSPs, and other U.S. counterparties.[257] Furthermore, Eurex agrees that this removal would significantly lessen the operational cost currently incurred from reporting data for all cleared swaps.[258] However, Eurex requests a list of SDs, MSPs, and other U.S. counterparties so, as a non-U.S. DCO, Eurex can appropriately filter out swap transactions that do not fall under the jurisdiction of the Commission.[259] The Commission believes Eurex is confusing voluntary supplemental reporting with cross-border reporting, possibly due to the Commission's example of some voluntary reports being non-jurisdictional. The Commission clarifies that removing the regulations for voluntary supplemental reporting does not impact cross-border reporting requirements, and non-U.S. DCOs should continue reporting swap data to SDRs, to the extent the Commission's cross-border rules and guidance require it.

K. § 45.13 – Required Data Standards

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

The Commission is changing the § 45.13(a) regulations for data maintained and furnished to the Commission by SDRs. Existing § 45.13(a) requires 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 Commission is removing existing § 45.13(a), and moving existing § 45.13(b) to § 45.13(a)(3). The 2019 Part 49 NPRM proposed moving the requirements of §

[257] Eurex at 5.
[258] *Id.*
[259] *Id.*

45.13(a) to § 49.17(c).[260] The Commission did not propose corresponding modifications to § 45.13 in that release.[261] Therefore, the Commission is changing § 45.13(a) in this release by removing language that the 2019 Part 49 NPRM proposed incorporating in § 49.17(c). The Commission discusses the changes to § 45.13(b), including moving the requirement to § 45.13(a)(3), in this section.

Existing § 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. Existing § 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.

In new § 43.13(a)(1), the Commission is requiring that in reporting required swap creation data and required swap continuation data to an SDR, each reporting counterparty, SEF, 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 pursuant to § 45.15. This requirement is implied in the current regulations through the requirements in the introductory text to § 45.3 and § 45.4, the definitions of "required swap creation data" and "required swap continuation data," and § 45.13(b) and (c), but new § 45.13(a)(1) would make the existing requirement explicit.

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[260] 84 FR at 21060.
[261] *Id.* at n.132 (noting the Commission's expectation to modify § 45.13 in a subsequent Roadmap rulemaking).

In new § 45.13(a)(2), the Commission is requiring 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 adopting companion requirements for SDRs to validate swap data in § 49.10.[262] New § 45.13(a)(2) will 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 specifying the requirements for the validation messages in § 45.13(b). The Commission discusses these requirements, and comments received, in section IV.C.3 below.

Finally, the Commission is moving existing § 45.13(b) to § 45.13(a)(3) and changing the regulatory requirements. Existing § 45.13(b) requires that in reporting swap data to an SDR as required by part 45, each reporting entity or counterparty use the facilities, methods, or data standards provided or required by the SDR to which the entity or counterparty reports the data. An SDR may permit reporting entities and counterparties to use various facilities, methods, or data standards, provided its requirements in this regard enable it to meet the requirements of § 45.13(a) with respect to maintenance and transmission of swap data.

First, the Commission is replacing "each reporting entity or counterparty" with "each reporting counterparty [SEF, DCM, and DCO]" to be more precise. Second, the

[262] The Commission discusses § 49.10 in section IV.C below.

Commission is removing the second sentence in existing § 45.13(b) because it pertains to the requirements of § 45.13(a), which the Commission is moving to part 49.

The Commission did not receive any comments on the changes to § 45.13(a)-(b). For the reasons discussed above, the Commission is adopting the changes as proposed.

2. New Regulations for Data Validation Messages

The Commission is specifying the requirements for data validation acceptance messages for SDRs, SEFs, DCMs, DCOs, and reporting counterparties. New § 45.13(b)(1) will 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 will have to provide such notification ASATP after accepting the required swap creation data or required swap continuation data report. An SDR satisfies these requirements by transmitting data validation acceptance messages as required by proposed § 49.10.

New § 45.13(b)(2) will 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 outlined in §§ 45.3 and 45.4.

The Commission did not receive any comments on the new validations requirements in § 45.13(b). As the new regulations for data validations in § 45.13(b) are analogous to new regulations for SDRs to validate data in § 49.10, the Commission discusses its reasoning behind requiring validations in one section, section IV.C.3, below.

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

Existing § 45.13(c) and (d) contain a delegation of authority to the Chief Information Officer of the Commission concerning the requirements in existing § 45.13(a)-(b). The Commission is deleting § 45.13(c) and (d) and moving the delegation to new § 45.15 and delegating authority to the DMO Director. The Commission believes the updated delegation will enhance efficiency by including DMO. The Commission discusses new § 45.15 in the next section.

L. § 45.15[263] *– Delegation of Authority*

1. New Regulation for Delegations of Authority

The Commission is adding a new regulation to part 45 for delegations of authority. New § 45.15 is titled "Delegation of authority" and contains the delegation of authority in existing § 45.11(c) and (d) and § 45.13(c) and (d) with a new delegation to the DMO Director regarding reporting under § 45.13.

Existing § 45.11(c) delegates to the Chief Information Officer of the Commission, or another such employee he or she designates, with respect to swaps in an asset class not

[263] The Commission proposed amendments to § 45.14 in the 2019 Part 49 NPRM. Therefore, § 45.14 will not be discussed in this release. *See* 84 FR at 21067.

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 FIX, 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 must be reported to the Commission.

Existing § 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, existing § 45.13(c) 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 them, 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 § 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), to accommodate the needs of different communities of users, or to enable SDRs to comply with § 45.13(a).

Existing § 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 moving the delegations in existing §§ 45.11(c)-(d) and 45.13(c)-(d) to new § 45.15(a) and (b). The Commission is also updating the delegations to reflect the changes to the cross-references resulting from the Commission's other proposed amendments to part 45, and changing the delegation in § 45.13 from the Chief Information Officer to the Director of the Division of Market Oversight due to different responsibilities over swap data within the Commission.

The Commission received one comment on new § 45.15. NRECA-APPA support the delegation to DMO.[264] The Commission agrees with NRECA-APPA and believes delegation to DMO will benefit data element harmonization. The Commission did not receive any other comments on new § 45.15. The Commission is adopting the regulation as proposed.

2. Request for Comment on Data Standards

The Proposal solicited comment on whether the Commission should mandate a specific data standard for reporting swap data to SDRs, and whether that standard should be ISO 20022. Existing § 45.13(c) delegates to the Commission's Chief Information Officer 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,

[264] NRECA-APPA at 6.

including ISO 20022, in order to accommodate the needs of different communities of users. The Commission is retaining this delegation but moving the authority to § 45.15(b)(2) and transferring it to the DMO Director.

While the Commission would mandate any standards via the delegated authority in § 45.15(b)(2), the Commission took the opportunity presented by the Proposal to solicit public comment on the topic.[265] As explained in the Proposal, the Commission is currently part of an effort to develop a standardized ISO message for the data elements in the CDE Technical Guidance. The Commission sought comment on whether market participants believe mandating ISO 20022 would be beneficial.

The Commission received five comments supporting mandating data standards for swap data reporting.[266] In particular, GFXD encourages the Commission to harmonize with the CPMI-IOSCO reporting standards to the extent the Commission chooses to implement those data elements.[267] Similarly, XBRL "strongly" recommends the Commission "require all SDRs to adopt a single data standard." XBRL believes allowing SDRs to choose any data standard will lead to inconsistencies in the data, and unnecessary spending by counterparties, SDRs, data users, and the Commission, to accommodate multiple data sets that are standardized in different ways."[268]

The Commission received two comments opposing mandating standards for SDR reporting. ISDA-SIFMA state that, even if the Commission mandates that certain

[265] The Commission last solicited comment on the topic in 2012 when it adopted § 45.13. 77 FR 2136 at 2169-70.
[266] GFXD at 25; Chatham at 3-4; Eurex at 5; Data Coalition at 2; XBRL at 2.
[267] GFXD at 25.
[268] XBRL at 2.

messaging formats (e.g., XML, FpML, CSV) for reporting from the SDR to the Commission, ISDA-SIFMA do not believe this should result in a mandate that the same message format type be required from the reporting counterparty to the SDRs, as not all reporting counterparties are built uniformly with respect to messaging formats and technology.[269]

ICE SDR believes SDRs need flexibility to determine how to implement the requirement. For example, an SDR may choose to provide notifications through a graphical user interface so that less-sophisticated reporting entities are not forced to write an application programming interface.[270]

The Commission received four comments supporting mandating the ISO 20022 standard specifically.[271] In particular, GFXD believes including the CDE data elements in the ISO 20022 data dictionary would reduce the mapping required by market participants and third parties, but believes the Commission should coordinate with fellow international regulators to coordinate the adoption of CDE data elements.[272] GFXD also believes it is "extremely advisable" for the Commission and ESMA to come to the same determination on the adoption of the ISO 20022 messaging scheme and coordinate on implementation to reduce operational complexity and risk to data quality from mapping different message schemes in the interim.[273] DTCC also encouraged the Commission to "adopt a messaging methodology that is broadly consistent and aligned with the

[269] ISDA-SIFMA at 16-18.
[270] ICE SDR at 6, 10.
[271] GFXD at 25; Eurex at 5-6; JBA at 5; DTCC at 7.
[272] GFXD at 25.
[273] *Id.*

methodology adopted and used in other jurisdictions" and notes ESMA has proposed ISO 20022 in its EMIR REFIT consultation published in March 2020.[274]

The Commission received three comments opposing mandating ISO 20022. CME questions the value of using ISO 20022 values for reporting certain data elements given the significant implementation cost.[275] ISDA-SIFMA oppose mandating ISO 20022 due to costs imposed on market participants without benefits to regulatory oversight.[276] ICE SDR does not support prescribed facilities and methods for SDRs to communicate with and take in data from participants.[277] According to ICE SDR, the Commission should not consider mandating the ISO 20022 message scheme for reporting to SDRs as non-SD/MSP reporting entities often are not as sophisticated as SDs/MSPs and cannot follow such a standard.[278]

The Commission agrees with some commenters that mandating one standard for reporting swap data to SDRs is necessary to ensure data quality. The Commission believes if the data is reported using different standards or protocols, the data is then subject to interpretation by the SDRs, as it is transformed or translated into the SDRs' systems and further transformed when it is reported to the Commission. These successive layers of transformation inject ambiguity and data quality issues into the life cycle of the data. Such layers of transformation are unnecessary if the reporting solution

[274] DTCC at 7. *See* Regulation (EU) 2019/834 of the European Parliament and of the Council of 20 May 2019 amending Regulation (EU) No 648/2012 as regards the clearing obligation, the suspension of the clearing obligation, the reporting requirements, the risk-mitigation techniques for OTC derivative contracts not cleared by a central counterparty, the registration and supervision of trade repositories and the requirements for trade repositories ("EMIR REFIT").
[275] CME at 21.
[276] ISDA-SIFMA at 18-20.
[277] ICE SDR at 10.
[278] *Id.*

is straight through processing. Consistency of data from the source, in a common format, regardless of SDR, will lead to better quality data.

Several commenters noted aligning with other jurisdictions will help reduce burden on market participants. Staff supports the idea that having a consistent standard for reporting, such as ISO 20022, across the globe would reduce reporting burden, streamline processing and allow industry to leverage scaled solutions bringing down the cost of changes and updates. As previously noted by a commenter, ESMA has proposed ISO 20022 in its EMIR REFIT consultation published in March 2020 and has implemented ISO 20022 for other reporting regimes, including SFTR.

As discussed in the Proposal, CPMI-IOSCO assigned ISO to execute the maintenance functions for the CDE Technical Guidance because ISO has significant experience maintaining financial data standards and almost half of the CDE data elements in the CDE Technical Guidance are already tied to an ISO standard. CPMI-IOSCO also decided that the CDE data elements should be included in the ISO 20022 data dictionary and the development of an ISO 20022-compliant message for CDE data elements is in progress. Further, a majority of the data elements in the technical specification are from the CDE Technical Guidance. For these reasons, and because comprehensive and unambiguous rules regarding reporting format will ensure the quality and usefulness of the data, the Commission will mandate ISO 20022 for reporting to SDRs according to § 45.15(b)(2) when the standard is developed.

III. Amendments to Part 46

CEA sections 4r(a)(2)(A) and 2(h)(5) provide for the reporting of pre-enactment and transition swaps.[279] Part 46 of the Commission's regulations establishes the requirements for reporting pre-enactment and transition swaps to SDRs. In some instances, the revisions to part 45 necessitate corresponding amendments to the regulations in part 46. The Commission describes any substantive amendments in this section. However, the Commission does not repeat the reasoning for changes if the Commission has discussed the reasoning for analogous part 45 provisions above.

A. § 46.1 – Definitions

Existing § 46.1 contains the definitions for terms used throughout the regulations in part 46. The Commission is separating § 46.1 into two paragraphs: § 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, to be consistent with the same change in § 45.1.

The Commission is adding a definition of "historical swaps" to § 46.1(a). "Historical swaps" means pre-enactment swaps or transition swaps. This term will provide clarity as it is already used in part 46.

The Commission is adding a definition of "substitute counterparty identifier" to § 46.1(a). "Substitute counterparty identifier" means a unique alphanumeric code assigned by an SDR to a swap counterparty prior to the Commission designation of an LEI

[279] *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.)

identifier system on July 23, 2012. The term "substitute counterparty identifier" is already used throughout § 46.4.

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

The Commission is amending 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).[280] The Commission is updating the term throughout part 46.

The Commission is amending 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 defining "swap data" to mean swap data reported pursuant to part 45. As a result, the Commission is changing the reference to "data for a pre-enactment swap or transition swap" to reflect the reference is to part 46 data.

The Commission is removing the following definitions from § 46.1. The Commission has determined that the following definitions are redundant because the terms are already defined in either Commission regulation § 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."

[280] The Commission discusses the changes to the term in § 45.1(a) in section II.A.2 above.

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

The Commission did not receive any comments on the changes to § 46.1.

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

Existing § 46.3(a)(2)(i)[281] 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.

The Commission is amending § 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.

The Commission received one comment supporting the proposal. ISDA-SIFMA believe SDs should benefit from more limited part 46 reporting obligations. The Commission is adopting the changes as proposed.

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

C. § 46.10 – Required Data Standards

Existing § 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 adding 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 outlined 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. The Commission did not receive any comments on the changes to § 46.10. The Commission is adopting the changes as proposed.

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

Consistent with the Commission's removal of the option to report required swap continuation data by the state data reporting method, discussed in section II.D.2 above, the Commission is removing the option in § 46.11(b) for pre-enactment/transition swaps reporting. Specifically, existing § 46.11(b) 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 removal of existing § 46.11(b), the Commission is re-designating existing § 46.11(c) and (d) as new § 46.11(b) and (c), respectively.

The Commission received two comments supporting the proposal. Consistent with its position supporting removing state data reporting in § 45.4, Chatham believes this will significantly reduce the number of reports as life cycle data reporting provides the same critical information as state data reporting.[282] CEWG believes the proposal will improve the effectiveness and efficiency of reporting.[283] The Commission agrees removing state data reporting from part 46 will be beneficial for the reasons described above relating to § 45.4. The Commission did not receive any other comments on the proposed changes to § 46.11. The Commission is adopting the changes as proposed.

IV. Amendments to Part 49

A. § 49.2 – Definitions

The Commission is adding four definitions to § 49.2(a): "data validation acceptance message," "data validation error," "Data validation error message," and "data validation procedures."[284] The Commission discusses the impact of the four definitions in section IV.C below. The four definitions encompass the messages and validations reports SDRs would be required to send reporting counterparties under new regulations in § 49.10(c).

"Data validation acceptance message" means a notification that SDR data satisfied the data validation procedures applied by a SDR. "Data validation error" means that a specific data element of SDR data did not satisfy the data validation procedures

[282] Chatham at 2.
[283] CEWG at 3.
[284] The Commission also proposed defining "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* 84 FR at 21047. The term "SDR data" is also used in the amendments to § 49.10 in this release.

applied by a SDR. "Data validation error message" means a notification SDR data contained one or more data validation error(s). "Data validation procedures" means procedures established by a SDR pursuant to § 49.10 to validate SDR data reported to the SDR.

B. § 49.4 – Withdrawal from Registration

The Commission is amending the § 49.4 regulations for SDR withdrawals from registration. Existing § 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.[285]

Existing § 49.4(a)(2) requires that before 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 removing 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. Existing § 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 from the date

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

thereof.[286] The recordkeeping requirements for SDRs are located in § 49.12.[287] The Commission is removing erroneous § 49.4(a)(1)(iv) to avoid confusion.

Second, the Commission is removing 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.[288] The Commission is adding 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 Commission. New § 49.4(a)(2) will 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 did not receive any comments on the changes to § 49.4. The Commission believes the existing § 49.4(a)(2) 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

[286] 17 CFR 1.44(d).
[287] The Commission 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* 84 FR 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.
[288] Existing § 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 removing this part of § 49.4(a)(2) as well.

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 believes § 49.4(a)(2) will better address the Commission's primary concerns in an SDR withdrawal from registration.

The Commission is adopting the changes to § 49.4 as proposed.

C. § 49.10 – Acceptance and Validation of Data

The Commission is changing the § 49.10(a) through (d)[289] and (f) requirements for the acceptance of data. As part of these changes, the Commission is re-titling 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 making non-substantive amendments to the general requirements in existing § 49.10(a) for SDRs to have policies and procedures to accept swap data and swap transaction and pricing data. Existing § 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.

The non-substantive amendments include titling § 49.10(a) "General requirements" to distinguish it from the rest of § 49.10 and renumbering the sections.

[289] The Commission proposed amendments to the § 49.10(e) requirements for correction of errors and omissions in SDR data in the 2019 Part 49 NPRM. *See* 84 FR at 21050.

The Commission is revising 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. The Commission is removing 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 correcting references to defined terms.

Together, the amendments to § 49.10(a)(1) through (2) will 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.[290]

The Commission did not receive any comments on the proposed changes to § 49.10(a). For reasons discussed above, the Commission is adopting the changes as proposed.

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

The Commission is adopting non-substantive amendments to the § 49.10(b) requirements for SDRs to accept SDR data. Existing § 49.10(b) requires a registered SDR 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.

The non-substantive changes include titling § 49.10(b) "Duty to accept SDR data" and updating references to data in § 49.10(b) to "SDR data" to use the correct defined

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

term. The Commission did not receive any comments on the changes. For the reasons discussed above, the Commission is adopting the changes as proposed.

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

The Commission is adding new regulations for the SDR validation of SDR data in § 49.10(c). The Commission is moving the requirements in existing § 49.10(c) to § 49.10(d).[291] In § 49.10(c), the Commission is requiring SDRs to apply validations and inform the entity submitting the swap report of any associated rejections. SDRs will be required to apply the validations approved in writing by the Commission. The Commission is also adopting regulations for SDRs to send validation messages to SEFs, DCMs, and reporting counterparties in § 45.13(b).[292] The Commission discusses § 49.10(c) and § 45.13(b) together in this section.

The Commission believes the consistent application of validation rules across SDRs will lead to an improvement in the quality of swap data maintained at SDRs. SDRs currently check each swap report for compliance with a list of rules specific to each SDR. However, the Commission is concerned 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 data element,

[291] The amendments to the existing requirements of § 49.10(c), to be moved to § 49.10(d), are discussed in section IV.C.4 below.
[292] The Commission is adopting 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).

another SDR may accept reports containing the same erroneous value in the same data element. Further, the Commission is concerned responses to SDR validation messages vary across reporting counterparties, given the lack of current standards.

ESMA has published specific validations for TRs to perform to ensure that derivatives data meets the requirements set out in their technical standards pursuant to EMIR.[293] 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.[294] The Commission believes similarly consistent SDR validations will help improve data quality.

The Commission received two comments supporting data validations regulations in § 45.13. FIA believes the validations should strengthen data accuracy and appreciates using the SDRs' current processes.[295] Markit believes validation requirements will enable third-party service providers to develop data validation mechanisms that will substantially reduce the cost of complying with new SDR data validation procedures.[296]

The Commission received two comments on the new validations requirements in § 49.10(c) and § 45.13(b). NRECA-APPA request the Commission provide evidence that the validation process will achieve a specific regulatory benefit to offset the significant additional burden on non-SD/MSP/DCO counterparties to off-facility

[293] *See "EMIR Reporting" at https://www.esma.europa.eu/policy-rules/post-trading/trade-reporting.*
[294] *See id.*
[295] FIA at 7.
[296] Markit at 3.

swaps.[297] As discussed above, the Commission believes consistent SDR validations will improve data quality without placing unnecessary burdens on any swap counterparties as SDRs validate data today.

GFXD believes limited exceptions to the validation requirements should be in place but believes such exceptions may have limited use.[298] The Commission agrees, and believes the regulations, along with the existing delegations of authority that the Commission is moving to § 45.15, give the Commission the discretion to specify validations exceptions in the case of new products or changes that require flexibility.

The Commission did not receive any additional comments on § 49.10(c) or § 45.13(b). The Commission is adopting the regulations as proposed.

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

As described above, the Commission is moving the requirement in § 49.10(c) for SDRs to have policies and procedures to prevent invalidations or modifications of swaps to § 49.10(d). As a result, the Commission is re-designating § 49.10(d) as new § 49.10(f).[299] Existing § 49.10(c) 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.[300]

The Commission is making non-substantive amendments to existing § 49.10(c), moved to § 49.10(d). For instance, the Commission is titling § 49.10(c) "Policies and

[297] NRECA-APPA at 5.
[298] GFXD at 25.
[299] The amendments to the existing requirements of § 49.10(d), re-designated as § 49.10(f), are discussed in section IV.C.5 below.
[300] Existing § 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).

procedures to prevent invalidation or modification" to distinguish it from the other requirements in § 49.10.

The Commission did not receive any comments on the non-substantive changes to § 49.10(d). For the reasons discussed above, the Commission is adopting the changes as proposed.

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

As described above, the Commission is re-designating § 49.10(d) as § 49.10(f).[301] The Commission is making non-substantive amendments to the requirements in existing § 49.10(d), re-designated as § 49.10(f). Existing § 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.

The Commission is re-titling § 49.10(f) "Policies and procedures for resolving disputes regarding data accuracy" and updating terminology in the regulation. The Commission did not receive any comments on the amendments to § 49.10(f). For the reasons discussed above, the Commission is adopting the changes as proposed.

V. Swap Data Elements Reported to Swap Data Repositories

A. Proposal

The Commission is updating and standardizing the data elements in appendix 1 to part 45. The Commission's minimum PET for swaps in each swap asset class are found in existing appendix 1 to part 45. The existing PET for swaps contain a set of "data categories and fields" followed by "comments" instead of specifications such as

[301] The Commission's proposed revisions to § 49.10(e) are discussed in the 2019 Part 49 NPRM. *See* 84 FR at 21050.

allowable values, formats, and conditions.[302] In some cases, these comments include directions, such as to use "yes/no" indicators for certain data elements.[303] In others, the comments reference Commission regulations (e.g., to report the LEI of the non-reporting counterparty "[a]s provided in § 45.6").[304]

In adopting part 45, the Commission intended the PET 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.[305] However, in practice, this approach permitted a degree of discretion in reporting swap data that led to a lack of standardization which makes it more difficult for the Commission to analyze and aggregate swap data. Each SDR has worked to standardize the data within each SDR over recent years, and Commission staff has noted the improvement in data quality. However, the Commission believes a significant effort must be made to standardize swap data across SDRs. As a result, the Commission is revisiting the data currently required to be reported to SDRs in appendix 1.

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

[302] *See generally* 17 CFR 45 appendix 1.
[303] *Id.*
[304] *Id.*
[305] *See* 77 FR at 2149.

Technical Guidance to determine which data elements the Commission could adopt according to the CDE Technical Guidance.

As a general matter, the Commission believes 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 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.[306] Having completed this assessment, the Commission proposed listing 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 proposed listing the swap transaction and pricing data elements required to be reported to, and then publicly disseminated by, SDRs pursuant to part 43 in appendix A to part 43. The swap

[306] The Commission intended 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 existing regulatory requirement linking the two sets of data elements.

transaction and pricing data elements will be a harmonized subset of the swap data elements in appendix 1 to part 45.

At the same time as the Commission proposed updating the swap data elements in appendix 1, DMO published draft technical specifications for reporting the swap data elements in appendix 1 to part 45 to SDRs, and for reporting and publicly disseminating the swap transaction and pricing data elements in appendix A to part 43 described in a separate NPRM. Once finalized, DMO would then publish the technical specification in the *Federal Register* pursuant to the delegation of authority proposed in § 45.15(b). Overall, DMO is establishing a technical specification for certain swap data elements according to the CDE Technical Guidance, where possible.

The swap data elements to be reported to SDRs will therefore consist of: (i) the data elements implemented in the CDE Technical Guidance; and (ii) additional CFTC-specific data elements that support the Commission's regulatory responsibilities.[307] While much of this swap data is already being reported to SDRs according to each SDR's technical specifications, as explained below, the technical specification and validation conditions will be new. A discussion of the swap data elements and comments on the technical specification follows below. Data elements specific to part 43 are discussed in a separate part 43 final rule.

DMO's technical specification contains an extensive introduction to help reviewers. As a preliminary matter, the Commission notes the swap data elements in appendix 1 do not include swap data elements specific to swap product terms. The

[307] The update of appendix 1 and the technical specification are expected to represent a significant reduction in the number of swap data elements that could be reported to an SDR by market participants.

Commission is currently heavily involved in separate international efforts to introduce UPIs.[308] The Commission expects UPIs will be available within the next two years.[309] Until the Commission designates a UPI pursuant to § 45.7, SDRs will continue to accept, and reporting counterparties will continue to report, the product-related data elements unique to each SDR. The Commission believes this temporary solution will have SDRs change their systems only once when UPI becomes available, instead of twice if the Commission adopted standardized product data elements in this release before UPIs are available and then later designates UPIs pursuant to § 45.7.

In addition, the Commission is adopting the CDE Technical Guidance data elements as closely as possible. Where the Commission adopts a CDE Technical Guidance data element, the Commission adopts 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 includes footnotes in the technical specification to explain these differences as well as provide examples and jurisdiction-specific requirements. However, the Commission is not including these footnotes in appendix 1. In addition, the definitions from CDE Technical Guidance data elements included in appendix 1

[308] *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/*.
[309] *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.

sometimes include references to allowable values in the CDE Technical Guidance, which may not be included in appendix 1, but are in the technical specification.

Finally, the CDE Technical Guidance did not harmonize many data elements 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 anticipates addressing implementation issues through the international working groups 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.

B. Comments on the Proposal and Commission Determination

1. Category: Clearing

The Commission proposed requiring reporting counterparties report 12 clearing data elements.[310] The Commission received two comments on whether it should require

[310] 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 exceptions and exemptions – Counterparty 1 (11); and Clearing exceptions and exemptions – Counterparty 2 (12).

a data element for indicating whether a swap is subject to the Commission's clearing requirement in § 50.4 and the trade execution requirement in CEA section 2(h)(8). ISDA-SIFMA do not believe the Commission should add these data elements because it is static data and the Commission already gets all the data elements necessary to determine whether a swap is subject to the clearing requirement or trade execution requirement.[311] They believe the data elements would be burdensome due to their granularity and the prescriptiveness of the clearing mandates under § 50.4, and that the Commission will ultimately be able to use the global UPI to analyze data related to swaps subject to clearing.[312] Chatham believes the Commission can determine whether a product is subject to the clearing requirement or the trade execution requirement by other related data elements in the report.[313] The Commission agrees with Chatham and ISDA-SIFMA and is declining to add the mandatory clearing and trade execution indicators in appendix 1 at this time.[314]

The Commission is adopting the clearing data elements for clearing in appendix 1 as proposed. Nearly all of this information is currently being reported to 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.

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[311] ISDA-SIFMA at 21.
[312] *Id.*
[313] Chatham at 4.
[314] The Commission acknowledges that it can determine which swaps are subject to the clearing requirement or the trade execution requirement, but notes there have been certain difficulties with obtaining all of the necessary information in the past due to data quality concerns. The Commission expects significant data quality improvements in response to this final rule to make that process easier.

2. Category: Counterparty

The Commission proposed requiring reporting counterparties to report ten counterparty data elements.[315] The Commission received eight comments on whether it should require an ultimate parent data element. GLEIF support the proposed addition of ultimate parent data elements, but acknowledges that the Commission could instead retrieve this information through its LEI data search engine.[316] GFXD, ISDA-SIFMA, BP, CEWG, DTCC, Chatham, and FIA all oppose requiring this information at a transaction level, with most commenters pointing out that the Commission could obtain this information from the Global Legal Entity Identifier System.[317] The Commission agrees with GFXD, ISDA-SIFMA, BP, CEWG, DTCC, Chatham, and FIA that the Commission can obtain this information outside of SDR data. As a result, the Commission is declining to adopt any parent/ultimate parent swap data elements.

Reflecting input received from the Department of Treasury, the Commission is adopting two counterparty swap data elements that were not in the Proposal: Counterparty 1 federal entity indicator and Counterparty 2 federal entity indicator.[318] The Commission believes these swap data elements will help identify swaps use by federal entities. The Commission is adopting the rest of the counterparty data elements in appendix 1 as proposed. Nearly all of this information is currently being reported to SDRs. Six of these data elements are consistent with the CDE Technical Guidance.

[315] 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).
[316] GLEIF at 3.
[317] GFXD at 27; ISDA-SIFMA at 23; BP at 5-6; CEWG at 8; DTCC at 6; Chatham at 4; FIA at 4-6.
[318] https://www.cftc.gov/LawRegulation/DoddFrankAct/ExternalMeetings/dfmeeting_060320_1568.

3. Category: Events

The Commission proposed requiring reporting counterparties to report four event data elements.[319] The Commission received four comments on the event model generally. GFXD encourages the Commission harmonize the event model with ESMA.[320] CME and DTCC point out the differences between the Commission's event model and ESMA's.[321] The Commission has worked to harmonize its event model with ESMA's as much as possible. Any remaining differences between its and ESMA's event models reflect differences in regulations referenced by the event model in the two jurisdictions.

The Commission is adopting the event data elements as proposed, with one modification. The Commission is adding an Amendment indicator data element to flag changes to a previously submitted transaction due to a newly negotiated modification. The Amendment indicator will notify the public a swap is being amended on the public tape pursuant to part 43, to indicate that the change to the previously disseminated swap transaction is price-forming.

The Commission is adopting the rest of the events swap data elements as proposed. 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,

[319] In appendix 1, these data elements are: Action type (26); Event type (27); Event identifier (29); Event timestamp (30);
[320] GFXD at 28.
[321] CME at 18; DTCC at 3.

the Commission would be unable to discern why each swap event is reported following the initial required swap creation data report.

4. Category: Notional Amounts and Quantities

The Commission proposed requiring reporting counterparties report 12 notional data elements.[322] The Commission requested comment on whether it should adopt the CDE Technical Guidance data elements for notional schedules. ISDA-SIFMA support the inclusion of "Notional Amount Schedule" data elements.[323] They explain that the Notional amount data element does not provide a way to report changes (if applicable) in notional amounts, such as for amortizing swaps.[324] The Commission agrees with ISDA-SIFMA that the Notional amount schedule data elements would remedy an issue with reporting changing notionals. As such, the Commission is adding the notional amount schedule data elements to appendix 1.

The Commission also requested comment on whether it should require the reporting of a USD equivalent notional amount data element. Four commenters oppose the data element on the grounds it would impose an unnecessary burden on reporting counterparties.[325] The Commission agrees with commenters that the USD equivalent notional amount data element would be burdensome to compute and is declining to add the swap data element to appendix 1.

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[322] In appendix 1, these data elements are: Notional amount (31); Notional currency (32);); Delta (109); Call amount (36); Call currency (37); Put amount (38); Put currency (39); Notional quantity (40); Quantity frequency (41); Quantity frequency multiplier (42); Quantity unit of measure (43); and Total notional quantity (44).
[323] Notional amount schedule is three data elements in the CDE Technical Guidance.
[324] ISDA-SIFMA at 25.
[325] CME at 19-20; GFXD at 29; ISDA-SIFMA at 25-26; FIA at 4-6.

The Commission is adopting the notional data elements as proposed, with the modification described above for Notional amount schedule data elements and the data element Delta (109) which will be moved and included with valuation data elements. Nearly all of this information is currently being reported to SDRs. Eleven of the 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.

5. Category: Packages

The Commission proposed requiring reporting counterparties report four package transaction data elements.[326] The Commission received three comments related to package data elements. GFXD supports the decision to implement package transaction elements, but GFXD requests the Commission coordinate with ESMA to ensure that implementation is consistent across jurisdictions.[327] ISDA-SIFMA do not support additional package data elements because they are exceptionally complex and there is no consistent approach to decomposing a package transaction or their associated definitions.[328] Markit opposes package transaction data elements because it believes they are too complex to provide a benefit to the Commission.[329]

The Commission believes package transaction data is necessary for the Commission to monitor the exposure of its registrants to these complex transactions. As

[326] In appendix 1, these data elements are: Package identifier (46); Package transaction price (47); Package transaction price currency (48); and Package transaction price notation (49).
[327] GFXD at 29.
[328] ISDA-SIFMA at 26.
[329] Markit at 5.

a result, despite the objections of ISDA-SIFMA and Markit, the Commission is adding three package transaction swap data elements to appendix 1 from the CDE Technical Guidance: Package transaction spread; Package transaction spread currency; and Package transaction spread notation. The Commission is also adding Package indicator data element to appendix 1. The Commission agrees with GFXD that it should harmonize with ESMA to ensure consistent implementation across jurisdictions, and that is why the Commission adopted the package data elements according to the CDE Technical Guidance where possible. The Package indicator will alert the public on the part 43 tape that the swap is part of a package, so the public will know the price is impacted by factors beyond the swap.

The Commission is adopting the rest of the package data elements as proposed. Some of this information is currently being reported to SDRs. Seven 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.

6. Category: Payments

The Commission proposed requiring reporting counterparties to report 12 data elements related to payments.[330] The Commission did not receive any comments on adding or removing the payments data elements in appendix 1 and is adopting the data

[330] In appendix 1, these data elements are: Day count convention (53); Fixing date (54); Floating rate reset frequency period (55); Floating rate reset frequency period multiplier (56); Other payment type (57); Other payment amount (58); Other payment currency (59); Other payment date (60); Other payment payer (61); Other payment receiver (62); Payment frequency period (63); and Payment frequency period multiplier (64).

elements as proposed. 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 proposed requiring reporting counterparties to report 18 data elements related to swap prices.[331] The Commission received two comments on whether the Commission should continue to require the reporting of the Non-standardized pricing indicator. ISDA-SIFMA and GFXD oppose the indicator[332] and raise a concern that it could lead to reporting counterparties reporting additional terms to address the vague direction the data element provides. The Commission disagrees with ISDA-SIFMA and GFXD and is declining to remove this data element from appendix 1. While broad, the Non-standardized term indicator alerts the public a price may be due to unique terms when SDRs disseminate it to the public. The Commission does not share ISDA-SIFMA's concerns about additional terms, as the data element is just an indicator to flag terms of the swap that may not be reported to an SDR.

The Commission is adopting the price data elements in appendix 1 as proposed. Nearly all of this information is currently being reported to SDRs. Seventeen of these data elements are consistent with the CDE Technical Guidance. This information is critical for, and used by, the Commission in understanding pricing in the swaps market.

8. Category: Product

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[331] In appendix 1, these data elements are: Exchange rate (65); Exchange rate basis (66); Fixed rate (67); Post-priced swap indicator (68); Price (69); Price currency (70); Price notation (71); Price unit of measure (72); Spread (73); Spread currency (74); Spread notation (75); Strike price (76); Strike price currency/currency pair (77); Strike price notation (78); Option premium amount (79); Option premium currency (80); Option premium payment date (81); and First exercise date (82).

[332] GFXD at 31; ISDA-SIFMA at 29.

The Commission proposed requiring reporting counterparties to report five product-related data elements.[333] The Commission received two comments on its approach to product data elements until the UPI is available. GFXD and ISDA-SIFMA support the Commission's approach.[334]

The Commission is adopting the product data elements in appendix 1 as proposed. Product data elements are currently being reported to SDRs. The Commission has 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.

9. Category: Settlement

The Commission proposed requiring reporting counterparties to report two settlement data elements.[335] The Commission received two comments on additional settlement data elements. GFXD and ISDA-SIFMA recommend the Commission consider including the Settlement location data element in the CDE Technical Guidance, as it would be an efficient option to collect additional information on trades involving offshore currencies.[336] The Commission agrees with GFXD and ISDA-SIFMA that the Settlement location data element would help the Commission collect information on trades involving offshore currencies. As a result, the Commission is adding the CDE Technical Guidance data element for Settlement location to appendix 1. For reasons

[333] In appendix 1, these data elements are: CDS index attachment point (83); CDS index detachment point (84); Index factor (85); Embedded option type (86); and Unique product identifier (87).
[334] ISDA-SIFMA at 26-27; GFXD at 30.
[335] In appendix 1, these data elements are: Final contractual settlement date (88) and Settlement currency (89).
[336] GFXD at 30; ISDA-SIFMA at 27.

articulated in the Proposal and reiterated above, the Commission is adopting the rest of the settlement data elements in appendix 1 as proposed.

10. Category: Transaction-Related

The Commission proposed requiring reporting counterparties to report 15 data elements that provide information about each swap transaction.[337] The Commission received one comment on whether the Commission should include the data element for Jurisdiction indicator. ISDA-SIFMA oppose the indicator as the reporting counterparty would need to reach out to each of its counterparties for each transaction at or shortly after execution.[338] They also question whether and how the list of jurisdictions could change and whether they would be subject to the public rulemaking process, and note this is not a CDE data element.[339] The Commission is adopting the data element with one change to address ISDA-SIFMA's concerns about complicated implementation: the data element will be named Jurisdiction and will include limited allowable values.

The Commission received one comment on whether the Commission should add a Prime brokerage transaction identifier data element in appendix 1. ISDA-SIFMA have significant concerns with the Prime brokerage transaction identifier data element and opposes its adoption.[340] ISDA-SIFMA point out that the Commission can require any SD

[337] In appendix 1, these data elements are: Allocation indicator (91); Non-standardized term indicator (92); Block trade election indicator (93); Effective date (94); Expiration date (95); Execution timestamp (96); Reporting timestamp (97); Platform identifier (98); Prime brokerage transaction identifier (89 in the Proposal); Prime brokerage transaction indicator (99); Prior USI (for one-to-one and one-to-many relations between transactions) (100); Prior UTI (for one-to-one and one-to-many relations between transactions) (101); Unique swap identifier (USI) (102); Unique transaction identifier (UTI) (103); and Jurisdiction (104).
[338] ISDA-SIFMA at 28.
[339] *Id.*
[340] ISDA-SIFMA at 27-28.

to provide any information relating to a swap, including asking any prime broker to map swaps that result from a trigger swap and to which such SD is a party.[341] In addition, the Prime brokerage transaction indicator data element should help identify prime broker intermediated transactions in SDR data.[342] The Commission agrees with ISDA-SIFMA that the identifier would be too complex to implement at this time. As such, the Commission is declining to add Prime brokerage transaction identifier to appendix 1.

The Commission is adopting the rest of the transaction data elements in appendix 1 as proposed. Most of this information is currently being reported to SDRs and the Commission requires data elements like transaction identifiers to properly track new and amended swaps.

11. Category: Transfer

The Commission proposed requiring reporting counterparties to report one data element related to changing SDRs.[343] The Commission did not receive any comments on the New SDR identifier data element and is adopting the data element as proposed. This data element is necessary as the Commission is adopting § 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

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[341] *Id.*
[342] *Id.*
[343] In appendix 1, this data element is: New SDR identifier (105).

The Commission proposed requiring reporting counterparties to report six valuation data elements.[344] The Commission received several comments on the valuation data elements. ISDA-SIFMA, GFXD, and Markit generally oppose the valuation data elements. GFXD and ISDA-SIFMA do not support any valuation data elements outside of those required by the CDE Technical Guidance.[345] Markit opposes the valuation data elements as it would be difficult for firms to report them each day because (i) valuation data comes from systems separate from risk management systems that hold the transaction information; and (ii) daily valuation reporting that is prepared for other jurisdictions only involves minimum transaction information (trade reference, USI or UTI) that are used to link the valuation to the right trade.[346]

The Commission is adopting Next floating reference reset date, along with the other valuation data elements in appendix 1. Nearly all of this information is currently being reported to SDRs. Five 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.

13. Category: Collateral and Margins

The Commission proposed requiring reporting counterparties to report 14 collateral and margins data elements.[347] In light of the importance of this information,

[344] In appendix 1, these data elements are: Last floating reference value (107); Last floating reference reset date (108); Valuation amount (110); Valuation currency (111); Valuation method (112); and Valuation timestamp (113).
[345] ISDA-SIFMA at 30-31; GFXD at 31-32.
[346] Markit at 7.
[347] In appendix 1, these data elements are: Affiliated counterparty for margin and capital indicator (114); Collateralisation category (115); collateral portfolio code (105 in the Proposal); Portfolio containing non-reportable component indicator (117); Initial margin posted by the reporting counterparty (post-haircut)

the Commission is adopting the margin and collateral data elements as proposed, with one change. The proposed Collateral portfolio code is now two separate data elements, Initial margin collateral portfolio code and Variation margin collateral portfolio code. This information is not currently being reported to SDRs. Eleven of these data elements are consistent with the CDE Technical Guidance. One data element, Affiliated counterparty for margin and capital indicator (114), will help the Commission monitor compliance with the uncleared margin requirements. The three 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.

14. Category: Miscellaneous

CME requests clarification on whether SDRs can add proprietary data elements to its technical specification or whether an SDR can reject submissions due to validation failures of these data elements, and gave two examples of certain data elements for internal processing purposes (e.g., billing) and data elements to satisfy its regulatory

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(118); Initial margin posted by the reporting counterparty (pre-haircut) (119); Currency of initial margin posted (120); Initial margin collected by the reporting counterparty (post-haircut) (121); Initial margin collected by the reporting counterparty (pre-haircut) (122); Currency of initial margin collected (123); Variation margin posted by the reporting counterparty (pre-haircut) (125); Currency of variation margin posted (126); Variation margin collected by the reporting counterparty (pre-haircut) (127); and Currency of variation margin collected (128).

obligations (e.g., implementation of certain data elements at the leg level).[348] The Commission understands SDRs may have data elements for internal processing, and the Commission does not want to interrupt an SDR's ability to efficiently function. Beyond that, the Commission opposes SDRs adding data elements outside of those mandated by the Commission to satisfy the Commission's rules to avoid creating the issue SDRs and the Commission currently face of each SDR creating their own data elements according to different standards and thus inhibiting data quality.

ISDA-SIFMA request the Commission follows EMIR's process on the data elements in the future: ESMA publishes the data validation table on an "EMIR Reporting" web landing page, while only the data elements required to be reported, format and applicable types of derivatives contracts appear in the rule text.[349] The approach would allow for public comment on any future changes to the data required to be reported to the SDRs, but would provide greater flexibility to make adjustments (e.g., due to industry feedback or completion of developing the ISO message for example) that do not change the data elements required to be reported.[350] The Commission has endeavored to follow ESMA's approach as reflected by the steps taken to solicit public comment on the data elements and have DMO publish its technical specification.

VI. Compliance Date

In the Proposal, the Commission acknowledged that market participants will need a sufficient implementation period to accommodate the changes proposed in the three

[348] CME at 20.
[349] ISDA-SIFMA at 34-35.
[350] *Id.*

Roadmap proposals that would be adopted by the Commission. The Commission expected to finalize all rules at the same time, even though the three Roadmap proposals were approved separately. The Commission also expected that the compliance date for the Roadmap rules that the Commission adopts other 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 expected that the compliance date for the rules on UTIs in § 45.5 would be December 31, 2020, according to the UTI implementation deadline recommended by the FSB.[351]

The Commission received three comments supporting the proposed one-year compliance period. ISDMA-SIFMA support a single compliance date for parts 43, 45, and 49 at a minimum of 12 months from the date the final rules are published in the Federal Register. If the Commission does not implement all rules at the same time, ISDA-SIFMA support a compliance date a minimum of 12 months from the date the last rule of the final set of rules is published in the Federal Register.[352]

Similarly, LCH recommends the Commission set the compliance date for all requirements under the proposal to 12 months from publication to comply with all aspects of the rules, as LCH believes the current date of December 31, 2020, related to UTI implementation does not allow enough time for market participants to comply.[353]

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[351] *See* Financial Stability Board, Governance Arrangements for the Unique Transaction Identifier (UTI), Conclusions and Implementation Plan (Dec. 2017), § 5.2.
[352] ISDSA-SIFMA at 36.
[353] LCH at 2 and 4.

ICE SDR suggests the Commission allow voluntary early implementation before the compliance effective date, and points out that having SDRs and market participants implement immediately after publication would be advantageous to the market and would eliminate the need for reporting counterparties to report valuation data.[354]

The Commission received five comments opposing the proposed implementation period. GFXD suggests 12 months from publication of final rules should be the minimum implementation period and that GFXD believes the changes to the technical specification in parts 43 and 45 should be implemented and allowed to imbed before the validation changes under part 49 are implemented.[355]

CME believes SDRs will need an extra six months beyond the Commission's proposal because the Commission expects SDRs to implement all changes simultaneously. CME notes this timing assumes the technical specification would be finalized at the same time and would not be modified in any material respect prior. CME's DCO also believes the Commission underestimated the number of man-hours that it will take reporting entities, including CME's DCO, to implement the Commission's proposed changes to the reporting requirements.[356]

DTCC requests clarification regarding the implementation period for any proposed changes to the reporting requirements in § 45.15(a)(1-3) and in § 45.15(b)(1-3),

[354] ICE SDR at 2 and 5.
[355] GFXD at 35.
[356] CME at 22-23.

because certain changes, including the potential use and ingestion of prescribed message standards, may take significant time to implement.[357]

ICE DCOs believes the Commission should adopt a realistic compliance period that allows for industry coordination.[358] FIA suggests extending the compliance date for all aspects of the proposals to the later of two years following the effective date of the final rules or one year following finalization of the required data elements and validation processes of the reporting counterparty's SDR. FIA is concerned the proposed dates do not provide enough time for market participants to undertake the extensive system developments necessary for compliance.[359]

The Commission received six comments opposing the UTI compliance date proposal. GFXD believes the December 31, 2020 compliance date for UTIs is "extremely ambitious," and that there should be a later implementation period for UTI that is coordinated with the EU.[360] CME requests the Commission align the UTI transition with the main compliance date to reduce the potential for unnecessary duplication of effort and to allow for potential project implementation synergies.[361]

JBA believes aligning the UTI implementation timeline across jurisdictions will be more beneficial, and that deadlines should coincide with those of the UPI and CDE, in light of proposals offered in the ESMA consultation.[362] ISDA-SIFMA note the proposed date would give only two months for entities to complete builds and test systems,

[357] DTCC at 8.
[358] ICE DCOs at 1-2.
[359] FIA at 10-11.
[360] GFXD at 34-35.
[361] CME at 22.
[362] JBA at 1-2.

accounting for year-end code freezes and the exacerbation of budgeting and resource constraints caused by the COVID-19 pandemic. ISDMA-SIFMA want § 45.5 to be implemented at least at the same time as the rest of part 45 but would prefer the Commission wait until closer to the Australian Securities and Investments Commission's or ESMA's compliance dates in 2022.

CS recommends the Commission not separate the Proposal's compliance dates. If the Commission does keep them separate, CS suggests working closely with fellow IOSCO members in considering an extended implementation timeline for the UTI. In light of other initiatives for global SDs, the operationalizing requirements and operational hurdles present challenges for SDs. CS requests the Commission continue to weigh concerns related to data fragmentation in evaluating a bifurcated implementation of the proposals. CS also suggests the Commission continue to engage in dialogue with the Harmonisation Group and could suggest a timeframe that takes into account the Commission's proposals and other data reform efforts in other IOSCO jurisdictions.[363]

FIA believes the USI and UTI compliance changes will have to be addressed and should occur in tandem with the rest of the reporting rule requirements. It recommends eliminating the December 30, 2020 compliance date for UTIs and instead imposing one date for compliance for all final rules.[364]

The Commission received two questions on going-forward amendments for UTIs. ISDA-SIFMA request the amendments to the Commission's swap reporting rules clarify that requirements should be applied on a "going forward" basis and only apply to swaps

[363] CS at 2.
[364] FIA at 10-11.

and events occurring on or after the compliance date of the amended rules, including the clarification that UTI requirements only apply to new swap transactions and not to swaps prior to the compliance date that have a USI.[365] DTCC requests clarification on implementing UTI versus USI. It questions whether swaps that were reported using a USI prior to the end of the compliance period can continue being reported using the USI and only events requiring the creation of new UTIs will be reported using the UTI.[366]

Based on the many comments that requested one compliance date for all aspects of the Proposal and all of the Roadmap proposals, including final § 45.5, and the many comments that requested a compliance date that is more than one year from the date the proposals are finalized, the Commission has determined to adopt a unified compliance date that is 18 months from the date of finalization for the final rule amendments. The Commission agrees with the suggestion from ICE SDR that market participants should be able to adopt the rule changes ahead of the compliance date.

Regarding the UTI implementation, the Commission clarifies that UTI implementation should be on a going-forward basis. This means that all new swaps entered into after the compliance date should have UTIs according to final § 45.5. As a result, SDRs will need to accommodate both USIs and UTIs for a certain amount of time after the compliance date, but the Commission anticipates SDRs would be able to phase it out at a certain point after swaps using USIs are terminated or reach maturity.

Part 20 of the Commission's regulations governing large trader reporting for physical commodity swaps contains a "sunset provision" in § 20.9 that would take effect

[365] ISDA-SIFMA at 36.
[366] DTCC at 5.

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."[367] In the Proposal, the Commission asked whether: "[i]n 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?"[368]

The Commission received three comments on the appropriateness of sunsetting part 20. BP supports sunsetting part 20 since SDRs have been collecting and processing data for several years, Commission and industry resources should no longer be expended on part 20.[369] CEWG believes once the improvements in the proposed rules are implemented, CFTC should look towards ending part 20.[370] FIA believes the provisions in § 20.9 have been met and recommends CFTC sunset the part 20 reporting requirements.[371]

Since part 20 data is reported directly to the Commission and not to SDRs, the Commission did not propose any changes to part 20 in the Roadmap or in the Proposal, and therefore, the Commission is taking no action on part 20 in this release. The Commission nonetheless acknowledges the commenters' responses to the question. The

[367] 17 CFR 20.9.
[368] Swap Data Recordkeeping and Reporting Requirements, 85 FR 21578, 21614.
[369] BP at 6.
[370] CEWG at 9.
[371] FIA at 14.

Commission may address part 20 reporting at a future date after implementation of the Roadmap rules.

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.[372] 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 under the RFA.[373] The changes to parts 45, 46, and 49 adopted 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,[374] DCOs,[375] MSPs,[376] SDs,[377] SDRs[378], and SEFs[379] are not small entities for purpose of the RFA.

Various changes 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 CEA section

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[372] *See* 5 U.S.C. 601- 604.
[373] *See* Policy Statement and Establishment of "Small Entities" for purposes of the Regulatory Flexibility Act, 47 FR 18618 (Apr. 30, 1982).
[374] *See id.*
[375] *See* Derivatives Clearing Organization General Provisions and Core Principles, 76 FR 69334, 69428 (Nov. 8, 2011).
[376] *See* 77 FR at 20194 (basing determination in part on minimum capital requirements).
[377] *See* Swap Trading Relationship Documentation Requirements for Swap Dealers and Major Swap Participants, 76 FR 6715 (Feb. 8, 2011).
[378] *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).
[379] Core Principles and Other Requirements for Swap Execution Facilities, 78 FR 33476, 33548 (June 4, 2013).

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 under the rules of a DCM.[380] The Commission has previously certified that ECPs are not small entities for purposes of the RFA.[381]

The Commission has analyzed swap data reported to each SDR[382] 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 under 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 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, the Commission does not believe the rules would affect a substantial number of small entities.

Based on the above analysis, the Commission does not believe this Final Rule 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

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[380] *See* 7 U.S.C. 2(e).

[381] *See* Opting Out of Segregation, 66 FR 20740, 20743 (Apr. 25, 2001). The Commission also notes 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.

[382] 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.

that the Final Rule will not have a significant economic impact on a substantial number of small entities.

B. Paperwork Reduction Act

The Paperwork Reduction Act ("PRA")[383] imposes certain requirements on federal agencies, including the Commission, in connection with their conducting or sponsoring any collection of information, as defined by the PRA. The rule amendments adopted herein will result in the revision of three information collections, as discussed below. The Commission has previously received control numbers from the Office of Management and Budget ("OMB") for each of the collections impacted by this rulemaking: OMB Control Numbers 3038-0096 (relating to part 45 swap data recordkeeping and reporting); 3038-0089 (relating to part 46 pre-enactment swaps and transition swaps); and 3038-0086 (relating to part 49 SDR regulations).

The Commission did not receive any comments regarding its PRA burden analysis in the preamble to the Proposal. The Commission is revising the three information collections to reflect the adoption of amendments to parts 45, 46, and 49, as discussed below, including changes to reflect adjustments that were made to the final rules in response to comments on the Proposal (not relating to the PRA). In addition, the Commission is revising the information collections for part 45 to include estimates of the burden hours that SDRs, SEFs, DCMs, and reporting counterparties could incur to report updated swap data elements in appendix 1 to part 45 in the form and manner provided in the technical specification published by the Commission, as discussed below, which were

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

not included in the Proposal. The Commission has re-evaluated its analysis of the one-time costs that SDRs, SEFs, DCMs, and reporting counterparties could incur to modify their systems for part 45. These estimates have been updated to include software developer labor costs for amended § 45.3 related to the technical specification, as developed by staff in its Offices of the Chief Economist and Data and Technology. The Commission does not expect any ongoing costs after the initial builds. Further, the Commission previously included estimates for proposed § 45.4 of costs for SDRs and reporting counterparties to update systems for reporting required swap continuation data. However, after further analysis, the Commission is removing the estimates for § 45.4 to avoid double-counting, since the costs relate to resporting certain swap dala elements that are included in the estimated one-time start-up costs for § 45.3.. = The Commission does not believe the rule amendments as adopted impose any other new collections of information that require the approval of OMB under the PRA.

Under the PRA, Federal agencies must obtain approval from OMB for each collection of information they collect or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3 and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA, 44 U.S.C. 3506(c)(2)(A), requires Federal agencies to provide a 60-day notice in the **Federal Register** for each proposed collection of information before submitting the collection to OMB for approval. The Commission is publishing a 60-day notice ("60-day Notice") in the Federal Register concurrently with

the publication of this final rule in order to solicit comment on burden estimates for part 45 that were not included in the Proposal.

1. Part 45: Revisions to Collection 3038-0096 (Swap Data Recordkeeping and Reporting Requirements)

a. § 45.3 – Swap Creation Data Reports

Existing § 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 adopting changes that will remove the requirement for SEFs, DCMs, and reporting counterparties[384] to report confirmation data reports, and instead report a single swap creation data report. Commission staff estimates that for these entities, the change will reduce the number of swap creation data reports sent to SDRs from 10,000 reports per 1,732 respondents to 7,000 reports per 1,732 respondents, or 12,124,000 reports in the aggregate. The annual hourly burden is estimated to remain .01 average hours per report for the remaining reports, and the gross annual reporting burden is estimated to be 121,240 hours.

The Commission is also adopting changes that will remove the § 45.3(i) requirement for SEFs, DCMs, and reporting counterparties to report TR identifiers and swap identifiers for international swaps. The changes 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 will not change the burden estimate, as SEFs, DCMs, and reporting

[384] The current requirement for SEFs and DCMs is in § 45.3(a), and the current requirement for off-facility swaps is in §§ 45.3(b)-(d).

counterparties are required to report swap identifiers for all swaps pursuant to § 45.5. However, the removal of the requirement to report TR identifiers will slightly reduce the amount of time required to make each report, as SEFs, DCMs, and reporting counterparties will not need to report this information anymore.

The Commission estimates the removal of this requirement will lower the burden hours by .01 hour per report. However, at the same time, as discussed further below in section VII.B.1.c, the Commission is adopting changes to require the reporting of UTIs instead of USIs, which are currently reported in every required swap creation data report. The Commission estimates the new rules requiring SEFs, DCMs, and reporting counterparties to report UTIs will 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 net change to the .01 burden hours per report for § 45.3 required swap creation data reporting resulting from the amendments to § 45.3(i).

The aggregate burden estimate for § 45.3 required swap creation data reports 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

In addition, the Commission estimates SDRs, SEFs, DCMs, and reporting counterparties will incur capital/start-up costs related to adopting the changes proposed in § 45.3. The Commission estimates that SDRs will incur one-time initial costs in a range

of $144,000 to $1,010,000 per SDR to update their systems, with each SDR spending approximately 3,000 to 5,000 hours on the updates. The Commission estimates SEFs, DCMs, and reporting counterparties will incur one-time initial costs in a range of $24,000 to $73,225 per reporting entity, with each reporting entity spending approximately 500 to 725 hours per reporting entity on the updates. [385] The cost per entity is estimated to be $28,923 for a total cost across entities of $50,094,636.

b. § 45.4 – Swap Continuation Data Reports

Existing § 45.4 requires reporting counterparties to report data to SDRs when swap terms change, as well as daily and quarterly swap valuation data, depending on the type of reporting counterparty. As a preliminary matter, the Commission is correcting the estimated number of respondents for § 45.4 from 1,732 SDRs, SEFs, DCMs, and reporting counterparties to 1,705 SDRs and reporting counterparties to reflect that SEFs and DCMs do not report required swap continuation data.

Existing § 45.4(a) 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 adopting changes that will remove the option for state data reporting for reporting counterparties. The Commission estimates that this will reduce the number of § 45.4 continuation data reports that

[385] The Commission is updating its estimates of the capital/start-up costs and ongoing operational/maintenance costs that SDRs, SEFs, DCMs, and reporting counterparties will incur related to adopting the changes in § 45.3 to provide a more-accurate range of expected costs. In doing so, the Commission includes the costs associated with updates to § 45.4, discussed below, as they would be captured in the costs of updating systems to adopt the updated data elements in appendix 1 to part 45.

reporting counterparties report from 207,543 reports per respondent to 103,772 reports per respondent.

The Commission is also adopting changes 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 estimates this will further reduce the number of § 45.4 swap continuation data reports they send to SDRs by four quarterly reports per 1,585 non-SD/MSP/DCO reporting counterparties. This is estimated to reduce the number of § 45.4 continuation data reports sent by reporting counterparties from 103,772 reports per respondent to 97,431 reports per respondent.

Separately, the Commission is adopting changes to expand the daily valuation data reporting requirement for SD/MSP reporting counterparties to report margin and collateral data in addition to valuation data. This is a change from the Proposal, in which the Commission proposed requiring DCO counterparties to report the information as well. The frequency of the report will not change for SD/MSP reporting counterparties, but the Commission estimated SD/MSP/DCO reporting counterparties would require more time to prepare each report. However, since all of this information is reported electronically, the Commission expected the increase per report to be small, from .003 to .004 hours per report. Since the Commission is not requiring DCO reporting counterparties to report the information, the Commission is revising its estimate to .0035 hours per report. The reduction in this estimate from .004 hours in the Proposal reflects the Commission adopting a less burdensome rule than was proposed.

The aggregate burden estimate for § 45.4 required swap continuation data is as follows:

Estimated number of respondents: 1,705

Estimated number of reports per respondent: 97,431

Average number of hours per report: .0035

Estimated gross annual reporting burden: 581,419

In addition, in the Proposal, the Commission estimated SDRs and reporting counterparties would incur capital/start-up costs and ongoing operational/maintenance costs related to adopting the changes proposed in § 45.4. In reevaluating its analysis in the Proposal, the Commission recognizes the reporting costs created by the changes to § 43.4 relate to reporting swap data elements, which the Commission has included in the estimated costs for § 45.3. To avoid double-counting costs, the Commission is not estimating separate initial and ongoing costs for § 43.4 and removing the estimate that was included in the Proposal.

c. § 45.5 – Unique Swap Identifier Reporting

Existing § 45.5 requires SEFs, DCMs, reporting counterparties, and SDRs to generate and transmit USIs, and include USIs in all of their § 45.3 creation data and § 45.4 continuation data reports to SDRs. As a preliminary matter, the Commission is correcting 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 in the current estimated number of respondents.

The Commission is updating the number of 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 respondent will increase proportionately to 115,646 reports per 147 respondents to account for the 17,000,000 new swaps reported each year with USIs.

Existing § 45.5 requires SDRs to generate and transmit USIs for off-facility swaps with a non-SD/MSP reporting counterparty. The Commission is adopting changes that will 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 will increase from 147 SDs, MSPs, SEFs, DCMs, DCOs, and SDRs to 940 respondents with the addition of financial entities. At the same time, however, this will 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 will decrease from 115,646 reports per 147 respondents to 18,085 reports per 940 respondents.

The aggregate burden estimate for § 45.5 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

In addition, the Commission estimates that § 45.5 will create costs for entities required to generate USIs to update their systems to generate UTIs. The Commission estimates that SDRs and reporting counterparties required to generate UTIs will incur a one-time initial burden of one hour per entity to modify their systems to adopt the changes described below, for a total estimated hours burden of 940 hours. The cost per entity is estimated to be $72.23 for a total cost across entities of $67,896. The Commission additionally estimates one hour per entity annually to perform any needed maintenance or adjustments to reporting systems, at a cost of $72.23 per entity and $67,896 across entities.

d. § 45.6 – Legal Entity Identifier Reporting

Existing § 45.6 requires reporting entities to have LEIs and report them to SDRs as part of their § 45.3 creation data and § 45.4 continuation data reports. As a preliminary matter, the Commission is revising 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 revising 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.[386]

[386] 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

The Commission is also adopting amendments to § 45.6 to require SDs, MSPs, SEFs, DCMs, DCOs, and SDRs to renew their LEIs annually. The change will increase the burden estimates for these entities, but will not affect the burden for the majority of entities required to have LEIs. Nonetheless, the Commission expects the burden associated with these changes to increase from .01 to .02 hours per report, and 17 hours in the aggregate.

The aggregate burden estimate for § 45.6 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. § 45.10 – Reporting Changing SDRs

The Commission is adopting new regulations in § 45.10(d) that require reporting counterparties to send SDRs and non-reporting counterparties notifications if they change the SDR to which they report swap data and swap transaction and pricing data. This is a new reporting burden that is not covered in the current collection.

The Commission estimates that no more than 15 reporting counterparties will choose to change the SDR to which they report data. As a result, the Commission estimates these 15 reporting counterparties will each send one report annually, with an average response time of .01 hours per report and a gross annual burden of .15 hours.

The aggregate burden estimate for § 45.10 is as follows:

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are accounted for in §§ 45.3 and 45.4. To avoid double-counting until there is a UPI, the Commission is removing the burden estimate for § 45.7 until the Commission designates a UPI.

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 Repositories: Registration and Regulatory Requirements)

a. SDR Withdrawal from Registration Amendments

Existing § 49.4 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 any of the changes the Commission is adopting will require any one-time or ongoing system updates for SDRs. In addition, the Commission notes it had not previously provided a burden estimate for § 49.4, so the Commission provided an estimate with the NPRM.

Existing § 49.4(a)(1)(iv) requires that an SDR's request to the Commission to withdraw from SDR registration specify, among other items, a statement that the custodial SDR is authorized to make such data and records available in accordance with § 1.44. The Commission is adopting changes to remove this requirement from § 49.4(a)(1)(iv).

Existing § 49.4(a)(2) requires that before filing a request to withdraw, a registered SDR shall file an amended Form SDR to update any inaccurate information. The Commission is adopting changes that eliminate the requirement for SDRs to file an amended Form SDR prior to filing a request to withdraw.

Separately, the Commission is adopting new § 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 estimates that at most one SDR will request to withdraw from registration each year pursuant to amended § 49.4. The Commission estimates that the SDR will provide one notification to the CFTC, which will take an estimated 40 hours for the SDR to complete.

The aggregate burden estimate for § 49.4 is 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

Existing § 49.10 provides the requirements for SDRs in accepting SDR data. As an initial matter, the Commission is correcting the estimates for § 49.10 in the NPRM. In the NPRM, the Commission misstated the current burden estimate for § 49.10 as 5,652,000 messages per SDR respondent, for a total of almost 17,000,000 messages across SDRs. The correct current estimate for § 49.10 is 2,652,000 messages per SDR, for a total of almost 8,000,000 messages. The Commission will discuss the changes to the estimate for § 49.10 resulting from this rulemaking below according to the corrected estimate for § 49.10.

Existing § 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. The Commission is adopting those changes in a separate release. In this release, the Commission is adopting separate § 49.10(c) requirements for validating swap messages. These changes further specify that SDRs must send validation acceptance and rejection messages after validating SDR data. The Commission estimates that this will increase the number of reports SDRs will need to send reporting entities.

The Commission estimates that the new requirement to send validation messages in § 49.10(c) will add 3,000,000 messages to each SDR's current burden estimate, at .00055 hours per message, or 4,950 aggregate burden hours for all three SDRs.

When added to the current estimate for § 49.10, the aggregate burden estimate for § 49.10 is 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: 9,326[387]

In addition, the Commission estimates that SDRs will incur capital/start-up costs and ongoing operational/maintenance costs related to adopting the changes proposed in § 49.10(c). The Commission estimates that SDRs will incur a one-time initial burden of 100 hours per entity to modify their systems to adopt the changes described above, for a

[387] The Commission is correcting an incorrect estimate from the Proposal of 9,750 hours, due to an error in another Supporting Statement accompanying a different rulemaking.

total estimated hours burden of 300 hours, and that SDRs will additionally spend 100 hours per entity annually to perform any needed maintenance or adjustments to reporting systems. Based on a labor cost of $72.23 per hour, the total cost of the one-time initial burden is estimated at $21,669 across all three SDRs, and the total cost to perform any additional needed maintenance or adjustments to reporting systems annually is estimated at $21,669 across all three SDRs.

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

Existing § 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 adopting changes to remove the option for state data reporting from § 45.4, the Commission is also adopting changes to remove the option for state data reporting from § 46.11.

Because reporting counterparties will no longer be able to send daily state data reports for their part 46 historical swaps, the Commission estimates the changes adopted in § 46.11 will reduce the number of continuation data reports reporting counterparties send SDRs for historical swaps by 50%. As a result, the Commission estimates that the 125[388] SD/MSP reporting counterparties that the Commission estimates are reporting historical swaps will each spend five hours on these reports annually instead of the previous estimate of 10 hours, and the 500 non-SD/MSP reporting counterparties will

[388] The Commission had erroneously stated there were 500 SD, MSP, and non-SD/MSP reporting counterparties in the Proposal.

spend .64 hours on these reports annually, instead of the previous estimate of 1.275 hours.

The aggregate burden estimate for reporting historical swaps to SDRs under part 46 is as follows:

Estimated number of respondents: 625

Estimated number of reports per respondent: 151

Average number of hours per report: .01

Estimated gross annual reporting burden: 945[389]

The Commission does not believe the changes to § 46.11 being adopted will require SDRs or reporting counterparties to make any one-time or ongoing updates to their systems.

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 swap data.[390] As a result of this work, the Commission has identified ways to

[389] In the NPRM, the Commission estimated that to comply with proposed amended § 46.11, 500 SD, MSP, and non-SD/MSP reporting counterparties that the Commission estimated are reporting historical swaps would each submit 200 reports under part 46 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 correct aggregate burden hours estimate, which was reflected in the supporting statement filed with OMB in connection with the Proposal, is 945 (consisting of 625 aggregate annual burden hours for the 125 SD/MSP reporting counterparties and 320 aggregate burden hours for the 500 non-SD/MSP reporting counterparties). The Commission is also revising the estimated number of reports filed per respondent under part 46 from 200 reports to 151.

[390] 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*.

improve the existing swap data reporting rules. 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 amending its rules to improve data quality and standardization to achieve the Group of Twenty ("G20") goal for trade reporting to improve transparency, mitigate systemic risk, and prevent market abuse.[391]

While the Commission believes the amendments will meaningfully benefit market participants and the public, some costs could result as well. Section 15(a) of the CEA requires the Commission to consider the costs and benefits of its actions before promulgating rules under the CEA.[392] Section 15(a) specifies that the Commission evaluates costs and benefits 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.[393] The Commission considers the costs and benefits resulting from its discretionary determinations concerning the section 15(a) factors.

In this release, the Commission is adopting revisions to existing regulations in parts 45, 46, and 49. The Commission is also adopting new requirements in parts 45, 46, and 49. Together, these revisions and additions should further specify and streamline

[391] *See* G20, Leader's Statement Pittsburgh Summit September 24-25, 2009, (Sept. 2009), *available at https://www.treasury.gov/resource-center/international/g7-g20/Documents/pittsburgh_summit_leaders_statement_250909.pdf*.
[392] 7 U.S.C. 19(a)(1).
[393] 7 U.S.C. 19(a)(2).

swap data reporting and improve the quality of swap data reporting. The Commission is making most of the changes to existing systems and processes, so nearly all costs considered are incremental additions or updates to systems already in place. The Commission believes many of the amendments, which are non-substantive or technical, will not have material cost-benefits implications.[394]

The Commission is adopting multiple changes to harmonize the Commission's reporting regulations with those of other regulators as part of the FSB and CPMI-IOSCO harmonization efforts. As these efforts have incorporated industry feedback, and the Commission has been vocal about its support and participation,[395] the Commission expects many market participants have been planning and preparing for updates to accommodate these important changes in efficient, cost-effective manners.

Many jurisdictions have committed to these harmonization efforts for which the Commission is adopting standards. If the Commission did not adopt these standards, but other jurisdictions—consistent with the technical guidance and implementation deadlines recommended by the FSB—did, SDRs and reporting entities could experience unnecessary costs due to unharmonized reporting infrastructures for CFTC reporting, while market participants in other jurisdictions enjoyed harmonization efficiencies.

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[394] The Commission believes there are no cost-benefit implications for amendments 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.

[395] *See, e.g.*, Testimony of Chairman J. Christopher Giancarlo before the House Committee on Agriculture, Washington, D.C., July 25, 2018, *available at 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").

The Commission discusses reasonably quantifiable costs and benefits in this section; the Commission discusses them qualitatively if they are not reasonably quantifiable. Throughout this release, the Commission estimates the cost-benefit impact of its changes using swap data, such as the prevalence of state data reporting and duplicative required swap creation data reports. Most of the changes affect reporting requirements for reporting counterparties, SDRs, SEFs, and DCMs. As a result, there will likely be some reasonably quantifiable costs related to either: (a) creating new data reporting systems; (b) reprogramming existing data reporting systems to meet the new reporting requirements; or (c) canceling data streams, which might lead to archiving data and maintaining legacy systems. These estimates focus on the costs and benefits of the amended rules market participants are likely to encounter with an emphasis on technical details, implementation, and market-level impacts. Where software changes are expected, these costs reflect software developer labor costs only, not a blend of different occupations. Costs and benefits quantified at the respondent level are estimated in the PRA section in VII.B. Those costs are not repeated in this section, but where appropriate, quantified costs reflected in the PRA are noted below to reflect PRA costs have been taken into account in the cost-benefit analysis.

These costs are quantifiable if entities covered by the final regulations can price-out the changes to the information technology architecture to adopt the reporting requirement changes. These quantifiable costs, however, will likely vary because the sophistication of reporting entities varies. For example, some reporting entities operate their own data reporting systems and employ in-house developers and analysts to plan,

design, code, test, establish, and monitor systems. Other reporting entities pay fees to third-party vendors. The quantitative costs associated with the reporting rules in this release will vary depending on the reporting entities' operations and number of swaps they execute. The Commission provides a monetary range for quantifiable costs as they relate to each change discussed below where possible.

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 participants often conduct operations both within and outside the U.S. Where the Commission does not always refer to location, the discussion of costs and benefits refers to the 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).[396]

2. Background

The Commission has issued several rulemakings related to swaps reporting where it has considered the benefits and costs.[397] Among others, the Commission has identified

[396] *See* 7 U.S.C. 2(i). CEA section 2(i) provides that the swap provisions enacted by the Dodd-Frank Act, and Commission regulations promulgated under those provisions, shall not apply to activities outside 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 the Dodd-Frank Act.

[397] In 2012, 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,

benefits such as increased transparency to both market participants and 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; and improved regulatory oversight and more robust data management systems.[398] The Commission also identified two main areas where costs may be incurred: recordkeeping and reporting.[399]

Based on its experience with swap data and extensive feedback from market participants, the Commission believes improving data quality will significantly enhance the utility of the swap data while also reducing burdens on reporting entities and SDRs through harmonizing, streamlining, and clarifying data requirements. In this release, the Commission focuses 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 modifying several other regulations for clarity and consistency.

Three SDRs are currently provisionally registered with the Commission: CME, DTCC, and ICE. The changes the Commission is adopting should apply equally to all three SDRs. The current reporting environment also involves third-party service providers that help market participants fulfill their reporting requirements, though the reporting requirements do not apply directly to them. The Commission estimates that

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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).

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

[399] *See, e.g., id.*

third-party service providers do not account for a large portion of the overall record submissions to SDRs, but provide an important service for entities that use them.

Finally, the current reporting environment depends on reporting counterparties. The Commission estimates reporting counterparties include 107 provisionally registered SDs, 24 SEFs, 3 DCMs, 13 DCOs, and approximately 1,585 non-SD/MSP/DCO reporting counterparties. Each of these reporting counterparty types varies as to size and activity. The Commission believes most SDs and nearly all SEFs, DCMs, DCOs, and SDRs have sophisticated technology dedicated to data reporting because of the frequency with which they enter into or facilitate swaps execution or accept swap data from reporting entities. The Commission also believes these entities have greater access to resources to update these systems as regulatory requirements change. Further, the Commission estimates that SDs will incur much of the costs and benefits associated with the Commission's changes, given they are the most sophisticated participants with the most experience reporting under the EU and U.S. reporting regimes. For instance, SDs accounted for over 70% of records submitted to SDRs in December 2019.[400]

Non-SD/MSP/DCO reporting counterparties account for a small fraction of SDR reports. The Commission believes there is a wide variation in the reporting systems maintained by these entities and the resources available to them. These reporting counterparties can be large, sophisticated financial entities, including banks, hedge funds,

[400] 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.

and asset management firms, but a significant number are smaller, less-sophisticated swap end-users entering into swaps less frequently to hedge commercial risk.

The Commission has a significant interest in ensuring these smaller, less-sophisticated entities can access the U.S. swaps market without unnecessary costs or burdens, but the Commission has difficulty accurately estimating the cost impact of the changes on them. The challenge stems from the wide range of complexity of firms in this group: 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 service providers to handle its reporting obligations. Commenters did not provide information to help the Commission quantify the costs to these smaller entities, notwithstanding the Proposal's request for data and other information to assist the Commission's quantification effort.[401]

Swap data reports submitted under the existing regulations have posed data quality challenges. For example, the existing appendix 1 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 existing 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.

[401] 85 FR at 21628.

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,[402] 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 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.

Based on its experience with data reporting, the Commission is amending certain regulations, particularly in parts 45, 46, and 49, to improve swap data accuracy and completeness. This release also adopts one amendment to part 49 to improve the process

[402] *See* CFTC's Weekly Swaps Report, *available at https://www.cftc.gov/MarketReports/SwapsReports/index.htm*.

for an SDR's withdrawal from registration. Many of the final regulations have costs and benefits that must be considered. The Commission discusses these below.

The Commission summarizes the amendments[403] and identifies and discusses the costs and benefits attributable to the amendments below. Where significant software development costs are expected, CFTC staff estimated the hourly wages market participants will likely pay software developers to implement each change to be between $48 and $101 per hour.[404] 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. The Commission did not receive any comments on its hourly wage estimates. Finally, the Commission considers the costs and benefits of all of the amendments 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 regulations in this release. The Commission believes the baseline for measurement of costs and benefits attributable to the amendments to §§ 45.3, 45.4, 45.5, 45.6, 45.10,

[403] As described throughout this release, the Commission is adopting a number of non-substantive changes, such as renumbering provisions and modifying the wording of existing provisions. The Commission may acknowledge these non-substantive amendments, but they present no costs or benefits to consider.

[404] Hourly wage rates came from the Software Developers and Programmers category of the May 2019 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 ($36.89 and $78.06, 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 changes. Individual entities may, based on their circumstances, incur costs substantially greater or less than the estimated averages.

45.12, 46.3, 46.10, 46.11, and 49.4 are the costs and benefits realized under current regulations, as discussed above in sections II, III, and IV. The baseline for § 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. General Cost-Benefit Comments

The Commission received no comments on the general costs and benefits of the Proposal overall. The Commission received a few comments on the costs and benefits of the proposed amendments to individual sections, which are discussed in the relevant sections below. To the extent the Commission did not receive comments objecting to the Proposal's general cost-benefit consideration, or to its cost-benefit consideration of specific sections, the Commission views the absence of comment as affirmation that the Proposal's consideration of costs and benefits was sound, unless otherwise stated below.

The Commission also notes, with one exception discussed in section VII.C.5.a below, it did not receive specific data or information regarding costs and benefits from commenters in response to its requests for such information in the Proposal.[405] The Commission therefore did not receive additional information making it reasonably feasible for the Commission to quantify overall costs and benefits, or costs and benefits for specific proposed amendments, to a degree beyond that presented in the Proposal, except as otherwise noted below.

5. Costs and Benefits of Amendments to Part 45

a. § 45.3 – Swap Data Reporting: Creation Data

[405] *See* 85 FR at 21628.

The Commission is changing § 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) single required creation data report will reduce complexity for reporting counterparties, as well as for the Commission; (ii) extending the deadline to report required swap creation data and allocations will 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.

The Commission is also updating the swap data elements in appendix 1, which existing and amended § 45.3 require SEFs, DCMs, and reporting counterparties report to SDRs in the manner provided in § 45.13(b).[406] The Commission believes this will improve data quality at SDRs and help market participants by removing ambiguity around what data they need to report to SDRs.

i. Benefits

Requiring a single confirmation data report for SEFs, DCMs, and reporting counterparties will benefit SDRs, SEFs, DCMs, and reporting counterparties by reducing the number of swap data reports being sent to and stored by SDRs. An analysis of SDR data by Commission staff found this change is likely to significantly reduce reported

[406] The Commission is moving § 45.13(b) to § 45.13(a)(3) and updating the reference in § 45.3.

messages, which benefits the reporting parties sending data, and the SDRs who ingest, validate and store the data. The analysis showed 26% of all swap messages received by the Commission from DTCC, ICE, and CME in December of 2019 (48 million records in total) were separate PET and confirm messages, which means this amendment could reduce overall messages reported to and stored by SDRs by approximately 13% overall.

Extending the deadline to report required swap creation data will 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 new deadline 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 will benefit SDRs by removing the need to manage separate processes to maintain this information. SEFs, DCMs, and reporting counterparties will benefit from reporting allocations directly via swap data reporting, and no longer reporting information about international swaps that will be rendered unnecessary given the UTI standards.

Through updating and further specifying the swap data elements required to be reported to SDRs, the Commission will 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 degrees of compliance with swap data standards both within and across SDRs.

ii. Costs

The Commission expects the initial cost of updating systems to adopt the changes in § 45.3—outside of updating the data elements in appendix 1—to be small.[407] Most SEFs, DCMs, and reporting counterparties should have systems to report swap data to SDRs ASATP after execution, as well as systems that report separate PET and confirmation swap reports and information about international swaps. SDRs likewise have systems to accept both PET data and confirmation data reports, possibly separately or combined, as well as systems to map allocations and ingest information about international swaps.

In both cases, the changes will reduce complexity and software functionality. Reporting entities will 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 and will see data storage costs decline over time.

The Commission expects market participants to further mitigate costs by the fact they involve updates to current systems, rather than having to create new systems as most firms had to do when 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 entities implement these one-time system updates, the Commission expects SDRs, SEFs, DCMs,

[407] The Commission estimates for PRA purposes that there would be a decrease in the burden incurred by reporting counterparties, as discussed in the PRA estimates.

and reporting counterparties will recognize significant benefits through reduced costs and complexity associated with reporting streamlined data to SDRs.

The Commission received comments supporting its expectation that the changes to § 45.3 will improve data quality and reduce compliance and cost burdens. Specifically, DTCC believes these changes will improve data quality by reducing the number of corrections sent to the SDRs and streamline reporting for market participants.[408] ISDA-SIFMA believe the extended timeline for reporting swap data will improve data quality[409] and CEWG comments that these changes will reduce the compliance burden on market participants.[410] The Commission requested comments on the proposed cost-benefit analysis for § 45.3, but did not receive any providing data, significant cost-benefit alternatives, or opposing views on the costs and benefits.

Conversely, the Commission expects SEFs, DCMs, SDRs, and reporting counterparties will incur greater costs in response to the changes to the appendix 1 data elements in order to comply with § 45.3. Beyond the changes to appendix 1, the Commission expects SEFs, DCMs, SDRs, and reporting counterparties will update systems according to DMO's technical specification on website at www.cftc.gov, resulting in additional costs, even though the technical specifications help these entities implement reporting for the data elements in appendix 1.

The three SDRs will need to update their systems to accept the updated swap data elements in appendix 1. SEFs, DCMs, and reporting counterparties will need to update

[408] DTCC at 5.
[409] ISDA-SIFMA 5-7.
[410] CEWG at 2.

systems to report the swap data elements in appendix 1 to SDRs. SDRs will also need to update systems to validate swap data pursuant to the validations requirements in § 49.10(c). The costs are likely to differ across entities but, depending on current systems, as indicated in the estimates detailed below, could be significant, before accounting for likely mitigating factors, also discussed below.

The Commission believes some factors will mitigate the costs to these entities. First, most of the swap data the Commission is further standardizing with updated appendix 1 is currently being reported to SDRs. Commission staff recognizes 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 from current practice could be more pronounced. Costs to standardize data elements that had not previously been standardized in certain asset classes like commodities, or adding new data elements would be costlier; although the reporting entity could mitigate costs if it already saves this information but either does not currently send it to an SDR or sends it in a non-standard format.

To the extent SDRs operate in multiple jurisdictions, ESMA already requires many of the swap data elements the Commission is adopting. An SDR presumably will spend fewer resources updating its systems for the changes in appendix 1 if it has already made these changes for European markets. Similarly, SEFs, DCMs, and reporting counterparties reporting to European TRs may have to spend fewer resources.

Additionally, after the updates are made, the Commission expects SDRs, SEFs, DCMs, and reporting counterparties will see an offsetting 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 will be able to report more efficiently as jurisdictions adopt the CDE Technical Guidance data elements.

Finally, the changes adopted to the swap data elements makes the part 43 swap transaction and pricing data elements a subset of the part 45 swap data elements. This means the changes to parts 43 and 45 will require technological changes that could merge two different data streams into one. For example, SDRs will have to adjust their extraction, transformation, and loading ("ETL") process to accept feeds that comply with the new technical specification and validation conditions, but these changes will apply to data elements in both parts 43 and 45.

Because many of the changes SDRs will make to comply with part 45 will likely also help them comply with part 43, the Commission anticipates significantly lower aggregate costs for complying with both rules 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 final rules but for purposes of this section focus on the part 45 swap data elements.

Based on conversations with ODT SMEs experienced in designing data reporting, ingestion, and validation systems, Commission staff estimates the cost per SDR to be in a range of $144,000 to $505,000.[411] Staff based this estimate on several assumptions and

[411] 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, staff anticipates the task for the SDRs will be significantly more complex than it is for reporters. On several occasions, the CFTC has developed an ETL data stream similar to the parts 43 and 45 data streams. These data sets consist of 100-200 data elements, similar to the

covers the set of tasks required for an SDR to design, test, and implement a data system based on the list of swap data elements in appendix 1 and the technical specification.[412] These numbers assume that each SDR will spend approximately 3,000-5,000 hours to establish ETL processes into a relational database on such a data stream.[413]

For reporting entities, the Commission estimates the cost per reporting entity to be in a range of $24,000 to $73,225.[414] This cost estimate is based on several assumptions and covers a number of tasks required by the reporting entities to design, test, and implement an updated data system based on the swap data elements, technical specification, and validation conditions.[415] These tasks include defining requirements, developing an extraction query, developing an interim extraction format (e.g., comma-

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number of data elements in appendix 1. This past Commission experience has been used to derive the included estimates.

[412] 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) The SDR would require implementation of a new database or other data storage vehicle from which their business processes can be executed. (3) While the record structure is straight forward, the implementation of a database representing the different asset classes may be complex. (4) The SDR would need to implement a data validation regime typical of data sets of this size and magnitude. (5) 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.

[413] The lower estimate of $144,000 represents 3,000 working hours at the $48 rate. The higher estimate of $505,000 represents 5,000 working hours at the $101 rate.

[414] 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 transmitted to outside organizations. These data sets consist of 100-200 data elements, similar to the number of data elements in appendix 1. This past experience has been used to derive the included estimates.

[415] 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 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 change in part 43.

separated values ("CSV")), developing validations, developing formatting conversions, developing a framework to execute tasks on a repeatable basis, and finally, integration and testing. Staff estimates 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.[416]

The Commission received one comment, from CME, addressing these estimates.[417] CME noted it expects the costs for its organization to be 8,000 to 10,000 developer hours, which is approximately double the 3,000 to 5,000 developer-hour estimate listed above. The costs CME referenced are specific to its organization. The costs may not directly apply to other SDRs and do not apply to the reporting counterparties, but provide useful information on the level of effort needed to comply with these amendments. Accordingly, the Commission deems it appropriate to expand the range of potential costs per SDR before mitigation upwards to between $144,000 and $1,010,000 for purposes of its cost-benefit assessment. Additionally, CME acknowledged they expect maintenance costs to decline over time due to the streamlined reporting requirements. The Commission did not receive any other comments related to the amendments to the data elements in appendix 1 that provided additional data, significant cost-benefit alternatives, or other opposing or critical views.

[416] The lower estimate of $24,000 represents 500 working hours at the $48 rate. The higher estimate of $73,225 represent 725 working hours at the $101 rate.
[417] CME at 22.

In sum, for reasons discussed above and taking into account relevant comments, the Commission believes the expected benefits justify the final rule amendments notwithstanding their expected mitigated costs.[418]

b. § 45.4 – Swap Data Reporting: Continuation Data

The Commission is amending § 45.4 to (i) remove the option for state data reporting; (ii) extend the deadline for reporting required swap continuation data to T+1 or T+2; (iii) remove the requirement for non-SD/MSP/DCO reporting counterparties to report valuation data quarterly; and (iv) require SD/MSP reporting counterparties to report margin and collateral data daily.

The Commission believes: (i) removing state data reporting will reduce the number of messages being sent to and stored by SDRs; (ii) extending the deadline to report required swap continuation data will improve data quality without impacting the Commission's ability to perform its regulatory responsibilities; (iii) removing the valuation data reporting for non-SD/MSP/DCO reporting counterparties will reduce burdens for these counterparties, which tend to be smaller and less active in the swaps market; and (iv) requiring SD/MSP reporting counterparties to report margin and collateral daily is reasonable given the sophistication of their trading and reporting systems, especially on a T+1 timeline, and essential for the Commission to monitor risk.

i. Benefits

[418] Note the costs associated with reporting daily collateral and margin information required by § 45.4 for SD/MSP/DCO reporting counterparties as detailed in section VII.C.5.b.ii are fully reflected in the costs detailed in this section.

Removing state data reporting will benefit reporting counterparties by reducing the number of messages they report to SDRs. This will also benefit SDRs by reducing the number of messages they need to ingest, validate, process, and store. In 2019, CFTC staff estimates the Commission received over 557 million swap messages from CME, DTCC, and ICE. Staff analysis from December 2019 shows over 50% of all records submitted were state data messages.

Extending the deadline to report required swap continuation data will benefit SDRs and reporting counterparties by reducing the number of validation errors SDRs must notify reporting counterparties about. Removing the requirement for non-SD/MSP/DCO reporting counterparties to report quarterly valuation data will reduce reporting costs for these estimated 1,585 counterparties, which tend to be smaller and less active in the swaps market. Because of their size, the Commission does not expect the lack of valuation data to inhibit the Commission's market oversight responsibilities.

ISDA-SIFMA note approximately 98% of uncleared swaps involve at least one SD. As such, this change will affect 2% of reported swaps, which they agree do not present systemic risk issues.[419] Requiring SD/MSP reporting counterparties to report margin and collateral daily will benefit the swaps market by improving the Commission's ability to monitor swap markets and systemic risk within and across markets, particularly for uncleared swaps. In contrast, because existing part 45 reports do not include collateral information, while the Commission is often able to identify the level of risk

[419] ISDA-SIFMA at 8.

inherent to a swap (or set of swaps), it may not fully understand the amount of collateral protection a counterparty holds to mitigate this risk.

ii. Costs

The Commission expects the initial costs of updating systems to adopt the changes in § 45.4 to range from low to moderate, offset by the decreased reporting burden for all reporting entities.[420] For instance, the Commission understands many reporting counterparties have systems to report swap data, including snapshot data, to SDRs according to the current timelines. Extending the deadline reduces some of this complexity and removes a message type that accounts for over 50% of the existing message traffic, which will significantly reduce reporting burdens. Based on CFTC SME experience with similar systems, SDRs should require minimal updates to their systems that accept snapshot data and should ultimately experience reduced data storage costs.

Non-SD/MSP/DCO reporting counterparties will need to update their systems to stop sending valuation data to SDRs. In contrast, SD/MSP reporting counterparties will need to program systems to begin reporting margin and collateral data in addition to valuation data. The T+1 reporting timeline mitigates this by allowing end-of-day data integration and validation processes as opposed to near-real-time integration, which, according to CFTC SMEs and staff conversations with industry participants, provides flexibility in how and when system resources are used to produce the reports and better aligns trade and collateral and margin data reporting streams. The Commission understands SD/MSP reporting counterparties currently have access to the data they need

[420] The Commission estimates for PRA purposes that there would be a moderate increase in the burden incurred by market participants, as discussed in the PRA section.

to report collateral and margin data and the costs lie in integrating that information with the swap data reporting stream. The cost of implementing these changes is expected to be fully contained in and a subset of the costs associated with implementing the updated data elements in appendix 1 detailed in section VII.C.5.a, above. As a result, the Commission expects the cost of reporting daily collateral and margin data for SD/MSP reporting counterparties on a T+1 basis to be fully encapsulated by the effort to implement the updated data elements in appendix 1.

Additionally, over time, after these one-time system updates, the Commission expects SDRs, SEFs, DCMs, and reporting counterparties will 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 will likely involve costs for the estimated 107 SD/MSP reporting counterparties, it is unlikely to occasion significant, if any material, additional costs for the SDRs serving EU jurisdictions. This is because ESMA currently requires the reporting of much of the same information to EU-registered TRs.

The Commission expects this could also mitigate the costs for most of the 107 SD/MSP reporting counterparties given that they are likely active in European swap markets and thus already comply with similar requirements. The Commission also expects, for the smaller remaining group of reporting entities not active in European swaps markets, each entity already has access to the collateral and margin information. Accordingly, for them, the primary cost will be in integrating existing collateral data streams into SDR reporting workflows, which is less costly and burdensome than

acquiring additional or outside data to integrate. 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 received comments supporting its expectation these amendments will benefit the market and mitigate costs incurred. FIA agrees the quarterly valuation data reported by non-SD/MSP/DCO reporting counterparties is not integral to the CFTC's systemic risk monitoring and the benefit of collecting this data do not justify the cost incurred by the impacted market participants.[421] CEWG believes the burden of collecting the quarterly valuation data is not proportional to the limited value the data provides.[422] Additionally, IECA notes many small counterparties contract with third-party reporting services to report the required quarterly valuations and the value derived from the data does not justify the cost.[423]

The Commission received 12 comments related to the daily collection of collateral and margin data from SD/MSP/DCO counterparties, with four in favor and eight opposed. Of the supportive comments, Markit addressed the expected costs by noting the daily submission of both cleared and uncleared collateral and margin data is more streamlined and efficient (and therefore cost-effective) than making reporting for cleared trades optional.[424] Other supportive commenters emphasized the need to harmonize collateral and margin data elements to the greatest extent possible across

[421] FIA at 14.
[422] CEWG at 2.
[423] IECA at 3.
[424] Markit at 6.

jurisdictions in order to not create unnecessary costs for market participants.[425] Several of the opposing comments note the additional regulatory costs associated with reporting collateral and margin data,[426] which as noted above is mitigated by the T+1 reporting deadline.

CME, Eurex, ICE DCOs, ISDA-SIFMA, and FIA raised concerns about duplicative reporting for DCOs regarding cleared swaps. Further, as noted in section II.D.4, the Commission acknowledges these concerns but believes the costs are warranted for uncleared swaps reported by SD/MSP reporting counterparties, as this information is not available elsewhere and is critical for monitoring systemic risk. For cleared swaps reported by DCOs, however, the Commission acknowledges the potential duplication with collateral and margin data reported by DCOs pursuant to part 39. While collateral and margin data is reported pursuant to part 39 using a different set of data elements than those contained in appendix 1, and collateral and margin data is reported for end-of-day positions pursuant to part 39 as opposed to a more granular transaction-by-transaction basis pursuant to part 45, the Commission believes the collateral and margin data reported by DCOs pursuant to part 39 is sufficiently similar to data reported pursuant to part 45 to meet the Commission's current needs.

In sum, for reasons discussed above and taking into account relevant comments, the Commission believes the expected benefits justify the final rule amendments notwithstanding their expected mitigated costs.

c. § 45.5 – Unique Swap Identifiers

[425] FXPA at 4-5.
[426] *See, e.g.,* CEWG at 8 and Eurex at 3.

The Commission is amending § 45.5 to (i) require reporting parties use UTIs instead of USIs for new swaps; (ii) require financial entities to generate UTIs for off-facility swaps; and (iii) permit non-SD/MSP/DCO reporting counterparties that are not financial entities to generate UTIs themselves or ask their SDR to generate UTIs for off-facility swaps. In general, 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 multiple jurisdictions.

i. Benefits

The Commission believes amending § 45.5 will benefit SDRs by providing one identifier for multiple regulators to adopt to reduce the burdens associated with multiple jurisdictions requiring different, and possibly conflicting, identifiers. The Commission believes requiring SD/MSP and other financial entity reporting counterparties to generate UTIs for off-facility swaps will benefit SDRs 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 either generate UTIs or ask their SDR to generate UTIs for off-facility swaps will benefit smaller, less-active swaps market participants by relieving them of the burden to generate UTIs unless they choose to do so. Non-financial entities may include end-users more likely to not maintain systems that automatically generate UTIs. Therefore, this group will benefit proportionally more from this change.

Permitting these entities to ask the SDRs to generate UTIs will maintain, but lower, an ancillary cost for the three SDRs that are currently required to generate USIs for off-facility swaps with non-SD/MSP reporting counterparties. The Commission believes giving these 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.

ii. Costs

In general, the Commission expects the initial costs of updating systems to adopt UTIs will be small to moderate for most reporting entities and SDRs.[427] For instance, the Commission expects reporting counterparties and SDRs have systems that generate, 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, the Commission expects market participants will recognize the reduced costs associated with reporting a globally-standardized UTI.

In addition, the Commission understands ESMA mandates UTIs. The Commission views this as a significant mitigating factor when assessing what, if any, additional burden SDRs serving multiple jurisdictions as well as reporting counterparties active in the European markets, will experience, since they have likely already updated their systems to meet the European standards.

Commenters supported the Commission's expectation implementing the global standard would streamline reporting across jurisdictions, reduce costs overall, and benefit

[427] The Commission estimates for PRA purposes that there would be a moderate increase in the burden incurred by market participants, as discussed in the PRA section.

markets by facilitating more accurate global swap data aggregation.[428] LCH notes implementing the UTI will reduce cross-border reporting complexity, further encouraging global aggregation.[429] Many commenters also support expanding the ability to generate UTIs to non-SD/MSP/DCO reporting counterparties that are not financial entities for off-facility swaps since they are in the best position to collect the required information (such as the LEI) from the non-reporting counterparty[430] and it removes a disparity between trade identifiers used by internal record-keeping systems and data reported to SDRs.[431]

Some commenters disagree with keeping SDRs as the UTI "generator of last resort."[432] However, other commenters recognize the need for it in some cases.[433] Further, keeping SDRs at the bottom of the UTI generation hierarchy is consistent with the UTI Technical Guidance and is currently required by the Commission's regulations.

In sum, for reasons discussed above and taking into account relevant comments, the Commission believes the expected benefits justify the final rule amendments notwithstanding their expected mitigated costs.

d. § 45.6 – Legal Entity Identifiers

The Commission is amending § 45.6 to (i) require SDs, MSPs, DCOs, SEFs, DCMs, and SDRs to maintain and renew LEIs; (ii) require financial entity reporting counterparties to use best efforts to cause LEIs to be issued for swap counterparties that do not have one and if those efforts fail, to promptly provide the identity and contact

[428] GLEIF at 3; *see also* GFXD at 22-23.
[429] LCH at 3.
[430] DTCC at 5.
[431] CME at 16.
[432] CME at 16-17, DTCC at 5, and ICE SDR at 5.
[433] Chatham at 3.

information of the counterparty to the Commission; 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.

i. Benefits

Mandating LEI renewal will benefit the swaps market by improving the Commission's ability to analyze activity in the swaps market. Reference data provide valuable identification and relationship information about swap counterparties. Accurate reference data allow for robust analysis of 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 believes accurate reference data is essential for it to satisfy its regulatory responsibilities because it clearly identify 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 have reduced ambiguity for market participants previously using various unstandardized identifiers.

ii. Costs

LEI renewals will impose some costs.[434] Currently, the Commission understands registering a new LEI costs $65 and renewals cost each holder $50 per year.[435] One comment notes the mitigating fact these costs have fallen by more than 50% over the last

[434] The Commission estimates for PRA purposes that there would be a slight increase in the burden incurred by market participants, as discussed in the PRA section.
[435] LEI registration and renewal costs from Bloomberg LLP, retrieved on July 16, 2020. https://lei.bloomberg.com/docs/faq#what-fees-are-involved

5 years due to increased efficiency as market adoption increased.[436] To limit burdens, the Commission is limiting the renewal requirement to the estimated 150 SDs, MSPs, SEFs, DCMs, DCOs, and SDRs, resulting in an aggregate cost of approximately $7,500 for this requirement. The Commission believes these entities have the most systemic impact on the Commission's ability to fulfill its regulatory mandates and thus warrant this small additional cost. The Commission will consider expanding the renewal requirement in future releases upon further enhancements in LEI reference data or realized reductions in cost to LEI holders.

Requiring financial entities to endeavor to cause LEIs to be issued for swap counterparties that do not have one (and, if those efforts fail, to report the identity and contact information of the counterparty to the Commission) will 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 on both the entity encouraged to obtain an LEI and the financial entity in verifying that its counterparties have valid LEIs and encouraging them to obtain one (or obtaining an LEI for them) if they do not and informing the Commission if the financial entity's efforts fail. As mentioned above, the cost to an entity to obtain an LEI is minor, and has trended down over time. Further, financial entities collect the same information during the onboarding process when entering into a swap contract with a new counterparty that is needed to obtain an LEI for the counterparty, a mitigating factor for the financial entities to the

[436] GLEIF at 1-2.

extent they must be required to encourage their counterparties to obtain LEIs (or obtain an LEI for them). The cost to notify the Commission if the financial entity's efforts fail is also expected to be low. The Commission expects both cases to impose a limited burden on swaps markets as the widespread adoption of the LEI standard continues.

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 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 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. Given the low cost of registering for a new LEI listed above, the small number of remaining entities engaging in swap transactions without an LEI, and the limited amount of additional effort financial entities need to exert so that every LEI-eligible counterparty has an LEI, the Commission expects the overall cost of this amendment to be minimal.

The Commission received comments supporting its expectation that requiring the most systemically important swaps market participants to maintain and renew their LEIs will facilitate better aggregation of entities and more accurate analysis of swaps market activity, market concentration, risk transfer, and systemic risk. Commenters, including DTCC, GLEIF, XBRL, LCH, Chatham, and Eurex, all support the requirement for SDs,

MSPs, DCOs, SEFs, DCMs, and SDRs to maintain and renew their LEIs to ensure their accuracy noting this improves transparency and aligns with the global adoption of LEIs.[437] While the existing requirement for all LEI holders to update their LEI reference data remains, the Commission believes the confirmation of the accuracy of their reference data provided by LEI holders during LEI renewal serves as an additional assurance of data quality for the most systematically important entities, and therefore warrants the annual renewal requirement for SDs, MSPs, DCOs, SEFs, DCMs, and SDRs.

In sum, for reasons discussed above and taking into account relevant comments, the Commission believes the expected benefits justify the final rule amendments notwithstanding their expected mitigated costs.

e. § 45.10 – Reporting to a Single SDR

The Commission is amending § 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 will 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 will 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.

[437] DTCC at 6, GLEIF at 1-2, XBRL at 2, LCH at 3, Chatham at 3, Eurex at 4.

i. Benefits

The amendments to § 45.10(d) will 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.

ii. Costs

The amendments will impose costs on the three SDRs. SDRs will 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 life cycle, rather than at the point of swap initiation. However, the Commission believes SDRs will be able to accommodate these changes after initial system updates since they are only slightly more burdensome than current onboarding practices for new clients at SDRs.[438]

The Commission received comments supporting its expectation that market participants will benefit from the flexibility to change SDRs and the SDRs themselves will be able to accommodate the changes with minimal additional burden.[439] The Commission requested comments on the costs and benefits of the amendments to § 45.10, but did not receive any comments that provided additional data, significant cost-benefit alternatives, or other opposing or critical views on the costs and benefits.

[438] The Commission estimates for PRA purposes that there would be a minimal increase in the burden incurred by reporting counterparties, as discussed in the PRA section.
[439] GFXD at 24, DTCC at 7.

In sum, for reasons discussed above and taking into account relevant comments, the Commission believes the expected benefits justify the rule amendments notwithstanding their expected mitigated costs.

f. § 45.12 – Data Reporting for Swaps in a Swap Asset Class Not Accepted by Any SDR

The Commission is removing the § 45.12 regulations permitting voluntary supplemental reporting. Existing § 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. Existing § 45.12 also requires counterparties correct errors in voluntary supplemental reports. The Commission believes removing voluntary supplemental reports will reduce unnecessary messages at SDRs that do not provide a clear regulatory benefit to the Commission.

i. Benefits

Removing the option for voluntary supplemental reporting will benefit SDRs that will no longer need to take in, process, validate, and store the reports. This should reduce costs and any unnecessary complexities for SDRs concerning these reports that provide little benefit to the Commission.

ii. Costs

The change could impose initial costs on SDRs. SDRs may need to update their systems to stop accepting these reports. However, the Commission expects these costs will 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 received comments from Eurex, ISDA-SIFMA, and NRECA-APPA in support of this amendment.[440] The Commission did not receive any comments providing additional data, significant cost-benefit alternatives, or other opposing or critical views on the costs and benefits. In sum, for reasons discussed above and taking into account relevant comments, the Commission believes the expected benefits justify the final rule amendments notwithstanding their expected mitigated costs.

6. Costs and Benefits of Amendments to Part 46

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

The Commission is amending § 46.3 to remove an exception for required swap continuation data reporting for pre-enactment and transition swaps. Existing § 46.3(a)(2) provides that reporting counterparties need to report only a subset of part 45 swap data elements 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.

The Commission believes this is current practice for SDRs and reporting counterparties, and therefore should not impact costs or benefits to SDRs and reporting counterparties. The Commission did not receive any comments on the cost-benefit considerations for the proposed changes to § 46.3.

b. § 46.10 – Required Data Standards

The Commission is updating § 46.10 to require reporting counterparties to use the required data standards outlined in § 45.13(a) and data elements in appendix 1 for

[440] Eurex at 5, ISDA-SIFMA at 16, NRECA-APPA at 5.

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 will ensure that reporting counterparties continue to do so under the updated list of swap data elements in appendix 1 and the new technical specification.

SDRs and reporting counterparties will both incur costs in updating their part 46 reporting systems to report according to any of the changes to part 45 reporting. However, given the diminishing number of historical swaps that have not yet matured or been terminated, the Commission expects these costs will be negligible compared to the costs associated with complying with new data elements in appendix 1. In addition, since the data elements are the same, any costs or benefits are captured in the Commission's analysis for § 45.3. The Commission did not receive any comments on the cost-benefit considerations for the proposed changes to § 46.10

c. § 46.11 – Reporting of Errors and Omissions in Previously Omitted Data

The Commission is removing § 46.11(b) to remove the option for state data reporting. This is consistent with the Commission's elimination of state data reporting in § 45.4. While the number of historical swaps that have not yet matured or been terminated is dwindling, SD/MSP and non-SD/MSP reporting counterparties would see a reduction in costs due to no longer having to submit daily reports for any open swaps.[441] The Commission did not receive any comments on the cost-benefit considerations for the proposed removal of § 46.11(b).

7. Costs and Benefits of Amendments to Part 49

[441] 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.

a. § 49.4 – Withdrawal from Registration

The Commission is amending § 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. The Commission believes the amendments will simplify the regulations and help ensure that swap data is properly transferred to a different SDR when one SDR withdraws from registration.

i. Benefits

The Commission believes SDRs will benefit from the removal of the unnecessary requirement to update Form SDR prior to withdrawing from registration. The swaps market will benefit from having an explicit regulatory requirement for an SDR withdrawing from registration to have an agreement with the custodial SDR regarding the withdrawing SDR's data and records. This will also benefit market participants by ensuring the preservation of historical swap data which will improve the Commission's oversight abilities and promote the health and integrity of swaps markets.

ii. Costs

The Commission believes SDRs will not incur any material costs associated with the changes.[442] SDRs will execute a custodial agreement to transfer the data as a matter of due course. The changes concerning timing and removing the erroneous reference will not result in costs for the SDRs. The Commission did not receive any comments on the cost-benefit considerations for the proposed changes to § 49.4. In the absence of material costs, the Commission believes the expected benefits justify this amendment.

b. § 49.10 – Acceptance of Data

Most of the amendments to § 49.10 are non-substantive technical amendments. However, the Commission is adding new § 49.10(c) to require SDRs to validate SDR data. New § 49.10(c) will require that SDRs establish data validations. SDRs will also be required to send SEFs, DCMs, and reporting counterparties data validation acceptance and error messages that identify the validation errors. The Commission is prohibiting SDRs from rejecting a swap transaction and pricing data message if it was submitted jointly with a swap data message that contained a validation error.

i. Benefits

SDRs, SEFs, DCMs, and reporting counterparties will benefit by having a single set of validation rules in the technical specification instead of the current environment where each SDR applies different validations they designed independently. A common set of validations specified in the technical data standards will also benefit market participants by streamlining the data reporting process for market participants and

[442] The Commission estimates for PRA purposes that there would be a minimal change in the burden incurred by reporting counterparties, as discussed in the PRA section.

ensuring more accurate data which facilitates more effective market oversight by the Commission.

ii. Costs

SDRs, SEFs, DCMs, and reporting counterparties will incur costs in updating their reporting systems to apply these validation rules.[443] To the extent SDRs operate in multiple jurisdictions, ESMA already requires many data validations similar to those in the DMO technical specification to be published on cftc.gov. An SDR may have to spend fewer resources updating its systems for the 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. In both cases, the cost of implementing these changes is expected to be fully contained in the costs associated with implementing the data standards detailed in section VII.C.5.a, since the validations are part of the data standards. As a result, the Commission expects the cost of implementing data validations to be fully encapsulated by the effort to implement the data standards.

The Commission received comments from FIA that they believe validations will improve data accuracy.[444] Markit supports validations notes they will allow third-party service providers to develop data validation solutions for reporting parties that will substantially reduce the cost of complying with them.[445] NRECA-APPA note these validations burden swap market participants and requests evidence of regulatory benefits

[443] The Commission estimates for PRA purposes that there would be an increase in the burden incurred by reporting counterparties and SDRs, as discussed in the PRA section.
[444] FIA at 7.
[445] Markit at 3.

that would offset their costs.[446] In response, the Commission maintains the critical regulatory benefits of more accurate swap data noted multiple times throughout section VII.C of this final rule and consistent with Congressional goals reflected in the Dodd-Frank Act—including more effective market oversight by the Commission and streamlined reporting processes for market participants—provide the necessary degree of justifying benefits. The Commission did not receive any comments that provided additional data, significant cost-benefit alternatives, or other opposing or critical views on the costs and benefits.

In sum, for reasons discussed above and taking into account relevant comments, the Commission believes the expected benefits justify the final rule amendments notwithstanding their expected mitigated costs.

8. Consideration of CEA Section 15(a) Factors

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.[447] 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. SDRs

[446] NRECA-APPA at 5.
[447] *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.

and 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 45, 46, 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.

The Commission discusses the CEA section 15(a) factors below.

a. Protection of Market Participants and the Public

The Commission believes the reporting changes under parts 45, 46, and 49 will enhance protections already in place for market participants and the public. By lengthening reporting timeframes and standardizing data formats, the Commission believes it will receive more cohesive, more standardized, and, ultimately, more accurate data without sacrificing the ability to oversee the markets robustly. Higher-quality swap data will improve the Commission's oversight and enforcement capabilities, and, in turn, will aid it in protecting markets, participants, and the public in general.

b. Efficiency, Competitiveness, and Financial Integrity

The Commission believes the final rules will streamline reporting and improve efficiencies given the improved data standardization. By identifying reporting entities and more sharply defining reporting responsibilities by making DCO reporting duties

clearer, the final rules strive to improve the reliability and consistency of swap data. This enhanced reliability, in turn, is an added support that might further lead to bolstering the financial integrity of swaps markets. Finally, the validation of swap data will improve the accuracy and completeness of swap data available to the Commission and will 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 final rules will have a significant impact on price discovery.

d. Risk Management Practices

The Commission believes the final rules will 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 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 the improved accuracy resulting from improvements to data entry by market participants and validation efforts by SDRs via the final rules has other public interest impacts s 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.

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 believe the changes to part 45 would result in anti-competitive behavior. The Commission believes the 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 did not receive any comments on the antitrust considerations in the Proposal.

VIII. Text of the Final Rules

List of Subjects

17 CFR Part 45

Data recordkeeping requirements, Data reporting requirements, Swaps.

17 CFR Part 46

Data recordkeeping requirements, Data reporting requirements, Swaps.

17 CFR Part 49

Registration and regulatory requirements, Swap data repositories.

For the reasons stated in the preamble, the Commodity Futures Trading Commission amends 17 CFR chapter I as follows:

PART 45 – SWAP DATA RECORDKEEPING AND REPORTING REQUIREMENTS

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, revise all references to "unique swap identifier" to read "unique transaction identifier" and revise all references to "non-SD/MSP" to read "non-SD/MSP/DCO".

§§ 45.2, 45.5, 45.7, 45.8, and 45.9 [Amended]

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/Paragraph	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	counterparties

Section/Paragraph	Remove	Add
	Commission	
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;

Section/Paragraph	Remove	Add
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

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 the twenty-four-hour day, on all days except Saturdays, Sundays, and legal holidays, in the location of the swap execution facility, designated contract market, or reporting counterparty reporting data for the swap.

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 of execution of a particular swap. The execution date for a clearing swap that replaces an original swap is the date 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 Securities and Exchange Commission.

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:

(i) All life-cycle-event data for the swap; and

(ii) 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 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 part 37 of this chapter.

Swap transaction and pricing data means all data elements for a swap in appendix A to part 43 of this chapter that are required to be reported or publicly disseminated pursuant to part 43 of this chapter.

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 the end of 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 (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 the end of 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 the end of 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 no 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 the end of the next business day following the day 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 the end of the next business day following the day 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 the end of the second business day following the day 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 the end of the second business day following the day that any life cycle event occurred.

(2) *Valuation, margin, and collateral data reporting.* (i) If the reporting counterparty is a swap dealer, major swap participant, or derivatives clearing organization, swap valuation data shall be reported electronically to a swap data repository in the manner provided in § 45.13(b) each business day.

(ii) If the reporting counterparty is a swap dealer or major swap participant, 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 revising paragraphs (a)(1)(i); (b)(1)(i); (c) introductory text; (c)(1) introductory text; (c)(1)(i); (d) introductory text; (d)(1)(i) and (f); and adding paragraphs (g) and (h) to 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

* * * * *

(b) * * *

(2) * * *

(i) * * *

(ii) To the non-reporting counterparty to the swap, no later than the applicable deadline in § 45.3(b) for reporting required swap creation data;

* * * * *

(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: create and transmit a unique transaction identifier as provided in paragraphs (b)(1) and (2) of this section; or 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 or in part 43 of this chapter, 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, maintain, 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 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 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) of this chapter.

(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 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, use best efforts to cause a legal entity identifier to be assigned to the counterparty. If these efforts do not result in a legal entity identifier being assigned to the counterparty prior to the reporting of required swap creation data, the financial entity reporting counterparty shall promptly provide the identity and contact information of the counterparty to the Commission.

(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. In § 45.8, revise 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) through (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. Revise § 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 subject to this section shall be reported at times announced by the Commission and in an electronic file in a format acceptable to the Commission.

§ 45.12 [Removed and Reserved]

12. Remove and reserve § 45.12.

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), 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), 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 applies 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.	✓	✓	✓	✓	✓

	Data Element Name	Definition for Data Element	Asset Class				
			CR	IR	FX	EQ	CO
		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").					
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	Identifies the type of the clearing exception or	✓	✓	✓	✓	✓

	Data Element Name	Definition for Data Element	Asset Class				
			CR	IR	FX	EQ	CO
	exceptions and exemptions – Counterparty 2	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. 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	✓	✓	✓	✓	✓

	Data Element Name	Definition for Data Element	Asset Class				
			CR	IR	FX	EQ	CO
		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 does not apply 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 does not apply 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 which this data element could apply are: • most swaps and swap-like contracts including interest rate swaps, credit total	✓	✓	✓	✓	✓

	Data Element Name	Definition for Data Element	Asset Class				
			CR	IR	FX	EQ	CO
		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 does not apply 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 does not apply 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.	✓	✓	✓	✓	✓
23	Counterparty 1 federal entity indicator	Indicator of whether Counterparty 1 is: (1) One of the following entities: a) An entity established pursuant to federal law, including, but not limited to, the	✓	✓	✓	✓	✓

	Data Element Name	Definition for Data Element	Asset Class				
			CR	IR	FX	EQ	CO
		following: i. An "agency" as defined in 5 U.S.C. § 551(1), a federal instrumentality, or a federal authority; ii. A government corporation (examples: as such term is defined in 5 U.S.C. § 103(1) or in 31 U.S.C. § 9101); iii. A government-sponsored enterprise (example: as such term is defined in 2 U.S.C. § 622(8)); iv. A federally funded research and development center on the master list referenced in 48 CFR 35.017-6; and v. An executive department listed in 5 U.S.C. § 101; or b) An entity chartered pursuant to federal law after formation (example: an organization listed in title 36 of the U.S. Code); or (2) An entity that was established by, or at the direction of, one or more of the entities listed in clause (1), or has an ultimate parent listed in its LEI reference data that is an entity listed in clause (1) or in the first part of this clause (2). Notwithstanding the foregoing, the Counterparty 1 federal entity indicator data element does not include federally chartered depository institutions.					
24	Counterparty 2 federal entity indicator	Indicator of whether Counterparty 2 is: (1) One of the following entities: a) An entity established pursuant to federal law, including, but not limited to, the following: i. An "agency" as defined in 5 U.S.C. § 551(1), a federal instrumentality, or a federal authority; ii. A government corporation (examples:	✓	✓	✓	✓	✓

	Data Element Name	Definition for Data Element	Asset Class				
			CR	IR	FX	EQ	CO
		as such term is defined in 5 U.S.C. § 103(1) or in 31 U.S.C. § 9101); iii. A government-sponsored enterprise (example: as such term is defined in 2 U.S.C. § 622(8)); iv. A federally funded research and development center on the master list referenced in 48 CFR 35.017-6; and v. An executive department listed in 5 U.S.C. § 101; or b) An entity chartered pursuant to federal law after formation (example: an organization listed in title 36 of the U.S. Code); or (2) An entity that was established by, or at the direction of, one or more of the entities listed in clause (1), or has an ultimate parent listed in its LEI reference data that is an entity listed in clause (1) or in the first part of this clause (2). Notwithstanding the foregoing, the Counterparty 2 federal entity indicator data element does not include federally chartered depository institutions.					
	Category: Custom baskets						
25	Custom basket indicator	Indicator of whether the swap transaction is based on a custom basket.	✓	✓	✓	✓	✓
	Category: Events						
26	Action type	Type of action taken on the swap transaction or type of end-of-day reporting. Actions may include, but are not limited to, new, modify, correct, error, terminate, revive, transfer out, valuation, and collateral.	✓	✓	✓	✓	✓
27	Event type	Explanation or reason for the action being taken on the swap transaction. Events may include, but are not limited to, trade, novation, compression or risk reduction exercise, early termination, clearing, exercise, allocation, clearing and allocation, credit	✓	✓	✓	✓	✓

	Data Element Name	Definition for Data Element	Asset Class				
			CR	IR	FX	EQ	CO
		event, transfer.					
28	Amendment indicator	Indicator of whether the modification of the swap transaction reflects newly agreed upon term(s) from the previously negotiated terms.	✓	✓	✓	✓	✓
29	Event identifier	Unique identifier to link swap transactions resulting when an event may be, but is not limited to, compression or credit event. The unique identifier may be assigned by the reporting counterparty or a service provider.	✓	✓	✓	✓	✓
30	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						
31	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 in the swap data technical specification 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	✓	✓	✓	✓	✓

	Data Element Name	Definition for Data Element	Asset Class				
			CR	IR	FX	EQ	CO
		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.					
32	Notional currency	For each leg of the transaction, where applicable: currency in which the notional amount is denominated.	✓	✓	✓	✓	✓
33	Notional amount schedule - notional amount in effect on associated effective date	For each leg of the transaction, where applicable: for swap transactions negotiated in monetary amounts with a notional amount schedule: • Notional amount which becomes effective on the associated unadjusted effective date. The initial notional amount and associated unadjusted effective and end date are reported as the first values of the schedule. This data element is not applicable to OTC derivative transactions with notional amounts that are condition- or event-dependent. The currency of the varying notional amounts in the schedule is reported in Notional currency.	✓	✓	✓	✓	✓
34	Notional amount schedule - unadjusted effective date of the notional amount	For each leg of the transaction, where applicable: for OTC derivative transactions negotiated in monetary amounts with a notional amount schedule: • Unadjusted date on which the associated notional amount becomes effective This data element is not applicable to OTC derivative transactions with notional amounts that are condition- or event-dependent. The	✓	✓	✓	✓	✓

	Data Element Name	Definition for Data Element	Asset Class				
			CR	IR	FX	EQ	CO
		currency of the varying notional amounts in the schedule is reported in Notional currency.					
35	Notional amount schedule - unadjusted end date of the notional amount	For each leg of the transaction, where applicable: for swap transactions negotiated in monetary amounts with a notional amount schedule: •Unadjusted end date of the notional amount (not applicable if the unadjusted end date of a given schedule's period is back-to-back with the unadjusted effective date of the subsequent period). This data element is not applicable to OTC derivative transactions with notional amounts that are condition- or event-dependent. The currency of the varying notional amounts in the schedule is reported in Notional currency.	✓	✓	✓	✓	✓
36	Call amount	For foreign exchange options, the monetary amount that the option gives the right to buy.			✓		
37	Call currency	For foreign exchange options, the currency in which the Call amount is denominated.			✓		
38	Put amount	For foreign exchange options, the monetary amount that the option gives the right to sell.			✓		
39	Put currency	For foreign exchange options, the currency in which the Put amount is denominated.			✓		
40	Notional quantity	For each leg of the swap 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.					✓
41	Quantity frequency	The rate at which the quantity is quoted on the swap transaction. e.g., hourly, daily, weekly, monthly.					✓
42	Quantity frequency multiplier	The number of time units for the Quantity frequency					✓
43	Quantity unit	For each leg of the transaction, where				✓	✓

	Data Element Name	Definition for Data Element	Asset Class				
			CR	IR	FX	EQ	CO
	of measure	applicable: unit of measure in which the Total notional quantity and Notional quantity are expressed.					
44	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						
45	Package indicator	Indicator of whether the swap transaction is part of a package transaction.	✓	✓	✓	✓	✓
46	Package identifier	Identifier (determined by the reporting counterparty) 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 updated as it becomes available.	✓	✓	✓	✓	✓
47	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, or • Package transaction spread is used Prices and related data elements of the transactions (Price currency, Price notation,	✓	✓	✓	✓	✓

	Data Element Name	Definition for Data Element	Asset Class				
			CR	IR	FX	EQ	CO
		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.					
48	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 spread is used, or • Package transaction price notation = 3	✓	✓	✓	✓	✓
49	Package transaction price notation	Manner in which the Package transaction price is expressed. This data element is not applicable if: • no package is involved, or • Package transaction spread is used	✓	✓	✓	✓	✓
50	Package transaction spread	Traded price of the entire package in which the reported derivative transaction is a component of a package transaction. Package transaction price when the price of the package is expressed as a spread, difference between two reference prices. This data element is not applicable if • no package is involved, or • Package transaction price is used Spread and related data elements of the transactions (spread currency, Spread notation) that represent individual components of the package are reported when available. Package transaction spread may not be known when a new transaction is reported but may be updated later.	✓	✓	✓	✓	✓
51	Package transaction spread currency	Currency in which the Package transaction spread is denominated. This data element is not applicable if • no package is involved, or • Package transaction price is used, or • Package transaction spread notation = 3, or = 4	✓	✓	✓	✓	✓

	Data Element Name	Definition for Data Element	Asset Class				
			CR	IR	FX	EQ	CO
52	Package transaction spread notation	Manner in which the Package transaction spread is expressed. This data element is not applicable if • no package is involved, or • Package transaction price is used.	✓	✓	✓	✓	✓
	Category: Payments						
53	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.	✓	✓	✓	✓	✓
54	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.			✓		
55	Floating rate reset frequency period	For each floating leg of the swap transaction, where applicable, time unit associated with the frequency of resets, e.g., day, week, month, year, or term of the stream.	✓	✓	✓	✓	✓
56	Floating rate reset frequency period multiplier	For each floating leg of the swap 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	✓	✓	✓	✓	✓

	Data Element Name	Definition for Data Element	Asset Class				
			CR	IR	FX	EQ	CO
		reset frequency period is intraday, then the Floating rate reset frequency period is "DAIL" and the Floating rate reset frequency period multiplier is 0.					
57	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.	✓	✓	✓	✓	✓
58	Other payment amount	Payment amounts with corresponding payment types to accommodate requirements of transaction descriptions from different asset classes.	✓	✓	✓	✓	✓
59	Other payment currency	Currency in which Other payment amount is denominated.	✓	✓	✓	✓	✓
60	Other payment date	Unadjusted date on which the Other payment amount is paid.	✓	✓	✓	✓	✓
61	Other payment payer	Identifier of the payer of Other payment amount.	✓	✓	✓	✓	✓
62	Other payment receiver	Identifier of the receiver of Other payment amount.	✓	✓	✓	✓	✓
63	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.	✓	✓		✓	✓
64	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.	✓	✓		✓	✓

	Data Element Name	Definition for Data Element	Asset Class				
			CR	IR	FX	EQ	CO
		If the Payment frequency is intraday, then the Payment frequency period is "DAIL" and the Payment frequency multiplier is 0.					
	Category: Prices						
65	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.			✓		
66	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.			✓		
67	Fixed rate	For each leg of the transaction, where applicable: for OTC derivative transactions with periodic payments, per annum rate of the fixed leg(s).	✓	✓			✓
68	Post-priced swap indicator	Indicator of whether the swap transaction satisfies the definition of "post-priced swap" in § 43.2(a) of the Commission's regulations.	✓	✓	✓	✓	✓
69	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.				✓	✓

	Data Element Name	Definition for Data Element	Asset Class				
			CR	IR	FX	EQ	CO
		For contracts for difference and similar products, this data element refers to the initial price of the underlier. This data element does not apply 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					

	Data Element Name	Definition for Data Element	Asset Class				
			CR	IR	FX	EQ	CO
		transaction is reported, the price is updated as it becomes available. For transactions that are part of a package, this data element contains the price of the component transaction where applicable.					
70	Price currency	Currency in which the price is denominated. Price currency is only applicable if Price notation = 1.				✓	✓
71	Price notation	Manner in which the price is expressed.				✓	✓
72	Price unit of measure	Unit of measure in which the price is expressed.				✓	✓
73	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.	✓	✓		✓	✓
74	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.	✓	✓		✓	✓
75	Spread notation	For each leg of the transaction, where applicable: manner in which the spread is expressed.	✓	✓		✓	✓
76	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,	✓	✓	✓	✓	✓

	Data Element Name	Definition for Data Element	Asset Class				
			CR	IR	FX	EQ	CO
		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.					
77	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.	✓	✓	✓	✓	✓
78	Strike price notation	Manner in which the strike price is expressed.	✓	✓	✓	✓	✓
79	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.	✓	✓	✓	✓	✓
80	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.	✓	✓	✓	✓	✓
81	Option premium payment date	Unadjusted date on which the option premium is paid.	✓	✓	✓	✓	✓

	Data Element Name	Definition for Data Element	Asset Class				
			CR	IR	FX	EQ	CO
82	First exercise date	First unadjusted date during the exercise period in which an option can be exercised. For European-style options, this date is the 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						
83	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).	✓				
84	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).	✓				
85	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.	✓				
86	Embedded	Type of option or optional provision	✓	✓	✓	✓	✓

	Data Element Name	Definition for Data Element	Asset Class				
			CR	IR	FX	EQ	CO
	option type	embedded in a contract.					
87	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						
88	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.	✓	✓	✓	✓	✓
89	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).	✓	✓	✓	✓	✓
90	Settlement location	Place of settlement of the transaction as stipulated in the contract. This data element is only applicable for transactions that involve an offshore currency (i.e., a currency which is not included in the ISO 4217 currency list, for example CNH).	✓	✓	✓	✓	✓
	Category: Transaction related						
91	Allocation indicator	Indicator of whether the swap transaction is intended to be allocated, will not be allocated, or is a post-allocation transaction.	✓	✓	✓	✓	✓
92	Non-standardized term indicator	Indicator of whether the swap transaction 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 transaction.	✓	✓	✓	✓	✓
93	Block trade election	Indicator of whether an election has been made to report the swap transaction as a block	✓	✓	✓	✓	✓

	Data Element Name	Definition for Data Element	Asset Class				
			CR	IR	FX	EQ	CO
	indicator	transaction by the reporting counterparty or as calculated either by the swap data repository acting on behalf of the reporting counterparty or by using a third party.					
94	Effective date	Unadjusted date at which obligations under the OTC derivative transaction come into effect, as included in the confirmation.	✓	✓	✓	✓	✓
95	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.	✓	✓	✓	✓	✓
96	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.	✓	✓	✓	✓	✓
97	Reporting timestamp	Date and time of the submission of the report to the trade repository.	✓	✓	✓	✓	✓
98	Platform identifier	Identifier of the trading facility (e.g., exchange, multilateral trading facility, swap execution facility) on which the transaction was executed.	✓	✓	✓	✓	✓
99	Prime brokerage transaction indicator	Indicator of whether the swap transaction satisfies the definition of "mirror swap" or "trigger swap" in § 43.2(a) of the Commission's regulations.	✓	✓	✓	✓	✓
100	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).	✓	✓	✓	✓	✓
101	Prior UTI (for one-to-one	UTI assigned to the predecessor transaction that has given rise to the reported transaction	✓	✓	✓	✓	✓

	Data Element Name	Definition for Data Element	Asset Class				
			CR	IR	FX	EQ	CO
	and one-to-many relations between transactions)	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).					
102	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.	✓	✓	✓	✓	✓
103	Unique transaction identifier (UTI)	A unique identifier assigned to all swap transactions which identifies the swap uniquely throughout its lifecycle and used for all recordkeeping and all swap data reporting pursuant to §45.5. A UTI is comprised of the LEI of the generating entity and a unique alphanumeric code.	✓	✓	✓	✓	✓
104	Jurisdiction	The jurisdiction(s) that is requiring the reporting of the swap transaction.	✓	✓	✓	✓	✓
	Category: Transfer						
105	New SDR identifier	Identifier of the new swap data repository where the swap transaction is transferred to.	✓	✓	✓	✓	✓
	Category: Valuation						
106	Next floating reference reset date	The nearest date in the future that the floating reference resets on.	✓	✓	✓	✓	✓
107	Last floating reference value	The most recent sampling of the value of the floating reference to determine cashflow. Ties to Last floating reference reset date data element.	✓	✓	✓	✓	✓
108	Last floating reference reset date	The date of the most recent sampling of the floating reference to determine cashflow. Ties to Last floating reference value data element.	✓	✓	✓	✓	✓
109	Delta	The ratio of the absolute change in price of an	✓	✓	✓	✓	✓

	Data Element Name	Definition for Data Element	Asset Class				
			CR	IR	FX	EQ	CO
		OTC 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.					
110	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 market in an orderly transaction at the valuation date).	✓	✓	✓	✓	✓
111	Valuation currency	Currency in which the valuation amount is denominated.	✓	✓	✓	✓	✓
112	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 in the swap data technical specification, then the whole valuation is classified as mark-to-model. If only inputs are used that are classified as mark-to-market in appendix the swap data technical specification, then the whole valuation is classified as mark-to-market.	✓	✓	✓	✓	✓
113	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						
114	Affiliated counterparty for margin and capital indicator	Indicator of whether the current counterparty is deemed an affiliate for U.S. margin and capital rules (as per § 23.159).	✓	✓	✓	✓	✓
115	Collateralisation category	Indicator of whether a collateral agreement (or collateral agreements) between the counterparties exists (uncollateralised/partially collateralised/one-	✓	✓	✓	✓	✓

	Data Element Name	Definition for Data Element	Asset Class				
			CR	IR	FX	EQ	CO
		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 applies to both cleared and uncleared transactions.					
116	Initial margin collateral portfolio code	If collateral is reported on a portfolio basis, a unique code assigned by the reporting counterparty to the portfolio that tracks the aggregate initial margin of a set of open swap transactions. This data element is not applicable if the collateralisation was performed on a transaction level basis, or if there is no collateral agreement or if no collateral is posted or received. The portfolio code is required for both collateral reporting and valuation reporting in order to link the 2 data sets.	✓	✓	✓	✓	✓
117	Portfolio containing non-reportable component indicator	If collateral is reported on a portfolio basis, indicator of whether the collateral portfolio includes swap transactions exempt from reporting.	✓	✓	✓	✓	✓
118	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 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	✓	✓	✓	✓	✓

	Data Element Name	Definition for Data Element	Asset Class				
			CR	IR	FX	EQ	CO
		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.					
119	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.	✓	✓	✓	✓	✓
120	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	✓	✓	✓	✓	✓

	Data Element Name	Definition for Data Element	Asset Class				
			CR	IR	FX	EQ	CO
		reporting counterparty has chosen to convert all the values of posted initial margins.					
121	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. 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.	✓	✓	✓	✓	✓
122	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 the 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.	✓	✓	✓	✓	✓

	Data Element Name	Definition for Data Element	Asset Class				
			CR	IR	FX	EQ	CO
		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.					
123	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.	✓	✓	✓	✓	✓
124	Variation margin collateral portfolio code	If collateral is reported on a portfolio basis, a unique code assigned by the reporting counterparty to the portfolio that tracks the aggregate variation margin related to a set of open swap transactions. This data element is not applicable if the collateralisation was performed on a transaction level basis, or if there is no collateral agreement or if no collateral is posted or received. The portfolio code is required for both collateral reporting and valuation reporting in order to link the 2 data sets.	✓	✓	✓	✓	✓
125	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 the portfolio level, the variation margin posted relates to the whole portfolio; if the collateralisation is performed for single	✓	✓	✓	✓	✓

	Data Element Name	Definition for Data Element	Asset Class				
			CR	IR	FX	EQ	CO
		transactions, the variation margin posted relates to such single transaction. 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.					
126	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.	✓	✓	✓	✓	✓
127	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.	✓	✓	✓	✓	✓

	Data Element Name	Definition for Data Element	Asset Class				
			CR	IR	FX	EQ	CO
128	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: PRE-ENACTMENT AND TRANSITION SWAPS

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, revise all references to "non-SD/MSP" to read "non-SD/MSP/DCO".

§§ 46.3, 46.4, 46.5, 46.6, 46.8, 46.9, 46.10, and 46.11 [Amended]

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/Paragraph	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

Section/Paragraph	Remove	Add
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

Section/Paragraph	Remove	Add
46.11(a)	report swap data	report data for a pre-enactment or a transition swap

19. Amend § 46.1 by:

a. Revising the introductory text and re-designating it as paragraph (a);

b. 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";

c. Revising the definitions of "asset class"; "non-SD/MSP counterparty"; "reporting counterparty"; and "required swap continuation data";

d. Adding, in alphabetical order, definitions for "historical swaps" and "substitute counterparty identifier"; and

e. Adding paragraph (b).

The revisions and additions 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. In § 46.3, revise paragraph (a)(2)(i) to read as follows:

§ 46.3 Data reporting for pre-enactment swaps and transition swaps.

(a) * * *

(2) * * *

(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. In § 46.10, add a second 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:

a. Removing paragraph (b);

b. Re-designating paragraph (c) as paragraph (b) and revising it; and

c. Re-designating paragraph (d) as paragraph (c).

The revision reads as follows:

§ 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 § 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.

* * * * *

PART 49 – SWAP DATA REPOSITORIES

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/Paragraph	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	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. In § 49.2(a), remove the paragraph designations and arrange the definitions, in alphabetical order, and add, in alphabetical order, definitions for the terms "data validation acceptance message"; "data validation error"; "data validation error message"; and "data validation procedures" to read as follows:

§ 49.2 Definitions.

(a) * * *

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. In § 49.4, remove paragraph (a)(1)(iv) and revise paragraph (a)(2).

The revision reads 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. In § 49.10, revise paragraphs (a) through (d) and add reserved paragraph (e) and paragraph (f) to read as follows:

§ 49.10 Acceptance and validation of data.

(a) *General requirements.* (1) *Generally.* 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 and data validation error messages, as provided in this paragraph (c).

(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.

(e) [Reserved].

(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 [DATE], 2020, by the Commission.

Christopher Kirkpatrick,

Secretary of the Commission.