COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 45

RIN 3038-AD19

Swap Data Recordkeeping and Reporting Requirements

AGENCY: Commodity Futures Trading Commission (CFTC)

ACTION: Final Rulemaking

SUMMARY: The Commodity Futures Trading Commission ("Commission" or "CFTC") is adopting rules to implement sections 2(a)(13)(G), 4r, and 21(b) of the Commodity Exchange Act ("CEA" or "Act") relating to swap data recordkeeping and reporting requirements. These sections of the CEA were added by sections 727, 729, and 728, respectively, of Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act"). The rules being adopted apply to swap data recordkeeping and reporting requirements for swap data repositories, derivatives clearing organizations, designated contract markets, swap execution facilities, swap dealers, major swap participants, and swap counterparties who are neither swap dealers nor major swap participants (including, without limitation, counterparties entitled to elect the clearing requirement exception pursuant to CEA § 2(h)(7) with respect to particular swaps). The recordkeeping and reporting requirements of this rule further the goals of the Dodd-Frank Act to reduce systemic risk, increase transparency and promote market integrity within the financial system.

DATES: The effective date of this part is [insert date 60 days after issuance of this rule]. Compliance dates: (1) Swap execution facilities, designated contract markets, derivatives clearing organizations, swap data repositories, swap dealers, and major swap participants shall commence full compliance with this part with respect to credit swaps and interest rate swaps on

the later of: July 16, 2012; or 60 calendar days after the publication in the Federal Register of the later of the Commission's final rule defining the term "swap" or the Commission's final rule defining the terms "swap dealer" and "major swap participant. " (2) Swap execution facilities, designated contract markets, derivatives clearing organizations, swap data repositories, swap dealers, and major swap participants shall commence full compliance with this part with respect to equity swaps, foreign exchange swaps, and other commodity swaps on or before 90 days after the compliance date for credit swaps and interest rate swaps. (3) Non-SD/MSP counterparties shall commence full compliance with this part with respect to all swaps on or before 90 days after the compliance date applicable to swap execution facilities, designated contract markets, derivatives clearing organizations, swap data repositories, swap dealers, and major swap participants with respect to equity swaps, foreign exchange swaps, and other commodity swaps.

FOR FURTHER INFORMATION CONTACT: David Taylor, Associate Director, Division of Market Oversight, 202-418-5488, *dtaylor@cftc.gov*, or Anne Schubert, Economist, Division of Market Oversight, 202-418-5436, *aschubert@cftc.gov*; Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20851.

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I. BACKGROUND

A. Introduction

On July 21, 2010, President Obama signed into law the Dodd-Frank Act.[1] Title VII of the Dodd-Frank Act[2] amended the CEA[3] to establish a comprehensive new regulatory framework for swaps and security-based swaps. The legislation was enacted to reduce systemic risk, increase transparency, and promote market integrity within the financial system by, among other things: providing for the registration and comprehensive regulation of swap dealers ("SDs") and major swap participants ("MSPs"); imposing clearing and trade execution requirements on standardized derivative products; creating rigorous recordkeeping and data reporting regimes with respect to swaps, including real time reporting; and enhancing the Commission's rulemaking and enforcement authorities with respect to, among others, all registered entities, intermediaries, and swap counterparties subject to the Commission's oversight.

B. Swap Data Provisions of the Dodd-Frank Act

To enhance transparency, promote standardization, and reduce systemic risk, Section 727 of the Dodd-Frank Act added to the CEA new section 2(a)(13)(G), which requires all swaps, whether cleared or uncleared, to be reported to swap data repositories ("SDRs"),[4] which are new registered entities created by section 728 of the Dodd-Frank Act to collect and maintain data related to swap transactions as prescribed by the Commission, and to make such data

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[1] See Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, 124 Stat. 1376 (2010). The text of the Dodd-Frank Act may be accessed at http://www.cftc.gov./LawRegulation/OTCDERIVATIVES/ index.htm.

[2] Pursuant to Section 701 of the Dodd-Frank Act, Title VII may be cited as the "Wall Street Transparency and Accountability Act of 2010."

[3] 7 U.S.C. 1, et seq.

[4] See also CEA § 1a(40)(E).

electronically available to regulators.[5] New section 21(b) of the CEA, added by section 728 of the Dodd-Frank Act, directs the Commission to prescribe standards for swap data recordkeeping and reporting. Specifically, CEA section 21(b)(1)(A) provides that:

> The Commission shall prescribe standards that specify the data elements for each swap that shall be collected and maintained by each registered swap data repository.

These standards are to apply to both registered entities and counterparties involved with swaps. CEA section 21(b)(1)(B) provides that:

> In carrying out [the duty to prescribe data element standards], the Commission shall prescribe consistent data element standards applicable to registered entities and reporting counterparties.

CEA section 21 also directs the Commission to prescribe data standards for SDRs. Specifically, CEA section 21(b)(2) provides that:

> The Commission shall prescribe data collection and data maintenance standards for swap data repositories.

These standards are to be comparable to those for clearing organizations. CEA section 21(b)(3) provides that:

> The [data] standards prescribed by the Commission under this subsection shall be comparable to the data standards imposed by the Commission on derivatives clearing organizations in connection with their clearing of swaps.

In addition, CEA section 21(c)(3) provides that, once the data elements prescribed by the Commission are reported to an SDR, the SDR shall:

> maintain the data [prescribed by the Commission for each swap] in such form, in such manner, and for such period as may be required by the Commission.

[5] Regulations governing core principles and registration requirements for, and the duties of, SDRs are the subject of part 49 of this chapter.

Section 727 of the Dodd Frank Act, which added to the CEA new section 2(a)(13), provides that "Each swap (whether cleared or uncleared) shall be reported to a registered swap data repository."[6] Section 729 of the Dodd-Frank Act added to the CEA new section 4r, which addresses reporting and recordkeeping requirements for uncleared swaps. Pursuant to this section, each swap not accepted for clearing by any derivatives clearing organization ("DCO") must be reported to an SDR (or to the Commission if no repository will accept the swap). In a July 15, 2010 floor statement concerning swap data reporting as well as other aspects of the Dodd-Frank Act, Senator Blanche Lincoln emphasized that these provisions should be interpreted as complementary to one another to assure consistency between them, stating that: "All swap trades, even those which are not cleared, would still be reported to regulators, a swap data repository, and subject to the public reporting requirements under the legislation." [7]

CEA section 4r ensures that at least one counterparty to a swap has an obligation to report data concerning that swap. The determination of this reporting counterparty depends on the status of the counterparties involved. If only one counterparty is an SD, the SD is required to report the swap. If one counterparty is an MSP, and the other counterparty is neither an SD nor an MSP ("non-SD/MSP counterparty"), the MSP must report. Where the counterparties have the same status—two SDs, two MSPs, or two non-SD/MSP counterparties—the counterparties must select a counterparty to report the swap.[8]

In addition, CEA section 4r provides for reporting to the Commission of swaps neither cleared nor accepted by any SDR. Under this provision, counterparties to such swaps must maintain books and records pertaining to their swaps in the manner and for the time required by

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[6] CEA § 2(a)(13)(G).

[7] Senator Blanche Lincoln, "Wall Street Transparency and Accountability Act," Congressional Record, July 15, 2010, at S5905.

[8] See CEA § 4r(a)(3).

the Commission, and must make these books and records available for inspection by the Commission or other specified regulators if requested to do so.[9] It also requires counterparties to such swaps to provide reports concerning such swaps to the Commission upon its request, in the form and manner specified by the Commission.[10] Such reports must be as comprehensive as the data required to be collected by SDRs.[11]

C. International Considerations

Section 752 of the Dodd-Frank Act directs the Commission to consult and coordinate with foreign regulatory authorities regarding establishment of consistent international standards for the regulation of swaps and swap entities. The Commission is committed to a cooperative international approach to swap recordkeeping and swap data reporting, and has consulted extensively with various foreign regulatory authorities in the process of promulgating both its proposed and final part 45 rules. During this process, the Commission has served as Co-Chair of the Committee on Payment and Settlement Systems ("CPSS") and the International Organization of Securities Commissions ("IOSCO") Task Force that has prepared a Report on OTC Derivatives Data Reporting and Aggregation Requirement for presentation to the Financial Stability Board ("FSB") in December 2011. The Commission also served as a member of the organizing committee for the FSB Legal Entity Identifier Workshop held in Basel, Switzerland in September 2011. In the course of preparing the proposed and final part 45 rules, Commission staff met with financial regulatory authorities from Argentina, Australia, Brazil, Canada, China, Dubai (United Arab Emirates), France, Germany, Hong Kong, Indonesia, India, Italy, Japan,

[9] CEA § 4r(c)(2) requires individuals or entities that enter into a swap transaction that is neither cleared nor accepted by an SDR to make required books and records open to inspection by any representative of the Commission; an appropriate prudential regulator; the Securities and Exchange Commission; the Financial Stability Oversight Council; and the Department of Justice.

[10] CEA § 4r(a)(1)(B) and § 4r(c).

[11] CEA § 4r(d).

Korea, Mexico, the Netherlands, Portugal, Russia, Saudi Arabia, Singapore, Spain, Sweden, Switzerland, Turkey, and the United Kingdom. Staff also met with representatives of FSB, IOSCO, CPSS, the International Monetary Fund, the FSB Data Gaps and Systemic Linkages Group, the Bank for International Settlements, the Committee on the Global Financial System, the OTC Derivatives Regulatory Forum, the OTC Derivatives Supervisors Group, the European Central Bank, the European Commission, the European Union, the Commission of European Securities Regulators, the European Systemic Risk Board, the International Organisation for Standardisation ("ISO"), and the Association of National Numbering Agencies ("ANNA").

In September 2009, the G20[12] leaders made a number of commitments regarding OTC derivatives, including the statement that:

> All standardized OTC derivative contracts should be traded on exchanges or electronic trading platforms, where appropriate, and cleared through central counterparties by end-2012 at the latest. OTC derivative contracts should be reported to trade repositories.[13]

The Commission's part 45 rules, if adopted by the Commission, which requires reporting of swap data to SDRs to begin in mid-2012, may be the first set of regulatory requirements in the world to fulfill this commitment.

D. Consultations With Other U.S. Financial Regulators

In developing the swap data recordkeeping and reporting rule, Commission staff has also engaged in extensive consultations with U.S. domestic financial regulators. The agencies and institutions consulted include the Federal Reserve Board of Governors ("Federal Reserve") (including the Federal Reserve Bank of New York), the Federal Deposit Insurance Corporation

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[12] The G-20 include leaders and representatives of the core members of the G-20 major economies, which comprises 19 countries and the European Union which is represented by its two governing bodies, the European Council and the European Commission.

[13] *Leaders' Statement*, Pittsburgh Summit, September 25, 2009, at 9; available at http://www.g20.org/Documents/pittsburgh_summit_leaders_statement_250909.pdf.

("FDIC"), the Office of Financial Research ("OFR"), the Office of the Comptroller of Currency ("OCC"), the Securities and Exchange Commission ("SEC"), and the Department of the Treasury.

E. Summary of the Proposed Part 45 Rule

1. FUNDAMENTAL GOAL.

The fundamental goal of the part 45 Notice of Proposed Rulemaking ("NOPR") was to ensure that complete data concerning all swaps subject to the Commission's jurisdiction is maintained in SDRs, where it would be available to the Commission and other financial regulators for fulfillment of their various regulatory mandates, including systemic risk mitigation, market monitoring, and market abuse prevention.

2. SWAP RECORDKEEPING.

The NOPR called for registered entities and swap counterparties to keep records relating to swaps throughout the existence of each swap and for five years following final termination or expiration of the swap. These records would be required to be readily accessible during the life of the swap and for two years thereafter, and retrievable from storage within three business days during the remaining three years of the retention period. The NOPR would require that data in SDRs be readily accessible to the Commission throughout the retention period as required by the Dodd-Frank Act.[14]

3. SWAP DATA REPORTING: CREATION DATA AND CONTINUATION DATA.

In order to ensure that complete data concerning swaps is maintained in SDRs and available to the Commission and other regulators, the NOPR called for reporting of swap data

[14] The proposed rule also cross-referenced the detailed recordkeeping requirements specific to DCMs, SEFs, DCOs, SDs, and MSPs included in rulemakings specific to those entities and counterparties.

from each of two important stages of the existence of a swap: the creation of the swap, and the continuation of the swap over its existence until its final termination or expiration.

a. Creation data reporting. To ensure timeliness, accuracy, and completeness with respect to data, the NOPR required reporting of two types of data relating to the creation of a swap: the primary economic terms of the swap verified or matched by the counterparties at or shortly after the time of execution; and all of the terms of the swap included in the legal confirmation of the swap. To ensure inclusion of primary economic terms necessary for regulatory purposes, the rule specified minimum data elements that must be reported for swaps in each asset class.

b. Continuation data reporting. The NOPR provided that continuation data reporting for credit and equity swaps would follow the life cycle approach, and required reporting of all life cycle events affecting the terms of a swap. The NOPR directed reporting of continuation data for interest rate, currency, and other commodity swaps to follow the state or snapshot approach, and required reporting of a daily snapshot of all primary economic terms of a swap including any changes to such terms occurring since the previous snapshot. For all asset classes, the NOPR called for continuation data reporting to include specified valuation data.

4. UNIQUE IDENTIFIERS.

The NOPR called for use of three unique identifiers in connection with swap data reporting: a unique swap identifier (USI), a unique counterparty identifier (UCI), and a unique product identifier (UPI). The Commission proposed requiring use of these unique identifiers because they would be crucial regulatory tools for linking data together and enabling data aggregation by regulators across counterparties, transactions, and asset classes, to fulfill the systemic risk mitigation, market manipulation prevention, and other important purposes of the

Dodd-Frank Act. The Commission also noted that such identifiers would have great benefits for financial transaction processing, internal recordkeeping, compliance, due diligence, and risk management by financial entities.

The NOPR called for the USI to be created at the time a swap is executed, shared with all registered entities and counterparties involved with the swap, and used to track that particular swap over its life. The UCI would identify the legal entity that is a counterparty to a swap. Pursuant to the NOPR, the Commission would require use of UCIs in all swap data reporting, selecting an internationally-developed legal entity identifier system for this purpose if one meeting the Commission's requirements is available prior to the compliance date when swap data reporting begins, or imposing a system created by the Commission if that were needed. Confidential reference data concerning the corporate or company affiliations of the legal entity involved would allow regulators to monitor swap exposures. The UPI would categorize or describe swaps with respect to the underlying products referenced in them, allowing regulators to aggregate, analyze, and report swap transactions by product type, and also enhancing position limit enforcement and real time reporting.

5. WHO REPORTS.

In general, the NOPR called for reporting by the registered entity or counterparty having the easiest, fastest, and cheapest access to the data in question, and most likely to have automated systems suitable for reporting. Swap execution facilities ("SEFs") or designated contract markets ("DCMs") would report primary economic terms data ("PET data") for swaps executed on a trading facility, and DCOs would report confirmation data for cleared swaps. Counterparty reporting would follow the hierarchy outlined in the statute, giving SDs or MSPs the duty to report when possible, and limiting reporting by non-SD/MSP counterparties to situations where

there is no SD or MSP counterparty. Where both counterparties have the same hierarchical status, the proposed rule would require them to agree as one terms of their swap which of them is to report, in order to avoid reporting delays.

6. THIRD-PARTY FACILITATION OF REPORTING.

The NOPR would explicitly permit third-party facilitation of data reporting, without removing the reporting responsibility from the appropriate registered entity or counterparty.

7. REPORTING A SWAP TO A SINGLE SDR.

To avoid fragmentation of data for a given swap across multiple SDRs, the NOPR would require that all data for a particular swap must be reported to the same SDR.

8. REPORTING SWAPS IN AN ASSET CLASS NOT ACCEPTED BY ANY SDR.

As required by the section 729 of the Dodd-Frank Act, the NOPR provided that if there were an asset class for which no SDR currently accepted data, registered entities or counterparties required to report concerning swaps in such an asset class would be required to report the same data to the Commission at a time and in a form and manner determined by the Commission.

9. DATA STANDARDS.

The NOPR would require SDRs to maintain data and transmit it to the Commission in the format required by the Commission. It would permit an SDR to allow those reporting data to it to use any data standard acceptable to the SDR, so long as the SDR remains able to provide data to the Commission in the Commission's required format.

10. REPORTING ERRORS AND OMISSIONS IN PREVIOUSLY REPORTED DATA.

Finally, the NOPR provided that registered entities and counterparties required to report swap data must also report to the SDR any errors or omissions in data previously reported, using the same format used in the previous report. Non-reporting counterparties discovering an error or omission would be required to notify the reporting counterparty, for reporting to the SDR by the reporting counterparty.

F. Overview of Comments Received

The comment period for the NOPR closed on February 7, 2011, but was reopened pursuant to the Commission's Order *Reopening and Extension of Comment Periods for Rulemakings Implementing the Dodd-Frank Wall Street Reform and Consumer Protection Act*, dated May 4, 2011. The reopened comment period closed on June 3, 2011. Seventy-five comment letters submitted to the Commission addressed the proposed part 45 swap data recordkeeping and reporting rule.[15] Comments were provided by a broad range of interested

[15] All comment letters are available on the Commission web site at http://comments.cftc.gov/PublicComments/CommentList.aspx?id=920. Specific comment letters are identified by CL and the submitter. Comments addressing the NOPR were received from: (1) ACM Capital Management ("ACM") June 15, 2011 ("CL-ACM"); (2) Alice Corporation ("Alice") June 1, 2011("CL-Alice"); (3) American Bankers Association and the ABA Securities Association ("ABA/ABASA") June 3, 2011 ("CL- ABA/ABASA"); (4) American Benefits Council ("ABC") February 7, 2011 ("CL-ABC"); (5) American Benefits Council ("ABC") and Committee on Investment of Employee Benefit Assets ("CIEBA") February 7, 2011 ("CL-ABC/CIEBA I"); (6) ABC and CIEBA March 25, 2011 ("CL – ABC/CIEBA II"); (7) American Gas Association ("AGA") February 3, 2011 ("CL-AGA I"); (8)AGA June 3, 2011 ("CL-AGA II"); (9) Asset Management Group ("AMG") and Securities Industry and Financial Markets Association ("SIFMA") February 7, 2011 ("CL-AMG/SIFMA"); (10) Japanese Banking Organizations - Bank of Tokyo-Mitsubishi UFJ, Ltd.("BTMU"), Mizuho Corporate Bank ("MHCB"), and Sumitomo Mitsui Banking Corporation ("SMBC") May 5, 2011 ("CL-Japanese Banks") (11) Better Markets, Inc. ("Better Markets") February 7, 2011 ("CL-Better Markets I"); (12) Better Markets June 3, 2011 ("CL-Better Markets II"); (13) BlackRock, Inc. ("BlackRock") June 3, 2011 ("CL-BlackRock I"); (14) BlackRock June 3, 2011 ("CL-BlackRock II"); (15) Bloomberg, LP ("Bloomberg") June 3, 2011 ("CL-Bloomberg"); (16) Chatham Financial Corporation ("Chatham Financial") February 7, 2011 ("CL-Chatham Financial"); (17) Chris Barnard ("Barnard") May 17, 2011 ("CL- Barnard"); (18) Citadel, LLC ("Citadel") June 3, 2011 ("CL-Citadel"); (19) CME Group, Inc. ("CME") February 7, 2011 ("CL-CME I"); (20) CME June 3, 2011 ("CL- CME II"); (21) Coalition of Derivatives End-Users ("CDEU") February 25, 2011 ("CL-CDEU"); (22) Coalition of Physical Energy Companies ("COPE") February 7, 2011 ("CL- COPE I"); (23) COPE June 3, 2011 ("CL-COPE II"); (24) Committee on Capital Markets Regulation June 13, 2011 ("CL-Committee on Capital Markets Regulation I"); (25) Committee on Capital Markets Regulation

persons, including: existing trade repositories, DCMs, and DCOs; providers of various third party services related to swaps; financial data and data management services and providers of various types of identifiers; both buy side and sell side swap counterparties of various types and sizes; trade associations involving securities, futures, and foreign exchange markets and firms;

June 24, 2011 ("CL-Committee on Capital Markets Regulation II"); (26) Committee on Futures and Derivatives Regulation, Bar Association of the City of New York June 13, 2011 ("CL- Committee on Futures and Derivatives Regulation"); (27) Committee on the Investment of Employee Benefit Assets ("CIEBA") June 3, 2011 ("CL-CIEBA"); (28) Commodity Markets Council ("CMC") February 6, 2011 ("CL-CMC I"); (29) Commodity Markets Council ("CMC") February 7, 2011("CL-CMC II"); (30) Congressman James Renacci ("Renacci") June 10, 2011 ("CL-Renacci"); (31) CUSIP Global Services ("CUSIP") February 7, 2011 ("CL- CUSIP"); (32) Customer Data Management Group ("CDMG") April 1, 2011 ("CL- CDMG"); (33) DC Energy, LLC ("DC Energy") June 3, 2011 ("CL- DC Energy"); (34) Dominion Resources, Inc. ("Dominion Resources") February 7, 2011 ("CL-Dominion Resources"); (35) The Depository Trust & Clearing Corporation ("DTCC") February 7, 2011 ("CL-DTCC I"); (36) DTCCC June 3, 2011 ("CL- DTCC II"); (37) Edison Electric Institute ("EEI") June 3, 2011 ("CL-EEI"); (38) Edison Electric Institute Electric Power Supply Association ("EPSA") February 7, 2011 ("CL-EPSA"); (39) Encana Marketing (USA), Inc. ("Encana") February 7, 2011 ("CL-Encana"); (40) Eris Exchange, LLC ("Eris Exchange") June 3, 2011 ("CL-Eris"); (41) Futures Industry Association ("FIA"), The Financial Services Roundtable ("FSR"), Institute of International Bankers ("IIB"), Insured Retirement Institute ("IRI"), International Swaps and Derivatives Association ("ISDA"), Securities Industry and Financial Markets Association ("SIFMA"), and U.S. Chamber of Commerce, (" Chamber of Commerce") June 1, 2011 ("CL-Chamber of Commerce"); (42) Foreign Banking Organizations – Barclays, BNP Paribas, Deutsche Bank, Royal Bank of Canada, The Royal Bank of Scotland Group, Societe Generale, Credit Suisse, HSBC, UBS, Nomura Securities International, Inc., Rabobank Nederland ("Foreign Banks") January 11, 2011 ("CL-Foreign Banks I"); (43) Foreign Banks February 17, 2011 ("CL-Foreign Banks II"); (44) Freddie Mac February 7, 2011 ("CL-Freddie Mac"); (45) The Federal Home Loan Banks ("FHLB") February 7, 2011 ("CL-FHLB"); (46) Global Foreign Exchange Division ("Global Forex") February 7, 2011 ("CL-Global Forex"); (47) Green Exchange, LLC ("GreenEx") June 3, 2011 ("CL-GreenEx"); (48) GS1 US ("GS1") February 7, 2011 ("CL- GS1"); (49) Intercontinental Exchange, Inc. ("ICE") February 7, 2011 ("CL-ICE"); (50) International Energy Credit Association ("IECA") February 7, 2011 ("CL-IECA"); (51) International Swaps and Derivatives Association, Inc. ("ISDA") June 2, 2011 ("CL-ISDA") (52) ISDA SIFMA February 7, 2011("CL-ISDA SIFMA"); (53) Kansas City Board of Trade Clearing Corporation ("KCBT") February 7, 2011("CL-KCBT"); (54) Managed Funds Association ("MFA") February 7, 2011("CL- MFA"); (55) Markit June 3, 2011 ("CL-Markit"); (56) MarkitSERV June 3, 2011 ("CL-MarkitSERV I); (57)MarkitSERV June 3, 2011 ("CL-MarkitSERV II"); (58) Minneapolis Grain Exchange ("MGEX") June 3, 2011 ("CL- MGEX"); (59) Not-For-Profit Electric End User Coalition consisting of the National Rural Electric Cooperative Association, American Public Power Association, Large Public Power Council, Edison Electric Institute Electric Power Supply Association, ("Electric Coalition") February 7, 2011 ("CL-Electric Coalition I"); (60) Electric Coalition June 3, 3011 ("CL-Electric Coalition II"); (61) Noble Energy, Inc. ("Noble Energy") July 7, 2011 ("CL-Noble Energy"); (62) Office of the Comptroller of the Currency July 1, 2011 ("CL-Office of the Comptroller of the Currency"); (63) REGIS-TR February 7, 2011 ("CL-REGIS-TR"); (64) Reval.com, Inc. ("Reval") January 24, 2011 ("CL-Reval"); (65) Shell Energy North America (US), L.P. ("Shell Energy") June 3, 2011 ("CL-Shell Energy I"); (66) Shell Energy June 21, 2011 ("CL-Shell Energy II"); (67) Society for Worldwide Interbank Financial Telecommunication SCRL ("SWIFT") February 14, 2011 ("CL-SWIFT") (68) SunGard Energy & Commodities ("SunGard") February 7, 2011 ("CL-Sungard"); (69) Thomson Reuters February 7, 2011 ("CL-Thomson Reuters"); (70) Tradeweb Markets, LLC ("Tradeweb") June 3, 2011 ("CL- Tradeweb"); (71) TriOptima February 7, 2011 ("CL-TriOptima"); (72) Senator Sherrod Brown ("Brown") June 13, 2011 ("CL-Brown"); (73) Vanguard February 7, 2011 ("CL-Vanguard"); (74) Working Group of Commercial Energy Firms ("WGCEF") February 7, 2011("CL-WGCEF I"); (75) WGCEF June 3, 2011 ("CL-WGCEF II").

banks and mortgage lenders; managed funds and investment advisors; swap dealers; swap "end users"; energy producers; and non-profit associations. Commission staff also held three public roundtables relating to swap data reporting, on September 14, 2010, January 28, 2011, and June 6, 2011, which provided input from a broad cross-section of industry and private sector experts concerning the issues addressed in the NOPR. While many commenters expressed support for the proposed part 45 rules, many also offered suggestions regarding swap data recordkeeping and reporting, as well as recommendations for clarification or modification of specific provisions of the proposed rule. Comments are addressed as appropriate in connection with the discussion below of the final rule provision or provisions to which they relate. Some comments received by the Commission requested further clarification relating to definitions provided in the NOPR, or regarding the application of NOPR provisions in various contexts. Definitions included in the final rule are provided for clarification and do not impose new substantive obligations.

II. PART 45 OF THE COMMISSION'S REGULATIONS: THE FINAL RULES

New part 45 contains provisions governing swap data recordkeeping and reporting. Definitions are set forth in § 45.1. Section 45.2 establishes swap recordkeeping requirements for registered entities and swap counterparties. Sections 45.3 and 45.4 establish swap data reporting requirements. Reporting of required swap creation data (the data association with the creation or execution of a swap) is addressed in § 45.3, while reporting of required swap continuation data (the data associated with the continued existence of a swap until its final termination) is addressed in § 45.4. Required use of unique identifiers in swap data recordkeeping and reporting is addressed in § 45.5, which sets forth requirements regarding unique swap identifiers ("USIs"); § 45.6, which sets forth requirements regarding legal entity identifiers ("LEIs"); and 45.7, which sets forth requirements regarding unique product identifiers ("UPIs"). Determination of which counterparty must report swap data for each swap is established by § 45.8. Third-party facilitation of swap data reporting is addressed by § 45.9. Section 45.11 establishes requirements for reporting all data concerning a swap to a single SDR. Section 45.11 addresses data reporting for swaps in a swap asset class not accepted by any SDR. Section 45.12 sets forth requirements concerning voluntary supplemental reporting of swap data to SDRs. Section 45.13 establishes required data standards for swap data reporting. Finally, § 45.14 sets forth requirements for reporting concerning errors and omissions in previously reported swap data.

A. Recordkeeping Requirements – § 45.2

1. PROPOSED RULE. The NOPR provided that all SEFS, DCMs, DCOs, SDs, and MSPs must keep full, complete, and systematic records, together with all pertinent data and memoranda, of all activities relating to the business of such entities or persons with respect to swaps, including, without limitation, records of all data required to be reported in connection

with any swap. All such records would be required to be kept throughout the existence of the swap and for five years following final termination of the swap. Records would be required to be readily accessible by the registered entity or counterparty in question via real time electronic access throughout the life of the swap and for two years following the final termination of the swap, and retrievable within three business days through the remainder of the required retention period.

The NOPR proposed lesser recordkeeping requirements for non-SD/MSP counterparties, calling for them to keep full, complete, and systematic records, including all pertinent data and memoranda, with respect to each swap in which they are a counterparty (as opposed to all activities relating to the business of such entities with respect to swaps), in a way that makes the records retrievable by the counterparty within three business days during the required retention period.

The NOPR provided that all records required to be kept by SDRs must be kept by the SDR both: (a) throughout the existence of the swap and for five years following final termination or expiration of the swap, during which time the records must be readily accessible by the SDR and available to the Commission via real time electronic access; and (b) thereafter, for a period determined by the Commission, in archival storage from which they are retrievable by the SDR within three business days. This provision was intended to make effective the statutory mandate that SDRs must "provide direct electronic access to the Commission (or any designee of the Commission including another registered entity)."[16]

As proposed, part 45 would also require that all records required to be kept pursuant to the regulations must be open to inspection upon request by any representative of the

[16] CEA § 21(c)(4)(A).

Commission, the Department of Justice, or the SEC, or by any representative of a prudential regulator as authorized by the Commission.

2. COMMENTS RECEIVED. The Commission received comments concerning the proposed recordkeeping provisions from both market participants who anticipated that they could be SDs and MSPs and market participants who anticipated that they could be non-SD/MSP counterparties. Many commenters asked that non-SD/MSP counterparties be allowed to keep fewer records and to keep records in paper form. Commenters suggested that required record retention periods should be shortened, and that retrievability requirements should be somewhat relaxed. Other commenters suggested that recordkeeping requirements for non-SD/MSP counterparties should be phased in.

a. Records required. American Gas Association ("AGA") and Edison Electric Institute ("EEI") asked the Commission to specify more precisely the information that non-SD/MSP counterparties will be required to retain, defining in particular the meaning of "all pertinent data and memoranda," with examples. Arguing that non-SD/MSP counterparties should not be required to keep records of swap terms other than the final terms of the swap, EEI suggested that non-SD/MSP counterparties be required to retain only "master or bespoke agreements, long or short-form confirmations, amendments and associated swap transaction data stored in an end-user's trade capture system." The Committee on the Investment of Employee Benefit Assets ("CIEBA") suggested that a non-SD/MSP counterparty should only be required to retain the final confirmation of any swap where the other counterparty is an SD or MSP, and (presumably where no SD or MSP is involved) should only be required to retain swap creation or continuation data that the non-SD/MSP is required to report. The Working Group of Commercial Energy Firms ("WGCEF") asked that non-SD/MSP counterparties to physical commodity swaps (or at least

energy swaps) be excused from recordkeeping requirements altogether, arguing that the final rule should recognize "the unique operational characteristics and abilities of different participants in swap markets for physical commodities," since such counterparties may not presently have the necessary technology, and the benefits of implementing it would not justify the costs imposed. The Not-for-Profit Electric End User Coalition ("Electric Coalition") contended that the rule should allow non-SD/MSP counterparties to keep records in paper form.

b. Record retention periods. The International Swap Dealers Association ("ISDA") and the Securities Industry and Financial Markets Association ("SIFMA") suggested that the Commission should analyze this requirement further before it is implemented. AGA argued that record retention for the life of the swap plus five years would impose substantial costs on non-SD/MSP counterparties such as gas utilities, and asked that the record retention period for non-SD/MSP counterparties be reduced to the life of the swap plus three years. WGCEF commented that there would be no benefit to record retention beyond five years following termination of a swap. Taking an opposite view, Chris Barnard recommended that all registered entities and swap counterparties should be required to keep records indefinitely.

c. Record retrievability. ISDA and SIFMA commented that current recordkeeping practice for their members would normally mean accessibility within a reasonable period of time, such as two working days, and argued that instant access is impracticable to achieve.[17] The Global Foreign Exchange Division of SIFMA ("Global Forex") suggested that after termination of the swap, real time access should only be required for an additional 30 days. With respect to retrieval by non-SD/MSP counterparties, AGA argued that the three-business-day retrievability requirement is too onerous, and would preclude off-site storage of business records, forcing end

[17] WGCEF asked the Commission to confirm that real time accessibility refers to access by the counterparty, not the Commission, and asked that the requirement be changed to require record retrieval by the close of business the day following a request.

users to maintain on-site record storage. The Electric Coalition suggested that the retrieval period for non-SD/MSP counterparties be extended to 20 business days.

d. Phasing in recordkeeping requirements for non-SD/MSP counterparties. The Electric Coalition suggested that recordkeeping requirements for non-SD/MSP counterparties be phased in. The Electric Coalition also suggested that the Commission define two sub-categories of non-SD/MSPs, namely financial and non-financial non-SD/MSPs, and that it delay the beginning of compliance with recordkeeping requirements even further for non-financial non-SD/MSP counterparties. Dominion Resources commented that recordkeeping should focus first on swaps involving platform execution or clearing, or involving SDs and MSPs.

3. FINAL RULE: § 45.2

a. Records required.

The Commission believes that the final rule should largely maintain the NOPR provisions regarding required records. Those provisions call for recordkeeping with respect to swaps that parallels the Commission's existing recordkeeping requirements with respect to futures and options.[18] Under those existing requirements, all DCMs, DCOs, futures commission merchants ("FCMs"), introducing brokers ("IBs"), and members of contract markets are generally required to keep full and complete records, together with all pertinent data and memoranda, of all activities relating to the business of the entity or person that is subject to the Commission's authority. The Commission believes that the rationale for requiring futures registrants and counterparties subject to its jurisdiction to keep full and complete records must also govern recordkeeping with respect to swaps. Such records are essential to carrying out the regulatory

[18] Recordkeeping requirements relating to futures and options are found in CEA §§ 5(b) and 5(d); §§ 1.31 and 1.35 of this chapter; Appendix B to Part 38 of the Commission's Regulations, Core Principle 17, *Recordkeeping*; and Appendix A to Part 39 of the Commission's Regulations, Core Principle K, *Recordkeeping.*

functions of not only the Commission but all other financial regulators, and for appropriate risk management by registered entities and swap counterparties themselves.[19]

The Commission notes that the NOPR placed narrower recordkeeping obligations on non-SD/MSP counterparties subject to the Commission's jurisdiction, requiring them to keep full, complete, and systematic records, including all pertinent data and memoranda, with respect to each swap to which they are a counterparty, rather than with respect to their entire business relating to swaps. This narrower requirement was designed to effectuate a policy choice made by the Commission to place lesser burdens on non-SD/MSP counterparties to swaps, where this can be done without damage to the fundamental systemic risk mitigation, transparency, standardization, and market integrity purposes of the legislation.

The Commission does not believe that it should further define or reduce the records required to be kept. The Commission's existing recordkeeping regulations in the futures context call for maintenance of "full and complete records." Complete records regarding each swap should be required from all counterparties, including non-SD/MSP counterparties to physical commodity swaps and other swaps, because such records are essential for effective market oversight and prosecution of violations by the Commission and other regulators. Experience with recordkeeping requirements in the context of futures suggests that all market participants are able to retain such records. The Commission also does not believe that it should specifically delineate the meaning of "all pertinent data and memoranda." This phrase is not further defined in the Commission's existing futures regulations.

[19] The need for such records is also recognized internationally. As CPSS has noted: "it should be clear that the data recorded in a TR [trade repository] cannot be a substitute for the records of transactions at original counterparties. Therefore, it is important that even where TRs have been established and used, market participants maintain their own records of the transactions that they are a counterparty to and reconcile them with their counterparties or TRs on an ongoing basis (including for their own risk management purposes)." Committee on Payment and Settlement Systems, *Considerations for Trade Repositories in OTC Derivatives Markets*, May 2010, at 1.

With respect to paper recordkeeping, the Commission agrees with the comment suggesting that non-SD/MSP counterparties should be permitted to keep required records in paper form, since this could serve to reduce burdens on some such counterparties while still ensuring that essential records are available.[20] The final rule provides that non-SD/MSP counterparties may keep records in either electronic or paper form, so long as they are retrievable, and information in them is reportable, as required by part 45. Because SEFS, DCMs, DCOs, SDs, and MSPs are more likely to have automated systems suitable for electronic recordkeeping, and because electronic production of records is important to the Commission's enforcement functions, the final rule will permit such registrants to keep records in paper form only if they are originally created and exclusively maintained in paper form.

b. Record retention periods. The Commission has determined that the final rule should maintain the NOPR provision calling for required records to be retained for the life of the swap plus five years. A swap can continue to exist for a substantial period of time prior to its final termination or expiration. During this time, which in some cases can extend for many years, the key economic terms of the swap can change. Thus, recordkeeping requirements with respect to a swap must necessarily cover the entire period of time during which the swap exists, as well as an appropriate period following final termination or expiration of the swap. A five-year retention period following termination of the swap will ensure document retention consistent with the information that the Commission and other regulators need to carry out their oversight and enforcement responsibilities. It will also parallel the Commission's existing five-year record retention requirement in the context of futures. Finally, this five-year period is consistent with the Commission's final part 49 rules regarding SDR registration.

[20] Although the final rule requires data reporting in electronic form, a non-SD/MSP counterparty could achieve this by entering information from paper records into a web interface provided by an SDR.

With respect to record retention by SDRs, the Commission has determined that SDRs must retain all required records both: (a) throughout the existence of the swap and for five years following final termination or expiration of the swap, during which time the records must be readily accessible by the SDR and available to the Commission via real time electronic access, as provided in the NOPR; and (b) thereafter, for an archival storage period of ten additional years, during which they must be retrievable by the SDR within three business days. The Commission believes that extended retention of SDR records will assist regulators in discharging their systemic risk and market monitoring responsibilities, and aid market analysis. However, after a substantial period of time has passed following final termination of a swap, the data storage burden of retaining SDR records concerning the swap could outweigh the remaining benefit involved, and accordingly the Commission does not agree with the comment suggesting indefinite record retention. The Commission may review the ten-year archival storage requirement for SDRs at a future time, after experience with its operation is available.

c. Record retrievability. The Commission does not believe that it should reduce record retrievability requirements for SEFS, DCMs, DCOs, SDs, and MSPs. The requirement that records be readily accessible for the life of the swap plus two years parallels the Commission's retrievability requirement during the first two years of the five-year retention period for futures-related records.[21] The Commission has routinely interpreted "readily accessible" to mean retrievable in real time or at least on the same day as the records are requested. Moreover, Commission Regulation 1.31 requires records maintained electronically to be produced immediately upon request. FCMs routinely comply with this requirement, and the Commission does not believe that SDs and MSPs should be unable to do so as well.

[21] See § 1.31 of this chapter.

With respect to record retrievability for non-SD/MSP counterparties, the Commission accepts the comments suggesting that retrieval from off-site storage within three business days could possibly involve additional costs or limit off-site storage options for some smaller non-SD/MSP counterparties. In order to lessen any burden on non-SD/MSP counterparties while maintaining necessary accessibility of pertinent records, the final rule will only require retrievability of non-SD/MSP counterparty records within five business days throughout the record retention period. The Commission believes that this will not unduly compromise its ability to conduct investigations and carry out its enforcement responsibilities.

d. Phasing in recordkeeping requirements for non-SD/MSP counterparties. The Commission does not believe that it is necessary to provide any phasing treatment with respect to recordkeeping requirements for non-SD/MSP counterparties beyond the phasing by counterparty type provided in the final rule with respect to compliance dates. As noted above, the final rule provides less onerous recordkeeping requirements and less onerous retrievability requirements for non-SD/MSP counterparties, in order to ameliorate recordkeeping burdens for them. Excusing non-SD/MSP counterparties from all recordkeeping for an extended period could interfere with ability of the Commission and other regulators to carry out their oversight and enforcement responsibilities. As previously noted, experience with recordkeeping requirements in the context of futures suggests that all market participants do retain records and that such recordkeeping is essential for effective oversight and prosecution of violations.

B. Swap Data Reporting: Creation Data – § 45.3

1. PROPOSED RULE.

a. What creation data should be reported. In order to ensure timeliness, accuracy, and completeness with respect to the swap data available to regulators, the proposed rule called for reporting of swap data from each of two important stages of the existence of a swap: the creation of the swap, and the continuation of the swap over its existence until its final termination or expiration. The NOPR required reporting of two sets of data generated in connection with the swap's creation: primary economic terms data, and confirmation data.

The NOPR defined primary economic terms as including all of the terms of the swap verified or matched by the counterparties at or shortly after the execution of the swap. In order to ensure that the array of primary economic terms reported to an SDR for a swap is sufficient in each case for regulatory purposes and is comparable enough to permit data aggregation, the NOPR required that the primary economic terms reported for each swap must include, at a minimum, all of the data elements listed by the Commission in the asset class-specific tables of minimum data elements appended to the NOPR. The tables were designed to include data elements reflecting the basic nature and essential economic terms of the product involved.

The NOPR defined confirmation as the full, signed, legal confirmation by the counterparties of all of the terms of a swap, and defined confirmation data as all of the terms of a swap matched and agreed upon by the counterparties in confirming the swap. The NOPR required reporting of confirmation data, in addition to the earlier reporting of primary economic terms data, in order to help ensure the completeness and accuracy of the data maintained in an SDR with respect to a swap. Reporting of the terms of the confirmation, which has the assent of

both counterparties, also provides a means of fulfilling the statutory directive that an SDR "shall confirm with both counterparties to the swap the accuracy of the data that was submitted."[22]

b. Who should report creation data. The NOPR's swap data reporting provisions were designed to streamline and simplify the data reporting approach, by calling for reporting by the registered entity or counterparty that the Commission believes has the easiest, fastest, and cheapest access to the data in question. As recognized in the NOPR, such entities and counterparties are also the most likely to have automated systems suitable for reporting.

Because the Commission anticipated that swap contract certification process for swaps listed by SEFs and DCMs would define all or most of the primary economic terms of a swap, the NOPR called for SEFs or DCMs to report PET data for swaps executed on a trading platform, as soon as technologically practicable after execution, with reporting counterparties reporting only PET data that for any reason was not available to the SEF or DCM. For off-facility swaps, where PET data is created by the counterparties' verification of the primary economic terms of the swap, the NOPR provided for the reporting counterparty (as defined) to report the required PET data for the swap. The NOPR called for this report to be made promptly, but in no event later than: 15 minutes after execution of a swap for which execution and verification of primary economic terms occur electronically; 30 minutes after execution of a swap which is not executed electronically but for which verification of primary economic terms occurs electronically; or, in the case of a swap for which neither execution nor verification of primary economic terms occurs electronically, within a time after execution to be determined by the Commission.

For cleared swaps, where confirmation data will be generated by DCOs in the course of the normal clearing process, the NOPR called for DCOs to report confirmation data, doing so as

[22] CEA § 21(c)(2).

soon as technologically practicable following clearing. For non-cleared swaps, where confirmation will be done by the counterparties, the NOPR required the reporting counterparty to report confirmation data, making this report promptly following confirmation, but in no event later than: 15 minutes after confirmation of a swap for which confirmation occurs electronically; or, in the case of a swap for which confirmation was done manually rather than electronically, within a time after confirmation to be determined by the Commission.

The NOPR did not explicitly assign the right to select the SDR to which a swap is reported, but it effectively determined who will make this choice, through the interaction of two key aspects of the rule. First, in order to prevent fragmentation of data for a single swap across multiple SDRs, which would seriously impair the ability of the Commission and other regulators to view or aggregate all of the data concerning the swap, the proposed rule provided that, once an initial data report concerning a swap is made to an SDR, all data reported for that swap thereafter must be reported to that same SDR.[23] Second, in order to ensure that PET data concerning the swap is reported as soon as technologically practicable following execution—in part to facilitate real time reporting—the proposed rule required the SEF or DCM to make the initial PET data report for swap executed on such a facility, and required the reporting counterparty (in the majority of cases, an SD or MSP) to make the initial report for an off-facility swap. Because subsequent reports must go to the SDR that received the initial report, in practice this meant that the SEF or DCM would select the SDR for platform-executed swaps, and the reporting counterparty would choose the SDR for off-facility swaps.

c. Deadlines for creation data reporting. The NOPR established reporting deadlines for creation data reporting, including both PET data reporting and confirmation data reporting,

[23] This requirement received universal approbation in both comments and roundtables as appropriate and necessary.

determined by whether the swap is platform-executed and/or cleared, whether verification (matching) of primary economic terms by the counterparties occurs electronically, and whether the reporting counterparty is an SD or MSP on the one hand or a non-SD/MSP counterparty on the other. The resulting deadlines were as shown in the following tables.

PROPOSED RULE – REPORTING COUNTERPARTY: SD or MSP			
Execution and Clearing	***Report***	***Reporter***	***Reporting Time***
SEF or DCM DCO	PET data	SEF or DCM	As soon as technologically practicable following execution
	Any PET data not reported by SEF or DCM	SD or MSP	After execution: * 15 minutes if execution and verification electronic * 30 minutes if execution non-electronic but verification electronic * 24 hours if neither execution nor verification electronic
	Confirmation data	DCO	As soon as technologically practicable following clearing
SEF Not cleared	PET data	SEF	As soon as technologically practicable following execution
	Any PET data not reported by SEF	SD or MSP	After execution: * 15 minutes if execution and verification electronic * 30 minutes if execution non-electronic but verification electronic * 24 hours if neither execution nor verification electronic
	Confirmation data	SD or MSP	After confirmation: * 15 minutes if confirmation electronic * 24 hours if confirmation non-electronic
No platform DCO	PET data	SD or MSP	After execution: * 30 minutes if verification electronic * 24 hours if verification non-electronic
	Confirmation data	DCO	As soon as technologically practicable following clearing
No platform Not cleared	PET data	SD or MSP	After execution: * 30 minutes if verification electronic * 24 hours if verification non-electronic
	Confirmation data	SD or MSP	After confirmation: * 15 minutes if confirmation electronic * 24 hours if confirmation non-electronic

PROPOSED RULE – REPORTING COUNTERPARTY: NON-SD/MSP			
Execution and Clearing	***Report***	***Reporter***	***Reporting Time***
SEF or DCM DCO	PET data	SEF or DCM	As soon as technologically practicable following execution
	Any PET data not reported by SEF or DCM	Non-SD/MSP	After execution: * 15 minutes if execution and verification electronic * 30 minutes if execution non-electronic but verification electronic * 24 hours if neither execution nor verification electronic
	Confirmation data	DCO	As soon as technologically practicable following clearing

SEF Not cleared	PET data	SEF	As soon as technologically practicable following execution
	Any PET data not reported by SEF	SD or MSP	After execution: * 15 minutes if execution and verification electronic * 30 minutes if execution non-electronic but verification electronic * 24 hours if neither execution nor verification electronic
	Confirmation data	Non-SD/MSP	After confirmation: * To be determined by the Commission prior to final rule
No platform DCO	PET data	Non-SD/MSP	After execution: * 30 minutes if verification electronic * 24 hours if verification non-electronic
	Confirmation data	DCO	As soon as technologically practicable following clearing
No platform Not cleared	PET data	Non-SD/MSP	After execution: * 30 minutes if verification electronic * 24 hours if verification non-electronic
	Confirmation data	Non-SD/MSP	After confirmation: * To be determined by the Commission prior to final rule

d. Reporting for multi-asset swaps and mixed swaps. As noted in the NOPR, a mixed swap is in part a security-based swap subject to SEC jurisdiction, and in part a swap subject to CFTC jurisdiction.[24] Multi-asset swaps are those that do not have one easily identifiable primary underlying asset, but instead involve multiple underlying assets belonging to different asset classes that are all within CFTC's jurisdiction. One way of stating the distinction between these two types of swaps is that SEC and CFTC will each have jurisdiction over part of a mixed swap, but only CFTC will have jurisdiction over the different parts of a multi-asset swap. The NOPR requested comment on how multi-asset and mixed swaps should be reported.

2. COMMENTS RECEIVED. The Commission received numerous comments from a variety of commenters concerning the proposed rule's provisions addressing creation data reporting. The broad themes of these comments addressed what should be included in required

[24] The Dodd-Frank Act defines "mixed swap" as follows: "The term 'security-based swap' includes any agreement, contract, or transaction that is as described in section 3(a)(68)(A) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(68)(A)) and is also based on the value of 1 [sic] or more interest or other rates, currencies, commodities, instruments of indebtedness, indices, quantitative measures, other financial or economic interest or property of any kind (other than a single security or a narrow-based security index), or the occurrence, non-occurrence, or the extent of the occurrence of an event or contingency associated with a potential financial, economic, or commercial consequence (other than an event described in subparagraph (A)(iii)." Dodd-Frank § 721(21), CEA § 1a(47)(D).

primary economic terms data, who should make the initial creation data report, what deadlines should be set for making creation data reports, and how creation data should be reported with respect to multi-asset swaps, mixed swaps, and international swaps.

a. What should be included in required PET data. Comments concerning various aspects of required minimum PET data are discussed below.

Clarification of the catch-all PET data category. The tables of minimum PET data for each asset class appended to the NOPR included a field for reporting "any other primary economic terms of the swap matched by the counterparties in verifying the swap." ISDA and SIFMA commented that the Commission should clarify or provide examples of what this requirement means.

Clarification of particular PET data terms for other commodity swaps. Electric energy providers including EEI, the Electric Power Supply Association ("EPSA"), the Coalition of Physical Energy Companies ("COPE"), and Dominion Resources suggested that the terms "timestamp," "settlement method," "grade," and "total quantity" should be clarified or else should not be included in the minimum PET data for other commodity swaps. They asserted that timestamps are not typically recorded under current energy market practice. They argued that the settlement method field implies a swap potentially involving physical delivery, whereas they believe that swaps are not agreements intended to be physically settled. They also argued that the "total quantity" of a commodity in a swap is not a term typically captured by swap counterparties, who instead typically express the size of a swap in terms of the quantity aligned with a settlement period.

Elimination or clarification of calculation and reporting of futures equivalents. The NOPR called for minimum PET data reporting to include futures contract equivalents and futures

contract equivalent units of measure. Better Markets expressed support for required reporting of futures equivalents. However, the Depository Trust & Clearing Corporation ("DTCC") commented that OTC derivatives cannot be mapped readily to futures contracts, and thus this data will not necessarily be able to be aggregated in a meaningful fashion. Global Forex asked the Commission to provide guidance on how to report futures equivalents for swaps whose tenor sits between two futures contracts dates; guidance on the case where multiple futures contracts exist for the same underlying product; and guidance on products for which no corresponding futures contracts exist.

Clarification of creation data reporting in the context of structured transactions. ISDA and SIFMA commented that "execution," "affirmation," and "confirmation" may have somewhat different meanings in different asset classes, and requested clarification of the application of these terms with respect to creation data reporting. More specifically, Global Forex requested clarification of creation data in the context of structured transactions, noting that the meaning given these terms under prevalent foreign exchange market conventions, which frequently involve structured transactions, may differ from their application in other contexts.

Clarifications regarding foreign exchange transactions. Contending that cross-currency swaps should be classified as interest rate swaps rather than foreign exchange swaps, Global Forex argues that cross-currency swaps in fact are interest rate products with multi-payment schedules, that they are most often traded by interest rate desks with interest rate participants, and that they are captured and managed in interest rate systems and infrastructure using interest rate conventions. Global Forex notes that foreign exchange swaps are products traded by distinct foreign exchange desks with market participants and internal and external systems infrastructure that are different from the participants and infrastructure involved in cross-currency swaps.

Existing trade repositories including TriOptima and DTCC also suggest that the Commission classify cross-currency swaps as interest rate swaps.

Global Forex notes that foreign exchange swaps consist of a near and a far leg, and that the foreign exchange swap market currently lacks market conventions that suggest how to select a reporting counterparty responsible for reporting both legs, in situations where both parties have the same hierarchical level (e.g., two SDs). Global Forex also notes that current trade capture systems differ in how they handle foreign exchange swaps, and that some may book a foreign exchange swap as a single trade, but split it in back-office systems into two trades with separate trade identifiers. Global Forex does not advocate reporting both legs separately; it simply points out this potential issue in light of current, differing market practices.

Combining all PET data and confirmation data reporting in a single report. Several comments suggest consolidating the requirements to report both PET data and confirmation data. Dominion Resources and Global Forex suggest a single report providing PET data plus confirmation status (rather than all terms confirmed). ISDA and SIFMA suggest replacing all creation data reporting with end-of-day snapshot reporting (including the first-day report). The Kansas City Board of Trade ("KCBT") suggests that for swaps that are platform-executed and cleared, the DCO's clearing report should replace confirmation reporting.[25] DTCC suggests creation data reporting for fully-electronic trades should be limited to confirmation reporting, in the belief that fully electronic trades can be confirmed within 15 minutes. Thomson Reuters believes that creation data reporting should be limited to confirmation reporting for all swaps whether platform executed or voice executed. The Managed Funds Association ("MFA") suggests defining "time of execution" to mean 24 hours after manual confirmation of the swap,

[25] KCBT also suggests that DCOs should be allowed to report a day's cleared swaps in a single daily data file, rather than individually.

arguing that the benefits of data reporting within minutes of execution as presently defined do not outweigh either the infrastructure costs or error risks involved.

Harmonizing the data fields require for real time and regulatory reporting. ISDA, SIFMA, WGCEF, and Dominion Resources recommended harmonizing the Commission's required PET data fields and real time reporting data fields. The Electric Coalition suggested a need to coordinate these two types of reporting with respect to reporting triggers and the words used to define them (e.g. verification or confirmation), and requested clarification concerning the data elements required by the real time reporting rule and the swap data reporting rule.

Allowing non-SD/MSP counterparties to report less data. The NOPR requires the same minimum PET data fields to be reported for each swap in an asset class, regardless of the nature of the reporting entity or counterparty. Various energy producers commented concerning potential burdens for non-SD/MSP counterparties in this regard. AGA suggested the rule should minimize the burdens of reporting for non-SD/MSP counterparties, and EEI supported the principle that responsibility for reporting should rest with those having the best technology, such as SEFs, DCMs, SDs and MSPs.[26] EEI, EPSA, and COPE suggested limiting data reporting for non-SD/MSP counterparties in physical energy to data they already maintain under current data capture practices, limiting their reporting of confirmation data to the confirmation information currently captured in their systems, rather than requiring them to report all confirmation terms. The International Energy Credit Association ("IECA") suggested exempting physical energy counterparties from reporting requirements entirely, or at least imposing "lesser" reporting requirements for them. The Electric Coalition suggested that non-SD/MSP counterparties be subject only to a "CFTC Lite" reporting regime.

[26] The NOPR takes this approach, calling for SEFS and DCMs to report all creation data in their possession for on-facility swaps, and making SDs and MSPs the reporting counterparties when they are involved.

Miscellaneous aspects of PET data. The NOPR specifies minimum PET data fields for each asset class. The SEC's proposed data reporting rule for swaps under the SEC's jurisdiction, i.e., security-based swaps in the credit and equity asset classes, sets out categories of required data rather than specific data fields. ISDA and SIFMA suggested that the Commission should adopt the SEC's approach, and expressed concern that the Commission's approach could negatively affect FpML development and result in some products not being adequately described. Eris Exchange suggested that the Commission determine where prescriptive rules are absolutely necessary to address systemic risk, and the Commodity Markets Council suggested that the Commission avoid a prescriptive regulatory model which would create detailed reporting requirements and thus require different reporting methods.

SunGard Energy & Commodities ("SunGard") suggested that for swaps executed on SEFs and DCMs, having the SEF or DCM report position changes to each account, instead of reporting individual swap transactions, would be more efficient and more advantageous for monitoring of positions and of risk.[27]

b. Who makes the initial creation data report and selects the SDR. The NOPR did not explicitly assign the right to select the SDR to which a swap is reported, but it effectively determined who will make this choice, through the interaction of two key aspects of the proposed rule. First, in order to prevent fragmentation of data for a single swap across multiple SDRs, which would seriously impair regulators' ability to view or aggregate all of the data concerning the swap, the NOPR provided that, once an initial data report concerning a swap is made to an SDR, all data reported for that swap thereafter must be reported to that same SDR.[28] Second, in

[27] SunGard suggested that such position reports could be accompanied by a reference to the primary economic terms of the contract, rather than by data reflecting all primary economic terms.

[28] This requirement received universal approbation in both comments and roundtables as appropriate and necessary.

order to ensure that PET data concerning the swap is reported as soon as practicable following execution—in part to facilitate real time reporting—the NOPR required the SEF or DCM to make the initial PET data report for swap executed on such a facility, and required the reporting counterparty (in the majority of cases, an SD or MSP) to make the initial report for an off-facility swap. Because subsequent reports must go to the SDR that received the initial report, in practice this meant that the SEF or DCM would select the SDR for platform-executed swaps, and the reporting counterparty would choose the SDR for off-facility swaps.

The Commission received a number of comments concerning who should select the SDR to which a swap is reported. WGCEF, COPE, EEI, and EPSA supported the NOPR approach of giving reporting obligations to SEFs, DCMs, and DCOs, arguing that this approach simplifies reporting and eases burdens on counterparties, which is especially important in the case of non-SD/MSP counterparties. EEI and EPSA emphasized that the rules should ensure that SDR selection by a SEF, DCM, SD, or MSP does not result in costs or burdens for non-SD/MSP counterparties. WGCEF also suggested that DCOs should make the initial report for cleared swaps executed off-platform, since (in WGCEF's view) execution technically will not occur until such a swap is accepted for clearing. Global Forex observed that if a platform makes the initial report and thus selects the SDR, other entities or counterparties with reporting obligations during the life of the swap would need to ensure that they can connect to the chosen SDR. ABC and CIEBA suggested that for swaps involving a benefit plan as a counterparty, the SDR selection should always be made by the plan. ISDA and SIFMA suggested that the reporting counterparty should always select the SDR, arguing that this would permit the market to determine and follow the most efficient manner of reporting. REGIS –TR opposed having reporting obligations assigned based on platform execution or clearing.

DTCC and ICE recommended that the reporting counterparty—an SD or MSP in the majority of cases—should always select the SDR, even for platform-executed swaps. ICE also suggested that if a SEF or DCM makes the first report and thus selects the SDR for a swap that is to be cleared, the SEF or DCM should be permitted to select a DCO that is also registered as an SDR as both the DCO that will clear the swap and the SDR to which the swap is reported. Going further in this direction, CME contended that the final rule should require the initial report for each cleared swap to be made to a DCO that is also registered as an SDR or an SDR chosen by such a DCO. CME argued that the structure and wording of the Dodd-Frank Act demonstrate that this was Congress's intent, and that limiting reporting for cleared swaps to DCOs that are dually registered as SDRs or to SDRs chosen by a DCO would involve the lowest cost and least burden. The Commodity Markets Council echoed CME's cost-benefit argument, asserting that DCOs are the "natural choice" to act as SDRs for cleared trades, and that it would be costly, inefficient and unnecessary to require industry to establish a redundant set of expensive connections with non-DCO SDRs for the purpose of making regulatory reports for cleared trades.

c. Creation data reporting deadlines and deadline phasing.

Extended creation data reporting deadlines. The Commission received a number of comments recommending extended deadlines for both PET data reporting and confirmation data reporting. The Electric Coalition commented that the NOPR reporting deadlines are far too short if the reporting party is a non-financial entity, because such an entity would need to manually extract reportable data elements from a customized swap.

Several commenters urged the Commission to extend deadlines for PET data reporting, particularly in the case of non-SD/MSP counterparties. EEI suggested a PET data report

deadline of T+1 (i.e., by the close of business on the business day following the day of execution) in the case of either electronic or manual verification. CIEBA asked that the 24-hour deadline for PET data reporting where both execution and verification are non-electronic include only business days. COPE concurred that the 24-hour deadline where verification is non-electronic is too short for non-SD/MSP counterparties, and asked the Commission not to set a deadline in the final rule, but to determine the deadline through ongoing consultations with industry following issuance of the final rule.

Commenters also urged extension of the deadlines for confirmation data reporting. AGA asked that the confirmation data reporting deadline for non-SD/MSP counterparties be set at T+1 for swaps electronically confirmed, and at T+2 (i.e., by the close of business on the second business day following the day of execution) for swaps not electronically confirmed. The Federal Home Loan Banks ("FHLB") suggested a deadline of 24 hours following confirmation for reporting confirmation of a swap electronically confirmed, and a deadline of five business days following confirmation for a swap manually confirmed. DTCC suggested that a 15-minute deadline for reporting confirmation of an electronically executed swap would require a level of straight-through processing not yet available, and that for similar reasons a somewhat longer deadline would be needed where the swap was not electronically executed but electronically cleared. DTCC recommended setting the initial deadline for confirmation data reporting for electronically executed swaps at 30 minutes, setting the deadline for swaps not electronically executed but electronically cleared at two hours, and phasing in confirmation data reporting deadlines. For manually confirmed swaps, DTCC advocated a confirmation data reporting deadline of five days after execution.

Streamlined regulatory and real time reporting. The Commission also received comments from DTCC and from roundtable participants suggesting that it consider minimizing the number of swap creation data reports to be required of any given registered entity or swap counterparty, either by combining PET data reporting and confirmation data reporting in a single report, or by allowing a single PET data report to fulfill both regulatory reporting requirements under part 45 and real time reporting requirements under part 43.

Phasing in reporting deadlines. DTCC suggested that the Commission consider phasing in creation data reporting deadlines where possible.

d. Reporting of multi-asset swaps and mixed swaps. As noted in the preamble of the NOPR, generally, a mixed swap is in part a security-based swap subject to SEC jurisdiction, and in part a swap belonging to an asset class subject to CFTC jurisdiction.[29] Multi-asset swaps are those that do not have one easily identifiable primary underlying notional item, but instead involve multiple underlying notional items belonging to different asset classes that are all within CFTC's jurisdiction. One way of stating the distinction between these two types of swaps is that SEC and CFTC will each have jurisdiction over part of a mixed swap, but only CFTC will have jurisdiction over the different parts of a multi-asset swap. The NOPR requested comment on how multi-asset and mixed swaps should be reported, but did not directly address such reporting in the text of the proposed rule.

Commenters provided differing views concerning reporting of mixed swaps and multi-asset swaps. Better Markets suggested that the different legs of mixed swaps and multi-asset

[29] The Dodd-Frank Act defines "mixed swap" as follows: "The term 'security-based swap' includes any agreement, contract, or transaction that is as described in section 3(a)(68)(A) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(68)(A)) and is also based on the value of 1 [sic] or more interest or other rates, currencies, commodities, instruments of indebtedness, indices, quantitative measures, other financial or economic interest or property of any kind (other than a single security or a narrow-based security index), or the occurrence, non-occurrence, or the extent of the occurrence of an event or contingency associated with a potential financial, economic, or commercial consequence (other than an event described in subparagraph (A)(iii)." Dodd-Frank § 721(21), CEA § 1a(47)(D).

swaps should be reported separately. ISDA and SIFMA suggested that multi-asset swaps should not be decomposed into their underlying asset classes but should be reported to an SDR that accepts swaps in the most significant asset class component of the swap, as determined by the reporting counterparty (in practice, usually the asset class of the desk that trades the swap). DTCC suggested that swaps in asset classes subject to joint SEC-CFTC regulation could be reported to an SDR registered with both Commissions (except in cases where no such SDR is available), or that a practicable reporting regime for mixed swaps and multi-asset swaps may be to have the reporting counterparty for a mixed swap or multi-asset swap report the swap to an SDR serving each asset class, including the USI assigned in the context of the report to the first SDR in the report made to the second SDR.

i. Reporting of international swaps. As noted above, the Dodd-Frank Act directs the Commission to consult and coordinate with foreign regulatory authorities regarding establishment of consistent international standards for the regulation of swaps and swap entities. The Commission is committed to a cooperative international approach to swap recordkeeping and swap data reporting, and has consulted extensively with various foreign regulatory authorities in the process of preparing this final rule. International regulators consulted by the Commission have urged the Commission to include provisions in its final swap data reporting rules concerning "international swaps," i.e., those swaps that may be required by U.S. law and the law of another jurisdiction to be reported both to an SDR registered with the Commission and to a different trade repository registered with the other jurisdiction.

3. FINAL RULE: § 45.3

a. What should be included in required PET data.

Clarification of the catch-all PET data category. The Commission's purpose in including in the tables of minimum PET data a field for reporting "any other primary economic terms of the swap matched by the counterparties in verifying the swap" is to provide a "catch all" category necessary to (1) ensure reporting of all price-forming terms agreed on at the time of swap verification, including any such terms not listed in the minimum PET data tables for the asset class in question, and (2) keep pace with market innovation and new varieties of swaps for which the Commission has not enumerated all relevant data fields. To clarify that this field is intended to include all terms agreed on at the time of swap verification, the final rule eliminates the words "primary economic" from the field description, specifies reporting of "any other terms of the swap matched by the counterparties in verifying the swap," and adds some possible examples of such terms. This aligns the field description with the NOPR and final rule definition of "primary economic terms" as meaning "all of the terms of a swap matched or affirmed by the counterparties in verifying the swap."

Clarification of particular PET data terms for other commodity swaps.

The Commission disagrees with comments suggesting that execution date and time should not be required to be reported for certain types of other commodity swaps. The Commission believes that the date and time of the execution of a swap constitute a basic primary economic term and a fundamental audit trail component for all swaps. This information is essential to the ability of the Commission and other regulators to fulfill their obligations to supervise swap markets and prosecute abuses. For swaps executed on a SEF or DCM, and for off-facility swaps executed via an automated system, a timestamp will be created automatically

by the system involved. For off-facility swaps executed manually, counterparties can and must manually record and report the date and time of execution. Where current market practice does not include recording the date and time of execution of a swap, adjustment will be necessary.

While the Commission notes that the parameters of what constitutes a swap will be provided by the final definition of "swap" issued jointly by the Commission and the SEC, the Commission believes that "settlement method" should be retained as a PET data field. The definition of a swap in CEA § 1a(47) could include options that potentially could require physical delivery of a commodity. Thus, while certain transactions that require delivery of a commodity, e.g., forward contracts or spot transactions that are excluded from the definition of a swap, may not constitute swaps (as commenters argue), other derivative transactions involving delivery would be required to be reported as swaps.

The Commission believes that "grade" should also be retained as a PET data field for other commodity swaps. "Grade" would typically be applicable as a defining characteristic of the swap for both physically delivered and cash settled transactions, in that this term is intended to identify the quality and other characteristics of the commodity that underlies the swap. For a cash settled swap, the Commission believes that separately accounting for grade in the terms reported is also necessary as a means of classifying and identifying the quality characteristics of the commodity underlying the swap. The Commission recognizes that in certain cases—electricity being one example—a grade may not exist. The final rule will indicate that where a particular PET data field does not apply to a given swap, the reporting entity or counterparty should report "Not applicable" for that field.

As noted in the comments, some commodity swap counterparties use the convention of identifying the notional amount of a swap by specifying the quantity in terms of dollars or units

of the commodity, whichever is used to calculate settlement period payment obligations. However, other counterparties account for the size of a swap by referring to the total quantity involved in a swap over its entire existence. Because a single convention does not apply in all cases, the final minimum PET data tables will retain the terms "Quantity" and "Total quantity, " but will also add the terms "Quantity units" and "Notional quantity." Notional quantity will be defined as the amount of the underlying commodity that is used to calculate periodic settlement payments during the life of the swap. Quantity units will be defined as the units in which the notional quantity is expressed, e.g., bushels, gallons, barrels, pounds, or tons.

Elimination or clarification of calculation and reporting of futures equivalents. The NOPR provision for reporting of futures contract equivalents was intended to assist the Commission in monitoring the positions of traders for the purpose of enforcing position limits mandated by the Dodd-Frank Act. However, in July 2011, subsequent to publication of the NOPR, the Commission adopted new reporting requirements for physical commodity swaps and swaptions. Part 150 of this chapter now requires routine position reports from clearing organizations, clearing members and swap dealers, and also applies to reportable swap trader positions. It also provides guidelines on how swaps should be converted into futures equivalents. The new regulations were issued in part to cover the period between the present, when the date by which SDRs registered with the Commission will be operational in all asset classes is not yet certain, and a future time when the Commission may be able to obtain swap position data by aggregating data across SDRs.[30] Accordingly, the final part 45 rule will drop "futures contract equivalent" and "futures contract equivalent unit of measure" from its minimum PET data tables. The Commission may revisit possible reporting of futures equivalents at a later time, after

[30] An SDR would be able to report position data to the Commission only if it were the single SDR for an entire asset class.

Commission staff has had an opportunity to evaluate the Commission's experience in collecting futures equivalent data under the new part 150 regulations.

Clarification of creation data reporting in the context of structured transactions. In response to comments requesting clarification of creation data reporting in the context of structured transactions, the Commission provides the following explanation.

As discussed below in the context of who reports creation data, for swaps executed on a SEF or DCM, the final rule requires the SEF or DCM to report all required swap creation data, as soon as technologically practicable after execution, in a single report that includes all primary economic terms data and all confirmation data for the swap. This will address some of the concerns raised in these comments for swaps executed on a SEF or DCM.

For off-facility swaps, the final rule requires the reporting counterparty to report both (1) all primary economic terms data, within specified times following execution, and (2) all confirmation data, within specified times following confirmation by the counterparties.[31] The final rule requires both a PET data report and a confirmation data report in recognition that the elapsed time between execution and verification of primary economic terms on the one hand, and confirmation of all terms of the swap on the other, may differ for a given swap depending on context.

The Commission understands that a major concern underlying these comments reflects uncertainty as to what reporting the final rule requires (a) in situations where give-up arrangements or block trade details may not be entirely finalized as of the time the counterparties

[31] The final rule will further provide that if an off-facility swap is accepted for clearing within the applicable deadline for PET data reporting by the reporting counterparty, and before the reporting counterparty reports any primary economic terms data, then the reporting counterparty will be excused from reporting creation data, and the DCO will report all required creation data in a single report that includes both confirmation data and PET data. The final rule will also define "confirmation" as the consummation of legally binding documentation memorializing the agreement of the parties to all terms of the swap.

verify primary economic terms, or (b) in the case of structured transactions, where the counterparties may negotiate primary economic terms in stages over a period of time before reaching agreement on their entire deal. The Commission therefore wishes to clarify that for off-facility swaps where execution and confirmation are not simultaneous, the final rule requires PET data reporting when execution has occurred and verification of primary economic terms is completed, even though details such as give-ups may still be in process. It also wishes to clarify that PET data reporting is to follow agreement on all primary economic terms of the complete transaction, and is not required or desired after each stage of negotiating a structured transaction or after agreement on some but not all of the primary economic terms of the swap.

Clarifications regarding foreign exchange transactions. The Commission has considered and agrees with comments suggesting that cross-currency swaps should be classified and reported as interest rate swaps, in line with prevailing market practice concerning the trading of such swaps. The final rule provides for reporting of cross-currency swaps as interest rate swaps. The Commission has also considered comments noting differences in current foreign exchange market practice concerning the booking of the near and far legs of some foreign exchange transactions. The Commission understands that a firm's financial statements will address both legs of a foreign exchange swap, and that confirmation is performed with respect to the whole swap rather than separately for each leg. The final rule provides for reporting of foreign exchange swaps as a single transaction by a single reporting counterparty selected as provided in § 45.8. The Commission notes that foreign exchange market conventions may need to adjust to this requirement.[32]

[32] The Commission also notes that the final rule addresses the reporting of "foreign exchange instruments," defined as instruments that are both defined as a swap in part 1 of this chapter and included in the foreign exchange asset class. The definition specifies that instruments in the foreign exchange asset class include: any currency option, foreign currency option, foreign exchange option, or foreign exchange rate option; any foreign exchange forward as

Combining all PET data and confirmation data reporting in a single report. The Commission has considered the numerous comments suggesting that the final rule should provide for PET data and confirmation data reporting to be combined in a single report. The Commission agrees with these comments with respect to swaps executed on a SEF or DCM. As noted above, the final rule provides that for swaps executed on a SEF or DCM, a single report by the SEF or DCM, made as soon as technologically practicable after execution, will fulfill all creation data reporting that would otherwise be required of reporting counterparties.

The Commission disagrees with these comments as they apply to off-facility swaps. The NOPR requirements for both PET data reporting and confirmation data reporting are designed to ensure both (a) timeliness of reporting, served by the initial PET data report, and (b) data accuracy and completeness, served by confirmation data reporting.[33] In addition, as noted above, the NOPR requirement for both a PET data report and a confirmation data report recognizes that the elapsed time between verification of primary economic terms and confirmation of all terms may differ in different contexts, and in some cases may be substantial. In a number of cases, delaying the initial data report for a swap until confirmation has occurred could prevent regulators from seeing a current picture of the entire swap market in the data present in SDRs. As provided in the NOPR and the final rule, reporting counterparties for off-facility swaps will be free to contract with third-party services providers to fulfill either or both of these reporting obligations, which could reduce costs associated with making these reports. The Commission

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defined in CEA section 1a(24); any foreign exchange swap as defined in CEA section 1a(25); and any non-deliverable forward involving foreign exchange. This definition and this approach to reporting are required by the fact that the Dodd-Frank Act defines the term "foreign exchange swap," and the fact that foreign exchange swaps as so defined are only a subset of the foreign exchange instruments that will be defined as swaps.

[33] The Commission notes that it is working to align the timeframes for regulatory swap data reporting pursuant to this part and the dissemination delays for real time swap data reporting pursuant to part 43, in order to permit a reporting entity or counterparty to fulfill both obligations by making a single report, should the reporting entity or counterparty choose to do so.

notes that, for off-facility swaps not accepted for clearing within the applicable deadline for the reporting counterparty to report PET data, the reporting counterparty can avoid the need for a separate confirmation data reporting by confirming the swap within the applicable deadline for PET data reporting, and reporting both PET data and confirmation data in a single report.

Harmonizing the data fields required for real time and regulatory reporting. The Commission agrees in principle with comments suggesting harmonization of the data fields required for real time reporting pursuant to part 43 and those required for regulatory reporting pursuant to this part. While registered entities and reporting counterparties subject to the Commission's jurisdiction will remain responsible for complying with both part 43 and part 45, the Commission is working to substantially align the minimum PET data fields required by this part and the real time reporting data fields required by part 43, in order to reduce reporting burdens to the extent possible.

Allowing non-SD/MSP counterparties to report less data. The Commission disagrees with comments suggesting that it should require less data to be reported for a swap with respect to which a non-SD/MSP counterparty is the reporting counterparty. The Commission believes that fulfilling the purposes of the Dodd-Frank Act requires that regulators have access to the same information for all swaps reported to SDRs. To address commenters' concerns to the extent possible, the final rule will lessen burdens on non-SD/MSP counterparties by phasing in their reporting—which will begin as of a compliance date later than the compliance dates for other registered entities and counterparties—and by providing extended deadlines for their reporting once it begins.

Miscellaneous aspects of PET data. The Commission disagrees with comments suggesting that the final rule should only provide categories of data to be reported, rather than

minimum PET data fields. The Commission believes the approach taken by the NOPR in this respect is appropriate. It is designed to ensure uniformity of essential data concerning swaps across all of the asset classes over which the Commission has jurisdiction, and across different SDRs, and to ensure that the Commission has the necessary information to characterize and understand the nature of reported swaps. Commission staff have consulted with SEC staff regarding data reporting for swaps in the credit and equity asset classes where the Commission and the SEC share jurisdiction, and the Commission has substantially aligned its data requirements in those asset classes with the data sought by the SEC. As a result, the Commission does not believe that SDRs and security-based SDRs will have difficulty in collecting the data needed by the two Commissions. The inclusion in minimum PET data of all terms of the swap matched by the counterparties in verifying the swap provides an avenue for reporting for newly-developed swap products. The Commission will also have the ability to amend its tables of required minimum PET data at futures times when this is desirable.

The Commission disagrees with the comment suggesting that SEFs and DCMs should report positions rather than swap transactions. The Dodd-Frank Act requires "each swap" to be reported to an SDR, and does not address position reporting to an SDR. In addition, unlike most current futures exchanges, SEFs and DCMs will not necessarily have access to all of the transactions of a given counterparty in a particular product, and thus would be unable to report positions.

b. Who makes the initial creation data report and selects the SDR. The Commission has considered the various comments received concerning who should make the initial creation data report for a swap, and by operation of the various parts of the rule thus select the SDR to which the swap is reported. The Commission has determined that the final rule should maintain the

NOPR's approach, calling for initial creation data reporting by the registered entity or reporting counterparty that the Commission believes has the easiest and fastest access to the data required, and requiring that, once an initial data report concerning a swap is made to an SDR, all data reported for that swap thereafter must be reported to that same SDR. Cumulatively, these provisions prevent fragmentation of swap data that would impair the ability of the Commission and other regulators to use the swap data in SDRs for the purposes of the Dodd-Frank Act. Under this approach, competition may lead SEFs and DCMs to establish connections to multiple SDRs, and result in lower SDR fees charged, not only to SEFs and DCMs for swaps executed on such facilities, but also to reporting counterparties for off-facility swaps. The Commission believes that requiring that all cleared swaps be reported only to DCOs registered as SDRs or to SDRs chosen by a DCO would create a non-level playing field for competition between DCO-SDRs and non-DCO SDRs. The Commission also believes that it would make DCOs collectively, and could in time make a single DCO-SDR, the sole recipient of data reported concerning cleared swaps. On the other hand, the Commission believes that giving the choice of the SDR to the reporting counterparty in all cases could in practice give an SDR substantially owned by SDs a dominant market position with respect to swap data reporting within an asset class or even with respect to all swaps. The Commission believes that the rule as proposed favors market competition, avoids injecting the Commission into a market decision, and leaves the choice of SDR to be influenced by market forces and possible market innovations. The rule as proposed also addresses the major substance of the concerns expressed by non-SD/MSP counterparties, since it calls for the initial data report to be made by a non-SD/MSP counterparty only in the case of an off-facility swap between two non-SD/MSP counterparties.

c. Creation data reporting deadlines and deadline phasing.

Extended creation data reporting deadlines. The Commission continues to believe, as it stated in the NOPR, that in order to fulfill the purposes of the Dodd-Frank Act while minimizing burdens for registered entities and swap counterparties, particularly including non-SD/MSP counterparties, the final rule should establish a swap data reporting regime calling for reporting by the registered entity or counterparty that has the easiest, fastest, and cheapest access to the set of data in question. The Commission has also considered and evaluated the comments it has received regarding ways that reporting burdens could be reduced, either by allowing a single report to serve different required functions or by extending and phasing in reporting deadlines. The Commission has determined that the reporting regime established by the final rule should maintain many fundamental aspects of the reporting called for in the NOPR, while adjusting other aspects of that regime to streamline reporting and minimize reporting burdens where possible, while continuing to ensure that swap data for all swaps is reported to SDRs in a manner that ensures the ability of the Commission and other regulators to fulfill the systemic risk mitigation, market transparency, position limit monitoring and market surveillance objectives of the Dodd-Frank Act.

Streamlined regulatory and real time reporting. The Commission agrees with comments suggesting that, where possible, the number of swap creation data reports should be minimized and streamlined by combining PET data reporting and confirmation data reporting in a single report.

The Dodd-Frank Act does not specify the timeframes for reporting of swap data to SDRs for regulatory purposes. However, to further the objectives of the Dodd-Frank Act, the Commission believes it is important that swap data be reported to SDRs either immediately

following execution of the swap or within a short but reasonable time following execution. The Commission does not believe that PET data reporting can wait until it is possible to report confirmation data in all cases, because in an appreciable number of instances confirmation of a swap can occur days, weeks, or even months after execution.

Where execution and confirmation are simultaneous or nearly so, however, the Commission agrees with commenters' suggestion that reporting both PET data and confirmation data in a single report would reduce reporting burdens without impairing regulatory purposes. The Commission is working to adopt final rules for SEFs and DCMS, and final rules with respect to straight-through processing, providing that execution of a swap on a SEF or DCM will constitute confirmation of all of the terms of the swap. This final part 45 rule requires that the terms of such contracts must include all of the minimum PET data required by part 45 for a swap in the asset class in question. The final rule therefore provides for a single creation data report, including both PET data and confirmation data, in the case of swaps executed on or pursuant to the rules of a SEF or DCM. Accordingly, no counterparty will be required to report creation data for a swap executed on or pursuant to the rules of a SEF or DCM.

The Commission agrees with commenters that a reporting regime that, to the extent possible and practicable, permits reporting entities and counterparties to comply with the regulatory data reporting requirements of part 45 and the real time reporting requirements of part 43 by making a single report can reduce reporting burdens while still ensuring fulfillment of the purposes for which the Dodd-Frank Act requires such reporting. The Commission is working to align the reporting deadlines in this final rule with the public dissemination delays provided in the final part 43 real time reporting rule, to the extent possible and practicable, in order to achieve this goal.

The Commission's final clearing rules in part 39 of this chapter provide that acceptance of the swap for clearing by a DCO constitutes confirmation of all of the terms of the swap. This final part 45 rule provides that the terms of such contracts must include all of the minimum PET data required by part 45 for a swap in the asset class in question. Because acceptance for clearing constitutes confirmation, the final rule provides that if an off-facility swap is accepted for clearing within the reporting deadlines applicable to the reporting counterparty, the reporting counterparty shall be excused for creation data reporting for the swap, and the DCO shall report all creation data report, including both PET data and confirmation data, in a single report made as technologically practicable after clearing. In such cases, reporting will be further streamlined, and burdens for counterparties will be further reduced.

Phasing in and extending reporting deadlines. As noted above, counterparties will not be required to report creation data for swaps executed on a SEF or DCM, or for swaps accepted for clearing by a DCO within the applicable reporting deadlines. After considering comments advocating the extension and phasing in of counterparty reporting deadlines, the Commission has decided to extend and phase in such deadlines in the final rule with respect to off-facility swaps not accepted for clearing within such deadlines.

- PET data reporting deadlines for SD or MSP reporting counterparties will be phased in over two years.

- PET data reporting deadlines for non-SD/MSP reporting counterparties will be extended and phased in over three years, and will exclude weekend days and legal holidays. For example, while the NOPR set the non-SD/MSP reporting counterparty PET data reporting deadline for an uncleared swap at 24 hours, the final rule calls for reporting no later than 48 business hours after execution (during the first year of reporting), 36 business hours after execution (during the second year of reporting), or 24 business hours after execution (thereafter).

- To reduce possible burdens on small non-SD/MSP counterparties entering into a swap with an SD or MSP, if the non-reporting counterparty is a non-SD/MSP counterparty that is not a financial entity, and if primary economic terms are not verified electronically,

PET data reporting deadlines for the SD or MSP reporting counterparty will be further extended and phased in over three years, and will exclude weekend days and legal holidays.

- Confirmation data reporting deadlines for SD or MSP reporting counterparties where confirmation is non-electronic will be extended, and will exclude weekend days and legal holidays.

- Confirmation data reporting deadlines for non-SD/MSP reporting counterparties will be extended and phased in over three years, and will exclude weekend days and legal holidays. The final rule calls for such counterparties to report confirmation data no later than 48 business hours after confirmation (during the first year of reporting), 36 business hours after confirmation (during the second year of reporting), or 24 business hours after confirmation (thereafter).

- For off-facility, uncleared swaps, during the first six months following the applicable compliance date, while PET data will have to be reported electronically with data normalized in data fields, reporting counterparties for whom reporting confirmation data normalized in data fields is not yet technologically practicable may report required confirmation data by transmitting an image of all documents recording the confirmation. This will allow needed additional time for development of schemas for data reporting and implementation by non-SD/MSP counterparties. Electronic reporting of all confirmation data normalized in data fields will be required after this six month period.

Charts showing the final rule reporting requirements with respect to both creation data reporting and continuation data reporting can be seen below at pages 70 and71.

Reporting burden reductions for non-SD/MSP reporting counterparties. As a result of the streamlined reporting regime and extended, phased-in reporting deadlines noted above, the final rule eliminates all reporting obligations for non-SD/MSP reporting counterparties in many cases, and phases in or reduces them in virtually all other cases. Non-SD/MSP reporting counterparties must report data only for the small minority of swaps in which both counterparties are non-SD/MSP counterparties. Even within this small minority of swaps, a non-SD/MSP reporting counterparty will have no reporting obligations for on-facility, cleared swaps, or for off-facility swaps accepted for clearing within the applicable deadline for PET data reporting. If an off-facility swap is accepted for clearing after the PET data reporting deadline, the non-

SD/MSP reporting counterparty is excused from reporting confirmation data and continuation data, which instead will be reported by the DCO. For on-facility, uncleared swaps, a non-SD/MSP reporting counterparty's reporting obligations are limited to reporting continuation data during the existence of the swap. For off-facility, uncleared swaps, creation data reporting deadlines for a non-SD/MSP reporting counterparty have been extended and phased in as noted above, and no longer include weekend days or holidays. The deadline for a non-SD/MSP reporting counterparty to report changes to primary economic terms over the life of the swap has been lengthened from reporting on the day such a change occurs to reporting by the end of the second business day following the date of such a change; and a non-SD/MSP reporting counterparty will be required to report valuation data on only a quarterly rather than a daily basis.

d. Allocations. As set forth more fully below in the discussion of USIs, the Commission received and has considered comments and industry requests for clarification concerning USI creation and swap creation data reporting in the case of swaps involving allocation by an agent to its clients who are the actual counterparties on one side of the swap. In response to these requests, the final rule will address both USI creation and creation data reporting for swaps involving allocation, as set forth in the discussion of USIs below.

e. Reporting of multi-asset swaps and mixed swaps. After considering comments concerning how multi-asset swaps and mixed swaps should be reported, the Commission has determined that the final rule should provide for mixed swaps to be reported to both an SDR registered with CFTC and an SDR registered with SEC.[34] Reporting to a dual-registered SDR would satisfy this requirement, but would not be required. To ensure regulatory ability to track

[34] Such dual reporting would avoid any need for an SDR accepting swaps only in a CFTC-regulated asset class to dual-register with the SEC merely because it might receive a report for a mixed swap in part subject to SEC jurisdiction.

mixed swaps and aggregate data concerning them, the final rule will add a "mixed swap" checkbox field to the tables of minimum primary economic terms. To avoid double-counting of mixed swaps, the final rule requires the reporting entity or counterparty to obtain a USI for the swap from the first SDR to which the swap is reported, and to include that USI in the data concerning the swap reported to the second SDR to which the swap is reported.

For multi-asset swaps, the final rule requires reporting to a single SDR accepting swaps in the asset class determined by the registered entity or counterparty reporting the swap to be the first or primary asset class involved in the swap. To ensure regulatory ability to track the swap in all asset classes involved, the final rule will add two data fields to the tables of minimum primary economic terms, one for indication of the first or primary asset class involved in the swap (which must be an asset class accepted by the SDR), and the second for indication of the other asset class or classes involved in the swap.

f. Reporting of international swaps. The Commission agrees with international regulators with whom the Commission has consulted who have suggested that it is important for the final rule to include a mechanism that enables the Commission and other regulators to identify international swaps reported to multiple repositories, so that such swaps are not double-counted by regulators. The Commission is mindful of the fact that the Dodd-Frank Act directs the Commission to consult and coordinate with foreign regulatory authorities regarding establishment of consistent international standards for the regulation of swaps and swap entities. The Commission also believes that providing an accurate picture of the swap market to regulators is one of the fundamental purposes of the Dodd-Frank Act. For these reasons, and in order to clarify its intent concerning swap data reporting in this context, the Commission has determined that the final rule will address the reporting of "international swaps," defined for

clarity as those swaps that may be required by U.S. law and the law of another jurisdiction to be reported both to an SDR registered with the Commission and to a different trade repository registered with the other jurisdiction.[35] In order to help provide for international swaps the consistent international standards sought by the Dodd-Frank Act, the final rule provides that for each international swap that is reported to both a U.S.-registered SDR and a foreign trade repository, the reporting counterparty shall report to the U.S.-registered SDR, as soon as practicable, the identity of the foreign trade repository, and the swap identifier used by that foreign trade repository to identify that swap.[36] If necessary, the reporting counterparty shall obtain this information from the non-reporting counterparty. The Commission believes that these provisions are a logical outgrowth of the swap data reporting provisions of the NOPR and of the statutory call for international consultation and consistent international standards.

C. Swap Data Reporting: Continuation Data – § 45.4

1. PROPOSED RULE. As noted above, in order to ensure timeliness, accuracy, and completeness with respect to the swap data available to regulators, the proposed rule called for reporting of swap data from each of two important stages of the existence of a swap: the creation of the swap, and the continuation of the swap over its existence until its final termination or expiration. During the continued existence of the swap, the NOPR required reporting of three types of continuation data: (a) either life cycle event data or state data (depending on the reporting method involved) that reflects all changes to the swap; (b) contract-intrinsic data, meaning scheduled, anticipated events that do not change the contractual terms of the swap, such

[35] This definition does not add a new requirement for the reporting of swaps not otherwise required to be reported.

[36] Under the final rule provisions in § 45.6 of this part concerning unique swap identifiers, the non-reporting counterparty will receive the USI for the swap from the SDR, and thus will be able to provide it to the non-U.S. trade repository on request.

as an anticipated rate adjustment; and (c) valuation data that reflects the current value of the swap, such as the daily mark-to-market.

As proposed, the rule specified the reporting method to be used in each asset class for reporting all changes to the swap. For credit swaps and equity swaps, the NOPR called for reporting life-cycle events—meaning any event resulting in a change to data previously reported in connection with the swap, such as an assignment or novation, a partial or full termination of the swap, or a change in the cash flows originally reported—on the day that such an event occurs. For foreign exchange transactions, interest rate swaps, and other commodity swaps, the NOPR called for a daily report of state data—meaning all data necessary to provide a daily snapshot view of the primary economic terms of the swap, including any changes since the last snapshot.

For cleared swaps, the NOPR required daily valuation data reporting by the DCO, daily valuation data reporting by SD or MSP reporting counterparties, and valuation data reporting by non-SD/MSP reporting counterparties at intervals to be determined prior to issuance of the final rule.

2. COMMENTS RECEIVED. The Commission received several comments from a variety of commenters concerning the proposed rule's continuation data reporting provisions. These comments addressed reporting with respect to changes to the terms of the swap, contract intrinsic events, valuation, and master agreements and collateral.

a. Reporting changes to a swap. The broad themes of the comments received concerning reporting changes to a swap addressed the reporting method—life cycle or snapshot—to be used, the timing and frequency of reports, and the choice of who should make the required reports.

Reporting method. As noted above, the NOPR prescribed the data reporting method to be used in each asset class to report changes to the primary economic terms of the swap. TriOptima and the Electric Coalition agreed that the rule should specify the method used in each asset class, and supported the NOPR's choices in that respect. ICE recommended adopting the lifecycle method rather than the snapshot method for the other commodity asset class. ISDA, SIFMA, REGIS-TR, and DTCC recommended having the rule not make the choice between the lifecycle and the snapshot reporting method for each asset class, but rather allowing SDRs to decide whether to accept data by either or both methods. SunGard recommended that the Commission delegate the choice to a self-regulatory organization or standards board.

Timing for reporting changes. Various non-SD/MSPs involved in energy markets, including AGA, COPE, EEI, EPSA, and the Electric Coalition, argued that daily snapshot reporting would be unduly burdensome for non-SD/MSP reporting counterparties. COPE, EEI, and EPSA advocated requiring a snapshot only when a change to primary economic terms has occurred. AGA suggested reporting a monthly snapshot, while the Electric Coalition advocated a quarterly snapshot.

Change reporting for cleared swaps. ICE, a number of non-SD/MSPs involved in energy markets including WGCEF, EEI, EPSA, and Chris Barnard recommended having continuation data reporting for cleared swaps done solely by DCOs. WGCEF noted that counterparties to swaps that are both platform-executed and cleared, the counterparties may not know each other's identity, which could make determination of the reporting counterparty difficult.

Reporting of contract-intrinsic events. ISDA and SIFMA suggested that the Commission should not require reporting of contract-intrinsic events, i.e., events that do not result in any change to the contractual terms of the swap. These commenters noted that the SEC's proposed

data reporting rule for security-based swaps does not include such a requirement, and argued that reporting of such events is unnecessary if they are in the public domain. At a minimum, ISDA and SIFMA suggested limiting reporting of such events to reporting along with the next required life cycle event report.

Reporting corporate events of the non-reporting counterparty. For non-cleared swaps, ISDA and SIFMA requested that the final rule allow additional time for the reporting counterparty to report corporate events of the non-reporting counterparty, arguing that the reporting counterparty may not know of such events on the same day that they happen.

b. Valuation data reporting. The themes of the comments received regarding valuation data reporting included: who should report valuation data for cleared swaps; valuation data reporting by non-SD/MSP reporting counterparties; what valuation data should be reported; requiring independent valuations; and acceptable valuation methods.

Who should report valuation data for cleared swaps. A number of commenters, including ICE, WGCEF, EEI, EPSA, and Chris Barnard, recommended that all valuation data reporting for cleared swaps should be done by the DCO. COPE, EEI, EPSA, and the Electric Coalition suggested that non-SD/MSP reporting counterparties should not have to report valuation data for either cleared or uncleared swaps.

Valuation data reporting by non-SD/MSP reporting counterparties. The NOPR required non-SD/MSP reporting counterparties to report valuation data for both cleared and non-cleared swaps, at intervals to be determined by the Commission prior to issuance of the final rule. FHLB and a number of commenters in the energy sector suggested that valuation reporting requirements for non-SD/MSP counterparties be either loosened or eliminated. FHLB recommended weekly valuation reporting by non-SD/MSP reporting counterparties, arguing that

this should be sufficient for regulatory purposes and would avoid forcing end users to implement the costly infrastructure needed to generate daily valuation reports. AGA suggested monthly valuation reporting by non-SDs/MSPs, since daily reporting would be unduly burdensome for them. The Electric Coalition recommended quarterly reporting. Chatham Financial supported valuation reporting only when swap portfolios are reconciled, since (in their view) non-SD/MSP counterparties will lack the systems and staff necessary to produce valuations and thus would have to pay third-party service providers for them. As noted above, COPE, EEI, EPSA, and the Electric Coalition urged that non-SD/MSP reporting counterparties should not have to report valuation data at all.[37]

What valuation data should be reported. ISDA and SIFMA asked the Commission to note that valuation data for uncleared swaps will not be "same day," but will refer to portfolio valuation on the close of the preceding day, since these valuations are typically performed overnight. Reval urged required reporting of all data elements necessary to determine the market value of the swap, and suggested that independent valuation calculations by third parties such as SDRs should be required. Reval also suggested requiring that valuation data be reported on a portfolio basis rather than a transaction basis. ICE suggested that DCO valuation data reports should consist solely of daily price marks, and that SDRs should be required to calculate valuation amounts for each open trade. SunGard asked the Commission to provide guidance on acceptable methods of valuation for uncleared swaps, either in the final rule or by industry consensus.

[37] These commenters argued that valuation of swaps between non-SD/MSP counterparties did not cause the financial crisis and was not the target of the Dodd Frank Act, and contended that the Dodd-Frank Act does not authorize requiring non-SD/MSP counterparties (especially those that are not financial entities) to report valuation data. They also contended that the value of standardized swaps is transparent from market data, while the value of illiquid, non-standard swaps is merely based on a business judgment.

c. Possible reporting of master agreements or collateral. The NOPR required registered entities and swap counterparties to keep full and complete records concerning swaps, which would include records of master agreements. The NOPR did not require reporting the terms of such agreements to SDRs, but requested comment on whether a separate master agreement library system should be established as part of an SDR.

Should a master agreement library system be established? Commenters disagreed on whether master agreement reporting should be required. Chatham Financial and the Coalition of Derivatives End-Users ("CDEU") recommended that the Commission carefully consider the costs and benefits of master agreement reporting prior to instituting such a requirement. They noted that if such reporting went beyond submission of PDF copies of master agreements, market participants (especially end users) would find it labor intensive and tedious to extract legal terms from the documents. The Electric Coalition, American Benefits Council ("ABC"), and CIEBA also emphasized the need to minimize burdens involved in any required master agreement reporting. ISDA and SIFMA recommended against a master agreement library, stating that a centralized effort to capture documentation would need to be much wider than master agreements; would be duplicative of existing industry investments; would not provide regulators with particularly meaningful data given the slow rate of change of these documents; and would not provide information above and beyond that which would be readily obtained from regulated firms. Reval suggested establishment of a separate SDR for master agreements and related credit support agreements, in order to enhance regulators' ability to measure systemic risk. ABC and CIEBA suggested that master agreements be reported once to a separate library at an SDR, with amendments reported to the same SDR. The Electric Coalition recommended

limiting master agreement-related reporting to the reporting of master agreement identifiers rather than of agreements themselves, in order to lessen reporting burdens.

Should a collateral warehouse system be established? The NOPR required registered entities and swap counterparties to keep full and complete records concerning swaps, which would include records concerning collateral. It did not require reporting concerning collateral, but requested comment on whether a separate collateral warehouse system should be established as part of an SDR, to enable prudential regulators to monitor collateral management and gross exposure on a portfolio level. SunGard, ISDA, SIFMA, DTCC, and TriOptima recommended establishing a separate collateral repository, noting that collateral information is important for systemic risk management, but not possible in transaction-based reporting since collateral is dealt with at a portfolio level. They suggested that this would also provide a superior form of valuation information. Chatham Financial suggested that the benefits of a collateral warehouse and reporting concerning collateral may not outweigh the costs involved, due to the potential for highly customized terms and the complexity and difficulty of representing the terms of relevant agreements electronically.

3. FINAL RULE: § 45.4. The Commission has considered and evaluated these comments, and has made a number of changes in the final rule. Accordingly, the continuation data provisions of the final rule will include the following changes from the NOPR.

a. Reporting changes to a swap.

Reporting method. The Commission believes the general principle applicable to continuation data reporting should be that current information concerning all swaps must be available to regulators in SDRs in order to fulfill the purposes of the Dodd-Frank Act. Based on comments, meetings with market participants, roundtable discussions, and consultation with

other regulators, the Commission has determined that the final rule can serve this principle without mandating one particular reporting method, whether life cycle or snapshot, for continuation data reporting. Accordingly, the final rule requires registered entities and reporting counterparties to report continuation data in a manner sufficient to ensure that the information in the SDR concerning the swap is current and accurate, and includes all changes to any of the primary economic terms of the swap. The final rule will leave to the SDR and registered entity and reporting counterparty marketplace the choice of the method, whether life cycle or snapshot, for reporting continuation data that is sufficient to meet this requirement. This approach could also help to address reporting time concerns raised by commenters, since reporting counterparties would not be required to report on a daily basis if the SDR in question accepts life cycle reporting.[38]

Timing for reporting changes. Given the regulatory importance of ensuring that information in SDRs is current, and, in the Commission's view, the availability of automated systems and staff to DCOs, SDs, and MSPs, the Commission believes it is necessary to require DCOs and SD or MSP reporting counterparties to make continuation data reports, by either reporting method, no later than the same day a relevant change occurs. The Commission has considered comments suggesting that same-day reporting could impose greater burdens on non-SD/MSP reporting counterparties than on SDs or MSPs, due to comparative differences in automated systems and staff, and the Commission is aware that swaps between non-SD/MSP counterparties are likely to constitute only a minority of all swaps. Accordingly, the final rule will call for non-SD/MSP reporting counterparties to report continuation data no later than the end of the second business day following the date of a relevant change during the first year of

[38] The flexibility of this approach should also ensure harmonization of the final rule with SEC rules in this respect: even if the SEC rules specify a reporting method for reporting to security-based swap data repositories, SDRs that accept mixed swaps will be free to accept reporting by any reporting method mandated by the SEC.

reporting, and no later than the end of the first business day following the date of a relevant change thereafter. The Commission has determined that this approach will lighten burdens on non-SD/MSP reporting counterparties without unduly degrading the currency of the information available to regulators in SDRs.

Change reporting for cleared swaps. The Commission has considered, and agrees with, commenters' suggestion that continuation data reporting will be best done by DCOs. For cleared swaps in all asset classes, the final rule will make DCOs the sole reporters of continuation data other than valuation data.

Reporting of contract-intrinsic events. The Commission has considered the comments addressing reporting of contract-intrinsic events. In light of the fact that contract-intrinsic events do not involve changes to the primary economic terms of a swap, and that most such events are in the public domain, and in order to reduce reporting burdens to the extent this can be done without impairing the purposes for which the Dodd-Frank Act requires swap data reporting, the Commission has determined that the final rule will not require reporting of contract-intrinsic events.

Reporting corporate events of the non-reporting counterparty. The Commission has considered the comments relating to the time when corporate events of the non-reporting counterparty must be reported, and has made a number of changes in the final rule. As noted above, the final rule requires reporting of changes to primary economic terms by SDs or MSPs on the day they occur, and (after a one-year phase in period) by non-SDs/MSPs by the end of the business day after they occur. With respect to reporting corporate events of the non-reporting counterparty, the final rule provides that SD and MSP reporting counterparties must report their own corporate events on the day they occur, and must report corporate events of the non-

reporting counterparty by the end of the business day following the date when they occur. In order to further reduce related burdens for non-SD/MSP reporting counterparties, the rule requires non-SD/MSP reporting counterparties to report their own corporate events by the end of the business day after the date on which they occur, and to report corporate events of the non-reporting counterparty by the end of the second business day following the date on which they occur. In complying with the final rule, reporting counterparties should use due diligence to ensure that the non-reporting counterparty notifies the reporting counterparty promptly of the non-reporting counterparty's corporate events affecting any primary economic term of the swap.[39]

b. Valuation data reporting for cleared swaps.

Who should report valuation data for cleared swaps. After considering comments received, the Commission has determined that for cleared swaps where the reporting counterparty is a non-SD/MSP, a DCO's valuation is sufficient for regulatory purposes. The final rule therefore will not require non-SD/MSP reporting counterparties to report valuation data for cleared swaps. Because prudential regulators have informed the Commission that counterparty valuations are useful for systemic risk monitoring even where valuations differ, the final rule requires SD and MSP reporting counterparties to report the daily mark for each of their swaps, on a daily basis.[40] The Commission notes that SDs and MSPs may choose, though they are not required, to provide to SDRs and to counterparties, in addition to the daily mark,

[39] Such due diligence could consist of requiring as one term of the swap agreement that the non-reporting counterparty notify the reporting counterparty promptly of corporate events of the non-reporting counterparty.

[40] The Commission notes that SDs and MSPs may choose, though they are not required, to provide to SDRs and to counterparties, in addition to the daily mark, methodologies and assumptions suffcient to validate the output from a model used to generate the daily mark, collectively referred to as the "reference model." Non-SD/MSP counterparties may also choose, thought they are not required, to provide a "reference model" in connection with valuation data reporting. Provision of a "reference model" does not require an SD, MSP, or non-SD/MSP counterparty to disclose proprietary information.

methodologies and assumptions sufficient to independently validate the output from a model generating the daily mark, collectively referred to as the "reference model. Provision of a "reference model" does not require an SD or MSP to disclose proprietary information.

Valuation data reporting by non-SD/MSP reporting counterparties. The Commission has considered the comments concerning valuation data reporting by non-SD/MSP counterparties. As noted above, the final rule will lessen valuation data reporting burdens for non-SD/MSP counterparties by eliminating the requirement that they report valuation data for cleared swaps. With respect to uncleared swaps between non-SD/MSP counterparties, the Commission has determined that the final rule should lessen valuation data reporting burdens for the non-SD/MSP reporting counterparty by requiring such reports less frequently than proposed, but should not eliminate such reporting entirely. While this category represents a minority of all swaps, the Commission believes that some valuation information should be present in SDRs for all swaps for regulatory purposes. The final rule requires non-SD/MSP reporting counterparties to report valuation data consisting of the current daily mark of the transaction as of the last day of each fiscal quarter, transmitting this report to the SDR within 30 calendar days of the end of each fiscal quarter. The Commission notes that non-SD/MSP reporting counterparties may choose, though they are not required, to provide to SDRs and to counterparties, in addition to the daily mark, methodologies and assumptions sufficient to independently validate the output from a model generating the daily mark, collectively referred to as the "reference model. Provision of a "reference model" does not require a non-SD/MSP reporting counterparty to disclose proprietary information. The final rule will further provide that if a daily mark of the transaction is not available, the reporting counterparty satisfies the valuation data reporting requirement by reporting the current valuation of the swap recorded on its books in accordance with applicable

accounting standards. The Commission believes that requiring valuation data reporting by non-SD/MSP reporting counterparties on a quarterly basis, when applicable law and accounting standards may require them to value their swaps for purposes of their own accounting, will minimize reporting burdens for such counterparties to the greatest extent commensurable with ensuring that valuation data essential for regulatory purposes is reported for such swaps.

What valuation data should be reported. The Commission is aware, as comments noted, that valuations of swaps are typically performed overnight. Accordingly, the final rule provides that the appropriate daily mark to report when a valuation data report is required is the most current daily mark available. The Commission disagrees with comments suggesting required reporting of all data necessary for an independent valuation of each swap and required performance of such valuations by SDRs or other third parties, calling for portfolio-level valuation data reporting, or suggesting that the final swap data reporting rule should determine the acceptable methods for valuing uncleared swaps. The Commission believes valuation is fundamentally in the purview of the market. Prudential regulators have informed the Commission that counterparty valuations are useful for systemic risk monitoring even where such valuations represent the view of one party, and even where such valuations may differ. The Commission believes that daily mark to market, the valuation required by the final rule, is the valuation appropriate for reporting on a transaction basis.

c. Possible reporting of master agreements or collateral.

Should a master agreement library system be established? After considering relevant comments, the Commission has determined that it should not require master agreement reporting in its first swap data reporting final rule. As noted in the *Joint Study on the Feasibility of Mandating Algorithmic Descriptions for Derivatives* released by the CFTC and SEC in April

2011, at present the terms of such agreements are not readily reportable in an electronic format, as the industry has not developed electronic fields representing terms of a master agreement.[41] The Commission also understands that reporting of master agreements could be initiated by the other regulators pursuant to separate and different regulatory authority. The Commission may choose to revisit this issue at some point in the future, if and when industry and SDRs develop ways to represent the terms of such agreements electronically.

Should a collateral warehouse system be established? After considering relevant comments, the Commission has determined that it should not require establishment of a collateral warehouse or reporting concerning collateral in its first swap data reporting final rule. As is the case with respect to the terms of master agreements, the industry has not yet developed electronic fields suitable for representing the terms required to report collateral. The Commission also understands that reporting with respect to collateral could be initiated by other regulators pursuant to separate and different regulatory authority. The Commission may choose to revisit this issue at some point in the future, if and when industry and SDRs develop ways to represent electronically the terms required for reporting concerning collateral.

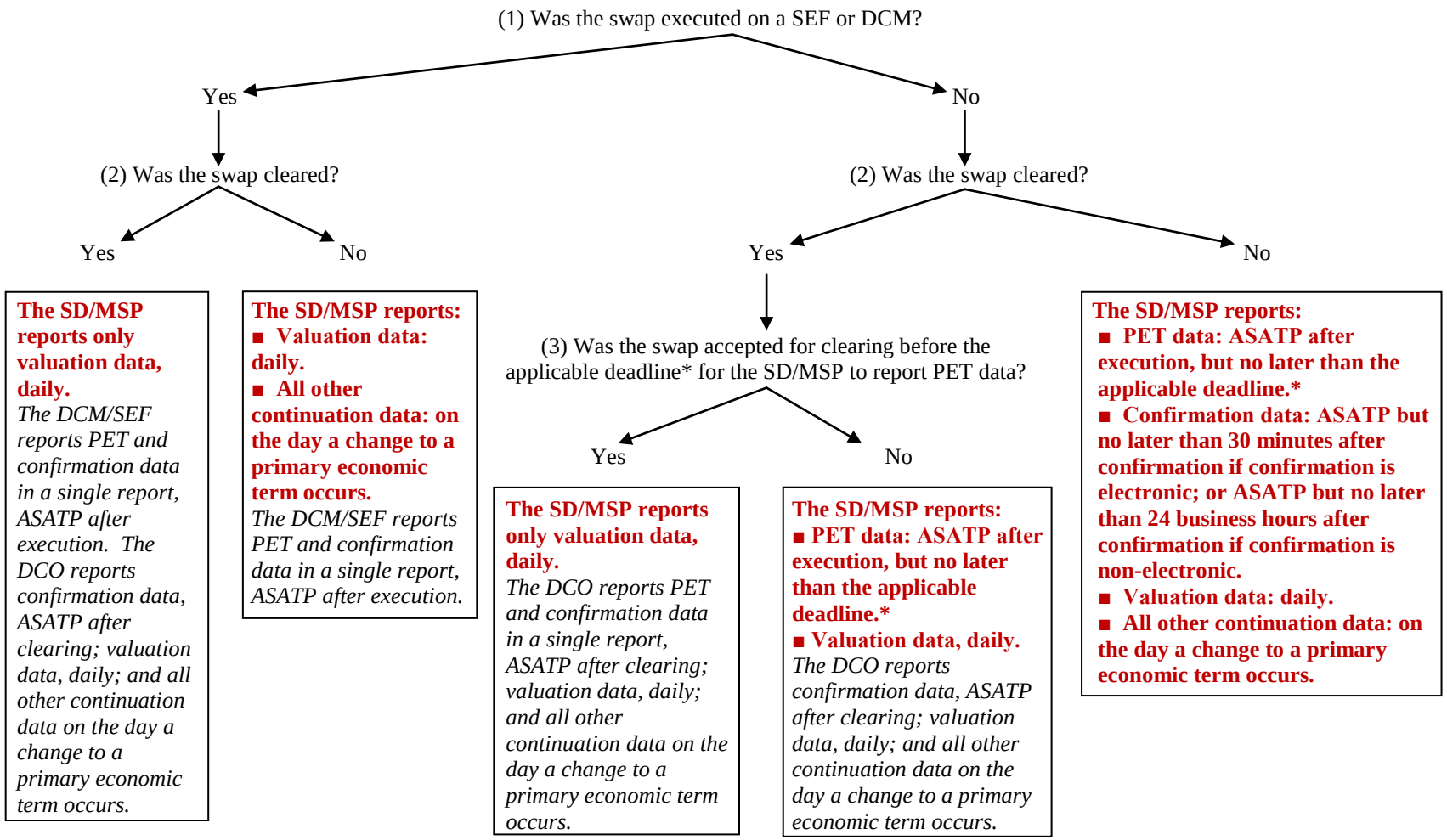
D. Summary of Creation Data and Continuation Data Reporting – §§ 45.3 and 45.4

As discussed above, the Commission is responding to comments concerning creation data reporting by creating a streamlined reporting regime that requires reporting by the registered entities or swap counterparties that the Commission believes have the easiest, fastest, and cheapest data access and those most likely to have the necessary automated systems; that minimizes burdens and costs for counterparties to the extent possible; and that provides certainty

[41] Commodity Futures Trading Commission and Securities and Exchange Commission, *Joint Study on the Feasibility of Mandating Algorithmic Descriptions for Derivatives*, April 7, 2011, available at http://www.sec.gov/news/studies/2011/719b-study.pdf.

to the market. The final rule provisions regarding creation data reporting obligations and deadlines for SD or MSP reporting counterparties, and for non-SD/MSP reporting counterparties, are summarized in the charts on the following two pages, respectively.

Reporting Obligations Flowchart When An SD or MSP Is The Reporting Counterparty

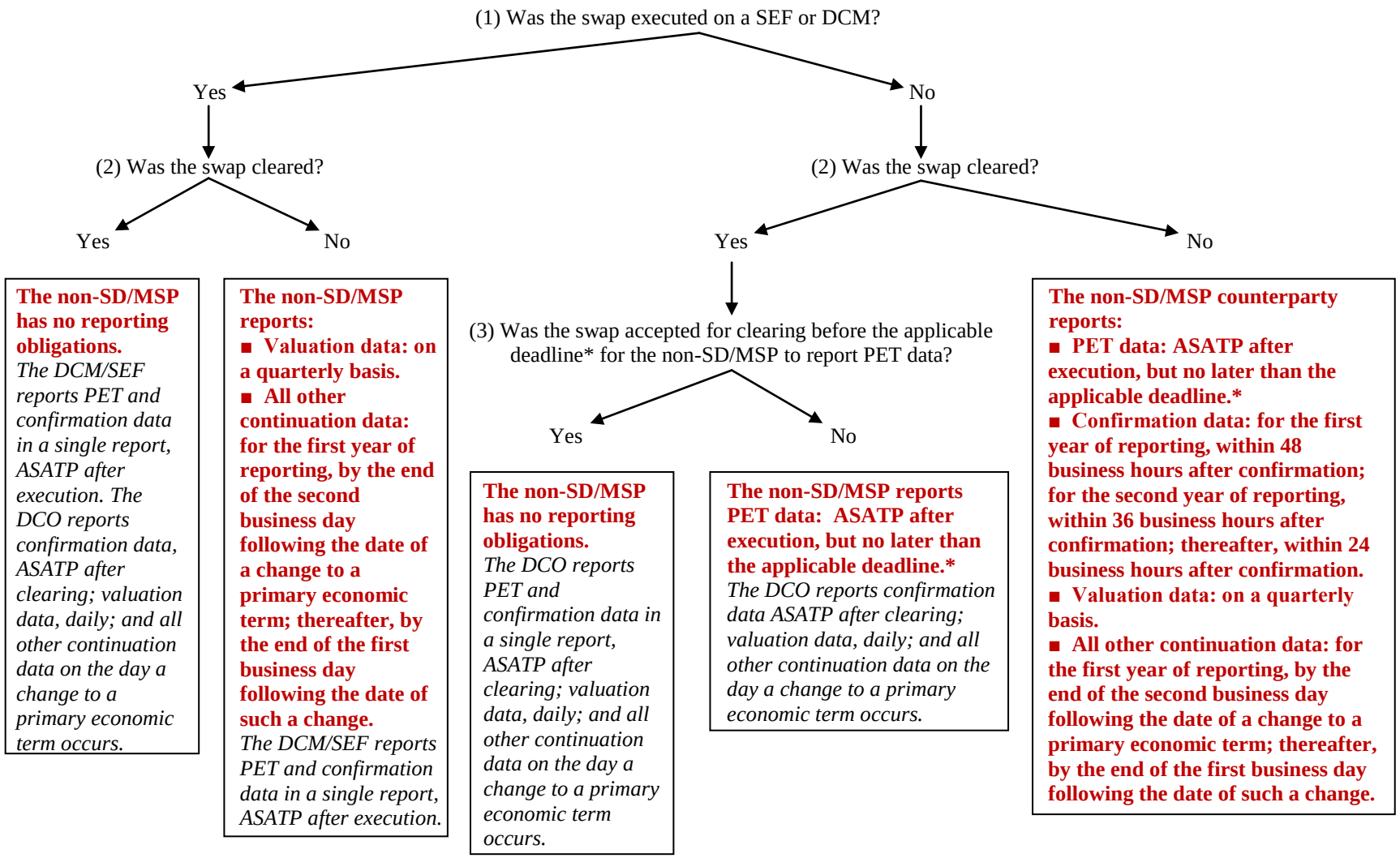


* Swap subject to mandatory clearing: 30 minutes after execution (year 1), 15 minutes after execution (thereafter).

Swap not subject to mandatory clearing (credit, equity, FX, rates): 1 hour after execution (year 1), 30 minutes after execution (thereafter). But if the non-RCP is not a financial entity, and verification is not electronic: 24 business hours after execution (year 1), 12 business hours after execution (year 2), 30 minutes after execution (thereafter).

Swap not subject to mandatory clearing (other commodities): 4 hours after execution (year 1), 2 hours after execution (thereafter). But if the non-RCP is not a financial entity, and verification is not electronic: 24 business hours after execution (year 1), 12 business hours after execution (year 2), 30 minutes after execution (thereafter).

Reporting Obligations Flowchart When A Non-SD/MSP Counterparty Is The Reporting Counterparty



* Swap subject to mandatory clearing: 4 hours after execution (year 1), 2 hours after execution (year 2), 1 hour after execution (thereafter)

Swap not subject to mandatory clearing: 48 business hours after execution (year 1), 36 business hours after execution (year 2), 24 business hours after execution (thereafter)

F. Unique Swap Identifiers – § 45.5

1. PROPOSED RULE. The NOPR required that each swap subject to the Commission's jurisdiction be identified in all swap recordkeeping and data reporting by a unique swap identifier ("USI"). The NOPR provided for a "first-touch" approach to USI creation, with the USI created by SEFs and DCMs for facility-executed swaps, by SDs and MSPs for off-facility swaps in which they are the reporting counterparty, and by SDRs for off-facility swaps between non-SD/MSP counterparties (who may lack the requisite systems for USI creation).

2. COMMENTS RECEIVED.

a. First-touch creation of USIs. Most comments concerning the USI received by the Commission via comment letters, roundtables, and meetings with industry and other regulators supported use of a USI that will enable regulators to track and aggregate all information concerning a single swap throughout its existence, and supported the NOPR's first-touch approach to USI creation. DTCC supported the first-touch approach, while noting that SDRs could also create USIs and transmit them to the counterparties to the swap (as the NOPR provides for swaps between non-SD/MSP counterparties). WGCEF approved having USIs assigned when a swap is executed. Global Forex supported USI creation at the time the swap is executed, while pointing out that in the foreign exchange context, where some pre-trade allocation occurs and some firms book the trade upon receipt of a message that their price has been hit, it could be necessary in some cases to append the USI to an already-created record in a firm's automated systems.[42] CME suggested that USIs should not be created and issued by a single coordinating registry, but should be created by market participants as provided in the NOPR, using common standards that can be applied free of charge. TriOptima indicated a

[42] Global Forex still preferred USI creation at the time of execution over creation at the point of order submission, since the latter would create a risk of cancelled and non-sequential USIs in the event a trade is cancelled.

preferences for having SDRs create the USI, with reporting entities or counterparties using their own local trade identifiers in reporting to the SDR, which can map the local identifiers to the USI. ISDA, SIFMA, and CME asked the Commission to clarify further the purpose and intended use of USIs. Some roundtable participants suggested that one way to ensure the uniqueness of USI codes created by different registered entities would be for the registered entity creating a USI to use an appropriate random number generator.

b. Impact of allocation on USIs. TriOptima suggested that the Commission should clarify the creation and use of USIs in the context of allocation, observing that where allocation follows execution, it may not be obvious whether or not a new USI should be assigned. TriOptima suggested that rules addressing this issue are needed. Other market participants also requested clarification concerning USI creation and swap creation data reporting in the context of allocation.

c. Impact of post-execution events on USIs. Thomson Reuters, TriOptima, and the WGCEF requested clarification regarding the impact on USI codes of events such as compression, assignments, partial terminations, changes to counterparty names, purchases, acquisitions, or deactivation. Thomson Reuters suggested that when multiple swaps are combined during their existence, the unique swap identifier should have alternative tracking numbers externally linked to the original USI.

d. USIs for historical swaps. Although this issue pertains to part 46 rather than part 45, TriOptima suggested in its part 45 comment that USIs should be assigned to historical swaps when they are first reported to an SDR. TriOptima noted that giving USIs only to swaps entered into after the applicable compliance date would create a long transition period during which there are live contracts with and without USIs, which TriOptima believed would be technologically

problematic. TriOptima recognized that introducing USIs for existing transactions would be a large undertaking. It suggested that reporting entities create USIs for historical swaps using the name-space method (combining a code for the assigning entity and a USI code unique within that entity).

3. FINAL RULE: § 45.5.

a. First-touch creation of USIs. After considering the comments received, the Commission has determined that, as provided in the NOPR, the final rule requires each swap subject to the Commission's jurisdiction to be identified in all recordkeeping and swap data reporting pursuant to this part by a USI, created through a first-touch approach. The Commission believes that USIs will benefit both regulators and counterparties, by facilitating aggregation of all data concerning a given swap (including creation data, continuation data, and error corrections, reported by execution platforms, clearing houses, and counterparties) into a single, accurate data record that tracks the swap over its duration. USIs are essential to giving regulators the ability to track swap transactions throughout their lives. In addition, USIs provide an efficient means of assuring that transactions are not double counted when producing summary reports. This is particularly important where transactions may be reported to multiple SDRs, for example where a counterparty may be required to report a transaction to a foreign SDR.

Having the USI created when the swap is executed, i.e., at the earliest possible point, will best ensure that all market participants involved with the swap, from counterparties to platforms to clearinghouses to SDRS, will have the same USI for the swap, and have it as soon as possible. This will avoid confusion and potential errors.[43] It will avoid delays in submitting an executed swap for clearing while waiting for receipt of a USI from creation at a later time, and will

[43] The Commission disagrees with TriOptima's suggestion that reporting entities should always use their own identifiers in reporting to SDRs during the life of a swap. This would require the SDR to match the entity's internal ID with the USI every time data is submitted, and is not the more efficient approach.

minimize to the extent possible the need to alter pre-existing records concerning the swap in various automated systems to add the USI. As the sole exception to first-touch USI creation, designed to reduce burdens on non-SD/MSP reporting counterparties who may lack the technical sophistication or automated systems needed for USI creation, the final rule will maintain the NOPR provision calling for the USI for each swap between non-SD/MSP counterparties to be created by the SDR to which the swap is reported.

To ensure the uniqueness of USIs created by registered entities as provided in the final rule, the final rule will follow the NOPR in prescribing USI creation through what is known as the "name space" method. Under this method, the first characters of each USI will consist of a unique code that identifies the registered entity creating the USI, given to the registered entity by the Commission during the registration process.[44] The remaining characters of the USI will consist of a code created by the registered entity that must be unique with respect to all other USIs created by that registered entity. While the Commission will not prescribe the means for ensuring the uniqueness of each USI created by a registered entity, Commission staff may work with registered entities to identify random number generators sufficiently capable for this purpose.

b. Impact of allocation on USIs. The Commission has considered the comments and industry requests for clarification it received concerning USI creation and swap creation data reporting in the case of swaps involving allocation by an agent to its clients who are the actual counterparties on one side of the swap. In response to these requests, the final rule will address both USI creation and creation data reporting for swaps involving allocation.

[44] The registration paperwork established pursuant to the SEF, DCM, SD, MSP, and SDR registration rules will include provision of such a code to the registrant.

The Commission understands that in the allocation context, a firm acting as an agent enters into a swap, typically with an SD (or possibly an MSP), and then allocates its side of the swap to its clients on whose behalf it arranged the swap. The clients of the agent, who are the actual counterparties to the SD, must have pre-existing ISDA agreements or similar agreements with the SD in order for the transaction to take place. At the time of execution, the SD knows that the firm acting as agent as only an agent and is not the SD's actual counterparty for the swap, and it knows that the agent's clients are its actual counterparties; but it does not yet know for this particular swap the identity of the agent's clients that are its counterparties. The agent firm allocates its side of the swap within a relatively short time after execution, and the agent (or a third party service provider acting on its behalf) then informs the SD of the identities of its counterparties.[45] Market participants have informed the Commission that allocation is not algorithmic, due to particular requirements of the agent's clients, and that it typically requires two or more hours but is always completed by the end of the business day on which the swap was executed. The result of allocation is that a single swap transaction created at the moment of execution is replaced by several swaps, for each of which the counterparties are the SD and one of the agent's clients.[46]

To provide the clarification requested by commenters as noted above, the Commission has determined that the final rule should specifically address the creation of USIs and the reporting of required swap creation data in the context of allocation.[47] Because real time reporting must occur as soon as technologically practicable after execution of a swap, and

[45] In the case of cleared swaps, allocation precedes submission to the DCO for clearing.

[46] This situation is distinct from cases where, for example, a hedge fund enters into a swap as a principal, and later enters into separate swaps with its own clients (who often are funds) to offset its risk from the first swap in which it was a principal.

[47] The allocation provisions of the final rule do not create reporting requirements additional to those included in the NOPR, since the NOPR required, as mandated by CEA section 2(a)(13)(G), that all swaps must be reported.

because it is important for the exposure of the reporting counterparty to be available to regulators in an SDR as soon a technologically practicable after execution, the Commission believes it is necessary for the original transaction between the SD and the agent to be reported. However, because the SD's actual counterparties are the clients of the agent and not the agent, the Commission believes it is also necessary for each individual swap between the SD and one of the agent's clients to also be reported. To avoid double-counting of swaps in the allocation context, it is necessary to be able to map together the original transaction and the post-allocation swaps.

Accordingly, the final rule provides that, in the context of allocation, the reporting counterparty must create a USI for the swap arranged between it and the agent, and report that swap to an SDR as soon as technologically practicable after execution. The PET data for such a swap will include an indication that the swap will be allocated, and include the LEI (or substitute identifier) of the agent, but not the LEIs of the clients who are the non-reporting counterparties, since they will not yet be known to the reporting counterparty.

The final rule will also allow the agent to inform the reporting counterparty of the identities of its actual counterparties as soon as technologically practicable after execution, but not later than eight business hours after execution. The Commission understands that major firms acting as agents in the allocation context can allocate in a shorter time, but that smaller firms acting as agents typically allocate by the end of the business day. The Commission believes that a deadline of eight business hours will appropriately take into account the needs of such smaller firms.

Finally, the final rule requires the reporting counterparty to create a USI for each of the individual swaps resulting from allocation, and to report each such swap as soon as technologically practicable after it is informed by the agent of the identities of its actual

counterparties, the clients of the agent (which must occur as soon as technologically practicable after execution or at least within eight business hours of execution, as provided above). To prevent confusion or errors with respect to the data reported, and to avoid double-counting, the final rule requires that the report to the SDR for each post-allocation swap must include: an indication that the swap is a post-allocation swap; the USI of the original transaction; the USI of the post-allocation swap; the LEI of the actual counterparty; and the LEI of the agent. The final rule will also require the SDR to which the swaps are reported—which must be the same SDR to which the original transaction is reported—to map together the USIs of the original swap and of each of the post-allocation swaps.

The Commission is adopting these USI and creation data reporting requirements in the context of allocation in response to comments seeking clarification on reporting in this context, as noted above, and in order to ensure that the Commission and other regulators can track the entire history of swaps in the context of allocation.

c. Impact of post-execution events on USIs. The Commission has noted comments requesting that the final address the impact of post-execution events on USIs. In response to these comments, the final rule provides that USI codes created at the time of execution using the first-touch approach will only be replaced where a new swap takes the place of an old swap, such as where a compression or full novation has occurred. Under the final rule, in such cases a new USI will be assigned to the new swap, and the SDR to which the swap has been reported will be required to map the new USI back to the USIs of the swaps from which the new swap originated, in a manner sufficient to allow the Commission and other regulators to follow the entire history and audit trail of each affected swap. In the case of events that do not result in the creation of a

new swap, such as partial terminations or changes to counterparty names, the swap in question will retain the USI code originally assigned to it.

d. USIs for historical swaps. The Commission agrees with the comment suggesting that it would undesirable and possibly technologically problematic to have live swaps both with and without USIs recorded in SDRs for an extended period. The Commission believes that for historical swaps, SDRs will be the best creators of USIs. The Commission will address this issue in its final part 46 rule for historical swaps.

G. Legal Entity Identifiers – § 45.6

1. PROPOSED RULE. The NOPR required that each counterparty to any swap subject to the Commission's jurisdiction be identified in all swap recordkeeping and data reporting by an legal entity identifier ("LEI") (referred to in the NOPR as a unique counterparty identifier or "UCI") approved by the Commission. The NOPR established principles that an LEI must follow for it to be designated by the Commission as the LEI to be used in swap data recordkeeping and reporting pursuant to the Commission's Regulations.[48] These principles included:

- Uniqueness (one LEI per legal entity, never re-used).
- Neutrality (a single-field identifier format containing no embedded intelligence).
- Verifiability (a reliable method of verifying the identity of holders of LEIs, avoiding assignment of duplicate identifiers, and maintaining accurate reference data).
- Reliability (data protection and system safeguards).
- Open source (an open data standard and format capable of broad use, that enables data aggregation by regulators).
- Extensibility (capability of becoming the single international standard for unique identification of legal entities in the financial sector on a global basis).

[48] In this summary of the principles that were discussed in the NOPR preamble concerning Unique Counterparty Identifiers and set forth in § 45.4(b) of the NOPR, paragraph headings that have come into common use in international discussions of principles for the LEI, but that do not change the substance of the principles stated in the NOPR, have been added for clarity.

- Persistence (each LEI remains permanently in the record, regardless of corporate events, while a new entity resulting from a corporate event receives a new LEI).
- Development and issuance acceptable to the Commission (development via an international voluntary consensus standards body such as the International Organisation for Standardisation, and issuance through such a body and an associated registration authority).
- Governance and funding acceptable to the Commission (ensuring LEI availability to all, on a royalty-free or reasonable royalty basis, through an LEI issuance system operated on a non-profit basis).

The NOPR also called for establishment of a confidential, non-public LEI reference database, to which each swap counterparty receiving an LEI would be required to report reference data that would be associated with its LEI. Such reference data would include information sufficient to verify the identity of the counterparty receiving an LEI, both initially and at appropriate intervals thereafter (commonly called validation data or level one reference data).[49] It would also include information concerning the corporate affiliations of the counterparty, in order to enable the Commission and other financial regulators to aggregate data concerning all swap transactions within the same ownership group (commonly called hierarchy data or level two reference data). As provided in the NOPR, data in the reference database would be available only to the Commission, and to other regulators via the same data access procedures applicable to data in SDRs.

The NOPR stated the Commission's belief that optimum effectiveness of LEIs for achieving the systemic risk protection and transparency goals of the Dodd-Frank Act—goals shared by financial regulators world-wide, and repeatedly endorsed by the G-20 Leaders—would

[49] As noted, the NOPR called for reference data including both (1) information sufficient to verify the identity of the counterparty receiving an LEI, both initially and on an ongoing basis, as set forth in section 45.4(b)(3)(iv) of the NOPR, and (2) information concerning the corporate affiliations and ownership group of the counterparty, as set forth in section 45.4(b)(2) of the NOPR. For clarity, the final rule uses the terms "level one" and "level two" reference data, which have come into common international use in discussions of the LEI and LEI reference data, to refer to these two types of reference information addressed in the NOPR. These terms do not represent new data requirements beyond those proposed in the NOPR, but instead provide a succinct way to refer to the two types of reference data required in the NOPR.

come from a global LEI created on an international basis through an international voluntary-consensus standards body such as ISO. The NOPR also announced the Commission's intention to have the final part 45 rule prescribe use of such an international LEI in complying with the final rule, if an LEI meeting the principles established in the NOPR is available sufficiently prior to the compliance date on which swap data reporting will first begin pursuant to the final rule.

Accordingly, the NOPR provided that the Commission would determine, prior to the initial compliance date, whether such an LEI is available. If it were, the NOPR called for the Commission to designate that LEI as the LEI approved by the Commission for use in complying with the final rule, and to publish notice of that designation to inform registered entities and swap counterparties where they can obtain LEIs for use pursuant to the final rule.[50]

In the event that the Commission were to find when it makes this determination that an LEI meeting the criteria set forth in the NOPR is not then available, the NOPR provided that until such time as the Commission determines that such an LEI is available, registered entities and swap counterparties should comply with the final rule by using a unique counterparty identifier created and assigned by an SDR as described in the NOPR.

2. COMMENTS RECEIVED.

a. Endorsement of the LEI. The great majority of comments concerning the LEI received by the Commission via comment letters, roundtables, and meetings with both industry and other regulators strongly supported establishing an LEI to identify derivatives transaction counterparties and other financial firms involved in the world financial sector. Commenters supporting the LEI in comment letters included ISDA, SIFMA, Global Forex, GS1, Thomson

[50] The NOPR called for the Commission to make this determination at least 100 days prior to the initial compliance date, and to publish notice no later than 90 days prior to the initial compliance date, in order to give registered entities and swap counterparties subject to the final rule reasonable time in which to obtain LEIs for use as prescribed by the final rule.

Reuters, CME, ABC, Customer Data Management Group, CIEBA, and the Committee on Capital Markets Regulation.

The Commission also received input from both U.S. and international financial regulators, international regulatory organizations, and world leaders endorsing creation of the LEI addressed in the NOPR. The CPSS-IOSCO *Report on OTC Derivatives Data Reporting and Aggregation Requirements* recommends expeditious development of a global LEI, stating that:

> [A] standard system of LEIs is an essential tool for aggregation of OTC derivatives data. An LEI would contribute to the ability of authorities to fulfill the systemic risk mitigation, transparency, and market abuse protection goals established by the G20 commitments related to OTC derivatives, and would benefit efficiency and transparency in many other areas. As a universally available system for uniquely identifying legal entities in multiple financial data applications, LEIs would constitute a global public good. The Task Force recommends the expeditious development and implementation of a standard LEI that is capable of achieving the data aggregation purposes discussed in this report, suitable for aggregation of OTC derivatives data in and across TRs [trade repositories] on a global basis, and capable of eventual extension to identification of legal entities involved in various other aspects of the financial system across the world financial sector.[51]

The LEI technical principles recommended in the Report, and the Report's statements concerning governance and funding for the LEI issuance system, closely parallel the LEI principles set forth in the NOPR, as do the principles set forth by the OFR in its Statement of Policy concerning the LEI,[52] and those discussed in the SEC's proposed rule on data reporting for security-based swaps.[53] Both the FSB Plenary and the G-20 Finance Ministers and Central

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[51] Committee on Payment and Settlement Systems and Technical Committee of the International Organization of Securities Commissions, *Report on OTC Derivatives Data Reporting and Aggregation Requirements.* Issuance of this report by CPSS and IOSCO is anticipated during December 2012.

[52] Department of the Treasury, Office of Financial Research, *Statement on Legal Entity Identification for Financial Contracts*, November 23, 2010, available at http://www.treasury.gov/initiatives/Documents/OFR-LEI_Policy_Statement-FINAL.PDF.

[53] See Securities and Exchange Commission, Proposed Regulation SBSR – Reporting and Dissemination of Security-Based Swap Information, 17 CFT Part 240 (November 19, 2010).

Bank Governors have endorsed and supported creation and implementation of a global LEI.[54] At the conclusion of their November 2011 meeting in Cannes, France, the G20 Leaders announced their strong support for the LEI, stating in the Cannes Summit Final Declaration that: "We support the creation of a global legal entity identifier (LEI) which uniquely identifies parties to financial transactions."[55] Following the meeting, the White House underscored President Obama's support for the LEI, stating that:

> The Legal Entity Identifier (LEI) initiative will support better understanding of true exposures and interconnectedness among and across financial institutions. We need such understanding to assess and reduce risks to the financial system.[56]

b. LEI suggestions. Several comment letters received by the Commission also made specific suggestions and requests for clarification relating to the LEI. ISDA and SIFMA, Thomson Reuters, and AMG suggested that the unique counterparty identifier required by the final rule should be the same identifier as the legal entity identifier being developed under principles stated in the OFR policy statement concerning LEIs. Roundtable participants also suggested referring to the identifier as the LEI rather than the UCI, to avoid confusion. CME, Thomson Reuters, and most roundtable participants supported the NOPR principle calling for a neutral LEI with no embedded intelligence. WGCEF and TriOptima asked for guidance on how the LEI would relate to corporate events such as mergers and acquisitions. The Asset

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[54] At its July 2011 meeting, the FSB Plenary "welcomed the progress of financial regulators and industry to establish a single global system for uniquely identifying parties to financial transactions." FSB Press Release, July 18, 2011, available at https://www.financialstabilityboard.org/press/pr_110718.pdf. In their Communiqué at the conclusion of their October 2011 meeting, the Finance Ministers and Central Bank Governors of the G-20 said, "We underscored our support for a global legal entity identifier system which uniquely identifies parties to financial transactions with an appropriate governance structure representing public interest." Communiqué of Finance Ministers and Central Bank Governors of the G-20, Paris, France, October 14-15, 2011, available at http://www.g20.org/Documents2011 /10/G20%20communiqué%2014-15%20October%202011-EN.pdf.

[55] Cannes Summit Final Declaration, November 4, 2011, at 7, paragraph 31, available at http://www.g20.org/ Documents2011/11/Cannes%20Declaration%204%20November%202011.pdf.

[56] The White House, *G-20: Fact Sheet on U.S. Financial Reform and the G-20 Leaders' Agenda*, November 4, 2011, available at http://www.whitehouse.gov/the-press-office/2011/11/04/g-20-fact-sheet-us-financial-reform-and-g-20-leaders-agenda.

Management Group advocated assigning LEIs at the individual fund or account level rather than the legal entity level. ISDA, SIFMA and CME suggested that the LEI should be administered by a not-for-profit industry utility, and that an international directory of LEI holders should be available at no cost. CUSIP and GS1 suggested that they might be potential providers of a future LEI.

c. LEI reference data. With respect to level two or hierarchical reference data for the LEI, CME suggested clarifying whether the LEI is intended to simply identify a specific counterparty or to establish a counterparty's relationship with other entities. Global Forex noted that data confidentiality law in different jurisdictions could raise issues regarding access to level two reference data. The Asset Management Group recommended that the definition of control for purposes of reporting level two reference data should require at least majority ownership. DTCC recommended that SDRs should have access to the non-public LEI reference database for use in the construction of reports to regulators, such as reports based on net or aggregated positions.

d. Progress toward a global LEI. Since the Commission issued the proposed rule requiring use of LEIs in swap data reporting under CFTC jurisdiction, both international financial regulators and industry have made significant progress toward creation of the global LEI called for in the NOPR.

Voluntary consensus body standard. In response to the Commission's preference, set forth in the NOPR as noted above, to have swap counterparties identified by a universally-available LEI created on an international basis through an international "voluntary consensus standards body," the International Organisation for Standardisation has developed a new international technical standard for the LEI, *ISO 17442 Legal Entity Identifier (LEI)*. ISO is the

world's principal voluntary consensus standards body, which includes 162 member countries. Through its Technical Committee 68 ("TC 68"), the expert committee for standardization in the field of banking, securities, and other financial services, ISO has published 48 key standards for the financial sector, ranging the international securities identification numbering ("ISIN") code for securities, and the business identification code ("BIC") for banking telecommunication messages to the codes for exchange and market identification ("MIC"), and for classification of financial instruments ("CFI").[57] The ISO 17442 LEI standard received unanimous approval from TC 68 in June 2011, and it received unanimous support in the second round of voting by member countries in the ISO approval process that concluded on December 14, 2011.[58]

Industry recommendations. Also in response to the NOPR's call for an international, universally-adopted LEI, in January 2011 a global coalition of financial sector trade associations and organizations came together to develop an industry consensus on requirements and standards for the LEI, and make a recommendation concerning formation of an LEI utility to issue LEIs and validate the identity of their holders.[59] After extended discussions involving a broad cross-

[57] During the process of developing ISO 17442, ISO determined that existing codes for other financial sector purposes, such as BIC codes and ISIN codes, were not suited by design to provide unique identification of legal entities across the world financial sector, and that a new standard was needed for this purpose.

[58] TC 68 will address comments received during the approval process in January 2012.

[59] The global coalition included twelve trade association who endorsed the industry's *Requirements for a Global Legal Entity Identifier (LEI) Solution*, available at http://www.sifma.org/LEI-Industry-Requirements/. The included trade associations were the Association for Financial Markets in Europe, Asia Securities Industry and Financial Markets Association, British Bankers Association, Customer Data Management Group, The Clearing House Association L.L.C., Enterprise Data Management Council, Financial Services Roundtable, Futures Industry Association, Global Regulatory Identifier Steering Group, International Swaps and Derivatives Association, Investment Company Institute, and Securities Industry and Financial Markets Association. In addition, the following firms were party to the discussions leading to creation of *Requirements for a Global Legal Entity Identifier (LEI) Solution*: AllianceBernstein, Bank of America Merrill Lynch, Bank of New York Mellon–Pershing, Barclays Capital, Branch Banking & Trust Company, BlackRock, BNP Paribas, CIBC Wholesale Banking, Citi, Credit Suisse, Deutsche Bank, E*Trade Financial, Edward Jones, Federated Investments, Fidelity, GE Asset Management, GE Capital, Goldman Sachs, HSBC, Janney Montgomery Scott LLC, Jefferies, JP Morgan Chase, JWG, KeyBank, Loomis Sayles, Morgan Stanley, New York Life, Nomura, Northern Trust, Prudential, Royal Bank of Canada, Royal Bank of Scotland, R-Cube, Renaissance Technologies, Société Générale, State Street, T Rowe Price, Tradeweb, UBS, and Wells Fargo.

section of financial trade associations and both buy-side and sell-side firms from a wide range of countries, during the spring and summer of 2011 the global coalition issued a comprehensive set of requirements for a viable, international LEI; initiated a Solicitation of Interest process to identify one or more solution providers able to build, manage, and run an LEI utility to issue LEIs; evaluated formal responses from more than 10 potential providers; and issued three recommendations concerning implementation of the global LEI system. First, the global coalition recommended that the international technical standard for the LEI code itself be the new international standard developed by ISO, *ISO 17442 Legal Entity Identifier (LEI)*. Second, the coalition recommended that the LEI utility that conducts LEI reference data collection and maintenance, LEI assignment, and quality assurance be operated as a joint venture including SWIFT (the Registration Authority selected by ISO for the ISO 17442 standard) and DTCC and its subsidiary AVOX Limited (to be the facilities manager for the LEI utility). Finally, the coalition recommended that the Association of National Numbering Agencies ("ANNA"), through its global network of national numbering agencies, be a partner in federated LEI issuance in the home countries of legal entities receiving LEIs. At the FSB LEI Workshop (discussed below) and elsewhere, the global coalition has stated its willingness to have the structure of the joint venture created to serve as the LEI utility include a governing board controlled by international financial regulators including the Commission, with authority over the operations of the joint venture sufficient to ensure that the LEI utility maintains compliance with the principles established for the LEI by international financial regulators, including the principles established by the Commission.

The Commission understands that, in order to ensure as far as possible that LEIs can in fact be issued to swap counterparties subject to the Commission's jurisdiction prior to the initial

compliance date for swap data reporting pursuant to this final rule, SWIFT, DTCC, AVOX, and ANNA are moving forward to cleanse already-available data sufficient to validate the identity of legal entities to receive an LEI; to collect and cleanse such validation data for other swap counterparties; and to issue temporary identifiers readily convertible into LEIs if their joint venture is designated by the Commission as the provider of LEIs to be used pursuant to this rule. They have also informed Commission staff that they anticipate being able to provide LEIs to swap counterparties by the summer of 2012 if they are so designated.

International developments. In September 2011, the FSB convened an international LEI Workshop including over 50 private sector experts and over 60 representatives from the international financial regulatory community, including the Commission, to further educate participants and elicit their input concerning the LEI, and to guide preparation of a roadmap leading to recommendations concerning implementation of a global LEI system. Workshop participants discussed possible technical and governance principles for the LEI drawn from the CPSS-IOSCO *Report on OTC Derivatives Data Reporting and Aggregation Requirements*, which as noted above closely parallel those included in the NOPR. The Workshop revealed strong support for the LEI initiative from both private sector and official sector participants. Industry representatives emphasized the vital importance of support and leadership from the global regulatory community, and the many potential benefits of a global LEI that would only be realized if regulators support the LEI initiative. Presenters at the Workshop also supported the timely phasing of LEI implementation, likely to begin with use of the LEI in reporting OTC derivatives data to trade repositories.

When the G-20 Leaders endorsed the LEI initiative following the Workshop, they stated that:

> We call on the FSB to take the lead in helping coordinate work among the regulatory community to prepare recommendations for the appropriate governance framework, representing the public interest, for such a global LEI by our next Summit.[60]

Following the request from the G20, the FSB decided in December to create a time-limited, ad-hoc expert group of authorities, including the Commission, to carry forward work on key outstanding issues relevant to implementation of a global LEI, in order to fulfill the G-20 mandate. The group held its first meeting on December 13 and 14, 2011. The issues to be addressed by the expert group include: (1) the governance framework for the global LEI; (2) the operational model for the LEI system; (3) the scope of LEI reference data; (4) reference data access and confidentiality; (5) the funding model for the LEI system; and (6) global implementation and phasing of the LEI. It is anticipated that the expert group will deliver clear recommendations with respect to implementation of a global LEI system to the FSB Plenary for endorsement in April or May 2012. This process is designed to allow first-phase implementation of the LEI in OTC derivatives data reporting to trade repositories, including swap data reporting to SDRs pursuant to this final rule, to proceed, if possible, on the basis of globally agreed principles concerning governance, funding, and access to reference data.

3. FINAL RULE: § 45.6.

a. Important factors in the Commission's decision. The Commission has considered and evaluated the comments and international input it has received concerning the LEI and the principles which should govern the LEI system, and has taken such comments and input into account in the LEI provisions of the final rule. It has also considered the progress made by the international financial regulatory community and industry toward creation of a global LEI, created on an international basis through an international voluntary consensus standards body,

[60] Cannes Summit Final Declaration, November 4, 2011, at 7, paragraph 31, available at http://www.g20.org/Documents2011/11/Cannes%20Declaration%204%20November%202011.pdf.

that meets the requirements provided in the NOPR, and is suitable for designation by the Commission for use in recordkeeping and swap data reporting pursuant to this final rule as set forth in the NOPR.

Broad endorsement of the LEI. The Commission agrees with the recommendation of commenters, roundtable participants, industry, U.S. and international financial regulators, international regulatory organizations, and world leaders calling for creation of a global LEI. It also believes, as recommended by roundtable participants, the CPSS-IOSCO *Report on OTC Derivatives Data Reporting and Aggregation Requirements*, and many FSB LEI Workshop participants, that the LEI should first be used for identification of swap counterparties in data reported to SDRs.

LEI suggestions by commenters. The Commission accepts the suggestion of various commenters and roundtable participants that the unique counterparty identifier required by the final rule should be the same identifier as the legal entity identifier ("LEI") being developed by industry and international regulators as described above, and should be referred to as the LEI (rather than the UCI as in the NOPR) in order to avoid confusion. The Commission agrees with commenters that the neutrality principle set forth in the NOPR and elsewhere, calling for a neutral LEI with no embedded intelligence should be maintained. The persistence principle in the final rule addresses commenters' requests for guidance on how the LEI will relate to corporate events such as mergers and acquisitions.[61] The Commission disagrees with the suggestion of one commenter that LEIs should be assigned at the individual fund or account level rather than the legal entity level, since LEIs by nature are legal entity identifiers. The

[61] In determining whether a new entity requiring a new LEI has resulted from a corporate event, the LEI utility may consider whether the primary regulator (if any) of the entity or entities involved in the corporate event considers the result to be a new entity; whether market data vendors consider the result to be a new entity; or whether ownership has changed as a result of the corporate event.

Commission agrees with comments calling for the LEI to be administered by a not-for-profit industry utility, and for an international directory of LEI holders to publicly available free of charge. The criteria for the Commission's designation of the LEI utility that will provide LEIs to be used in compliance with the rule are discussed below.

LEI reference data considerations. The Commission believes that level one LEI reference data is essential to the ability of the issuer of LEIs to validate the identity of a legal entity receiving an LEI. As recognized by the participants in the FSB LEI Workshop, the Commission understands that such data by its nature is public, and presents no confidentiality or access issues. The Commission also believes, as also recognized by participants in the Workshop and in the CPSS-IOSCO *Report on OTC Derivatives Data Reporting and Aggregation Requirements*, that level two LEI reference data concerning the hierarchical relationships or company affiliations of legal entities is needed by regulators for use of the LEI as a tool to aggregate the data in trade repositories in order to enhance systemic risk mitigation and market supervision. The Commission understands, as recognized by Workshop participants, that some level two reference data is public and does not pose confidentiality concerns. However, the Commission is also aware, as pointed out by commenters and Workshop participants, that financial data confidentiality law in different jurisdictions could raise issues regarding access by regulators outside those jurisdictions, or by the public, to some level two reference data.[62]

LEI standard. The Commission recognizes that ISO, the international voluntary consensus standards body cited in the NOPR, has developed an international standard for a global LEI, *ISO 17442 Legal Entity Identifier (LEI)*.

[62] The Commission has considered comments concerning the definition of control it should employ in connection with level two reference data, and concerning SDR access to level two reference data for the purpose of constructing reports for regulators.

Industry recommendations. The Commission also recognizes that a global coalition of financial sector trade associations and organizations has developed a broad-based industry consensus on requirements and standards for the LEI, and has recommended that (1) the international standard for the LEI code itself should be ISO standard 17442; and (2) the LEI utility for LEI issuance, reference data collection and maintenance, and quality assurance should be operated as a joint venture including SWIFT, DTCC, AVOX, and ANNA. The Commission notes that the coalition has publicly stated its willingness for this joint venture to include a governing board controlled by international financial regulators including the Commission, with power to ensure that the LEI utility maintains compliance with the principles established for the LEI by international financial regulators, including the principles established by the Commission in this final rule.

Timely availability of LEIs. The Commission understands that the recommended joint venture partners are moving forward to obtain and process the reference data necessary to validate the identity of legal entities to be identified by LEIs, so that if the joint venture is designated by the Commission as the issuer of LEIs to be used in swap data reporting, it can in fact be able to issue LEIs to swap counterparties subject to the Commission's jurisdiction prior to the commencement of swap data reporting pursuant to this final rule. At this time, the Commission is not aware of any other candidate to be the LEI utility designated to provide LEIs for use in compliance with this final rule that would in fact be able to provide the required LEIs on a timely basis.

The Commission is aware that the ability of any LEI utility designated by the Commission to provide the LEIs to be used in compliance with this final rule to provide such LEIs when swap data reporting commences pursuant to this rule will depend in part on the

Commission making such a designation, as called for in the NOPR, sufficiently prior to the commencement of swap data reporting to enable the LEI utility to issue the LEIs needed for compliance with this rule on a timely basis.

Need for an internationally-established LEI. As stated in the NOPR, the Commission recognizes that optimum effectiveness of LEIs as a tool for achieving the systemic risk mitigation, transparency, and market protection goals of the Dodd-Frank Act—goals shared by financial regulators world-wide—would come from creation of a global LEI, on an international basis, that is capable of becoming the single international standard for unique identification of legal entities across the world financial sector. The Commission has participated in all of the work of the global financial regulatory community to date concerning implementation of a global LEI, and has carefully considered the results of this work. One reason the Commission has done so is that it recognizes the importance of having first-phase implementation of a global LEI follow principles that are forward-compatible with later phases of LEI implementation.[63] The Commission welcomes, and is participating in, the work of the FSB-coordinated, ad-hoc expert group of authorities working to deliver clear recommendations on implementation of a global LEI system to the FSB Plenary for endorsement in April or May 2012. The Commission understands that an important purpose of FSB endorsement of these recommendations would be to allow first-phase implementation of the LEI, including its use in swap data reporting to SDRs pursuant to this final rule, to proceed, if possible, on the basis of globally agreed principles concerning governance and funding of the LEI and access to LEI reference data.

[63] This is particularly true in light of the fact that, once industry builds or adapts automated systems for use in swap data reporting to include the LEI, it could be inadvisable to require registered entities and swap counterparties to incur the additional burden and cost that could come from changing the LEI system in ways that were not compatible with first-phase implementation of the LEI.

b. Final rule LEI provisions. In light of these considerations, the Commission has determined that § 45.6 will include the following provisions.

Standard for the LEI code. The LEI to be used in all recordkeeping and all swap data reporting required by this part, once the Commission has designated the LEI utility that will provide the LEI to be used in complying with this part, as set forth below, must be issued under, and conform to, *ISO Standard 17442, Legal Entity Identifier (LEI)*. This standard is the sole existing LEI standard created by a voluntary consensus standards body, and is the standard created by ISO, the voluntary consensus standards body cited in the NOPR as the optimum source for the LEI standard.

LEI principles. The final rule includes both technical and governance principles that must be followed by the LEI used for compliance with the rule. These principles are based on those set forth in the NOPR, as complemented by the closely-parallel principles and governance considerations recommended in the CPSS-IOSCO *Report on OTC Derivatives Data Reporting and Aggregation Requirements* and the principles discussed at the FSB LEI Workshop.[64] The final rule principles, set forth in detail in the text of section 45.6, are summarized below.

TECHNICAL PRINCIPLES

- Uniqueness (one LEI per legal entity, never re-used).
- Neutrality (a single-field identifier format containing no embedded intelligence).
- Reliability (a reliable method of verifying the identity of holders of LEIs, based on reference data necessary for this purpose; as well as robust quality assurance practices and system safeguards, including the system safeguards applicable to SDRs under part 49 of this chapter).
- Open source (an open data standard and format capable of broad use, that enables data aggregation by regulators).

[64] As noted above, all of these principles closely parallel those set forth by the OFR in its Statement of Policy concerning the LEI, see footnote 52 above, and those discussed in the SEC's proposed rule on data reporting for security-based swaps, see footnote 53 above.

- Extensibility (capability of becoming the single international standard for unique identification of legal entities in the financial sector on a global basis).
- Persistence (each LEI remains permanently in the record, regardless of corporate events, while a new entity resulting from a corporate event receives a new LEI).

GOVERNANCE PRINCIPLES

- International governance (for operations, a governance structure for the LEI utility giving the Commission and other financial regulators requiring use of the LEI power to ensure that the LEI system adheres to these principles) (for compliance with ISO 17442, governance by ISO)
- Reference data access (access to LEI reference data must enable use of the LEI as a public good, while respecting applicable law regarding data confidentiality)
- Non-profit operation and funding (funding and operation on a non-profit, reasonable cost-recovery basis, subject to international governance)
- Unbundling and non-restricted use (LEI issuance not tied to other services; no restrictions on use of the LEI; intellectual property consistent with open source principles)
- Commercial advantage prohibition (no commercial use by the utility of LEI reference data that is not available to the public free of charge)

Designation of the LEI utility. As called for in the NOPR, the final rule provides for the Commission to designate the LEI utility that will provide the LEI to be used in complying with this rule, once the Commission determines that an LEI system satisfying the requirements of the rule is available, making this designation in a Commission order. In determining whether an LEI system satisfying the Commission's requirements is available, the Commission will consider, without limitation, the following factors:

- Whether the LEI provided by the utility is issued under, and conforms to, *ISO Standard 17442, Legal Entity Identifier (LEI)*.
- Whether the LEI provided by the utility complies with all of the technical principles set forth in this rule.
- Whether the LEI utility complies with all of the governance principles set forth in this rule.
- Whether the LEI utility has demonstrated that it in fact can provide LEIs for identification of swap counterparties in swap data reporting commencing as of the compliance dates set forth in this rule.

- The acceptability of the LEI utility to industry participants required to use the LEI in complying with the rule.

In making its determination, the Commission will consider all candidates meeting these criteria, but it will not consider any candidate that does not demonstrate that it in fact can provide LEIs for identification of swap counterparties in swap data reporting pursuant to this rule as of the compliance dates set forth in this rule.

The Commission will make this determination and designate the LEI utility at a time sufficiently prior to the commencement of swap data reporting to enable the designated utility to issue LEIs far enough in advance of the compliance dates set forth in the rule to enable compliance with the rule.

Reference data reporting. When an LEI utility has been designated by the Commission, the final rule requires reporting of both level one and level two reference data concerning the legal entity identified by an LEI. Level one reference data means the minimum information needed to identify, on a verifiable basis, the legal entity to which an LEI is assigned. Level two reference data means information concerning the corporate affiliations or company hierarchy relationships of the legal entity receiving an LEI. As provided in the NOPR, the final rule requires reporting of both types of reference data for each counterparty to any swap subject to the Commission's jurisdiction.

The rule provides that level one reference data must be reported into a publicly-available level one reference database maintained by the issuer of the LEI designated by the Commission, at a time sufficient to ensure that the counterparty's legal entity identifier is available for inclusion in recordkeeping and swap data reporting as required by the rule. Such reference data is essential to verifying the identity of the legal entity receiving an LEI. Level one reference data can be reported into the database by the entity itself (self-registration), or by another entity or

organization such as a swap dealer reporting on behalf of its counterparties or a national number agency or data service provider reporting on behalf of its clients (third-party registration). Subsequent changes and corrections to level one reference data must also be reported.

While the NOPR required reporting of level two reference data concerning all of a counterparty's corporate or company affiliation relationships, the Commission has determined that the final rule will reduce this requirement, and call for reporting of only a single piece of level two reference data, the identity of the counterparty's "ultimate parent" as defined in the final rule. In making this determination, the Commission has taken into account comments suggesting that the Commission should coordinate with the SEC and international regulators to ensure where possible against material, substantive difference in reporting requirements, as well as comments suggesting that it should establish an ownership threshold for affiliations required to be reported, in order to reduce burdens for counterparties. The definitions of "control," "parent," and "ultimate parent" adopted in the final rule are closely aligned with the SEC's definitions, including a 25% ownership threshold.[65] These definitions are provided both to reduce burdens for counterparties, in relation to the full affiliation reporting proposed in the NOPR, and to provide clarity as to the single affiliation required to be reported. The Commission believes that reporting of level two reference data consisting of the identity of a counterparty's ultimate parent is essential to the ability of the Commission and other regulators to aggregate swap data in order to fulfill the purposes of the Dodd-Frank Act. The Commission may revisit the issue of what additional level two reference data should be reported at a later time, when an international consensus concerning the reporting of additional level two reference data has had time to be developed.

[65] The Commission disagrees with the 50% ownership threshold suggested by one commenter. The Commission believes that a 50% threshold would result in no ultimate parent being reported in a notable number of cases, and believes that the 25% threshold used by the SEC is more appropriate.

Accordingly, the final rule also requires reporting of level two reference data, consisting of the identity of the counterparty's ultimate parent. Level two reference data must be reported to a level two reference database. All non-public level two reference data reported to the level two reference database will be available only to the Commission and other financial regulators in any jurisdiction requiring LEI use. Where applicable law forbids such reporting, the rule requires reporting that fact, and the citation of the law in question, in place of the data to which such law applies. The rule provides that the location of the level two database will be determined at a future time by a Commission order, and that the obligation to report level two reference data will not apply until that order is issued. The rule also provides that, once the order is issued, level two reference data must be reported at a time sufficient to ensure that it is included in the database when the counterparty's LEI is included in recordkeeping and swap data reporting as required by the rule. Level two reference data may also be reported via either self-registration or third-party registration. Changes and corrections must also be reported.

Use of the LEI by registered entities and swap counterparties. The final rule provides that, when an LEI utility has been designated by the Commission, each registered entity and swap counterparty subject to the Commission's jurisdiction must use the LEI provided by the designated LEI utility in all recordkeeping and swap data reporting pursuant to this part.[66]

Swap counterparty identification prior to LEI availability. Finally, the final rule provides that, before the LEI utility has been designated by the Commission, registered entities and swap counterparties subject to the Commission's jurisdiction shall use a

[66] The final rule provides a grace period until October 15, 2012, for reporting counterparties whose systems are not yet prepared to include LEIs.

substitute counterparty identifier created and assigned by an SDR, as provided in the final rule.

c. Incorporation of international principles and recommendations. Because this final rule is being issued prior to completion of the work of the FSB-coordinated, ad-hoc expert group of authorities that will make recommendations to the FSB Plenary in April 2012 concerning LEI governance, funding, and reference data, it has been written, of necessity, to provide the principles and requirements that will apply to the LEI, when its use pursuant to this rule begins, in the absence of globally agreed principles for these aspects of the LEI system. As noted above, the Commission shares the goal of a global LEI capable of becoming the single international standard for unique identification of legal entities across the world financial sector. Therefore, if LEI principles that the Commission determines are forward-compatible with the principles set forth in this rule, or recommendations concerning LEI governance and funding and access to LEI reference data that are acceptable to the Commission, are endorsed by the FSB in April or May 2012, the Commission may issue an interim final rule addressing LEI governance, funding, and reference data, that includes such principles and recommendations. Such an interim final rule, if issued, would replace affected provisions of this final rule, pending notice and comment and possible later adoption of the interim final rule by the Commission as a final rule.[67]

H. Unique Product Identifiers – § 45.7

[67] The Commission believes that the provisions of such an interim final rule must not impair the availability of LEIs for use in swap data reporting when such reporting commences pursuant to this rule. Accordingly, the Commission does not intend that such an interim final rule would alter the requirement for the LEI to be issued pursuant to ISO Standard 17442, or would alter the Commission's designation of the LEI utility once that designation has been made.

1. PROPOSED RULE. The NOPR required that each swap subject to CFTC jurisdiction be identified in all swap recordkeeping and data reporting by a unique product identifier ("UPI") and a product classification system, as determined by the Commission, for the purpose of categorizing swaps with respect to the underlying products referenced in them. The NOPR called for the UPI and product classification system to identify both the swap asset class and the subtype within that asset class to which the swap belongs, with sufficient specificity and distinctiveness (as determined separately for each asset class) to enable regulators to fulfill their regulatory responsibilities and to enhance real time reporting. As provided in the NOPR, UPIs would be assigned to swaps at a particular, asset class-specific level of the robust swap taxonomy used by the product classification system, and the use of UPIs and the classification system would enable regulators to aggregate and report swap activity at a variety of product type levels, and to prepare reports required by the Dodd-Frank Act regarding swap market activity.

2. COMMENTS RECEIVED. The majority of comments concerning the UPI received via comment letters, roundtables, and meetings with both industry and other regulators supported creation of a product classification system that provides a universally-accepted means of describing all swaps, whether standardized or bespoke, and permits creation of UPIs for sufficiently standardized swaps. As noted in the CPSS-IOSCO *Report on OTC Derivatives Data Reporting and Aggregation Requirements*, development of a standard product classification system is needed as a first step toward both a system of product identifiers for standardized derivatives products and an internationally-accepted semantic for describing non-standardized instruments. DTCC

and Thomson Reuters pointed out that creation of a product taxonomy is a significant undertaking, and Thomson Reuters suggested that a pilot program for developing UPIs could be useful.

An industry initiative to create a product classification system is being led by the creators of FpML, in cooperation with experts in FIX. The data subcommittee of the CFTC Technology Advisory Committee ("TAC") has taken up this subject as well. Industry experts involved in the industry initiative and the TAC data subcommittee anticipate that it may be possible, once a product classification system is developed, to assign a UPI to approximately 80 to 95 percent of swaps (depending on the asset class involved), while approximately 5 to 20 percent of swaps may be sufficiently bespoke that they can only be described rather than identified by a UPI. The CPSS-IOSCO *Report on OTC Derivatives Data Reporting and Aggregation Requirements* recommends CPSS-IOSCO and FSB support for timely development of a standard product classification system that can be used as a common basis for classifying and describing OTC derivatives products, and recommends that the FSB direct further international consultation and coordination by financial and data experts from both regulators and industry concerning this work.

3. FINAL RULE: § 45.7. After considering the comments and input received concerning the UPI and product classification system, the Commission has determined that, as called for in the NOPR, the final rule provides that each swap subject to the Commission's jurisdiction must be identified in recordkeeping and swap data reporting pursuant to this part by means of a unique product identifier and product classification system acceptable to the Commission, when such an identifier and classification system are designated by the

Commission for this purpose. The unique product identifier and product classification system will be required to identify and describe the swap asset class and the sub-type within that asset class to which the swap belongs, and the underlying product for the swap, with sufficient distinctiveness and specificity to enable the Commission and other financial regulators to fulfill their regulatory responsibilities.

The final rule provides that the Commission will determine when a unique product identifier and product classification acceptable to the Commission and satisfying these requirements is available, and when it so determines will designated the unique product identifier and product classification system for use in compliance with this part, making this designation in a Commission order. The final rule requires registered entities and swap counterparties subject to the Commission's jurisdiction to use the unique product identifier and product classification system in compliance with this part when this designation is made. Prior to this designation, each registered entity and swap counterparty must use the internal product identifier or product description used by the SDR in all recordkeeping and swap data reporting pursuant to this part.

I. Determination of Which Counterparty Must Report – § 45.8

1. PROPOSED RULE. The NOPR followed the reporting counterparty hierarchy outlined in § 4r(a)(3) of the CEA, which provides that where only one counterparty is an SD or MSP, the SD or MSP is the reporting counterparty, and where one counterparty is an SD and the other is an MSP, the SD is the reporting counterparty.[68] The effect of this provision is to

[68] As stated in the NOPR, the Commission believes that, while CEA § 4r(a) applies explicitly to swaps not accepted for clearing by a DCO, the duty to report should be borne by the same counterparty regardless of whether the swap is cleared or uncleared, for the sake of uniformity and ease of applicability. This approach also effectuates a policy choice made by Congress in the Dodd-Frank Act to place lesser burdens on non-SD/MSP counterparties to swaps, where this can be done without damage to the fundamental systemic risk mitigation, transparency, standardization, and market integrity purposes of the legislation. The Commission believes it is appropriate for SDs and MSPs to have the responsibility of reporting with respect to the majority of swaps, because they are more likely than non-SD/MSP counterparties to have automated systems in place that can facilitate reporting. The Commission notes that the SEC followed the same approach in its proposed regulations for security-based swap data reporting.

establish a hierarchy of counterparty types for reporting obligation purposes, in which SDs outrank MSPs, who outrank non-SD/MSP counterparties. Where both counterparties are at the same hierarchical level, the NOPR followed the statute in calling for them to select the counterparty obligated to report. In order to prevent confusion and delay concerning this choice, the NOPR provided a mechanism for counterparties to use in making this selection, by requiring counterparties at the same hierarchical level to agree as one term of their swap which counterparty will fulfill reporting obligations for that swap. In cases where only one counterparty is a U.S. person, the NOPR required requires the U.S. person to be the reporting counterparty, in order to ensure compliance with reporting obligations in such situations.

2. COMMENTS RECEIVED. The Commission received several comments concerning determination of the reporting counterparty. The two themes addressed in these comments were the need for a selection mechanism or deciding factor for cases where both counterparties are at the same hierarchical level, and who should be the reporting counterparty when only one counterparty is a U.S. person.

a. Deciding factor between two counterparties at the same hierarchical level. Commenters asked the Commission to provide in the final rule a mechanism for determining which counterparty is the reporting counterparty in cases where both counterparties are at the same hierarchical level, and suggested various deciding factors for use in such cases. The Electric Coalition recommended that for swaps between two non-SD/MSP counterparties where only one counterparty is a "financial entity," the final rule should make the financial entity the reporting counterparty. AGA suggested that, between counterparties at the same hierarchical level, the entity that is the "calculation agent" under the applicable ISDA documentation should be the reporting counterparty, unless the parties agree otherwise. ICE suggested that the seller of

the swap should be the reporting counterparty in such situations, arguing that there is too much uncertainty when parties are required to select the reporting counterparty, particularly for platform-executed swaps where counterparties are unknown to each other at the time of execution. WGCEF raised the issue of whether entities designated as SDs or MSPs for some but not all swaps should be treated as non-SDs/MSPs with respect to reporting counterparty determinations regarding swaps for which they are not designated as SDs or MSPs. WGCEF suggested that a "limited" SD or "limited" MSP should only be required to be the reporting counterparty for swaps within the particular asset class for which it is designated an SD or MSP. FHLB recommended that when an SD is transacting with a limited SD, the SD should be designated the reporting counterparty, because it would be burdensome for a limited SD to comply with requirements meant for entities for which swap dealing is a primary business. Where a limited SD is the reporting counterparty, FHLB asked that it be treated as a non-SD/MSP with respect to reporting deadlines.

b. Non-U.S. counterparties. The Commission received a number of comments on which counterparty should be the reporting counterparty when only one counterparty is a U.S. person. The Foreign Banks, ISDA, SIFMA, DTCC, MarkitServ, Freddie Mac, Vanguard, EEI, Chatham Financial, ABC, CIEBA, and the Electric Coalition recommended requiring non-U.S. SDs or MSPs to be the reporting counterparty for swaps with U.S. non-SD/MSP counterparties.[69] The commenters pointed to the superior technology and technical expertise of SDs and MSPs, the benefits of a consistent approach to reporting, and concerns regarding whether U.S. non-SD/MSP counterparties would be discouraged from transacting with foreign SDs and MSPs if they were required to bear the burden of reporting. EEI and Vanguard suggested allowing the

[69] ABC and CIEBA argued that making a U.S. non-SD/MSP counterparty the reporting counterparty where the other counterparty is a foreign SD or MSP is contrary to § 729 of the Dodd-Frank Act.

counterparties in this situation to agree on which of them will be the reporting counterparty, and MarkitServ suggested allowing non-SD/MSP counterparties to delegate the reporting obligation to the non-U.S. SD counterparty.

3. FINAL RULE: § 45.8

a. Deciding factor between two counterparties at the same hierarchical level.

The Commission has considered comments calling for the final rule to provide a mechanism for determining which counterparty is the reporting counterparty in cases where both counterparties are at the same hierarchical level, and agrees that this would be beneficial where a deciding factor can be applicable for all swaps. The Commission has determined that the final rule provides that for swaps between non-SD/MSP counterparties where only one counterparty is a "financial entity" as defined in CEA § 2(h)(7)(C), the financial entity shall be the reporting counterparty. The Commission believes it is appropriate for financial entities, as defined by the Dodd-Frank Act, to have the responsibility of reporting in such cases, because, in the Commission's view, they are more likely than non-SD/MSP counterparties who are not financial entities to have automated systems in place that can facilitate reporting. The Commission has not found any other factor usable for automatic choice of the reporting counterparty between two counterparties at the same hierarchical level that applies across all markets and all asset classes.

For off-platform swaps, the final rule retains the NOPR requirement that counterparties at the same hierarchical level agree, as one term of the swap, which of them is the reporting counterparty.

For swaps executed on a SEF or DCM, determination of the reporting counterparty is necessary for purposes of continuation data reporting, despite the fact that the SEF or DCM will report all creation data for the swap under the streamlined reporting schema adopted in the final

rule as discussed above. For on-facility swaps where counterparties at the same hierarchical level know the identity of the other counterparty, the final rule adopts the NOPR requirement that the counterparties agree as one term of the swap which of them is the reporting counterparty. For on-facility swaps where counterparties at the same hierarchical level do not know the identity of the other counterparty, the final rule provides that: (a) the SEF or DCM must transmit to each counterparty the LEI (or substitute identifier as provided in § 45.6) of the other counterparty that is at the same hierarchical level;[70] (b) the counterparties must agree which counterparty will be the reporting counterparty, after receiving such notice from the SEF or the DCM and before the end of the next business day following the date of execution of the swap; and (c) the reporting counterparty must report to the SDR to which the SEF or DCM has reported the swap that it is the reporting counterparty.

b. Non-U.S. counterparties. The Commission has considered the large number of comments recommending that a non-U.S. SD or MSP in a swap with a U.S. counterparty at a lower hierarchical level should be the reporting counterparty despite its status as a non-U.S. person. The Commission has determined that, because non-U.S. SDs and MSPs will be required to register with the Commission in this connection, the Commission will have sufficient oversight and enforcement authority with respect to such counterparties. The Commission understands that the SEC has made a similar determination in the context of security-based swap data reporting. Accordingly, the final rule provides that, with a single exception, the determination of the reporting counterparty in situations where only one counterparty is a U.S. person must be made by applying the normal counterparty determination procedure set forth in § 45.8. The Commission believes this is appropriate because it places the burden of reporting on

[70] The SEF or DCM will know that both counterparties are at the same hierarchical level because the final rule requires the terms of the contract on the SEF or DCM to include all minimum PET data, and the tables of minimum PET data include an indication of whether a counterparty is an SD, an MSP, or a non-SD/MSP counterparty.

the counterparty that in the Commission's view is more likely to have automated systems suitable for reporting. In cases where both counterparties are non-SD/MSP counterparties and only one counterparty is a U.S. person, the final rule will adopt the NOPR provision requiring the U.S. person to be the reporting counterparty. This is necessary in such situations because the non-U.S. non-SD/MSP counterparty will not be required to register with the Commission. Where neither counterparty to a swap executed on a SEF or DCM, otherwise executed in the U.S., or cleared on a DCO is a U.S. person, the final rule applies the same hierarchical selection criteria as for other swaps.

c. Reporting counterparty determination after a change of counterparty. In light of the various comments calling for clear direction from the Commission regarding determination of the reporting counterparty, and calling for the statutory preference for SD or MSP reporting counterparties where this is possible, the Commission has determined that the final rule provides for determination of the reporting counterparty in cases where, during the life of a swap, the reporting counterparty ceases to be a counterparty due to an assignment or novation. In such cases, the final rule provides for the reporting counterparty to be selected from the two current counterparties to the swap, as follows: if only one counterparty is an SD, the SD is the reporting counterparty; if neither counterparty is an SD and only one is an MSP, the MSP is the reporting counterparty; if both counterparties are non-SD/MSP counterparties and only one is a U.S. person, the U.S. person is the reporting counterparty; and in all other cases, the counterparty replacing the previous reporting counterparty is the reporting counterparty, unless otherwise agreed by the counterparties.

J. Third-Party Facilitation of Swap Data Reporting – § 45.9

1. PROPOSED RULE. The NOPR provided that registered entities and counterparties required to report pursuant to this part may contract with third-party service providers to facilitate reporting, but, nonetheless, remain fully responsible for reporting as required.

2. COMMENTS RECEIVED. Roundtable participants generally endorsed the NOPR provision permitting third-party facilitation of swap data reporting, and no comment letters suggested any changes to this provision.

3. FINAL RULE: § 45.9. The Commission recognizes, as stated in the NOPR, that while the various reporting obligations established in the final rule fall explicitly on registered entities and swap counterparties, efficiencies and decreased cost may in some circumstances be gained by engaging third parties to facilitate the actual reporting of information. The Commission believes that the use of such third-party facilitators, however, should not allow the registered entity or counterparty with the obligation to report to avoid its responsibility to report swap data in a timely and accurate manner. Accordingly, the Commission has adopted the regulation on third-party facilitation of swap data reporting as proposed.

K. Reporting to a Single Swap Data Repository – § 45.10

1. PROPOSED RULE. The NOPR required that all swap data for a given swap must be reported to a single SDR, which must be the SDR to which required primary economic terms data for that swap is first reported.

2. COMMENTS RECEIVED. Roundtable participants generally endorsed the NOPR provision requiring that all swap data for a given swap must be reported to a single SDR, and no comment letters suggested changing this requirement. Comments addressing who should make

the first swap data report for a swap, and thus in effect choose the SDR, are discussed above in the section concerning creation data reporting.

3. FINAL RULE: § 45.10. The Commission believes that important regulatory purposes of the Dodd-Frank act would be frustrated, and that regulators' ability to see necessary information concerning swaps could be impeded, if data concerning a given swap was spread over multiple SDRs. Accordingly, the final rule adopts the NOPR provision requiring that all swap data for a given swap must be reported to a single SDR, which shall be the SDR to which creation data for that swap is first reported.

As discussed above, the Commission is responding to comments concerning creation data reporting by adopting in the final rule a streamlined reporting regime that requires reporting by the registered entities or swap counterparties with the easiest, fastest, and cheapest data access and those most likely to have the necessary automated systems; that minimizes burdens and costs for counterparties to the extent possible; and that provides certainty to the market. To effectuate this streamlined reporting regime, § 45.3 and § 45.10 of the final rule provides that the initial report of creation data for a swap will be made as follows:

- For swaps executed on a SEF or DCM, the SEF or DCM reports all creation data to a single SDR, as soon as technologically practicable after execution.
- For off-facility swaps, the reporting counterparty reports all PET data to a single SDR, within the deadlines provided in the final rule.
- For off-facility swaps, if the reporting counterparty is excused from reporting, as provided in the final rule, because the swap is accepted for clearing before the reporting deadline and before any report made by the reporting counterparty, the DCO reports all creation data to a single SDR, as soon as technologically practicable after execution.

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

1. PROPOSED RULE. As noted in the NOPR, CEA § 4r(a)(1)(B) recognizes that in some circumstances there may be no SDR that will accept swap data for certain swap

transactions. This category of swaps should be limited, since the Commission's final part 49 regulations require an SDR that accepts swap data for any swap in an asset class to accept data for all swaps in that asset class. However, situations could arise where a novel product does not fit into any existing asset class, or where no SDR yet accepts swap data for any swap in an existing asset class. The NOPR provided that in such cases, the reporting counterparty must report to the Commission all swap data concerning that swap required by this part to be reported to an SDR, making this report at a time and in a form determined by the Commission.

2. COMMENTS RECEIVED. The Commission received no comments concerning this provision.

3. FINAL RULE: § 45.11. The Commission has determined to adopt the NOPR provision requiring that, should there be a swap asset class for which no SDR currently accepts swap data, each registered entity or swap counterparty required to report swap data for such a swap must report to the Commission all swap data required by this part to be reported to an SDR, making this report at times announced by the Commission and in an electronic file in a format acceptable to the Commission. The Commission has recently reorganized its divisional structure to facilitate discharge of its responsibilities under the Dodd Frank Act, and as part of that reorganization, the Commission's Chief Information Officer is responsible for all matters concerning data received by the Commission. Accordingly, the Commission has determined that the final rule will delegate to the Chief Information Officer the authority to determine the format, data standards, and electronic transmission standards and procedures acceptable to the Commission for such reporting, and the dates and times at which data for such swaps shall be reported to the Commission. The determinations made by the Commission through the Chief

Information Officer in these respects will be published in the Federal Register and on the Commission's website.

M. Voluntary Supplemental Reporting – § 45.12

1. PROPOSED RULE. As discussed above, the Dodd-Frank Act provides for designation of one counterparty to a swap as the reporting counterparty for that swap. Neither the Dodd-Frank act nor the NOPR addresses additional, voluntary reporting of swap data to an SDR by the other counterparty to the swap. Nothing in the Dodd-Frank Act prohibits such additional, voluntary reporting.

2. COMMENTS RECEIVED. The Commission received several comments recommending that the final rule should confirm that voluntary data reporting by market participants not required to report is permitted, and should provide for such voluntary supplemental reporting. WGCEF asked the Commission to clarify that a market participant has the option to report any and all transaction data even where it is not required to report by Commission rules. REGIS–TR recommended that both counterparties be allowed to report a swap and confirm their PET data and confirmation data, via SDR systems that allow regulators to see which counterparty entered the information, and argued this would lower overall compliance costs. DTCC stated that voluntary reporting by participants not required to report is technologically feasible and would ensure greater data accuracy. ISDA and SIFMA observed that reporting by both counterparties is not essential to the accuracy of data in SDRs, since confirmations require the consent of both counterparties and the NOPR required confirmation data reporting. TriOptima suggested that both parties should be required to report some types of transaction data, such as that relating to systemic risk monitoring, arguing that one-party reporting can raise risks of inaccurate data. Most of the international regulators consulted by the

Commission concerning the final rule have informed the Commission that they believe reporting by both counterparties is desirable, and that reporting regimes outside the U.S. are likely to require such dual reporting. Roundtable participants noted that some counterparties may prefer to report whether or not they are the reporting counterparty, in order to simply their business processes, and have data concerning all their swaps present in a single SDR.

3. FINAL RULE: § 45.12. The Commission has considered these comments, and agrees that voluntary supplemental reporting by counterparties not designated as the reporting counterparty is technologically feasible and may have benefits for both data accuracy and counterparty business processes. While the Dodd-Frank Act requires swap data reporting by only one counterparty and establishes a hierarchy for choosing the reporting counterparty, it does not prohibit voluntary swap data reporting to an SDR that supplements required reporting. The Commission also notes that its final part 49 rules permit counterparties to access to information in SDRs concerning their own swaps, and notes that nothing forbids swap counterparties to use an SDR as a provider of third-party services going beyond acceptance of required swap data reports for regulatory purposes. For these reasons, the Commission has determined that the final rule provides for voluntary supplemental reporting to any SDR by either counterparty of swap data that this part does not require that counterparty to report.

The Commission has also determined that, to avoid double-counting of the same swap due to voluntary supplemental reports, and to ensure that data reported via a voluntary supplemental report ("VSR") to the same SDR to which required data is reported is integrated into that SDR's record for the swap, each VSR must include minimum VSR information that ensures achievement of these purposes. This required VSR information includes: an indication that the report is a VSR; the USI for the swap that has been created as required by this part; the

identity of the SDR to which all required creation data and continuation data is reported for the swap, if the VSR is made to a different SDR; the LEI (or substitute identifier) of the counterparty making the VSR; and if applicable, an indication that the VSR is made pursuant to the law of a jurisdiction outside the U.S. To avoid confusion and double-counting, and to ensure that each VSR includes the USI for the swap, the rule will also provide that a VSR may not be made until after the USI for the swap has been created as provided in § 45.5 and transmitted to the counterparty making the VSR.

N. Required Data Standards – § 45.13

1. PROPOSED RULE. CEA § 21(b)(2) directs the Commission to prescribe data collection and data maintenance standards for swap data repositories. The CEA also provides that SDRs shall maintain swap data reported to them "in such form, in such manner, and for such period as may be required by the Commission," and directs SDRs to "provide direct electronic access to the Commission."[71] These requirements are designed to effectuate the fundamental purpose for the legislation's swap data reporting requirements: making swap data available to the Commission and other financial regulators so as to enable them to better fulfill their market oversight and other regulatory functions, increase market transparency, and mitigate systemic risk. Pursuant to these provisions, the NOPR required SDRs to be able to transmit data to the Commission using the data standards and formats required by Commission. The NOPR did not mandate use of a specific data standard for reporting to SDRs, but left SDRs free to make their own business decisions in this regard, so long as they remain able to transmit data to the Commission as required.

[71] CEA § 21(c)(3) and (4).

2. COMMENTS RECEIVED. DTCC and WGCEF both suggested that using existing standards and formats would facilitate implementation of Dodd-Frank. DTCC also noted that SDRs will need to adapt to a changing marketplace, and therefore will need the flexibility to specify acceptable data formats, connectivity, and protocols for reporting to them. DTCC recommended that SDRs make their data formats publicly available, and develop application programming interfaces ("APIs") to enable direct submission of data by participants. WGCEF argued that SDRs should be required to develop and use a common standard for data reporting, suggesting that this will reduce costs and opportunities for inaccuracy.

3. FINAL RULE: § 45.13. The Commission considered whether it would be preferable, as suggested by one commenter, to require that all swap data reporting to SDRs use a uniform reporting format or single data standard, but has decided not to impose such a requirement. Doing so would be likely to require changes to the existing automated systems of some entities and counterparties, which in some cases could impose additional burdens and costs. The Commission agrees with the comment suggesting that SDRs will need flexibility with respect to data standards used by them in receiving data. The Commission has been advised by existing trade repositories that they are able to accept data in multiple formats or data standards from different counterparties, and to map the data they receive into a common data standard within the repository, without undue difficulty, delay, or cost. The Commission notes that automated systems and data standards evolve over time, and that it may be desirable for regulations concerning data standards to avoid locking reporting entities, reporting counterparties, and SDRs into particular data standards that could become less appropriate in the future.[72] In addition, the Commission anticipates that the degree of flexibility offered by SDRs concerning data standards

[72] CEA § 21(f)(4)(B) explicitly permits the Commission to "take into consideration any evolving standard of the United States or the international community."

for swap data reporting could become an element of marketplace competition with respect to SDRs. Accordingly, the final rule gives SDRs flexibility to use a variety of data standards to receive data reported to them, provided that they are able to transmit data to the Commission in a manner that meets the Commission's needs. This flexibility is designed to allow the most cost-effective application of both existing and evolving data standards. .

The Commission also agrees with the comment suggesting that it would be beneficial for the data formats used by SDRs to be publicly available. The Commission encourages SDRs to make public the documentation of their data formats and any APIs or service interfaces they develop for reporting data.

For the reasons discussed above, the Commission has determined to adopt the NOPR provisions regarding data standards in the final rule. The final rule requires an SDR to maintain all swap data reported to it in a format acceptable to the Commission, and to transmit all swap data requested by the Commission to the Commission in an electronic file in a format acceptable to the Commission. It requires reporting entities and counterparties to use the facilities, methods, or data standards provided or required by an SDR to which they report data, but also allows an SDR to permit reporting via various facilities, methods, or data standards, provided that its requirements in this regard enable it to maintain swap data and transmit it to the Commission as the Commission requires.

As noted above, the Commission has recently reorganized its divisional structure to facilitate discharge of its responsibilities under the Dodd Frank Act, and as part of that reorganization, the Commission's Chief Information Officer is responsible for all matters concerning data received by the Commission. Accordingly, the Commission has determined that the final rule will delegate to the Chief Information Officer (a) the authority to determine the

format, data standards, and electronic transmission standards and procedures acceptable to the Commission for provision of data to the Commission by SDRs; and (b) the authority to determine whether the Commission may permit or require use of one or more particular data standards by SDRs or reporting entities and counterparties in order to ensure that SDRs can provide data to the Commission as required. The determinations made by the Commission through the Chief Information Officer in these respects will be published in the Federal Register and on the Commission's website.

O. Reporting of Errors and Omissions in Previously Reported Data – § 45.14

1. PROPOSED RULE. The NOPR directed all entities and counterparties required to report data to SDRs to report any errors and omissions in the data so reported, as soon as technologically practicable after discovery of any such error or omission. It also required non-reporting counterparties discovering a data error or omission to notify the reporting counterparty promptly, and required the reporting counterparty to then report it. The NOPR required reports of errors and omissions to be made using the same format used to report the erroneous or omitted data.

2. COMMENTS RECEIVED.

a. Error reporting. WGCEF and MFA suggested that the final rule should permit (but not require) non-reporting counterparties to report errors they discover to the SDR. MFA argued this is needed in the event of a dispute between the reporting and non-reporting counterparties. ISDA and SIFMA recommended the reasons for an error correction should not be reported, on the basis that recording the reason for an adjustment is not current market practice. Encana requested clarification of the interaction of error reporting under this section and the part 49

provisions requiring an SDR to confirm with the counterparties the accuracy of the data submitted.

b. Liability for errors. WGCEF, AGA, ISDA, and SIFMA suggested that safe harbors should be created for good-faith mistakes made by either counterparty in reporting swap data, and for errors of which the counterparties are not aware. AGA asked the Commission to state explicitly that it will not penalize parties for inadvertent errors in reporting, and that good faith efforts to comply with new requirements will not result in exposure to enforcement actions. ISDA and SIFMA asked the Commission to clarify that a party has no obligation to correct errors of which it is not aware, and suggested having the final rule provide that reporting parties are not responsible for data errors that occur after submission to an SDR.

3. FINAL RULE: § 45.14. The Commission has considered the above comments, and has determined to adopt the NOPR provisions concerning error reporting substantially as proposed. Accurate swap data is essential to effective fulfillment of the various regulatory functions of financial regulators, and the final rule provisions are designed to ensure data accuracy to the extent possible.

a. Error reporting. As noted above, the Commission agrees that voluntary supplemental reporting may have benefits for data accuracy, and has added § 45.12 to the final rule expressly permitting voluntary supplemental reporting, which is not limited in scope and can include error reporting. The Commission believes that it is a business decision of an SDR whether it should require reporting the reasons for an error correction, and has decided not to address that issue by rule. Records required to be kept pursuant to this part should provide sufficient information

when necessary regarding the reasons for an error correction.[73] The Commission intends § 45.14 to work together in a complementary fashion with the provisions of part 49 directing SDRs to obtain acknowledgment from counterparties of the accuracy of reported data within a short time after it is submitted. Both provisions are intended to protect the integrity and accuracy of the data in SDRs.

To help ensure data accuracy, the final rule requires registered entities and swap counterparties that report swap data to an SDR or to any other registered entity or swap counterparty to report any errors or omissions in the data they report, as soon as technologically practicable after discovery of any error or omission.[74] The final rule requires a non-reporting swap counterparty that discovers any error or omission with respect to any swap data reported to an SDR for its swaps to notify the reporting counterparty promptly of each such error or omission, and requires the reporting counterparty, upon receiving such notice, to report a correction of each such error or omission to the SDR, as soon as technologically practicable after receiving notice of it from the non-reporting counterparty. The Commission believes that this provision is an appropriate measure to ensure data accuracy.

To ensure consistency of data within an SDR with respect to error corrections, the final rule requires an entity or counterparty correcting an error or omission to do so in the same data format it used in making the erroneous report. To similarly ensure consistency of data transmitted to the Commission with respect to error corrections, the final rule imposes the same requirement on SDRs with respect to transmission of error corrections.

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[73] The Commission does not believe it is necessary or appropriate for the final rule to further address potential disputes between reporting and non-reporting counterparties, which could involve legal disputes between counterparties affecting the validity or terms of a swap.

[74] Because daily snapshot reports of state data by reporting counterparties by their nature can correct errors or omissions in previous snapshot reports, the final rule provides that for swaps reported via the snapshot reporting method, reporting counterparties fulfill the requirement to report errors or omissions in state data previously reported by making corrections in their next daily report of state data.

b. Liability for errors. The Commission has determined that the final rule should not provide a safe harbor for good-faith mistakes made in reporting data. It is the reporting party's responsibility to report data accurately and develop processes to achieve this goal. The Commission will continue to carry out its oversight and enforcement responsibilities in a reasonable and appropriate manner. The final rule does not require swap counterparties to monitor data in an SDR, but does require them to report all data errors of which they become aware. As noted above, the Commission believes this is an appropriate measure to ensure data accuracy.

III. RELATED MATTERS

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (''RFA''), 5 U.S.C. 601 et seq., requires that agencies consider the impact of their rules on "small entities." As provided in the NOPR, this part will have a direct effect on SDRs, DCOs, SEFs, DCMs, SDs, MSPs, and non-SD/MSP counterparties who are counterparties to one of more swaps and subject to the Commission's jurisdiction.

As stated in the NOPR, the Commission has previously established that DCMs are not small entities for purposes of the RFA. The Commission also proposed that certain entities for which the Commission had not previously made a determination for RFA purposes—namely SDRs, DCOs, SEFs, SDs, and MSPs—should not be considered to be small entities, for reasons set forth in the NOPR.

As noted in the NOPR, this part requires swap data reporting by a non-SD/MSP counterparty only with respect to swaps in which neither counterparty is an SD or MSP. With respect to such swaps, which represent a minority of swap transactions, only one of the swap non-SD/MSP counterparties will be required to report—the counterparty designated as the reporting counterparty. In addition, the Commission has determined that the final rule provides that for swaps between non-SD/MSP counterparties where only one counterparty is a "financial entity" as defined in CEA § 2(h)(7)(C), the financial entity shall be the reporting counterparty. The Commission believes these provisions of the final rule reduce the economic impact on any non-SD/MSP counterparties that may be considered to be small entities under the RFA.

Due to the operation of certain provisions of the CEA and the final rule, non-SD/MSP counterparties who may be considered small entities for RFA purposes are never required to report any swap creation data. Under the CEA, a non-SD/MSP counterparty is required to

transact on a SEF or DCM unless that non-SD/MSP is an Eligible Contract Participant ("ECP").[75] The Commission has previously determined that ECPs are not "small entities" for RFA purposes.[76] For all swaps executed on a SEF or DCM, the final rule requires the SEF or DCM to report all required swap creation data. Therefore, no "small entities" for RFA purposes are required to report any swap creation data under the final rule.

With respect to reporting of swap continuation data, the Commission has attempted to minimize the burden on non-SD/MSP counterparties who may be considered small entities for purposes of the RFA. As noted above, in the final rule the Commission is responding to comments concerning swap data reporting by creating a streamlined reporting regime that requires reporting by the registered entities or swap counterparties that the Commission believes will have the easiest, fastest, and cheapest data access and will be most likely to have the necessary automated systems, in order to minimize burdens and costs, to the extent possible, for swap counterparties and particularly for non-SD/MSP counterparties. Under the final rule reporting regime, non-SD/MSP reporting counterparties will not have to report either creation data or continuation data for any swap executed on a SEF or DCM and cleared on a DCO. In addition, non-SD/MSP counterparties will not have to report either creation data or continuation

[75] CEA § 2(e) provides that "It shall be unlawful for any person, other than an eligible contract participant, to enter into a swap unless the swap is entered into on, or subject to the rules of, a [SEF or DCM]." Congress created the ECP category in the Commodity Futures Modernization Act in 2000, to include individuals and entities that Congress determined to be sufficiently sophisticated in financial matters that they should be permitted to trade over-the-counter swaps without the protection of federal regulation. See, e.g., "Report of the President's Working Group on Financial Markets" (Nov. 1999) at 16 (recommending that "sophisticated counterparties that use OTC derivatives simply do not require the same protections under the CEA as those required by retail investors"). In the Dodd-Frank Act, Congress made two changes to the statutory ECP definition, both of which increased the thresholds to qualify as an ECP, making it harder for some entities and individuals to qualify. Compare CEA § 1a(12), 7 U.S.C. 1a(12) (2009), with §§ 721(a)(1) and (9) of the Dodd-Frank Act, respectively redesignating section 1a(12) as section 1a(18) and increasing thresholds for certain categories of ECP.

[76] 66 FR 20740, 20743, Apr. 25, 2001.

data for any off-facility swap accepted by a DCO for clearing within the deadline for the initial data report for the swap, as the DCO is then required to report all swap data for the swap. The Commission believes that these provisions of the final rule further reduce the economic impact on any non-SD/MSP counterparties that may be considered to be small entities under the RFA.

In the NOPR, the Chairman, on behalf of the Commission, certified that the rulemaking would not have a significant economic effect on a substantial number of small entities. Nonetheless, the Commission specifically requested comment on the impact these proposed rules may have on small entities. The Commission received one comment on its RFA statement, from the Electric Coalition, stating that the vast majority of members of the National Rural Electric Cooperative Association and the American Public Power Association are considered small entities for purposes of the RFA. The Electric Coalition suggested that the Commission should consider the overall impact of its Dodd-Frank Act rules on nonfinancial entities, including small entities, and conduct a comprehensive analysis under the RFA.

In response to this comment, and to other comments by non-SD/MSP counterparties, the Commission has adjusted the final reporting regime to reduce burdens and costs for non-SD/MSP counterparties in a variety of ways, as set forth in detail in the discussion above concerning §§ 45.3 and 45.4 of the final rule. The Commission notes that the commenter did not dispute the reasons for the Commission's conclusion that this part does not have a significant impact on a substantial number of small entities. For these reasons, and for the reasons stated above and in the NOPR, the Commission continues to believe that this part will not have a significant impact on a substantial number of small entities. Therefore, the Chairman, on behalf of the Commission, hereby certifies, pursuant to 5 U.S.C. 605(b), that this part as finally adopted will not have a significant economic impact on a substantial number of small entities.

B. Paperwork Reduction Act

1. INTRODUCTION.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number issued by the Office of Management and Budget (''OMB''). Provisions of Commission Regulations 45.2, 45.3, 45.4, 45.5, 45.6, 45.7, and 45.14 result in information collection requirements within the meaning of the Paperwork Reduction Act (''PRA'').[77] The Commission submitted the NOPR and supporting documentation to OMB for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. The Commission requested that OMB approve, and assign a new control number for, the collections of information covered by the NOPR.

The title for the proposed collection of information under part 45 is ''Swap Data Recordkeeping and Reporting Requirements.'' To the extent that the recordkeeping and reporting requirements in this rulemaking overlap with the requirements of other rulemakings for which the Commission prepared and submitted an information collection request to OMB, the burdens associated with the requirements are not being accounted for in the information collection request for this rulemaking, to avoid unnecessary duplication of information collection burdens.

2. PROPOSED INFORMATION COLLECTION.

In its proposed rulemaking, the Commission provided burden estimates for the new collections of information contained in proposed §§ 45.2, 45.3, and 45.4.

[77] 44 U.S.C. 3301 et. seq.

In the NOPR, it was estimated that 30,384 SDRs, SEFs, DCMs, DCOs, SDs, MSPs, and non-SD/MSP counterparties[78] would be required to keep records of all activities relating to swaps. Specifically, the NOPR required SDRs, SEFs, DCMs, DCOs, SDs, and MSPs to keep complete records of all activities relating to their business with respect to swaps. The NOPR required non-SD/MSP counterparties to keep complete records with respect to each swap in which they would be a counterparty. For SDs and MSPs, the Commission determined that the proposed recordkeeping requirements would not impose any new recordkeeping or information collection requirements, or other collections of information, as requirements for maintaining and recording swap transaction data by SDs and MSPs would be addressed in related rulemakings associated with business conduct standards for SDs and MSPs. For SDRs, SEFs, DCMs, DCOs (an estimated 84 entities or persons), which were anticipated to have higher levels of swap recording activity[79] than non-SD/MSP counterparties, the Commission estimates that there may be approximately 40 annual burden hours per entity, excluding customary and usual business practices. And for non-SD/MSP reporting counterparties (an estimated 30,000 entities or persons), who were anticipated to have lower levels of swap recording activity, the Commission estimated that there would be approximately 10 annual burden hours per entity, excluding customary and usual business practices. Accordingly, 303,360 estimated aggregate annual burden hours were estimated.

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[78] Because SDRs, MSPs, SDs, DCOs, and SEFs are new entities, the following estimates were made in the NOPR: 15 SDRs, 50 MSPs, 250 SDs, 12 DCOs, and 40 SEFs. The number of DCMs was estimated to be 17 DCMs based on the current (as of October 18, 2010) number of designated DCMs. Additionally, for purposes of the Paperwork Reduction Act, the Commission estimated that there would be 30,000 non-SD/MSP counterparties who would be subject annually to the recordkeeping requirements of proposed Regulation 45.1.

[79] The Commission estimated that ‘‘high activity’’ entities or persons would be those persons who would process or enter into hundreds or thousands of swaps per week that would be subject to the jurisdiction of the Commission. Low activity users were estimated to be those who would process or enter into substantially fewer than the high activity users.

Under the NOPR's swap data reporting provisions, SEFs, DCMs, DCOs, MSPs, SDs, and non-SD/MSP counterparties were required to provide reports to SDRs regarding swap transactions. SEFs and DCMs were required to report certain information once at the time of swap execution. DCOs, SDs, MSPs, and non-SD/MSP counterparties were required to report certain information once, as well as other information on a daily basis. With respect to proposed reporting by SDs, MSPs, and non-SD/MSP counterparties, only one counterparty was required to report, typically an SD or an MSP. The Commission anticipated that the reporting would to a significant extent be automatically completed by electronic computer systems, and calculated burden hours based on the annual burden hours necessary to oversee and maintain the reporting functionality.[80] SEFs, DCMs, DCOs, MSPs, and SDs (an estimated 369 entities or persons) were anticipated to have high levels of reporting activity, with the Commission estimating that the average annual burden would be approximately 2,080 hours.[81] Non-SD/MSP counterparties required to report under the proposed rules—estimated at 1,500 entities[82]—were anticipated to have lower levels of activity with respect to reporting. For such entities, the Commission estimated that the annual burden would be approximately 75 hours. In sum, the Commission estimated 880,020 aggregate annual burden hours for proposed regulation 45.3.

Under the NOPR's unique identifier provisions, SDRs, SEFs, DCMs, SDs, and MSPs were required to report a unique swap identifier to other registered entities and swap participants.

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[80] Estimated burden hours were obtained through consultation with the Commission's information technology staff.

[81] The Commission estimated 2,080 hours by assuming that a significant number of SEFs, DCMs, DCOs, MSP, and SDs would dedicate the equivalent of at least one full-time employee to ensuring compliance with the reporting obligations of Regulation 45.3 (2,080 hours = 52 weeks × 5 days × 8 hours). The Commission believed that this was a reasonable assumption due to the volume of swap transactions that would be processed by these entities, the varied nature of the information required to be reported by Regulation 45.3, and the frequency (daily) with which some reports would be required to be made.

[82] This is the estimated number of non-SD/MSP counterparties who would be required to report in a given year. Only one counterparty to a swap would be required to report, most frequently anticipated to be an SD or a MSP.

SEFs and DCMs were expected to have higher levels of activity than SDRs, SDs, and MSPs with respect to unique swap identifier reporting. The Commission anticipated that the reporting of the unique swap identifier would be automatically completed by electronic computer systems. Accordingly, the burden hours estimates in the proposal were based on the estimated burden hours necessary to oversee and maintain the electronic functionality of unique swap ID reporting.[83] In accord, the Commission estimated that SEFs and DCMs (an estimated 57 entities or persons) would expend approximately 22 annual burden hours per entity. The Commission estimated that SDRs, SDs, and MSPs (an estimated 315 entities or persons) would expend approximately 6 annual burden hours per entity. Therefore, 3,144 estimated aggregated annual burden hours were estimated.

The NOPR's unique identifier provisions also required SDs, MSPs, and non-SD/MSP counterparties (an estimated 30,300 entities and persons) to report into a confidential database their ownership and affiliations information (as well as changes to ownership and affiliations). The report would be made once at the time of the first swap reported to an SDR, and would be made anytime thereafter that the entity's legal affiliations change. The burden hours per report were estimated to be approximately two hours per entity, excluding customary and usual business practices. The number of reports required to be made per year was estimated to vary between zero and four, depending on the number of changes an entity would have in its legal affiliations in that year. The estimated annual burden per entity therefore was estimated to vary between zero and eight burden hours, with aggregate annual burden hours estimated to be between 0 and 242,400 hours.

[83] Estimated burden hours were obtained through consultation with the Commission's information technology staff.

3. COMMENTS ON PROPOSED INFORMATION COLLECTION.

Swap data reporting is required by the CEA as amended by Title VII of the Dodd-Frank Act. The Commission received numerous comments supporting the overall goals of swap data reporting, including systemic risk protection, market integrity, and transparency goals. The Commission also received general comments and suggestions regarding the information collections set forth in the NOPR. The comments concerned, among other things, the type of information that should be collected; the entity or entities that should be responsible for reporting the information; the manner in which the data should be required to be reported (snapshot or lifecycle method of reporting); and the timeframe in which such data should be required to be reported. The comments received by the Commission are set forth in detail above in the discussions of each section of the final rule as well as the discussion below on the consideration of the costs and benefits of the final rule.

In response, the Commission amended the information collection requirements set forth in the NOPR in a variety of ways in order to address concerns of the commenters and reduce the burden of the information collections on registered entities and counterparties. The Commission amended the information collection requirements of the NOPR by, among other things, reducing the types of information to be collected (e.g., the final rule does not require reporting of contract intrinsic data, master agreements, certain collateral information, or certain valuation information); streamlining the entity or entities responsible for reporting the information in order to assign reporting responsibilities to the entity or entities with the easiest, fastest, and cheapest access to the data in question (e.g., the final rule does not require non-SD/MSP counterparties to report any additional swap data for swaps that are both executed on a platform and cleared, as the SEF/DCM reports all creation data and the DCO reports all continuation data); providing greater

flexibility in the manner in which information is to be reported (the final rule permits either the snapshot or lifecycle method of reporting may be used for any asset class); and modifying the timeframe in which information is to be collected (e.g., the final rule requires non-SD/MSP counterparties to report valuation data for uncleared swaps only on a quarterly basis, and provides phasing to all SDs, MSPs, and non-SD/MSP counterparties with respect to the timeframe in which information must be reported).

The Commission is also clarifying in the final rule that non-SD/MSP counterparties are permitted to fulfill their part 45 recordkeeping responsibilities by keeping records in paper, rather than electronic, form. The final rule also provides that other counterparties and registered entities are also permitted to keep paper, rather than electronic, records, if such records were originally created and exclusively maintained in paper form. These provisions concerning the recordkeeping information collection provisions are intended to address concerns raised by several commenters

4. REVISED INFORMATION COLLECTION ESTIMATES.

Under the final rules, reporting entities and persons will provide information under sections 45.2, 45.3, 45.4, 45.5, 45.6, 45.7, and 45.14 of this part. The information provided under each regulation is set forth below, together with burden estimates that were calculated, through research and through consultation with the Commission's technology staff, using wage rate estimates based on salary information for the securities industry compiled by the Securities Industry and Financial Markets Association ("SIFMA").[84]

[84] These wage estimates are derived from an industry-wide survey of participants and thus reflect an average across entities; the Commission notes that the actual costs for any individual company or sector may vary from the average. The Commission estimated the dollar costs of hourly burdens for each type of professional using the following calculations:

(1) [(2009 salary + bonus) * (salary growth per professional type, 2009-2010)] = Estimated 2010 total annual compensation. The most recent data provided by the SIFMA report describe the 2009 total

a. Section 45.2. Under § 45.2, SDRs, SEFs, DCMs, DCOs, SDs, MSPs, and non-SD/MSP counterparties—which presently would include an estimated 30,210 entities or persons[85]—are required to keep records of all activities relating to swaps. Specifically, § 45.2 requires SDRs, SEFs, DCMs, DCOs, SDs, and MSPs to keep complete records of all activities relating to their business with respect to swaps. The rule requires non-SD/MSP counterparties to keep complete records with respect to each swap in which they are a counterparty.

With respect to SDs and MSPs, the Commission has determined that § 45.2 will not impose any new recordkeeping or information collection requirements, or other collections of information that require approval of the Office of Management and Budget under the Paperwork Reduction Act. The burden associated with the requirements for maintaining and recording swap transaction data by SDs and MSPs are also contained in separate rulemakings proposed by the Commission concerning business conduct standards for SDs and MSPs, for which the Commission has prepared an information collection request for review and approval by OMB.

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compensation (salary + bonus) by professional type, the growth in base salary from 2009 to 2010 for each professional type, and the 2010 base salary for each professional type; thus, the Commission estimated the 2010 total compensation for each professional type, but, in the absence of similarly granular data on salary growth or compensation from 2010 to 2011 and beyond, did not estimate dollar costs beyond 2010.

(2) [(Estimated 2010 total annual compensation) / (1,800 annual work hours)] = Hourly wage per professional type.]

(3) [Hourly wage) * (Adjustment factor for overhead and other benefits, which the Commission has estimated to be 1.3)] = Adjusted hourly wage per professional type.]

(4) [(Adjusted hourly wage) * (Estimated hour burden for compliance)] = Dollar cost of compliance for each hour burden estimate per professional type.]

The sum of each of these calculations for all professional types involved in compliance with a given element of the final rule represents the total cost for each counterparty, reporting counterparty, SD, MSP, SEF, DCM, or SDR, as applicable to that element of the final rule.

[85] Because SDRs, MSPs, SDs, DCOs, and SEFs are new entities, estimates were made by the Commission: 15 SDRs, 50 MSPs, 250 SDs, 12 DCOs, and 40 SEFs. The number of DCMs was estimated to be 17 DCMs based on the current (as of October 18, 2010) number of designated DCMs. Additionally, for purposes of the Paperwork Reduction Act, the Commission estimates that there would be 30,000 non-SD/MSP counterparties who would annually be subject to the recordkeeping requirements of proposed Regulation 45.1. The Commission is revising its estimate of SDs and MSPs from a total of 300 in the proposed rule to 125 for this final rule, and is revising its DCM estimate from 17 to 18 to account for the designation of a new DCM.

The Commission believes that some percentage of the estimated 30,000 non-SD/MSP counterparties who would be subject to the recordkeeping requirements of section 45.2 would contract with third-party service providers to fulfill these requirements, and would therefore pay some fee to such providers in lieu of incurring the Commission's estimated costs of reporting. The identity of such third parties, the composition of the marketplace for third party services, and the costs to third parties to provide recordkeeping services given the economies of scale and scope they may realize in providing those services are all presently unknowable. Therefore, the Commission does not believe it is feasibly to quantify the fees charged by third parties to non-SD/MSPs at the present time, but believes that they will likely vary with the volume of records to be retained. The remaining non-SD/MSP counterparties would elect to perform these functions themselves and incur the costs enumerated below. The Commission notes that this final rule allows non-SD/MSP counterparties to retain records in either an electronic or paper form, which could facilitate recordkeeping for less technologically resourced counterparties, and thus encourage a greater percentage of non-SD/MSP counterparties to retain records themselves.

For purposes of calculating recordkeeping burdens with respect to the PRA, the Commission is assuming that all 30,000 non-SD/MSP counterparties required to keep records will incur the cost of doing so themselves. The Commission estimates that this requirement would impose an initial non-recurring burden of 480 hours per reporting counterparty at a cost of $32,820, and investments in technological infrastructure of $50,000, and a recurring annual burden of 165 hours per reporting counterparty at a cost of $12,125 and a technological infrastructure maintenance cost of $25,000. This would present an aggregate non-recurring burden of $2,484,600,000 for all non-SD/MSP counterparties, and an aggregate recurring annual burden of $1,113,750,000 for all non-SD/MSP counterparties.

With respect to SEFs, DCMs, DCOs, SDs, and MSPs (an estimated 195 entities or persons), which will have higher levels of swap recording activity[86] than non-SD/MSP counterparties, the Commission estimates that this requirement would impose an initial non-recurring burden of 1,560 hours per SEF, DCO, or DCM at a cost of $111,917, and investments in technological infrastructure of $100,000, and a recurring annual burden of 700 hours per SEF, DCO, DCM, SD, or MSP at a cost of $49,798, and a technological infrastructure maintenance cost of $50,000.

The Commission also estimates that § 45.2 will result in retrieval costs for registered entities and swap counterparties that do not currently have the ability to retrieve records within the required timeframe. The Commission expects that this requirement will present costs to registered entities and swap counterparties in the form of non-recurring investments in technological systems and personnel associated with establishing data retrieval processes, and recurring expenses associated with the actual retrieval of swap data records.

With respect to non-SD/MSP reporting counterparties that do not contract with a third party, the Commission estimates that this requirement would impose an initial non-recurring burden of 310 hours per reporting counterparty at a cost of $25,534 and a recurring annual burden of 115 hours per reporting counterparty at a cost of $9,510. With respect to SEFs, DCOs, DCMs, SDs, and MSPs, the Commission estimates that this requirement would impose an initial non-recurring burden of 350 hours per SEF, DCO, DCM, SD, or MSP at a cost of $28,745, and a recurring annual burden of 175 hours per SEF, DCO, DCM, SD, or MSP at a cost of $14,373.

[86] For purposes of this Paperwork Reduction Act analysis, the Commission estimates that "high activity" entities or persons are those who process or enter into hundreds or thousands of swaps per week that are subject to the jurisdiction of the Commission. Low activity users would be those who process or enter into substantially fewer than the high activity users.

b. Sections 45.3 and 45.4. Pursuant to §§ 45.3 and 45.4, SEFs, DCMs, DCOs, MSPs, SDs, and non-SD/MSP counterparties are required to provide reports to SDRs regarding swap transactions. SEFs and DCMs are required to report certain information (swap creation data) once at the time of swap execution. DCOs, SDs, MSPs, and non-SD/MSP counterparties are required to report certain information (swap creation data) once, as well as other information (swap continuation data) throughout the life of a swap—whenever a reportable event or a reportable change occurs. With respect to reporting by SDs, MSPs, and non-SD/MSP counterparties, only one counterparty to a swap is required to report information concerning that swap, typically an SD or an MSP, as determined by § 45.8.

The Commission anticipates that the reporting required by §§ 45.3 and 45.4 will to a significant extent be automatically completed by electronic computer systems; the following burden hours are calculated based on the annual burden hours necessary to oversee, maintain, and utilize the reporting functionality. SEFs, DCMs, DCOs, MSPs, and SDs (an estimated 195 entities or persons) are anticipated to have high levels of reporting activity; the Commission estimates that their average annual burden may be approximately 2,080 hours per SEF, DCO, DCM, MSP, or SD.[87] The Commission estimated 2,080 hours by assuming that a significant number of SEFs, DCMs, DCOs, MSPs, and SDs will dedicate the equivalent of least one full-time employee to ensuring compliance with the reporting obligations of §§ 45.3 and 45.4 (2,080 hours = 52 weeks × 5 days × 8 hours). The Commission believes that this is a reasonable assumption due to the volume of swap transactions that will be processed or entered into by these entities, the varied nature of the information required to be reported, and the frequency with

[87] The Commission obtained this estimate in consultation with the Commission's information technology staff.

which information may be required to be reported.[88] The Commission notes, however, that these burdens should not be considered additional to the costs of compliance with Part 43, because the basic data reporting technology, processes, and personnel hours and expertise necessary to fulfill the requirements of Part 43 encompass both the data stream necessary for real-time public reporting and the creation data stream necessary for regulatory reporting.[89]

Non-SD/MSP counterparties who would be required to report—which presently would include an estimated 1,000 entities[90]—are anticipated to have lower levels of activity with respect to reporting. Of those 1,000 non-SD/MSPs, the Commission believes that a majority, estimated now at 75%, or 750 entities, will contract with third parties to satisfy their reporting obligations. The identity of such third parties, the composition of the marketplace for third party services, and the costs to third parties to provide reporting services given the economies of scale and scope they may realize in providing those services are all presently unknowable. Therefore, the Commission does not believe it is feasibly to quantify the fees charged by third parties to non-SD/MSPs at the present time, but believes that they will likely vary with the volume of reports to be made. For those non-SDs/non-MSPs who are required to report swap transaction and pricing data to an SDR and contract with a third party, the Commission estimates that such non-SD/MSP counterparties will incur a recurring burden for reporting errors and omissions should errors or omissions be noticed by the counterparty or the SDR; however, the Commission has already considered these burdens in Part 43, and thus has not reapplied them to this rule. The

[88] The estimated burden hours were obtained in consultation with the Commission's information technology staff.

[89] The Commission notes that DCOs are not dicussed in Part 43. The costs to DCOs for compliance with this final rule are thus unique to this rule, but identical to the costs addressed in Part 43.

[90] This is the estimated number of non-SD/MSP counterparties who will be required to report in a given year. Only one counterparty to a swap is required to report, typically an SD or a MSP as determined by § 45.8. Therefore, a non-SD/MSP counterparty that is in a swap with an SD or MSP counterparty will not be subject to the reporting obligations of §§ 45.3 and 45.4.

costs of reporting to the remaining 250 non-SD/MSP counterparties that do not contract with a third party are addressed below.

The Commission estimates that costs applicable to reporting counterparties will include maintenance of an internal order management system ("OMS") and the personnel hours needed to maintain a compliance program in support of that system. With respect to all reporting counterparties, including SEFs, DCOs, DCMs, SDs, MSPs, and non-SD/MSP counterparties that do not contract with a third party for reporting, the Commission estimates that the additional implementation of the OMS and the associated compliance and support program for the reporting of swap continuation data would impose an initial non-recurring burden of 350 hours per reporting counterparty at a cost of $28,745, and a recurring annual burden of 175 hours per reporting counterparty at a cost of $14,373.

In addition to the burden estimates presented here, reporting counterparties will incur costs associates with establishing and maintaining connectivity to an SDR for the purposes of effecting reporting. Connectivity costs have been accounted for in the information collection prepared by the Commission with respect to its proposed part 43 rules, in which the information collection costs applicable to SDRs also have been estimated.[91] To avoid creating duplicative PRA estimates, the Commission is not accounting again for those costs with respect to this rulemaking. And in the event that there is a swap asset class for which no SDR accepts swap data, swap data for a swap in that class must be reported to the Commission. With respect to all

[91] The Commission estimated the annual recurring technology-related burden of maintaining connectivity to an SDR at approximately $100,000 per reporting entity. The Commission also estimated the non-recurring personnel hour burden of establishing connectivity to an SDR from the perspective of a non-financial end-user counterparty with no initial infrastructure or personnel training to leverage to be approximately 172 burden hours at a cost of approximately $12,824 for each non-financial end-user. This estimate represents the costs of developing information capture and transmission systems, correspondence testing and operational support. The Commission notes that with respect to both part 43 and part 45, the cost to a non-financial end-user with no initial infrastructure or personnel training represents a high-end estimate, and that the costs of establishing and maintaining connectivity to an SDR will likely be considerably lower for SEFs, DCMs, SDs, and MSPs that likely have greater levels of technological sophistication and existing personnel training to leverage.

reporting counterparties, including SEFs, DCOs, DCMs, SDs, MSPs, and non-SD/MSP reporting counterparties that do not contract with a third party for reporting, the Commission estimates that the annual cost to maintain connectivity to the Commission would be approximately $100,000 for each reporting counterparty or registered entity that transacts in swap asset classes that are not accepted by any registered SDR.[92]

c. Section 45.5. Pursuant to § 45.5, SDRs, SEFs, DCMs, SDs, and MSPs will be required to report a unique swap identifier to other registered entities and swap participants. SEFs and DCMs are anticipated to have higher levels of activity than SDRs, SDs, and MSPs with respect to unique swap identifier reporting. The Commission anticipates that the reporting of the unique swap identifier will be automatically completed by electronic computer systems. The following burden hours are based on the estimated burden hours necessary to oversee, maintain, and utilize the electronic functionality of unique swap ID reporting.[93]

The Commission estimates that USI-related costs will be highest for SEFs, DCOs, and DCMs, because they will have to create the greatest number of USIs. The Commission estimates the requirement for SEFs, DCOs, and DCMs to create and transmit USIs to counterparties and other registered entities to present a total marginal non-recurring burden of 1,000 personnel

[92] This estimate is calculated as follows: [($100,000 in hardware- and software-related expenses, including necessary back-up and redundancy, per SDR connection) x (1 SDR connections per reporting counterparty)] = $100,000 per non-financial end-user. The Commission notes that there are circumstances under which a non-financial end-user serving as a reporting counterparty would be required to incur additional costs to maintain connectivity to both the Commission and one or more SDRs. Specifically, if a reporting counterparty engages in swap transactions in multiple asset classes, and an SDR exists that accepts data for at least one of those asset classes, but no SDR exists that accepts data for one or more of these asset classes, the reporting counterparty would then incur the costs of establishing and maintaining connectivity to both an SDR and the Commission. The Commission believes that the costs of establishing and maintaining connectivity to a second data repository would be some percentage of, but not equal to, the costs of establishing and maintaining connectivity to the first data repository, because the reporting counterparty would likely be able to leverage existing technology and expertise in the process. The Commission does not believe that the percentage of the initial costs that this additional cost represents is readily quantifiable, because it will likely vary with the volume of swaps, and thus the volume of data to be reported, that the reporting counterparty transacts in the secondary asset classes.

[93] The estimated burden hours were obtained in consultation with the Commission's information technology staff.

hours at a total cost of $81,869 per entity, and a recurring annual burden of 470 personnel hours at a total cost of $37,741 per entity.

For off-facility swaps with an SD or MSP reporting counterparty, the Commission estimates the requirement for SDs and MSPs to create and transmit USIs to counterparties and other registered entities to present a total marginal non-recurring burden of 750 personnel hours at a cost of $61,402 per entity, and a recurring annual burden of 353 hours of annual personnel hours at a total cost of $28,386 per entity.

For off-facility swaps between non-SD/MSP counterparties, the Commission estimates the requirement for SDRs to create and transmit USIs to counterparties and other registered entities to present a total marginal non-recurring burden of 500 annual personnel hours at a cost of $40,935 per entity, and a recurring annual burden of 235 annual personnel hours for a total cost of $18,871 per entity.

d. Section 45.6. Pursuant to § 45.6, each SD, MSP, and non-SD/MSP counterparty (an estimated 30,125 entities and persons), will be required to report both level one and level two reference data concerning itself to a public level one reference database and a confidential level two reference database, respectively. The report will be made once at the time of the first swap data report to an SDR involving the SD, MSP, or non-SD/MSP counterparty. A similar report will be required whenever an update or correction to the previously reported reference data is required. For any such report, the estimated number of burden hours is approximately two hours per entity, excluding customary and usual business practices. The number of reports required to be made per year is estimated to vary between zero and four, depending on when the SD, MSP or non-SD/MSP counterparty is required to make either the initial report or a report of an update or

correction.[94] Thus, the estimated annual burden per entity varies between zero and eight burden hours. Therefore, there are between 0 and 241,000 estimated aggregate annual burden hours.

Additionally, the Commission anticipates that an LEI meeting the requirement of the final rule will be available before the commencement of swap data reporting. However, the Commission has also considered the potential burden that will be imposed on SDRs for creating, assigning and transmitting substitute identifiers if they should be required. The Commission estimates the cost to SDRs to create, assign and transmit substitute identifiers to counterparties and other registered entities to present a total marginal non-recurring burden of 500 annual personnel hours at a cost of $40,935 and a recurring annual burden of 235 annual personnel hours for a total cost of $18,871.

e. Section 45.7. Pursuant to § 45.7, each swap subject to the Commission's jurisdiction will need to be identified in all recordkeeping and swap data reporting by means of a unique product identifier and product classification system, which shall be designated at a later date by the Commission. The Commission expects that this will result in a one-time retrieval burden for each SEF and DCM for each swap product traded on its platform, either at the time the Commission designates the system for currently listed products or at the time a product is listed for trading. SDs, MSPs, and non-SD/MSP reporting counterparties also will be subject to a one-time retrieval burden for each swap product that they are required to report to an SDR or the Commission. As with unique swap identifiers, the Commission anticipates that the reporting of the unique swap identifier will be automatically completed by electronic computer systems. Until such time as a system is designated, however, the Commission cannot estimate the aggregate annual burden hours associated with the retrieval necessary to populate the records and

[94] The estimated burden hours and the estimated number of reports were obtained in consultation with the Commission's information technology staff.

reports. The Commission therefore will establish a burden estimate associated with the collection of information resulting from § 45.7 on the designation of a system.

f. § 45.14. Pursuant to § 45.14, a registered SDR is required to develop protocols regarding the reporting and correction of erroneous information. The Commission anticipates that this requirement will result in costs to SDRs associated with the reporting of both creation and continuation data in the form of non-recurring investments in technological systems and personnel during the development of the formatting procedure, and recurring expenses associated with data processing, systems maintenance, and personnel hours to format new data. However, the burden associated with § 45.14 are contained in the real time public reporting rules proposed by the Commission, for which the Commission has prepared an information collection request for review and approval by OMB. To avoid duplication of PRA burdens, those costs are not being accounted for in the information collection request associated with this rulemaking.

C. Consideration of Costs and Benefits

1. INTRODUCTION

The swap markets, which have grown exponentially in recent years, are now an integral part of the nation's financial system. As the financial crisis of 2008 demonstrated, the absence of transparency in the swap markets can pose significant risk to this system.[95] The Dodd-Frank Act

[95] As the U.S. Senate Committee on Banking, Housing, and Urban Affairs explained concerning the 2008 financial crisis:

> Information on prices and quantities [in "over-the-counter", or "OTC", derivatives contracts] is opaque. This can lead to inefficient pricing and risk assessment for derivatives users and leave regulators ill-informed about risks building up throughout the financial system. Lack of transparency in the massive OTC market intensified systemic fears during the crisis about interrelated derivatives exposures from counterparty risk. These counterparty risk concerns played an important role in freezing up credit markets around the failures of Bear Stearns, AIG, and Lehman Brothers.

S.Rep. No. 111-176, at 30 (2010). More specifically with respect to credit default swaps ("CDSs"), the Government Accountability Office found that "comprehensive and consistent data on the overall market have not been readily available," that "authoritative information about the actual size of the CDS market is generally not available," and

seeks in part to promote the financial stability of the United States by improving financial system accountability and transparency. More specifically, Title VII of the Dodd-Frank Act directs the Commission to oversee the swap markets and to develop and promulgate regulations to increase swap market transparency and thereby reduce the potential for counterparty and systemic risk.[96]

Transaction reporting is a fundamental component of the legislation's objective to reduce risk, increase transparency, and promote market integrity within the financial system generally, and the swap market in particular. Specifically, the Dodd-Frank Act requires that "each swap (whether cleared or uncleared) . . . be reported to a registered swap data repository."[97] The Dodd-Frank Act also requires SDRs to collect and maintain swap transaction data as prescribed by the Commission, and to make such data electronically available to regulators.[98]

CEA section 21(b)(1)(A), added by section 728 of the Dodd-Frank Act, addresses the content of the swap transaction data that registered entities and reporting counterparties must report to a registered SDR and directs the Commission to "prescribe standards that specify the data elements for each swap that shall be collected and maintained by each registered swap data repository." In fulfilling this statutory mandate, CEA section 21(b)(1)(B) also directs the Commission to "prescribe consistent data element standards applicable to registered entities and reporting counterparties." In promulgating this part 45, the Commission implements Congress's mandate that swap transaction and pricing data is reported to registered SDRs. Part 45 achieves

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that regulators currently are unable "to monitor activities across the market." Government Accountability Office, "Systemic Risk: Regulatory Oversight and Recent Initiatives to Address Risk Posed by Credit Default Swaps," GAO-09-397T (March 2009), at 2, 5, 27.

[96] See Mark Jickling and Kathleen Ann Ruane, Cong. Research Serv., The Dodd-Frank Wall Street Reform and Consumer Protection Act: Title VII, Derivatives 1 (2010); Financial Regulatory Reform--A New Foundation: Rebuilding Financial Supervision and Regulation, U.S. Department of the Treasury, at 47-48 (June 17, 2009).

[97] CEA section 2(a)(13)(G)

[98] Regulations governing core principles, registration requirements, and duties of SDRs are contained in part 49 of this chapter.

the statutory objectives of transparency by, inter alia, requiring that market participants report swap transaction data to an SDR, possibly through intermediaries.[99]

As discussed in more detail below, the Commission anticipates that the requirements of part 45 will generate several overarching, if presently unquantifiable, benefits to swap market participants and the general public. These include (a) increased transparency; (b) improved regulatory understanding of concentrations of risk within the market; (c) more effective monitoring of risk profiles by regulators and by regulated entities themselves through the use of unique identifiers; (d) improved regulatory oversight, and (e) more robust data management systems.

The Commission believes these benefits, made possible by the timely reporting of comprehensive swap transaction data, consistent data standards for recordkeeping, and identification of products, entities and transactions through unique identifiers, will accrue to market participants in a number of ways:

- Increased transparency of derivatives markets.
- Improved risk management: a transfer of the costs associated with systemic risk from the public to private entities, particularly to those that are better positioned to realize economies of scale and scope in assuming those costs.
- More robust risk monitoring and management capabilities for market participants as a result of the systems required under part 45. This will improve the monitoring of the participant's current swap market position.
- New tools to process transactions at a lower expense per transaction given the systems required under part 45. These tools will enable participants to handle the same or an increased volume of swaps at a lower marginal expense.
- More robust standards for the financial services industry, such as utilizing UTC and unique identifiers.
- Swap transaction reporting under the final rules provides a means for the Commission to gain a better understanding of the swap markets--including aggregate positions both in

[99] CEA section 4r(a)(1)(B), added by section 729 of the Dodd-Frank Act, requires that each swap not accepted for clearing by any DCO must be reported to a registered SDR or, in the case in which there is no SDR that would accept the swap, to the Commission.

> specific swap instruments and positions taken by individual entities or groups--by requiring transaction data for currently opaque markets, and then aggregating that data in useful ways. For example, having such data would help Commission staff monitor and analyze the swap market in a more comprehensive manner. In this way, the final rule would support Congress' mandate that the Commission supervise the swap markets; in addition, transaction reporting aids the Commission in the development of the mandated semiannual reports on swap trading activity.

In the NOPR, the Commission requested comment on whether a phase-in approach should be used for the time of reporting of confirmation by non-SD/MSP counterparties. The Commission also requested comment on whether there was sufficient infrastructure to support lifecycle or alternative approaches for data reporting. The Commission received a number of comments on the implementation of the proposed rules that included cost-benefit considerations.

Global Forex commented that the phase-in period should take into account the work needed for FX market participants to establish connectivity to the SDR and for the SDR to develop unique identifiers and become established. Similarly, CME added that the compliance date must take into account the scope of implementation, which could take in its view several years. The Electric Coalition recommended that the Commission clarify its regulatory needs before setting forth specific reporting rules. Thomson Reuters recommended that the Commission implement rules consistent with proposals by the European Commission in their Markets in Financial Instruments Directive (MiFID). DTCC recommended a nearly year-long phase-in with products with the greatest automation being required first. ISDA recommended that legal entity identifiers and unique product identifiers be implemented prior to reporting.

The Electric Coalition presented a detailed three-step implementation proposal that it stated would reduce burdens for commercial energy firms. The Electric Coalition recommended that reporting be implemented in three phases: first for on-facility, cleared swaps; second for standardized but off-facility and uncleared swaps; and third for bespoke off-facility and

uncleared swaps. Similarly, Chatham Financial presented a detailed implementation schedule in four stages by counterparty. Under Chatham Financial's approach, DCMs, SEFs and DCOs would be required to report in the first stage; financial SDs would begin reporting in the second stage; non-financial SDs and MSPs would commence reporting in the third stage; and non-SD/MSP reporting counterparties would begin reporting in the fourth stage. CDEU agreed with Chatham Financial's approach. Dominion Resources recommended a phase-in approach for non-SD/MSP counterparties.

As discussed above, the Commission agrees with comments recommending phasing in reporting by asset class and by counterparty type, and has determined that the final rule provides for such a phase-in approach. The Commission anticipates that this approach will result in cost reductions for reporting counterparties relative to an immediate implementation of all of the reporting provisions of the rule. In particular, as discussed above, the phase-in approach adopted in the final rule will reduce costs for non-SD/MSP reporting counterparties by giving them six additional months to prepare for reporting. In response to comments, the Commission has also set forth a mechanism for voluntary supplemental reporting in § 45.12. As discussed in more detail above, the Commission believes § 45.12 may have benefits for both data accuracy and business processes.

In the sections that follow, the Commission considers the costs and benefits of part 45 as required by CEA section 15(a).

a. Background

Pursuant to CEA section 15(a), before promulgating a regulation under the CEA the Commission generally must consider the costs and benefits of its actions in the context of five broad areas of market and public concern: (1) protection of market participants and the public; (2) efficiency, competitiveness, and financial integrity of markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations. The Commission, in its discretion, may give greater weight to any one of the five enumerated factors and may determine that, notwithstanding costs, a particular rule protects the public interest.[100]

In the NOPR, the Commission stated that the proposed reporting and recordkeeping requirements could impose significant compliance costs on some SDRs, SEFs, DCMs, DCOs, SDs, MSPs, and non-SD/MSP counterparties. In particular, the Commission noted that the proposed recordkeeping and reporting requirements could require capital expenditures for some such entities that could affect their ability to compete in the global marketplace because of reductions in available resources. The Commission solicited comment on its consideration of costs and benefits and specifically invited commenters to submit any data or other information that they may have quantifying or qualifying the costs and benefits of the proposed requirements. The Commission also requested comments on the overall costs and benefits of the proposed rules implementing the Dodd-Frank Act.

In considering the costs and benefits of this final rule as well as its other final rules implementing the Dodd-Frank Act, the Commission has, wherever feasible, endeavored to estimate or quantify the costs and benefits of the final rules. Where this is not feasible, the Commission provides a qualitative assessment of such costs and benefits. In this respect, the

[100] See, e.g., Fisherman's Doc Co-op., Inc. v. Brown, 75 F.3d 164 (4th Cir. 1996); Center for Auto Safety v. Peck, 751 F.2d 1336 (D.C. Cir. 1985) (noting that an agency has discretion to weigh factors in undertaking cost-benefit analysis).

Commission notes that public comment letters did not provide quantitative data regarding the costs and benefits associated with the Proposed Rules.

In the following discussion, the Commission addresses the costs and benefits of the final rule, considers comments regarding the costs and benefits of the final rule, and subsequently considers the five broad areas of market and public concern as required by section 15(a) of the CEA. Moreover, as this rulemaking contains numerous reporting and recordkeeping requirements, many of the costs of the rulemaking are associated with collections of information. The Commission is obligated to estimate the burden of and provide supporting statements for any collections of information it seeks to establish under considerations contained in the PRA, 44 U.S.C. 3501 et seq., and to seek approval of those requirements from the OMB. Therefore, the estimated burden for the collections of information in this rulemaking, as well as the consideration of comments thereto, are discussed in the PRA section of this rulemaking and the information collection request filed with OMB as required by that statute. Otherwise, the costs and benefits of the Commission's determinations are considered in light of the five factors set forth in CEA section 15(a).

In this final rulemaking, the Commission is adopting regulations mandated by section 21(b) to specify "consistent data element standards" for reporting swaps to registered SDRs.

b. Cost-estimation methodology

The Commission has chosen to use as the reference point for its cost estimates a non-SD/MSP counterparty that is not a financial entity as defined in CEA section (2)(h)(7)(C), and does not have the technical capability and other infrastructure to comply with the part 45 requirements—in other words, a new market entrant with no prior swap market participation or infrastructure.

However, the Commission expects that the actual costs to established market participants will often be lower than this reference point—perhaps significantly so, depending on the type, flexibility, and scalability of systems already in place.[101]

The Commission recognizes that the costs of complying with part 45 are largely attributable to the reporting and recordkeeping requirements of this rule. As discussed above, the Commission has determined that the final rule will adopt a streamlined reporting regime that requires reporting by the registered entities or swap counterparties with the easiest, fastest, and cheapest data access and those most likely to have the necessary automated systems. Under this reporting regime, reporting obligations for non-SD/MSP counterparties are entirely eliminated in many cases, and are phased in or reduced in all other cases.

Non-SD/MSP counterparties can be required to report data only for the small minority of swaps in which both counterparties are non-SD/MSP counterparties.

Even within this small minority of swaps, the non-SD/MSP reporting counterparty will have no reporting obligations for swaps executed on a SEF or DCM and cleared by a DCO, or for off-facility swaps accepted for clearing by a DCO within the extended deadline for PET data reporting by the non-SD/MSP reporting counterparty.[102]

For swaps executed on a SEF or DCM but not cleared, the non-SD/MSP reporting counterparty's reporting obligations are limited to reporting required swap continuation data

[101] "The submission of information to trade repositories is an activity that takes place in many OTC markets today and will not unduly burden those who must comply with the requirement." CL-WMBAA at 6. In contrast, as commenters highlighted, the costs of complying with part 43 can be expected to be higher for non-financial end-users and others currently lacking the resources and systems of large financial institutions that transact swaps more frequently. See, e.g., CL-COPE. "Swap Dealers have books of business that typically are much larger because they encompass a much broader universe of types of swaps and because it is the core of their regular business…of necessity, swap dealers have and will continue to develop sophisticated and highly complex computer systems powered by highly customized software to enable them to keep track of and manage their books of business. … End-users simply do not have these systems and capabilities." CL-Coalition of Energy End-Users at 4.

[102] If an off-facility swap is accepted for clearing after the deadline for PET data reporting by the non-SD/MSP reporting counterparty, the non-SD/MSP counterparty is excused from reporting confirmation data, which will instead be reported by the DCO.

during the existence of the swap. Here the final rule provides reporting deadlines for non-SD/MSP reporting counterparties that are extended and phased in: a change to the primary economic terms of the swap must be reported by the end of the second business day following the date of the change during the first year of reporting, and by the end of the first business day following the date of the change thereafter; and valuation data is only required to be reported on a quarterly basis.

A non-SD/MSP counterparty will be required to report both swap creation data and swap continuation data only for off-facility, uncleared swaps between non-SD/MSP counterparties; and this obligation can apply only if the non-SD/MSP counterparty is an ECP, since CEA section 2(e) restricts swap trading by non-ECP counterparties to on-facility swaps. For the small number of off-facility, uncleared swaps for which a non-SD/MSP that is an ECP is the reporting counterparty, the final rule also provides reporting deadlines that are extended and phased in.[103]

Furthermore, costs for non-SD/MSP counterparties that are not a "financial entity" as defined in CEA § 2(h)(7)(C) will be further reduced by the fact that the final rule provides that for swaps between non-SD/MSP counterparties where only one counterparty is a financial entity, the financial entity will be the reporting counterparty. Because financial non-SD/MSP counterparties are more likely than non-SD/MSP counterparties that are not financial entities to have in place some or all of the personnel and technological infrastructure necessary to serve as the reporting counterparty, and to be able to realize economies of scale with respect to reporting,

[103] In such cases, PET data must be reported within 48 hours after execution during the first year of reporting, within 36 business hours after execution during the second year of reporting, and within 24 business hours after execution thereafter. Confirmation data must be reported within 48 hours after confirmation during the first year of reporting, within 36 business hours after confirmation during the second year of reporting, and within 24 business hours after confirmation thereafter. During the existence of the swap, changes to primary economic terms must be reported by the end of the second business day following the date of the change during the first year of reporting, and by the end of the first business day following the date of the change thereafter; and valuation data is only required to be reported on a quarterly basis.

placing the burden of reporting in this context on the counterparty that is a financial entity is likely to provide a more cost-effective overall reporting process.

These provisions of the final rule either eliminate or substantially reduce the cost and burden of reporting for non-SD/MSP counterparties.

To address costs specific to SDRs, the Commission has estimated the incremental costs SDRs would incur to comply with the reporting and recordkeeping requirements of this rulemaking above the base operating costs for SDRs reflected in a separate rulemaking.[104] These incremental costs include the creation and transmission of unique identifiers.

2. GENERAL COST-BENEFIT COMMENTS RECEIVED

This rulemaking has generated an extensive record, which is discussed at length throughout this notice as it relates to the substantive provisions in the final rules. A number of commenters suggested that implementing and complying with the proposed rules would incur significant costs. Because of its concern about the potential level of costs, the Minneapolis Grain Exchange ("MGEX") requested an extensive and realistic cost-benefit analysis of each regulation before adoption. The Commission also received general comments from Chatham Financial, Vanguard, ABC, EEI, WGCEF, Dominion Resources, FHLB, DTCC, the Electric Coalition, and CDEU, recommending that the Commission consider the costs and burdens of the proposed rules on non-registered, small entities. The Foreign Banks, Global Forex, CME, ISDA and SIFMA requested that the Commission consider the cost implications of the proposed regulations on all applicable entities and in some instances, recommended alternative approaches. The Commission has carefully considered alternatives suggested by commenters, and in a number of instances, has adopted alternatives or modifications to the proposed rules

[104] See Commission, Swap Data Repositories: Registration Standards, Duties and Core Principles: Final Rule. 76 FR 54538 (Sep. 1, 2011) at 54572 (SDR Final Rule).

where, in the Commission's judgment, the alternative or modified standard accomplishes the same regulatory objective in a more cost-effective manner.

In response to the Commission's invitation in the NOPR for comments on the overall costs and benefits of the proposed rules, Better Markets stated that the Commission's cost-benefit analyses in the notices of proposed rulemaking may have understated the benefits of the proposed rules. Better Markets argued that adequate assessment of the costs and benefits of any single proposed rule or element of such a rule would be difficult or impossible without considering the integrated regulatory system of the Dodd-Frank Act as a whole. According to Better Markets:

> It is undeniable that the Proposed Rules are intended and designed to work as a system. Costing-out individual components of the Proposed Rules inevitably double counts costs which are applicable to multiple individual rules. It also prevents the consideration of the full range of benefits that arise from the system as a whole that provides for greater stability, reduces systemic risk and protects taxpayers and the public treasury from future bailouts.[105]

Better Markets also stated that an accurate cost benefit assessment must include the avoided risk of a new financial crisis. One measure of this is the still accumulating cost of the 2008 financial crisis. The comment letter cited a statement by Andrew G. Haldane, Executive Director for Financial Stability at the Bank of England, who estimated the worldwide cost of the crisis in terms of lost output at between $60 trillion and $200 trillion, depending primarily on the long term persistence of the effects.

Notwithstanding that it must (and does) conduct a cost-benefit analysis with respect to this rulemaking, the Commission agrees with Better Markets that the proposed rules should operate in a coordinated manner to improve and protect financial markets. In that regard, the costs and benefits associated with this final rule are in some instances not readily separable from

[105] CL-Better Markets II, at 3.

the costs and benefits associated with other Commission rulemakings implementing the Dodd-Frank Act, most notably those governing real-time public reporting of swap transaction and pricing data (part 43) and registration and regulation of swap data repositories (part 49). Swap data recordkeeping and reporting, will, for instance, provide information to enable regulatory agencies to more fully understand the mechanisms and risks of the swap market. Access to previously unavailable data will allow these agencies to better model and analyze swap markets to mitigate systemic risk, detect potential market manipulation, and expand their capabilities in efficient market oversight. Acknowledging this, the Commission must conduct a cost-benefit analysis with respect to specific rulemaking.

In a broad sense, the costs presented to market participants by the requirements of this rule represent the internalization by financial market participants of a negative externality—the costs generated by systemically risky behavior on the part of market participants, which had previously been internalized by the taxpaying public in the form of government bailouts of failed financial firms that were brought down in part by this risky behavior.

In analyzing the costs and benefits of this rulemaking, it is important to note that many elements of the rule are mandated by Dodd-Frank Act and are thus outside the Commission's discretion. For example:

- Information about all swaps, cleared or uncleared, must be reported to a registered SDR (or, in the event that a swap is not is not accepted by an SDR, to the Commission).
- The Commission must prescribe consistent data element standards for SDRs, registered entities, and reporting counterparties.
- The Commission must determine the hierarchy of reporting responsibility for uncleared swaps

3. RECORDKEEPING

As discussed throughout this release, the CEA as amended by the Dodd-Frank Act establishes recordkeeping requirements for registered entities.

a. Benefits of recordkeeping

The recordkeeping requirements of part 45 will allow the Commission and other regulatory agencies to develop an accurate picture of swap markets in a timely fashion. This serves the public interest. From an enforcement perspective, the recordkeeping requirements of part 45 enable investigators and attorneys to reconstruct a comprehensive, sequenced record of swap transactions that will be an essential tool in ensuring the fairness of swap markets. The recordkeeping requirements of part 45 will also facilitate examinations and investigations by the Commission and other regulators to ensure that registered entities are in compliance with core principles.

The requirement to retain records for the life of the swap plus five years provides be of substantial benefit to the economists employed by the Commission and to other regulators. In general, economic analysis benefits from a broader body of data; in particular, time-series analysis (a fundamental element of economic and statistical analysis in which the value of a variable is charted over time) may benefit from a body of data that represents a longer time horizon.

b. Costs of recordkeeping

The Commission received several comments related to the costs of swap recordkeeping. With respect to recordkeeping by non-SD/MSP counterparties, the Electric Coalition recommended that the Commission reduce recordkeeping requirements to the minimum necessary and phase requirements relative to the cost of implementation. Shell Energy

requested clarification that non-SD/MSP counterparties are not subject to the recordkeeping requirements. WGCEF requested that the Commission consider participants who transact in non-financial markets when adopting its recordkeeping proposals, and further evaluate the actual costs, availability of technology, and ability of market participants to deploy the technology required to comply with such requirements.

With respect to record retention, AGA contended that requiring records to be kept through the life of a swap plus five years would impose substantive costs on end-users such as gas utilities. AGA also stated that the proposed three-day accessibility requirement effectively would require an off-site storage provider, which if available at all, could be cost-prohibitive. Reasoning that transactions between non-SD/MSP counterparties would represent only a small portion of regulated activity, AGA recommended that the Commission reduce its recordkeeping requirements for non-SD/MSPs so that they would only have to maintain such records for three years following expiration of the swap. CIEBA and WGCEF supported the proposed five-year post-expiration retention period, but also recommended not extending it further. ISDA and SIFMA requested clarification that the phrase "via real-time electronic access" does not mean "instantly accessible" which it characterized as impracticable given the volume of day to day reporting.

As discussed above, the Commission has determined that the final rule requires SEFS, DCMs, DCOs, SDs, and MSPs to keep full, complete, and systematic records, together with all pertinent data and memoranda, of all activities relating to the business of such entities or persons with respect to swaps. Such records must be kept in electronic rather than paper form unless they are originally created and exclusively maintained in paper form. The final rule limits the parallel requirement for non-SD/MSP counterparties to full, complete, and systematic records,

together with all pertinent data and memoranda, with respect to each swap in which they are a counterparty. In response to comments, the Commission has determined that non-SD/MSP counterparties may keep records in either electronic or paper form.

With respect to record retention, the final rule provides that all records required to be kept by SEFS, DCMs, DCOs, SDs, and MSPs must be kept with respect to each swap throughout the life of the swap and for at least five years following final termination of the swap, or for at least ten years following the date of creation of the swap, whichever is greater. Non-SD/MSP counterparties must keep required records throughout the existence of the swap and for five years following final termination of the swap.

With respect to record retrieval, the final rule provides that required records maintained by SEFs, DCMs, DCOs, SDs, and MSPs must be readily accessible by the registered entity in question via real time electronic access throughout the life of the swap and for two years following the final termination of the swap, and must be retrievable within three business days throughout the remainder of the required retention period. Record retrieval requirements are lower in the case of non-SD/MSP counterparties: in response to comments, the Commission has determined that non-SD/MSP counterparties need only be able to retrieve records within five business days throughout the required retention period.

As discussed above, the Commission has determined that the compliance date for non-SD/MSP counterparties will be six months after the compliance date for other registered entities and counterparties. The Commission has determined that compliance with the requirement to begin recordkeeping should not be further phased in for non-SD/MSP counterparties. As noted, the final rule provides lesser recordkeeping requirements and lesser retrieval requirements for non-SD/MSP counterparties, in order to reduce recordkeeping costs and burdens for them. The

Commission believes that delaying the requirement to comply with recordkeeping requirements could interfere with the ability of the Commission and other regulators to carry out their oversight and enforcement responsibilities. As noted above, the Commission's experience with recordkeeping requirements in the context of futures suggests that all market participants do retain records, and that such recordkeeping is essential for effective oversight and prosecution of violations.

The Commission anticipates that the recordkeeping requirements in § 45.2 will present additional costs to registered entities and swap counterparties that currently do not retain swap records for the required period of time. Costs for recordkeeping costs will include non-recurring investments in technological systems and personnel associated with establishing data capture and storage systems, and recurring expenses associated with personnel, data storage and maintenance of data storage systems. The Commission has not identified any quantifiable costs of recordkeeping that are not associated with an information collection subject to the PRA. Quantifiable costs associated with the same are reflected in the PRA. The Commission believes that this cost will be substantially reduced or effectively eliminated for registered entities and swap counterparties that already engage in the recordkeeping as required by the final rule.

The Commission anticipates that the retrieval requirements set forth in part 45.2 will result in additional costs to registered entities and swap counterparties that do not currently have the ability to retrieve records within the required timeframe. The Commission expects that this requirement will present costs to registered entities and swap counterparties in the form of non-recurring investments in technological systems and personnel associated with establishing data retrieval processes, and recurring expenses associated with the actual retrieval of swap data records. Quantifiable costs associated with the same are reflected in the PRA.

The Commission believes that these costs will be substantially reduced or effectively eliminated for registered entities and swap counterparties with an existing infrastructure capable of record retrieval within the timeframe set forth in this requirement.

The Commission also believes that its determination to allow non-SD/MSP counterparties to keep records in either electronic or paper form will generally reduce the cost and burden of recordkeeping for such counterparties. While many non-SD/MSP counterparties may choose to keep records in electronic form, some such counterparties that currently do not have electronic recordkeeping systems may prefer, as suggested by comments, to avoid the cost of acquiring such systems by continuing to maintain paper records. The Commission believes that the final rule provision lengthening the record retrieval period for non-SD/MSP counterparties to five business days will give such counterparties adequate time to retrieve such paper records in the event that the records are requested by the Commission or another regulator in the course of an investigation. The Commission generally believes that the pre-Dodd-Frank rationale for requiring Commission registrants to keep all records relating to their business similarly applies to swaps by registered entities and swap counterparties. The Commission requires these records to perform its regulatory function. Retaining readily accessible records may also improve the risk management practices of complying entities that wish to consult or analyze swap transactions as part of their proprietary risk management strategies.

c. Recordkeeping requirements in light of CEA § 15(a)

The Commission has evaluated the benefits of the recordkeeping provisions of § 45.2 in light of the specific considerations identified in section 15(a) of the CEA as follows:

Protection of market participants and the public. As discussed above, the Commission has endeavored to limit the costs attributable to discretionary implementation decisions to the

maximum degree consistent with statutory requirements and their intended benefits. The Commission has endeavored to match the costs of the post-implementation marketplace with the sizes, levels of sophistication, and levels of systemic importance of the affected participants, so that the associated benefits may be realized by the public.

With respect to recordkeeping, the Commission believes the benefits include the protection of market participants and the public. The Commission believes that the recordkeeping requirements in the final rule will enable the Commission and other regulatory agencies to fulfill their oversight and enforcement responsibilities. The record retention periods in the final rule are consistent with both the Commission's existing retention requirement in the context of futures, pursuant to Commission Regulation 1.31, and with applicable statutes of limitation. Such record retention will give the Commission ready access to data essential to its mission to protect market participants and the public from violations of the CEA and Commission regulations. The build-up of systemic risk in the largely opaque swap market played a significant role in the financial crisis of 2007-2008; accordingly, the Commission believes that the introduction of transparency to these markets will be critical to regulators' efforts to inform and protect market participants and the public in the future.

Efficiency, competiveness, and financial integrity. As discussed above, the Commission has endeavored to limit the costs attributable to discretionary implementation decisions to the maximum degree consistent with statutory requirements and their intended benefits. The Commission has endeavored to match the costs of the post-implementation marketplace with the sizes, levels of sophistication, and levels of systemic importance of the affected participants, so that the associated benefits may be realized by the public.

The Commission believes that the recordkeeping requirements provided in the final rule will serve to protect the financial integrity of swap markets, through increased transparency. This transparency will provide the Commission and other regulators enhanced enforcement abilities, aiding the prosecution and deterrence of market abuses. The Commission acknowledges the costs associated with the recordkeeping requirement (discussed above), and has attempted to minimize costs to the extent consistent with fulfillment of the purposes of the Dodd-Frank Act. The final rule adopts the NOPR provision for lesser recordkeeping requirements for non-SD/MSP counterparties. While other registered entities and counterparties must keep records of all activities relating to their businesses with respect to swaps, non-SD/MSP counterparties are only required to keep records with respect to each swap in which they are a counterparty. Recordkeeping by all swap counterparties, including non-SD/MSP counterparties, is essential to the Commission's enforcement and market supervision functions. The Commission also notes that current lapses in recordkeeping by institutions may generate implicit integrity costs to financial transactions and the wider public; the final rule attempts to mitigate these current costs through various recordkeeping requirements (including universal identifiers), aiding financial integrity.

The Commission believes that, by improving the integrity of the U.S. swap markets in the manner described above, this final rule may make participation in the U.S. swap markets more appealing to entities that currently do not participate, and thus could enhance demand for access to the U.S. swap market and its participants both domestically and internationally. This potential increase in swap market participation may improve the competitiveness of the swap marketplace as more parties demand sources of risk transference.

Furthermore, the Commission does not anticipate that the recordkeeping requirements of this final rule present any costs that would impede the efficiency of swap markets. Required recordkeeping may aid internal audits and dispute resolution. Electronic recordkeeping, which will aid required electronic reporting, may improve efficiency and reduce initiation and maintenance costs over the long run.

Price discovery. The Commission does not believe that this requirement has a material effect on the price discovery process.

Sound risk management practices. The Commission believes that the final rule recordkeeping requirements may serve to improve the soundness of the risk management practices of market participants. The Commission is essentially requiring the maintenance of accurate records in a manner such that records are readily available for reproduction to regulators, but the Commission anticipates an ancillary risk management benefit. That is, market participants will now have access to a highly organized and streamlined internal records system when analyzing or otherwise developing their risk management practices. The Commission does not believe that the costs associated with its discretionary implementation decisions are of a magnitude to impede sound risk management. Moreover, the cost of implementation of the recordkeeping rule may be partially compensated by error avoidance and the mitigation of internal risk.

Other public interest considerations. As discussed throughout the preamble, the Commission believes that the greater market transparency, enhanced market monitoring, and increased systemic risk mitigation that will be enabled by the swap recordkeeping required by the final rule are in the public interest.

4. SWAP DATA REPORTING

a. Benefits of swap data reporting

The Commission anticipates that the part 45 reporting requirements will generate several overarching, if presently unquantifiable, benefits to swap market participants and the general public. These include(i) improved risk management; (ii) a transfer of the costs associated with systemic risk from the public to private entities, particularly to those that are better positioned to realize economies of scale and scope in assuming those costs; and (iii) improved regulatory oversight.

The Commission believes these benefits, made possible by the timely reporting of comprehensive swap transaction data, will accrue to market participants in a number of ways:

- More robust risk monitoring and management capabilities for market participants as a result of the systems required under part 45. This will improve the monitoring of the participant's current swap market position.
- New tools to process transactions at a lower expense per transaction given the systems required under part 45. These tools will enable participants to handle the same or an increased volume of swaps at a lower marginal expense both at trade inception and during its life.
- More robust standards for the financial services industry, such as utilizing UTC and unique identifiers for products and legal entities.

Transaction reporting under part 45 also benefits the general public by supporting the Commission's supervision of the swap market, as well as the broader supervisory responsibilities of U.S. financial regulators to protect against financial market systemic risk. The reporting and recordkeeping requirements provide a means for the Commission to gain a better understanding of the swap market—including the pricing patterns of certain commodities. As bespoke swaps move onto more standardized, and in some cases, electronic platforms, more numerous trade

participants will likely enter these markets. Timely, comprehensive, and standardized regulatory reporting is especially crucial for successful oversight of these marketplaces.

Transparency facilitated by transaction reporting to SDRs also will help provide a check against a reoccurrence of the type of systemic risk build-up that occurred in 2008, when "the market permitted enormous exposure to risk to grow out of the sight of regulators and other traders and derivatives exposures that could not be readily quantified exacerbated panic and uncertainty about the true financial condition of other market participants, contributing to the freezing of credit markets."[106] The ability to monitor and quantify these levels of risk assumption provides one additional line of defense against another occurrence of crippling financial costs.

Pursuant to this final rule, reporting counterparties will be required to report allocation information when a swap is transacted by an agent on behalf of clients. The Commission believes that this requirement will enable regulators to better understand swaps in the context of allocation, and to more accurately assess their associated systemic risk, by enabling regulators to see the full record of each such swap all the way back to both the original transaction and the actual counterparties.

The Commission believes requiring all data to be reported in the same SDR following the initial report from a SEF or DCM would reduce data fragmentation and improve regulatory oversight. The costs and benefits of the Commission's approach are addressed in more detail below in the discussion of the section 15(a) factors. The Commission is harmonizing its initial PET data reporting with the part 43 real-time public reporting requirements to the extent possible

[106] Mark Jickling and Kathleen Ann Ruane, Cong. Research Serv., The Dodd-Frank Wall Street Reform and Consumer Protection Act: Title VII, Derivatives 1 (2010).

and setting forth identical timeframes so that counterparties and registered entities may be able to, in most cases, submit data for both requirements in a single report.[107]

The Commission notes that there is a cost reduction associated with the improved harmonization between the approach to PET data reporting of this final rule and the part 43 real-time public reporting requirements that were made by the Commission between the issuance of the NOPR and this final rule. These requirements have been harmonized to the extent possible, including the imposition of identical timeframes, so that counterparties and registered entities will be able to make one initial report. The Commission anticipates that this harmonization will result in a significant reduction in cost to counterparties and registered entities.

The Commission believes that part 45 will yield significant benefits to the public and swap market participants. As discussed more fully below, however, the Commission is mindful of the costs of its rules and has carefully considered comments concerning the potential costs of its proposed recordkeeping and reporting rules. To the extent possible and consistent with the statutory and regulatory objectives of this rulemaking, the Commission has adopted cost-mitigating alternatives presented by commenters. In the following paragraphs, the Commission first estimates the costs of reporting and next considers those costs and the aforementioned benefits in light of the five public interest factors of CEA section 15(a).

b. Costs of swap data reporting

As discussed in detail above, the Commission received a number of comments supporting the proposed reporting rules, and others suggesting alternatives or refinements. Commenters did not provide any quantitative data regarding the costs to registered entities, reporting

[107] The phase-in and implementation of these requirements may differ.

counterparties and the public. The Commission addressed those comments above and, where deemed appropriate, the final rules reflect commenters' suggestions.

Costs of reporting requirements

The Commission anticipates that the direct, quantifiable costs of complying with the requirement for SEFs, DCMs, DCOs, and reporting counterparties to report creation data will take the forms of (i) nonrecurring expenditures in technology and personnel; and (ii) recurring expenses associated with systems maintenance, support, and compliance. Each of these quantifiable costs of swap data reporting is associated with an information collection subject to the PRA. These costs therefore have been accounted for in the information collection requests filed with OMB as required by the PRA.

The Commission estimates that the initial costs for its reference point, a non-SD/MSP reporting counterparty that is not a "financial entity" as defined in CEA § 2(h)(7)(C), and does not contract with a third party to report swap data, will likely consist of (i) developing an internal OMS capable of capturing all relevant swap data in real-time; (ii) establishing connectivity with an SDR that accepts data; (iii) developing written policies and procedures to ensure compliance with part 45; and (iv) compliance with error correction procedures.[108]

The Commission anticipates, however, that the costs of creation data reporting for the reporting entities and counterparties listed above are already largely addressed by the costs of reporting the real-time data stream for compliance with part 43. Accordingly, the costs of

[108] As noted above, most data reporting pursuant to Part 45 will be performed by SDs, MSPs, SEFs, DCMs, or DCOs. However, when estimating costs to market participants for this final rule, the Commission anticipates that the technological infrastructure and personnel costs will likely be highest for an unsophisticated non-SD/MSP reporting counterparty that is not a financial entity, has no existing infrastructure for reporting, and does not contract with a third-party service provider to facilitate reporting. Accordingly the Commission considered costs from this perspective. The Commission anticipates that these costs will be lower, and in many cases significantly reduced or completely eliminated, for larger or more sophisticated entities that already have technological and personnel systems developed and operational.

creation data reporting presented by part 45 should not be considered incremental to the costs of capturing and transmitting the real-time data stream pursuant to part 43 except in certain instances, which are addressed below. In general, the Commission estimates that the processes necessary for capturing and transmitting the real-time data stream pursuant to part 43 will encompass the costs of capturing and transmitting creation data pursuant to part 45. The Commission anticipates that a reporting entity or counterparty will use its OMS to capture all of the information that pertains to a given swap. This body of information will be used to produce the fields necessary for compliance with both part 43 and part 45. Therefore, the Commission believes that, in general, the costs of developing and maintaining an OMS necessary for compliance with part 45 should not be considered to be incremental to the costs of developing and maintaining an OMS for compliance with part 43.

Similarly, under both part 43 and part 45 the reporting entity will be required to establish and maintain connectivity with an SDR for the transmission of data. The Commission anticipates that, in order to streamline the data reporting process, reporting entities will transmit both the real-time data stream and the regulatory data stream simultaneously to the same SDR via the same connection.[109] The Commission has aligned the reporting deadlines provided in part 45 and the public dissemination delays set forth in part 43 in order to reduce costs and burdens by permitting registered entities and reporting counterparties to fulfill their swap data reporting obligations with respect to both part 45 and part 43 by transmitting a single report.[110]

[109] Should a reporting entity elect to transmit these streams separately, its cost to transmit data to an SDR would likely increase; however, it is for precisely this reason that the Commission anticipates that reporting entities would, in fact, eliminate duplicative reporting of data streams for a given swap by transmitting both streams simultaneously.

[110] For off-facility swaps that are not accepted for clearing within the applicable deadline for the reporting counterparty to report PET data, the reporting counterparty can combine required PET data reporting and required real time reporting in a single report, but would still have to report confirmation data separately if it is not reported along with PET data. Reporting counterparties can avoid the need for a separate confirmation data report by confirming their swaps within the applicable deadline for PET data reporting.

Given simultaneous transmission of the data streams necessary for compliance with parts 43 and 45, the Commission believes that, in general, the costs of establishing and maintaining connectivity to an SDR in order to comply with part 45 should not be considered to be additional to the costs of establishing and maintaining connectivity to an SDR in order to comply with part 43.

The Commission anticipates that the same logic may be applied to the costs of developing written compliance policies and procedures, as well as the costs of developing and implementing error correction procedures. Because the data streams necessary for compliance with parts 43 and 45 for a given swap originate from the same set of information, the Commission anticipates that reporting entities will likely consider the management of both streams when developing compliance and error correction procedures. The Commission therefore believes that in general, the costs of developing and implementing compliance and error correction procedures presented by part 45 should not be considered additional to the costs of developing and implementing compliance and error correction procedures presented by part 43.

The Commission acknowledges that part 43 does not address the costs of reporting by DCOs. The Commission estimates that the incremental costs to DCOs of compliance with this final rule would be comparable to the costs either (a) a SEF or DCM, if the DCO makes the creation data report for an off-facility, cleared swap[111], or (b) an SDR, if the DCO registers as such. In the event that a DCO registers as an SDR, it will also incur the costs of registering as such pursuant to part 49.

[111] The costs to a DCO will be similar to those of a SEF or DCM in this instance because the initial report to the Commission by the registered entity will include the same data fields reported in the same timeframe; thus, the non-recurring and recurring costs to a DCO of processing and reporting those data should be similar, if not identical, to those incurred by a SEF or DCM.

Costs of reporting timelines

The reporting timelines and requirements established in this part were designed to accommodate the needs of reporting counterparties and registered entities of varying size and sophistication. The Commission believes that these reporting timelines and requirements have been tailored appropriately to the sizes and levels of technological and personnel sophistication of the affected entities, and will not impose any additional costs to reporting counterparties or registered entities above the costs associated with their reporting obligations. Costs associated with reporting obligations are discussed below in the sections addressing the costs of creation data reporting and continuation data reporting.

Several commenters addressed the timeframes allotted for reporting creation and continuation data. The AGA requested at least 24 hours for PET data reports by non-SD/MSP reporting counterparties, both initially and when required to supplement an incomplete SEF or DCM report. AGA also requested more than the 24 hour timeframe allotted for PET data reporting for swaps that are neither electronically executed nor verified, because in certain instances the reports could be required outside normal business hours, which would increase reporting costs. Similarly, ABC asked the Commission to clarify that the 24 hour time frame did not include non-business days, such as a national or state holiday or a national or state period of emergency.

MFA commented generally that it believed that the policy benefits of providing swap data within minutes of execution do not outweigh the costs in terms of the high likelihood of errors, or the infrastructure costs to establish a mechanism to report swaps information in these short timeframes. Specifically, MFA recommended that the Commission define “execution” as being coterminous with “confirmation” for on-facility swaps. It also urged that, for swaps not

executed or confirmed electronically, the 24-hour timeframe in the NOPR should commence following manual confirmation. Similarly, COPE, EEI, and IECA commented that the 24 hour timeframe was too short for non-SD/MSP counterparties. Specifically, IECA recommended weekly reports for all required creation data and weekly or biweekly for continuation data.

Chatham Financial and CDEU recommended a timeline of the next business day following execution for electronically executed non-SD/MSP reportable swaps and second business day following execution for non-electronically executed and confirmed non-SD/MSP reportable swaps.

The Electric Coalition recommended that non-SD/MSP reporting counterparties be required to report no more than quarterly, and generally commented that the timelines were too short for non-financial entities. Similarly, CDEU commented that, for valuation data (a subset of continuation data reporting), non-SD/MSP end-users should not be required no more frequently than they are required to reconcile their portfolios.

As discussed above, after considering these comments, the Commission has determined that the final rule will adopt a streamlined reporting regime that requires reporting by the registered entities or swap counterparties with the easiest, fastest, and cheapest data access and those most likely to have the necessary automated systems.

Under this reporting regime, in the case of swaps executed on a SEF or DCM and cleared on a DCO, and in the case of off-facility swaps accepted for clearing by a DCO within the deadlines for reporting counterparties to report PET data, reporting obligations for non-SD/MSP reporting counterparties are entirely eliminated, and the only reporting obligation for SD or MSP reporting counterparties is the requirement to report valuation data during the existence of the swap.

For on-facility swaps that are not cleared, reporting counterparties must report only required swap continuation data, including reports of changes to primary economic terms of the swap made after occurrence of such a change, and reports of valuation data. As noted above, the deadlines for such reports by non-SD/MSP reporting counterparties have been substantially extended.

For off-facility swaps not accepted for clearing within the applicable counterparty reporting deadline, but eventually cleared, SD or MSP reporting counterparties are required to report only PET data and valuation data, and non-SD/MSP reporting counterparties are required to report only PET data.

A non-SD/MSP counterparty will be required to report both swap creation data and swap continuation data only for off-facility, uncleared swaps between non-SD/MSP counterparties; and this obligation can apply only if the non-SD/MSP counterparty is an ECP, since CEA § 2(e) restricts swap trading by non-ECP counterparties to on-facility swaps. For the extremely small number of off-facility, uncleared swaps for which a non-SD/MSP that is an ECP is the reporting counterparty, the final rule also provides reporting deadlines that are extended and phased in. In such cases, PET data must be reported by the non-SD/MSP reporting counterparty within 48 hours after execution during the first year of reporting, within 36 business hours after execution during the second year of reporting, and within 24 business hours after execution thereafter. Confirmation data must be reported within 48 hours after confirmation during the first year of reporting, within 36 business hours after confirmation during the second year of reporting, and within 24 business hours after confirmation thereafter. During the existence of the swap, changes to primary economic terms must be reported by the end of the second business day following the date of the change during the first year of reporting, and by the end of the first

business day following the date of the change thereafter; and valuation data is only required to be reported on a quarterly basis.

Finally, for off-facility, uncleared swaps, SD or MSP reporting counterparties must report both required swap creation data and required swap confirmation data. However, the reporting timeframes for these reports have been coordinated with the dissemination delays for real time reporting, in order to permit counterparties to fulfill both real time and regulatory reporting obligations by making a single creation data report.[112] Confirmation data reporting deadlines in this context have also been extended to 24 business hours in cases where confirmation occurs manually rather than through use of automated systems, due to the presence of a non-SD/MSP counterparty that lacks such systems.

These provisions of the final rule either eliminate or substantially reduce the costs and burdens of swap data reporting for all reporting counterparties, and particularly for non-SD/MSP reporting counterparties, who are those least likely to have existing technological and personnel infrastructure for swap data reporting.

Costs of reporting cleared swaps

The Commission notes that the final rule swap data reporting requirements could present costs to reporting counterparties and registered entities to the extent that a SEF, DCM, or reporting counterparty reports regulatory data to an SDR with which it does not have a presently existing connection, rather than to a DCO registered as an SDR, with which registered entity or reporting counterparty has a presently existing connection for clearing purposes.[113] However, the Commission enumerated the costs of establishing connectivity to an SDR for swap data

[112] The phase-in and implementation of these requirements may differ.

[113] Should a DCO register as an SDR, counterparties that transacted through the DCO previously would have already established connectivity for processing those transactions, and would thus not have to incur new connectivity costs once the DCO began functioning as an SDR.

reporting in its final part 43 rules governing real-time reporting of swap transaction and pricing information. The costs of connectivity presented by this final rule are not additional to those costs considered in connection with part 43, and thus are not appropriate for evaluating costs relative to benefits in this rulemaking. Moreover, the Commission has not identified any quantifiable costs with respect to connectivity are not associated with the part 43 information collection request, for which the Commission must account under the PRA.

Two commenters addressed cost-benefit considerations in regard to the reporting of cleared swaps to SDRs. CMC recommended that the Commission leverage existing DCOs for reporting cleared swaps, adding that requiring the industry to establish a redundant set of expensive connections with non-DCO SDRs for the purpose of making regulatory reports for cleared trades would be costly, inefficient and unnecessary. Similarly, CME recommended that the initial regulatory report for a cleared swap be reported to a DCO or an SDR chosen by the DCO, adding that this approach is the lowest cost and least burdensome method for implementing the regulatory reporting requirements.

The Commission has determined to adopt the rules as they relate to reporting swap data for cleared trades to SDRs largely as proposed. While the Commission is cognizant of the cost-benefit considerations, section 2(a) of the CEA requires each "swap (whether cleared or uncleared) . . . be reported to a registered swap data repository" (emphasis added). The Commission notes that section 21(a)(1)(B) allows DCOs to register as SDRs, and that the final rules do not preclude counterparties or registered entities from reporting swap data to existing DCOs registered as SDRs, or to SDRs chosen by DCOs, if they so choose for business or cost-benefit reasons.

Costs affected by permitted use of third-party service providers to facilitate reporting

The Commission anticipates that the final rule reporting requirements for reporting counterparties and registered entities may result in costs to such counterparties and entities in the form of (i) personnel hours dedicated to the development and maintenance of reporting systems and connectivity to data repositories; and (ii) the development and ongoing administration of a compliance program. Such costs could include standardizing data or hiring new personnel to upgrade technology infrastructure. However, such costs could be affected or reduced where the reporting counterparty or registered entity required to report chooses to have a third-party service provider facilitate reporting..

The Commission requested comment on the merits of allowing third-party facilitation of swap data reporting and on how it should be structured. Several commenters responded with comments regarding cost-benefit considerations. Global Forex, DTCC and WGCEF supported the NOPR provision allowing third-party facilitation of reporting because they believe it will reduce costs, particularly for non-SD/MSPs.

As noted above, the Commission has considered these comments, and has determined to adopt in the final rule the NOPR provision permitting third-party facilitation of data reporting. The use of third-party service providers in the reporting phase of the regulatory data reporting process may also represent a likely cost reduction. Reporting counterparties and registered entities that elect to contract with third-party service providers can realize the cost savings associated with the comparative advantages of third-party providers specializing in swap data reporting services.

Costs of Creation Data Reporting

i. Costs to counterparties and registered entities

As discussed in more detail above, the NOPR called for two types of creation data reporting, namely PET data reporting and confirmation data reporting. The Commission anticipates that creation data reporting will represent costs to reporting counterparties and registered entities in the form of (a) significant non-recurring investments in technological systems and personnel; and (b) recurring expenses associated with systems usage and maintenance and personnel hours required for data reporting.

The Commission estimates that the initial costs for its reference point, a non-SD/MSP reporting counterparty that is not a financial entity as defined in the Dodd-Frank Act and does not contract with a third party to report swap data, will likely consist of (i) developing an internal OMS capable of capturing all relevant swap data in real-time; (ii) establishing connectivity with an SDR that accepts data; (iii) developing written policies and procedures to ensure compliance with part 43; and (iv) compliance with error correction procedures.

The Commission estimates that the recurring costs for its reference point, a non-SD/MSP reporting counterparty that is not a financial entity and does not contract with a third party to report swap data, will likely consist of (i) operational support for its OMS, including adaptation to new products, systems upgrades and ongoing maintenance; (ii) maintaining connectivity with an SDR that accepts data, including the demands on technological systems and the burden associated with the personnel hours necessary to facilitate transmission of data; and (iii) compliance with error correction procedures, including the burden associated with the personnel hours necessary to monitor and report errors.

The Commission notes, however, these costs should not be added to the costs of reporting data for real-time public reporting enumerated in the Commission's final rules in part 43 concerning real time reporting, insofar as they refer to PET data for regulatory reporting.

Pursuant to the final rule, counterparties will be required to report allocation information when a swap is transacted by an agent on behalf of clients. The Commission does not believe that this requirement is likely to present a significant incremental burden to counterparties. Based on conversations with industry participants, the Commission believes that allocation reports are already transmitted from one counterparty to the other following a swap; therefore, transmitting that report to an SDR would present a negligible additional burden.

The final rule provides that, should there be a swap asset class for which no SDR accepts swap data, swap data for a swap in that asset class must be reported to the Commission. This provision was set forth in the NOPR, and is required by CEA § 4r(b) and (c). The Commission anticipates that this requirement is unlikely to impose additional costs on registered entities and swap counterparties required to report swap data, since SDRs covering all existing swap asset classes have already applied for designation by the Commission. The Commission also notes that the requirements for such reporting differ from those for reporting to an SDR. The final rule calls for data for such swaps to be reported to the Commission at times announced by the Commission and in an electronic file in a format acceptable to the Commission, as determined by the Commission's Chief Information Officer.

The Commission has nonetheless considered possible costs associated with such reporting, which would apply only in the event that there is an asset class for which no SDR accepts data. In such circumstances, reporting counterparties and registered entities required to report swap data would be required to incur an initial one-time cost to establish and test

connectivity to the Commission. The Commission notes, however, that because reporting counterparties will already be required to develop and test technological systems for establishing connectivity to an SDR pursuant to this final rule, there will not be an incremental non-recurring cost presented by this requirement. Rather, because this cost will only be incurred by a reporting counterparty in the absence of an SDR that accepts data for any asset class, this cost should be considered to exist in the absence of, rather than together with, the cost of establishing connectivity to an SDR.

In the event that a new asset class comes into existence for which no SDR immediately accepts regulatory swap data reports, the Commission will be required to receive data reports concerning swaps in that asset class until an SDR elects to receive swap data in that asset class. The Commission has accounted in the PRA for the cost of maintaining connectivity to the Commission which would be incurred by registered entities and reporting counterparties transacting in such an asset. The Commission does not believe it is feasible to estimate the likelihood that such an asset class will arise or the length of time for which the Commission will be required to receive the associated regulatory data.

The Commission believes that this recurring burden of transmitting data to the Commission will represent a small percentage of the burden of transmitting data to a registered SDR or third-party service provider as required for real time reporting pursuant to part 43 and regulatory reporting to SDRs as required by this part. The Commission has determined that this percentage is not readily quantifiable, because the asset classes for which reporting to the Commission would be required, and thus the amount of data that would be required to be reported to the Commission, are currently unknown.

The NOPR sought to mitigate the fragmentation of data for a single swap across multiple SDRs by requiring that once an initial data report concerning a swap is made to an SDR, all data reported for that swap thereafter must be reported to that same SDR.[114] Roundtable participants agreed that the NOPR provision calling for all data for a given swap to be reported to a single SDR was essential to preventing fragmentation of data across multiple SDRs, something that would seriously impair both regulators' ability to view or aggregate all of the data concerning a swap and the ability of reporting entities and counterparties to review data reported by them. WGCEF commented that all swap data for a given swap should be reported to the same SDR. The Commission received no comments opposing this requirement.

Global Forex observed that, after the initial swap data report is made for a swap, market participants required to make further reports concerning that swap would need to ensure that they can connect to the chosen SDR. EEI, EPSA, and WGCEF suggested that the rules should ensure that SDR selection by a platform, SD, or MSP is equitable and does not result in unreasonable costs or burdens being imposed on non-SD/MSP counterparties.

WGCEF also suggested that market participants should not be required to report all of their swaps to the same SDR, since SDR competition would tend to lower fees associated with reporting. DTCC, ICE, and WGCEF recommended that the reporting counterparty should always select the SDR. ICE argued that otherwise reporting counterparties could incur significant expenses to build and maintain connections to an SDR with which they are not already connected. ABC and CIEBA suggest that for swaps involving a benefit plan as a counterparty, the SDR selection should always be made by the plan.

[114] The NOPR also called for PET data to be reported promptly following execution of the swap.

The CMC and CME both recommended that the initial regulatory report for a cleared trade be transmitted to either a DCO or an SDR that is affiliated with a DCO. CMC suggested that this would reduce unnecessary expenses and operational difficulties, whereas it would be costly, inefficient and unnecessary to require industry to establish a redundant set of expensive connections with non-DCO SDRs for the purpose of making regulatory reports for cleared trades. CME stated that having cleared swaps reported to a DCO also registered as an SDR or an SDR that is affiliated with a DCO would provide the lowest cost and least operationally burdensome path available to meet regulatory requirements.

The Commission anticipates that, because the final rule does not require each cleared swap to be reported to an SDR affiliated with the DCO that clears the swap, in some circumstances DCOs may incur some increased costs, relative to an environment in which all cleared swaps must be reported to a DCO-SDR.

- For a cleared swap executed on a SEF or DCM, and reported to an SDR by the SEF or DCM as required by the final rule, the DCO could incur incremental costs, if the SEF or DCM chooses to report to an SDR other than the DCO-SDR. In this circumstance, the DCO would be required to report confirmation data and continuation data to the SDR receiving the initial report, and thus to assume the costs necessary to establish connectivity to that SDR and transmit data to it. Such connectivity and transmission costs are addressed below. However, if the DCO chooses to register as an SDR, as explicitly permitted by the statute and anticipated by these commenters, the SEF or DCM would be able to reduce its costs by selecting the DCO-SDR as the SDR receiving the initial report, and thus avoid the need to send data separately to an SDR for regulatory reporting purposes and to a DCO for clearing purposes. In such an event, the DCO would not incur these incremental costs.

- For an off-facility, cleared swap for which the reporting counterparty is excused by the final rule from reporting creation data, the DCO would not incur incremental costs. In this situation, the DCO would select the SDR to which all data is reported, by making the initial creation data report. The DCO could report to itself in its capacity as an SDR if it chooses to to register as an SDR, as explicitly permitted by the statute and anticipated by these commenters.

- For an off-facility, cleared swap with respect to which the reporting counterparty makes the initial PET data report, the DCO would incur incremental costs if the reporting counterparty chooses to report to an SDR other than the DCO-SDR. In this circumstance the DCO would be required to report confirmation data and continuation data to the SDR receiving the initial report, and thus to assume the costs necessary to establish connectivity to that SDR and transmit data to it. These costs are addressed below. However, if the DCO chooses to register as an SDR, as explicitly permitted by the statute and anticipated by these commenters, the reporting counterparty would be able to reduce its costs by selecting the DCO-SDR as the SDR receiving the initial report, and thus avoid the need to send data separately to an SDR for regulatory reporting purposes and to a DCO for clearing purposes. In such an event, the DCO would not incur these incremental costs.

The Commission also anticipates that, because the final rule does not require each cleared swap to be reported to an SDR affiliated with the DCO that clears the swap, in some circumstances reporting counterparties may incur some increased costs, but also some increased benefits, relative to an environment in which all cleared swaps must be reported to a DCO-SDR.

- For swaps executed on a SEF or DCM, an SD or MSP reporting counterparty would incur the incremental costs if the SEF or DCM chooses to report to an SDR other than the DCO-SDR. In this circumstance, the SD or MSP would be required to report valuation data to the SDR, and thus to assume the costs necessary to establish connectivity to that SDR and transmit data to it. Such costs are addressed below. A non-SD/MSP reporting counterparty would not incur such incremental costs, because all continuation data would be reported by the DCO. However, if the DCO chooses to register as an SDR, as explicitly permitted by the statute and anticipated by these commenters, the SEF or DCM would be able to reduce its costs by selecting the DCO-SDR as the SDR receiving the initial report, and thus avoid the need to send data separately to an SDR for regulatory reporting purposes and to a DCO for clearing purposes. In such an event, the SD or MSP reporting counterparty would not incur these incremental costs.

- For an off-facility, cleared swap with respect to which the reporting counterparty is excused by the final rule from reporting creation data, an SD or MSP reporting counterparty would incur incremental costs only if the DCO chooses not to register as an SDR.[115] In this situation, the DCO would select the SDR to which all data is reported, by making the initial creation data report, and could report to itself in its capacity as an SDR

[115] The Commission believes that a DCO registered as an SDR would choose to report to itself in its capacity as an SDR in this circumstance.

if it chooses to to register as an SDR, as explicitly permitted by the statute and anticipated by these commenters. The incremental costs for the SD or MSP reporting counterparty would be the costs necessary to establish connectivity to, and transmit valuation data to, the SDR to which the initial creation data report was made. A non-SD/MSP reporting counterparty would not incur such incremental costs, because all continuation data would be reported by the DCO.

- For an off-facility, cleared swap with respect to which the reporting counterparty makes the initial PET data report, the reporting counterparty would not incur incremental costs, but would receive the benefit of being able to choose either the DCO-SDR or any other SDR accepting swaps in the asset class in question.

The Commission also anticipates that, because the final rule does not require each cleared swap to be reported to an SDR affiliated with the DCO that clears the swap, SEFs and DCMs would receive benefits relative to an environment in which all cleared swaps must be reported to a DCO-SDR. Specifically, for any swap executed on a SEF or DCM, the facility would be able to choose either the DCO-SDR or any other SDR accepting swaps in the asset class in question.

The Commission notes that DCOs are eligible to register as SDRs and capitalize on these existing connections, and the Commission anticipates that the competitive market for SDR services will dictate such an outcome if it is indeed cost-effective. The Commission believes that a competitive marketplace for SDR services presents the opportunity for significant reductions to the cost of swap data reporting.

WGCEF and Dominion recommended that the Commission harmonize its PET data requirements with the reporting required by the part 43 real-time public reporting regulations to reduce the reporting burdens on counterparties.

After considering these comments, the Commission has determined, as noted above, that the final rule should require that all data for a given swap be reported to the same SDR to which the initial report of swap data is made as provided in the final rule. The wide variety of suggestions by commenters concerning who should choose the SDR suggests that no single

approach produces the lowest cost for all market participants in all circumstances, and that this decision is best left to the market. The final rule as adopted avoids injecting the Commission unnecessarily into a market decision, and leaves the choice of SDR to be influenced by market forces and possible market innovations. Requiring that all cleared swaps be reported only to DCOs registered as SDRs would create a non-level playing field for competition between DCO-SDRs and non-DCO-SDRs. Conversely, giving the choice of the SDR to the reporting counterparty in all cases could in practice give an SDR substantially owned by SDs a dominant market position with respect to much swap data reporting. The final rule also addresses the major substance of the concerns expressed by non-SD/MSP counterparties, since it requires the initial data report to be made by a non-SD/MSP counterparty only in the case of a swap executed off-facility between two non-SD/MSP counterparties that are ECPs. Moreover, in this situation, the non-SD/MSP reporting counterparty will, by making the initial data report, be able to select the SDR as recommended by comments.

ii. Costs to SDRs

The Commission anticipates that creation data reporting will present additional costs to SDRs, both in the form of non-recurring investments in technological systems and personnel during the development of the formatting procedure, and in the form of recurring expenses associated with data processing, systems maintenance, and personnel hours. However, these costs should not be considered independent of the costs associated with real time reporting pursuant to part 43, which includes the burden estimate for the data formatting processes that an SDR will need to employ. The Commission anticipates that compliance with this requirement will primarily require SDRs to handle additional swap data required to be reported by this part but not required to be reported by part 43. This part will not require SDRs to fulfill any of the

rounding, counterparty masking, or disseminating requirements of real-time public reporting. Therefore, in general, the Commission anticipates that the recurring burden to an SDR presented by creation data reporting will be negligibly incremental to the costs to SDRs associated with real-time public reporting.

Pursuant to the final rule, in the context of allocations, as discussed above, reporting of both the original swap between the reporting counterparty and the agent and reporting of the swaps resulting from allocation will be required. The only additional duty for SDRs in this context is the need to map together these related swaps. SDRs will already be required to have automated systems and personnel capable of mapping together various data reports, such as mapping together different data reports for a single swap using the USI for the swap that is included in each such report. As a result of the requirement for mapping in the context of allocations, the Commission anticipates that SDRs will incur an incremental burden consisting of (a) one-time setup costs to program automated systems to do the required mapping in the allocation context, and (b) low ongoing maintenance costs associated with keeping such programming up to date. The Commission does not believe that this burden is readily quantifiable, both because the percentage of swaps involving allocations is currently unknown, and because the number of client allocations could vary greatly between swaps involving allocation. As noted above, SDRs must have the capacity to map together all data reports associated with any USI, and compliance with this requirement will facilitate the data mapping process in the context of allocations, which will also involve USIs. This should reduce the additional burden of linking allocation reports, or eliminate it in some cases. The Commission was informed by roundtable participants that existing trade repositories are able to accept data in multiple formats or data standards from different counterparties, and to map the data they receive

into a common data standard within the repository, without undue difficulty, delay, or cost. Therefore, the Commission anticipates that SDRs will be able to perform the mapping required in the allocation context using existing technologies and processes.

With regard to SDRs, the error reporting requirement of this final rule would require a registered SDR to develop protocols regarding the reporting and correction of erroneous information. This reporting requirement is associated with an information collection for which the Commission is obligated to account under the PRA. Accordingly, the burden estimates have been addressed in the information collection requests that the Commission has prepared and submitted to OMB for approval, as required under that statute

Costs of Continuation Data Reporting

The Commission received several comments on the cost-benefit implications of its proposed approach regarding continuation reporting.

Several comments addressed the NOPR provisions prescribed the data reporting method—life cycle reporting or snapshot reporting—to be used in each asset class to report changes to the primary economic terms of the swap. TriOptima supported the NOPR's approach. ICE commented with respect to the other commodity asset class that the snapshot approach would be inefficient, create burdens, and prove technologically challenging, and that therefore its drawbacks would outweigh its benefits. Reval commented that continuation data reporting by either method would require significant capabilities and investments, and stated that snapshot reporting for interest rate, currency, and other commodity swaps would not lessen the burdens of compliance. As noted above, ISDA, SIFMA, REGIS-TR, and DTCC recommended having the rule not make the choice between the lifecycle and the snapshot reporting method for

each asset class, but rather allowing SDRs to decide whether to accept data by either or both methods.

Other comments addressed the impact of required frequency of reporting. EEI, WGCEF, and CDEU contended that daily snapshot reporting would be burdensome and excessive for non-SD/MSP counterparties, and recommended quarterly rather than daily reports. AGA stated that daily continuation data reporting would be unduly burdensome, and recommended monthly reporting instead.

Additional comments addressed costs associated with valuation data reporting. Chatham Financial recommended that the Commission align the timing for valuation data reporting with the timing for the portfolio reconciliation requirements in the Commission's portfolio and reconciliation rulemaking, in order to reduce the burden on non-SD/MSP reporting counterparties. ICE suggested that only DCOs be required to report valuation data for cleared swaps, since requiring both DCOs and counterparties to report this data would drastically increase the number of messages transmitted to SDRs on a daily basis and unnecessarily burden reporting counterparties. EEI and CDEU questioned the Commission's regulatory authority and need for valuation data reporting from non-registered counterparties. ISDA and SIFMA commented that the implementation of any valuation methodology requires significant operational and infrastructure development, and called for further consultation before the Commission requires such a methodology. FHLB recommended weekly valuation reporting by non-SD/MSP reporting counterparties, arguing that this should be sufficient for regulatory purposes and would avoid forcing such counterparties to implement the costly infrastructure needed to generate daily valuation reports. The Electric Coalition recommended quarterly valuation data reporting for the same reason.

The Commission anticipates that the reporting of continuation data will present additional costs beyond the costs of reporting required swap creation data as discussed above, consisting of the additional maintenance of an internal OMS and the additional personnel hours needed to maintain a compliance program in support of the OMS.

The Commission believes that promptly submitting amended transaction and pricing data to the appropriate registered SDR after discovery of an error would impose a burden on reporting counterparties and registered entities. Likewise, the Commission believes that promptly notifying the relevant reporting counterparty or registered entity after discovery of an error would impose a burden on non-reporting counterparties.

The Commission believes that error reporting would impose an initial, non-recurring burden associated with designing and building the reporting parties' reporting system to be capable of submitting amended swap transactions to a registered SDR. In addition, reporting parties will be required to support and maintain the error reporting function and registered SDRs will be required to accept the error reporting.

The Commission believes that designing and building appropriate reporting system functionality would be a component of, and represent an incremental add-on to, the cost of building a reporting system and developing a compliance function as required by § 43.3(a) (real-time reporting rule). With regard to non-reporting counterparties, the Commission believes that the error reporting requirement of this final rule would impose a minimal non-recurring and recurring burdens associated with promptly notifying the relevant reporting party after discovery of an error. The Commission believes, however, that swap counterparties already monitor their swap transactions in the ordinary course of business, and thus the error reporting requirement of this final rule would not result in any significant new burdens for these participants.

Upon consideration of the comments, the Commission is adopting the NOPR continuation data provisions with a number of modifications that the Commission believes will further reduce costs and burdens for registered entities and reporting counterparties, and in particular for non-SD/MSP reporting counterparties. If a swap is cleared, the DCO will report all continuation data with the exception of valuation reporting by SDs and MSPs. Non-SD/MSP reporting counterparties will not be required to report any continuation data for cleared swaps. For uncleared swaps, the deadlines for non-SD/MSP reporting counterparties to report changes to primary economic terms have been extended and phased in. While the NOPR required the reporting of all of the data elements necessary for a person to determine the current market value of the swap, the final rule requires only the reporting of the data elements necessary to describe the daily mark of the transaction. In addition, non-SD/MSP reporting counterparties will only be required to report valuation data on a quarterly basis. In part to further reduce continuation data reporting costs as discussed in the above comments, the final rule requires that continuation data be reported in a manner sufficient to ensure that the information in the SDR concerning the swap is current and accurate, and includes all changes to any of the primary economic terms of the swap, but will leave to the SDR and registered entity and reporting counterparty marketplace the choice of the reporting method used to meet this requirement. This approach will help to address commenters' concerns about the cost of daily reporting, since reporting counterparties would not be required to report on a daily basis if the SDR in question accepts life cycle reporting.[116] Additionally in order to reduce reporting burdens to the extent this can be done without impairing the purposes for which the Dodd-Frank Act requires swap data reporting, the

[116] The flexibility of this approach should also ensure harmonization of the final rule with SEC rules in this respect: even if the SEC rules specify a reporting method for reporting to security-based swap data repositories, SDRs that accept mixed swaps will be free to accept reporting by any reporting method mandated by the SEC.

Commission has determined that the final rule will not require reporting of contract-intrinsic events.

The Commission believes that the swap data reporting requirements of the final rule represent a reduced cost compared to the requirements of the NOPR. The Commission does not mandate which particular approach an SDR chooses, either snapshot approach or lifecycle, in the final rule, so long as the continuation data for a given swap are accurately reported. This approach will allow registered SDRs to select the method of continuation data reporting that is most cost-effective and most logical for the swap business of their reporting customers. As noted, costs have been reduced by elimination of required reporting of contract-intrinsic data. The Commission does not mandate the reporting of contract-intrinsic data in the final rule, a data stream that was required under the proposed rule. The Commission believes that this requirement would have presented a cost burden to reporting counterparties and registered entities and its elimination will present a cost reduction. Furthermore, allowing the clearing of a swap on a DCO to satisfy the continuation data reporting obligations of non-SD/MSP reporting counterparties represents a lowered overall cost. This approach eliminates duplication of the reporting requirement, capitalizes on the transmission pipeline from the DCO to the SDR, and will allow for more cost-effective reporting than a regime in which reporting parties entering into a cleared swap would always be responsible for reporting regulatory data, as the DCO will likely realize economies of scale in the reporting process.

Collateral and master agreement reporting

In the NOPR, the Commission requested comment as to whether separate warehouse and library systems should be developed for collateral and master agreements. Several commenters responded with cost-benefit considerations regarding establishing these separate reporting

systems. ABC supported requiring master agreement reporting but recommended that they be reported only once if required. SunGard supported the establishment of a collateral SDR that could hold credit support agreements and related net margin and collateral positions between two counterparties, adding that this would eliminate unnecessary costs. Chatham Financial and CDEU recommended that the Commission not require master agreement or collateral reporting because the costs of reporting would outweigh the benefits. After consideration of these comments, the Commission has determined not to require master agreement or collateral reporting at this time.

c. Reporting requirements in light of CEA Section 15(a)

The Commission has evaluated the costs and benefits of the reporting provisions under § 45.3 in light of the specific considerations identified in Section 15(a) of the CEA as follows.

Protection of market participants and the public. As discussed above, the Commission has endeavored to limit the costs attributable to discretionary implementation decisions to the maximum degree consistent with statutory requirements and their intended benefits. The Commission has endeavored to match the costs of the post-implementation marketplace with the sizes, levels of sophistication, and levels of systemic importance of the affected participants, so that the associated benefits may be realized by the public.

With respect to swap data reporting, the Commission believes the benefits include the protection of market participants and the public. The Commission believes that the reporting requirement of § 45.3 will provide regulatory agencies with a wealth of previously unavailable data. This comprehensive data will be available in a unified format, greatly enhancing the ability of regulators in their oversight and enforcement functions. Systemic risk regulators need data that will enable them to monitor gross and net counterparty exposures wherever possible, not just

notional volumes for each contract but also market values. Such data would make it possible to calculate the concentration of counterparty risk on both participant and market levels. Market regulators need data that helps them promote market fairness and competitiveness; protect market participants against fraud, manipulation, and abusive trading practices; enforce aggregate speculative position limits as adopted; and ensure the financial integrity of the clearing process.

The Commission believes that important regulatory purposes of Dodd-Frank would be frustrated, and that regulators' ability to see necessary information concerning swaps could be impeded, if data concerning a given swap was spread over multiple SDRs.

Efficiency, competiveness, and financial integrity. As discussed above, the Commission has endeavored to limit the costs attributable to discretionary implementation decisions to the maximum degree consistent with statutory requirements and their intended benefits. The Commission has endeavored to match the costs of the post-implementation marketplace with the sizes, levels of sophistication, and levels of systemic importance of the affected participants, so that the associated benefits may be realized by the public.

With respect to swap data reporting, the Commission believes the benefits include enhancing the financial integrity of swap markets. The Commission believes that final rule's streamlined reporting regime, including the counterparty hierarchy used to select the reporting counterparty, can be considered efficient in that it assigns greater reporting responsibility to more sophisticated entities more likely to be able to realize economies of scale and scope in reporting costs. This reporting regime may also be an incentive for the platform execution of swaps that might have otherwise been executed bilaterally, since platform execution absolves the swap counterparties of the majority of the reporting burden discussed in this Consideration of Costs and Benefits section.. The Commission anticipates that this will increase the role of the

registered entities in the market that are able to report data to an SDR most efficiently. Similarly, a potential increase in the number of participants using platform execution, due to this efficiency, may aid in market competition

The Commission believes that, by improving the integrity of the U.S. swap markets in the manner described above, this final rule may make participation in the U.S. swap markets more appealing to entities that currently do not participate; therefore, this final rule presents the potential to enhance the demand for access to the U.S. swap market and its participants both domestically and in the global swap marketplace. This potential increase in swap market participation may improve the competitiveness of the swap marketplace as more parties demand sources of risk transference.

The Commission believes that reporting parties may be able to realize lower costs by means of transmitting reporting and regulatory data through third-party service providers. These providers will likely have a comparative advantage in data processing costs relative to the capabilities of reporting parties; as in the case of the reporting hierarchy, the final rule allows for the use of reporting methods considered more efficient by market participants themselves.

Because the accuracy of swap data is essential for market integrity and regulatory oversight, the final § 45.14 requires the prompt correction of errors. As seen during the most recent financial crisis, market volatility may be such that a delay in error correction, even on the order of a day, may be too late for effective analysis and response. Because of this, the Commission has considered the cost of error correction on market participants with regard to the effects of market turmoil during critical events intensified by market opacity.

The Commission believes that the data standards provisions of the final rule will serve to reduce costs and burdens for registered entities and swap counterparties by (a) allowing reporting

entities and counterparties to use whatever facilities, methods, or data standards are provided or required by the SDR to which data is reported; and (b) allowing SDRs to use various facilities, methods, and data standards to receive data, so long as the SDR can provide data to the Commission in the format required by the Commission. The Commission believes this approach is preferable to having the Commission mandate that reporting entities or counterparties adopt a particular format or data standard for reporting swap data, which in some cases could impose the additional burden of acquiring new technological capability different or more extensive that what the entity or counterparty already possesses. The Commission believes that, in light of this provision of the final rule, market competition is likely to lead SDRs to allow reporting entities and counterparties to report using data formats or standards that are easiest and least costly for them. Costs for market participants may also be lowered by the final rule provision authorizing the Commission's Chief Information Officer to require use of a particular data standard in order to accommodate the needs of different communities of users.[117]

Furthermore, the Commission does not anticipate that the recordkeeping requirements of this final rule present any costs that would impede the efficiency of swap markets.

Price Discovery. The Commission does not believe that the data reporting requirements of this final rule have a material effect on the price discovery process. The Commission does not believe that the costs associated with its discretionary implementation decisions are of a magnitude to impede the normal functioning of swap market participants, and thereby disrupt the price discovery process.

Sound risk management practices. The Commission does not believe that the data reporting requirements of this final rule have a material effect on sound risk management

[117] This authority could be used, for example, to require SDRs to accept swap data reports using a particular computer language already used by firms in a particular segment of the swap marketplace, so that they are not forced to incur additional cost by acquiring the capability needed to report using a different computer language.

practices of market participants or that the costs associated with its discretionary implementation decisions are of a magnitude to impede sound risk management. However, as noted in the section on recordkeeping, data which will be reported may be of use for internal risk management.

Other public interest considerations. The Commission believes that the data reporting requirements of this final rule will allow regulators to readily acquire and analyze market data, thus streamlining the surveillance process..

5. UNIQUE IDENTIFIERS

As discussed more fully above, pursuant to its authority in CEA § 21(b) (added by section 728(b) of the Dodd Frank Act), the Commission proposed requiring the use of three unique identifiers, which would serve as critical tools for data aggregation for the purposes of conducting market and financial risk surveillance, enforcing position limits, analyzing market data, enforcing Commission regulations, monitoring systemic risk, and improving market transparency.

The NOPR required that each swap be identified in all swap recordkeeping and data reporting by a Unique Swap Identifier ("USI"). The NOPR took a "first-touch" approach to USI creation, with the USI created by SEFs and DCMs for platform-executed swaps, by SDs and MSPs for off-platform swaps in which they are the reporting counterparty, and by SDRs for off-platform swaps between non-SD/MSP counterparties (who may lack the requisite systems for USI creation). This approach was designed to foster efficiency by taking advantage of the technological sophistication and capabilities of SEFs, DCMs, SDs, MSPs, and SDR, while ensuring that a swap is identified by a USI from its inception. The provision calling for SDRs to create USIs for off-facility swaps between non-SD/MSP counterparties was designed to reduce

costs and burdens for such counterparties. Non-SD/MSP counterparties may lack the sophistication to assign unique identifiers, whereas SDRs will likely be large, sophisticated entities capable of realizing economies of scope and scale in processing varied swap data streams; thus, SDRs are better suited to assign unique identifiers for off-facility swaps between non-SD/MSP counterparties.

The NOPR required that each swap counterparty be identified in all swap recordkeeping and data reporting by a legal entity identifier ("LEI") (referred to in the NOPR as a unique counterparty identifier or "UCI") approved by the Commission. The NOPR established principles that an LEI must follow to be designated by the Commission as the LEI to be used in swap data recordkeeping and reporting pursuant to the Commission's Regulations.
The NOPR also called for establishment of a confidential, non-public LEI reference database, to which each swap counterparty receiving an LEI would be required to report reference data that would be associated with its LEI. The NOPR stated the Commission's belief that optimum effectiveness of LEIs for achieving the systemic risk protection and transparency goals of the Dodd-Frank Act would come from a global LEI created on an international basis through an international voluntary-consensus standards body such as ISO. The NOPR provided that the Commission would determine, prior to the initial compliance date, whether such an LEI is available. If it were, the NOPR called for the Commission to designate that LEI as the LEI approved by the Commission for use in complying with the final rule. During such time as such an LEI is not available, the NOPR called swap counterparties to be identified by a substitute identifier created and assigned by an SDR as described in the NOPR.

The NOPR required that each swap subject to CFTC jurisdiction be identified in all swap recordkeeping and data reporting by a unique product identifier ("UPI") and a

product classification system, as determined by the Commission, for the purpose of categorizing swaps with respect to the underlying products referenced in them. The NOPR called for the UPI and product classification system to identify both the swap asset class and the subtype within that asset class to which the swap belongs, with sufficient specificity and distinctiveness to enable regulators to fulfill their regulatory responsibilities and to facilitate real time reporting. As provided in the NOPR, UPIs would be assigned to swaps at a particular, asset class-specific level of the robust swap taxonomy used by the product classification system, and the use of UPIs and the classification system would enable regulators to aggregate and report swap activity at a variety of product type levels, and to prepare reports required by the Dodd-Frank Act regarding swap market activity.

a. Benefits of the unique identifier requirements

The Commission anticipates that its approach regarding unique identifiers will generate several overarching, if presently unquantifiable, benefits to both swap market participants and the public generally, including both improved risk management and improved regulatory oversight. The Commission believes these benefits will accrue to market participants in a number of ways:

- Improved policy analysis by financial regulators employing legal entity reference data as the basic infrastructure for identifying, describing, classifying, labeling, organizing, and using information about trades, counterparties and market instruments
- Improved identification and quantification of existing or altered interconnections between firms
- Improved real time analysis across multiple financial markets to identify systemic risk, market stresses and potential contagion effects across asset classes
- Improved financial transaction processing, internal recordkeeping, compliance, due diligence, and risk management by financial entities.

Unique identifiers will benefit the general public by supporting the Commission's supervisory function over the swap market, as well as the broader supervisory responsibilities of U.S. financial regulators to protect against financial market systemic risk, enhancing the Commission's ability to detect anomalies in the market.

USIs will assist fulfillment of the systemic risk mitigation, transparency, and market monitoring purposes of the Dodd-Frank Act, by enabling identification of the origins of each swap as well as events that affect the swap during its existence. USIs will be essential for collating various data reports concerning a swap into a single, accurate data record. They will also help to avoid double-counting of a swap reported to different SDRs or to foreign trade repositories, something that will improve data quality and accurate data aggregation. Substantial benefits of LEIs for the public are recognized in the CPSS-IOSCO *Report on OTC Derivatives Data Reporting and Aggregation Requirement*, which recommends expeditious development of a global LEI:

> [A] standard system of LEIs is an essential tool for aggregation of OTC derivatives data. An LEI would contribute to the ability of authorities to fulfill the systemic risk mitigation, transparency, and market abuse protection goals established by the G20 commitments related to OTC derivatives, and would benefit efficiency and transparency in many other areas. As a universally available system for uniquely identifying legal entities in multiple financial data applications, LEIs would constitute a global public good.[118]

LEIs also offer benefits to market participants. The Commission notes that while requiring the use of LEIs will represent a new cost to market participants, LEIs may also reduce the costs of entity identification for market participants. As noted in the CPSS-IOSCO Data Report:

[118] CPSS-IOSCO *Report on OTC Derivatives Data Reporting and Aggregation Requirement,* August 2011, p.36. Publicly available at http://www.bis.org/publ/cpss96.pdf.

> The data aggregation experience of the private sector in past years suggests…that a universal LEI would have the added benefit of improving the operational efficiency of firms that are OTC derivatives counterparties. For financial firms, the current absence of an industry-wide LEI standard makes tracking counterparties and calculating exposures across multiple data systems complicated and expensive, and can lead to costly errors. Maintaining internal identifier databases and reconciling entity identification with counterparties is expensive for large firms and may be disproportionately so for small firms. In the worst case scenario, identification problems can lead to transactions that are broken or fail to settle. Entity identification touches so many aspects of critical business functions that many firms have created their own internal identifiers, sometimes doing so on a department-by-department or function-by function basis. Such stop-gap measures can provide a measure of local relief, but ultimately they further aggravate and complicate the discontinuity, inconsistency, and incompatibility of legal entity identification systems both for identifying OTC derivatives counterparties and across the international financial sector as a whole. This makes useful data aggregation and analysis substantially more difficult or even impracticable. In addition, complete automation of back-office activities and "straight through processing" remain elusive, in part, because of the lack of a universal identifier for legal entities.[119]

UPIs may enable better assessment of systemic risk with respect to particular products, more effective monitoring of the positions and exposures of individual market participants, and greater transparency provided by real time reporting as well as by the availability to regulators of a clearer picture of the marketplace. They may also allow aggregation of swap data across multiple SDRs, and comparison of swap data with information concerning cash, equities, and futures markets. As noted in the CPSS-IOSCO Data Report, UPIs may also assist the back office and risk management processes of market participants. Much as LEIs may reduce the costs of entity identification in the fashion described above by the CPSS-IOSCO Data Report, the Commission believes that while requiring the use of UPIs will represent a new cost to market participants, UPIs may lower costs for market participants associated with the need to develop and maintain proprietary product data models and systems, which many firms are forced to do

[119] CPSS-IOSCO *Report on OTC Derivatives Data Reporting and Aggregation Requirement,* August 2011, p.30. Publicly available at http://www.bis.org/publ/cpss96.pdf.

because of the absence of a universally-accepted standard for describing, classifying, and identifying swap products.

b. Costs of unique identifier requirements

Costs of USI Requirements

As noted above, for swaps executed on a SEF or DCM, the final rule requires SEFs and DCMs to generate a USI at the time of execution, and transmit it to both counterparties, the DCO (if applicable), and the SDR. For off-facility swaps with an SD or MSP reporting counterparty, the final rule requires the SD or MSP reporting counterparty to create the USI at the time of execution, and to transmit it to its counterparty, the DCO (if applicable) and the SDR. For off-facility swaps between two non-SD/MSP counterparties, the SDR will assign and transmit the USI to both counterparties and to the DCO (if applicable). The Commission anticipates that this requirement will impose additional costs to SEFs, DCMs, SDs, MSPs and SDRs. The Commission has not identified any quantifiable costs of the USI requirements that are not associated with an information collection subject to the PRA. These costs therefore have been accounted for in the information collection requests filed with OMB as required by the PRA.

Thomson Reuters stated that the USI proposal could impose a significant implementation burden on market participants because it requires the linkage of additional information such as tracking numbers. Thomson Reuters recommended a USI with no linked information such as embedded asset class or geographical identifiers.

The Commission believes that, even in the absence of this requirement, the automated systems of SEFs, DCMs, DCOs, SDs, MSPs, and SDRs would in all cases create internal identifiers for swap transactions. Accordingly, for these entities, the cost of creating USIs will

not constitute an incremental cost for such entities above costs they would already incur.. Additionally, to reduce costs for off-facility bilateral swaps between two non-SD/MSP counterparties, the final rules have maintained the NOPR approach requiring SDRs to create and transmit USIs for such swaps.

Costs of LEI requirements

The Commission anticipates that required use of LEIs will impose additional costs on market participants.

The Commission received several comments regarding the cost-benefit implications of the NOPR's LEI provisions.

Three commenters presented LEI proposals or alternatives they believed would meet the Commission's requirements in the most cost-effective manner. CME recommended that the Commission use its large trader system for futures, since this would be quicker, easier, less costly, and less risky than attempting to establish a new international method identifying legal entities. CUSIP presented its CABRE system as a viable and cost-effective alternative for LEIs, suggesting that it would help market participants realize significant cost savings much earlier than other options. GS1 presented itself as a potential LEI provider, suggesting that it could implement a LEI system at no additional cost to SDs and SEFs that would minimize the overall cost of the identification system. Two members of Congress asked that the Commission give full and fair consideration to GS1's proposal because it could make implementation less costly and burdensome for a significant segment of the industry.

TriOptima commented that the LEI would require significant adaptation costs and could possibly delay the implementation of SDRs. TriOptima suggested an interim period to allow

reporting institutions to submit their own LEI and then map this identifier to the one used by the SDR.

With respect to the NOPR requirement for reporting of level two LEI reference data concerning the affiliations of a counterparty, AMG suggested that the Commission should establish a 50 percent majority ownership threshold, because requiring corporate affiliation information from companies that have less than majority ownership may be burdensome, and in many cases, impracticable.

As discussed above, three commenters presented alternatives to the Commission's proposals regarding LEIs. The Commission has evaluated these proposals and will continue to weigh the cost and benefits of each as it prepares to implement an international industry initiative and designate an LEI for use in swap data reporting as provided in the final rule.

The Commission has determined that costs for market participants are not readily quantifiable. However, the Commission understands that start-up costs for the LEI system may borne at least in part by data service providers, SDs, and other major market participants that are involved in the international industry initiative now underway to develop LEIs. Because this process is ongoing, the Commission has determined that it cannot readily estimate the remaining costs to market participants that will be imposed by its completion, or what portion of the impetus for the LEI initiative can be attributed to this final rule rather than to a general pre-implementation industry initiative for a better system of legal entity identification.

The final rule calls for the Commission to determine prior to the start of swap data reporting whether an LEI system meeting the requirements of the final rule is available. If the Commission determines that such a system is available, its use will be required in all swap data recordkeeping and reporting. If the Commission determines that such a system is not yet

available, until such time as the Commission designates such a system for use in complying with the final rule, swap counterparties will be identified by means of a substitute identifier created by SDRs as specified in the final rule. Although the Commission anticipates that an LEI meeting the requirement of the final rule will be available before the commencement of swap data reporting, the Commission has also considered the potential costs and benefits to SDRs for creating, assigning and transmitting such substitute identifiers if they should be required. The Commission anticipates that if SDRs are required to create substitute identifiers, such requirements will impose additional costs for SDRs.

Pursuant to this final rule, the reporting of Level Two LEI reference data will be limited to the identity of a swap counterparty's ultimate parent. This represents a reduction to the burden presented in the NOPR, which called for the reporting of all affiliations of each swap counterparty identified by an LEI. The Commission believes that this approach is practical and cost-effective, because it reduces the burden on swap counterparties, while capturing the essential level two LEI reference data for a given swap that will allow the Commission and other regulators to aggregate swap data in a way that enables effective monitoring of systemic risk.

Costs of UPI requirements

Thomson Reuters recommended that the Commission establish a pilot program for the development of UPI codes.

The Commission anticipates that this requirement will ultimately impose additional costs to market participants. The final rule provides that when the Commission determines that a UPI and product classification system acceptable to the Commission is available, the Commission will designated that system for use in all swap data recordkeeping and reporting. Until the Commission designates such a system, the final rule calls for swaps to be identified by the

internal product identifier or product description used by the SDR to which a swap is reported. As the Commission has not set forth requirements for a UPI system in the final rules, and has not yet designated such a system for use by market participants, the Commission has not identified any quantifiable costs of the LEI requirements that are not associated with an information collection subject to the PRA. These costs therefore have been accounted for in the information collection requests filed with OMB as required by the PRA.

c. Unique identifiers in light of CEA section 15(a)

The Commission has evaluated the benefits of the required use of USIs, LEIs, and UPIs in light of the specific considerations identified in Section 15(a) of the CEA, as follows.

Protection of market participants and the public. As discussed above, the Commission has endeavored to limit the costs attributable to discretionary implementation decisions to the maximum degree consistent with statutory requirements and their intended benefits. The Commission has endeavored to match the costs of the post-implementation marketplace with the sizes, levels of sophistication, and levels of systemic importance of the affected participants, so that the associated benefits may be realized by the public.

With respect to unique identifiers, the Commission believes the benefits include the protection of market participants and the public.

USIs. The Commission believes that USIs will be a vital tool for regulatory agencies in analyzing swap market data for the purposes of identifying the positions of systemically important market participants and the accumulation of systemic risk, thus protecting market participants and the public. USIs will allow for the creation of a clear and unified data stream by allowing for the aggregation of transaction information without double-counting swaps reported to different SDRs or to foreign trade repositories, or reported in VSRs.

LEIs. The Commission believes that requiring the use of LEIs will greatly enhance the ability of the Commission and other regulatory agencies to oversee swap markets by providing necessary clarity and cohesion to the data used for regulatory analyses. Among the benefits to regulators of an LEI regime, the Global Financial Markets Association ("GFMA") identified more efficient data aggregation; more powerful modeling and risk analysis; facilitation of information sharing and reconciliation between regulators; better supervision of cross-border firms and firms whose business lines are overseen by multiple regulators; and facilitating identification of affiliates and parent companies. GFMA also called the LEI regime "a powerful tool for regulators in monitoring and managing systemic risks."[120] The CPSS-IOSCO *Report on OTC Derivatives Data Reporting and Aggregation Requirement*, which recommends expeditious development of a global LEI, states that:

> [A] standard system of LEIs is an essential tool for aggregation of OTC derivatives data. An LEI would contribute to the ability of authorities to fulfill the systemic risk mitigation, transparency, and market abuse protection goals established by the G20 commitments related to OTC derivatives, and would benefit efficiency and transparency in many other areas. As a universally available system for uniquely identifying legal entities in multiple financial data applications, LEIs would constitute a global public good.[121]

UPIs. The Commission believes that UPIs will work in conjunction with USIs to create an accurate, clear, and unified data record free of double-counting. The use of UPIs will also allow regulatory agencies to compare swap market data with data from the cash, equities, and futures markets for a given product, thus enhancing regulators' understanding of the roles of different financial instruments in the marketplace for that product.

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[120] GFMA, *Creating a Global Legal Entity Identifier (LEI) Standard*, September 21, 2001, p. 10. Publicly available at http://www.sifma.org/uploadedfiles/issues/technology_and_operations/legal_entity_identifier/lei-project-summary-slides.pdf.

[121] CPSS-IOSCO *Report on OTC Derivatives Data Reporting and Aggregation Requirement,* August 2011, p.36. Publicly available at http://www.bis.org/publ/cpss96.pdf.

Efficiency, competitiveness, and financial integrity. As discussed above, the Commission has endeavored to limit the costs attributable to discretionary implementation decisions to the maximum degree consistent with statutory requirements and their intended benefits. The Commission has endeavored to match the costs of the post-implementation marketplace with the sizes, levels of sophistication, and levels of systemic importance of the affected participants, so that the associated benefits may be realized by the public. With respect to unique identifiers, the Commission believes the benefits include enhancements to the financial integrity of the swap market.

The Commission believes that, by improving the integrity of the U.S. swap markets in the manner described above, this final rule may make participation in the U.S. swap markets more appealing to entities that currently do not participate. Therefore, this final rule presents the potential to enhance the demand for access to the U.S. swap market and its participants both domestically and in the global swap marketplace. This potential increase in swap market participation may improve the competitiveness of the swap marketplace as more parties demand sources of risk transference.

Furthermore, the Commission does not anticipate that the unique identifier requirements of this final rule present any costs that would impede the efficiency of swap markets.

USIs. The Commission believes that the benefits of USIs include greater transparency, improved data aggregation and cross-border supervision. This will improve regulatory oversight and responsiveness, and promote a more thorough understanding of the exposures of swap counterparties, which will provide more financial integrity for the swap market.

The Commission believes that USIs, as well as LEIs and UPIs, will enable greater automation of back-office processes for reporting counterparties, thereby promoting efficiency and a potential source of cost reduction for swap market participants.

LEIs. As stated above, the Commission believes that LEIs, along with USIs and UPIs, will promote greater automation of back-office processes for reporting counterparties, thereby improving operational efficiency.

UPIs. The Commission believes that UPIs will serve to work in conjunction with USIs in creating an accurate, clear, and unified data record. UPIs will therefore promote the same benefits of greater transparency, data aggregation, and cross-border supervision, and therefore enhance the financial integrity of swap markets.

Price discovery. The Commission does not believe that the unique identifier requirements will have a material impact on price discovery, or that the costs associated with its discretionary implementation decisions are of a magnitude to impede the normal functioning of swap market participants and thereby disrupt the price discovery process.

Sound risk management practices. The Commission believes that requiring the use of USIs, UPIs, and LEIs will also facilitate risk management for market participants.

USIs. The Commission believes that the use of USIs will likely create a more clearly organized, readily accessible database of swap information for each reporting counterparty, including accurate information related to cross-border transactions, which may facilitate the internal risk management operations of the counterparty.

LEIs. The Commission believes that LEIs will provide a number of benefits in the area of risk management to reporting counterparties. These include the benefits identified by GFMA, which are enumerated below.

GFMA stated that the risk management benefits of LEIs included improved response times for crisis reporting and the potential for improved response times for sanctions monitoring; a holistic view of counterparty and issuer risks; and the facilitation of data aggregation, modeling, and analysis.[122]

GFMA also listed a number of other operational benefits to market participants of implementing LEIs. These include an integrated view of entities across divisions and subsidiaries; support for the development of hierarchy information; processing and settlement efficiency; an improved vendor feed and improved corporate actions management; support for new client on-boarding; and the facilitation of post-merger integrations.[123]

The Commission believes that the benefits of LEIs also include the facilitation of straight-through processing, which will promote risk mitigation for counterparties. As the Counterparty Risk Management Policy Group II (CPRMG II) noted:

> CRMPG II recommends that trade associations and market participants must pursue and develop straight through processing of OTC transactions, a critical risk mitigant in today's high volume markets. As a fundamental matter, disputes over the existence or the terms of a transaction have the potential for enormously increasing risk, since each party to the disputed transaction hedges and risk manages the disputed trade based on certain economic assumptions. [Straight through processing] reduces the number and frequency of trade disputes and maximizes market efficiency, opportunity and access. [Straight through processing] therefore fosters legal, credit, market and operational certainty.[124]

UPIs. The Commission believes that UPIs will serve to work in conjunction with USIs in creating an accurate and unified internal data record for each reporting counterparty. The use of

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[122] GFMA, *Creating a Global Legal Entity Identifier (LEI) Standard*, September 21, 2001, p. 11. Publicly available at http://www.sifma.org/uploadedfiles/issues/technology_and_operations/legal_entity_identifier/lei-project-summary-slides.pdf.

[123] GFMA, *Creating a Global Legal Entity Identifier (LEI) Standard*, September 21, 2001, p. 11. Publicly available at http://www.sifma.org/uploadedfiles/issues/technology_and_operations/legal_entity_identifier/lei-project-summary-slides.pdf.

[124] Counterparty Risk Management Policy Group II, *Toward Greater Financial Stability: A Private Sector Perspective*, July 27, 2005, p. 84. Publicly available at http://fcic-static.law.stanford.edu/cdn_media/fcic-docs/2005-07-25%20Counterparty%20Risk%20Management%20Policy%20Group-%20Toward%20Greater %20Financial %20Stability.pdf

UPIs will allow a reporting counterparty to monitor its swap market exposures and compare them to its positions and to the broader market variables in analogous cash, equities, and futures instruments. The Commission believes that this will greatly enhance the ability of the reporting counterparty to assess the risk associated with its swap market exposures.

Other public interest considerations. The Commission anticipates that unique identifiers will facilitate the efforts of academics and analysts employed by regulatory agencies in the course of their investigations by providing a clear framework for data aggregation and comparison across financial instruments.

IV. COMPLIANCE DATES

A. Proposed Rule.

Section 754 of the Dodd-Frank Act requires Title VII to be effective within 360 days of enactment (i.e., by July 16, 2011) or, to the extent a provision of Title VII requires rulemaking, not less than 60 days after publication of final rules or regulations implementing such a provision of Title VII. While the final rules become effective sixty (60) days after Federal Register publication, the Commission has discretion to set forth dates to being enforcement of regulatory provisions.[125] In setting forth compliance dates the Commission has taken into consideration comment received and factors such as available resource and the Dodd-Frank Act's goals. In May 2011, the Commission and the SEC held a joint public roundtable to elicit comment concerning what implementation schedule should be set for the Commission's Dodd-Frank Act rules, including comment concerning the amount of time registered entities and counterparties will need, after issuance of the final rule, to prepare for the commencement of swap data reporting pursuant to this part. The NOPR requested comment regarding the nature and length of the implementation and preparation period which the Commission should provide prior to the start of swap data reporting, and concerning how the beginning of such reporting should be phased in.

B. Comments Received.

The Commission received numerous comments from comment letters and roundtable participants concerning when swap data reporting should begin, and how the commencement of reporting should be phased in.

[125] See Heckler v. Chaney, 470 U.S. 821 (1985).

1. INITIAL COMPLIANCE DATE.

A variety of comments addressed the setting of the initial compliance date for reporting.

a. Definite compliance dates. Better Markets called on the Commission to provide the industry with clear compliance dates for the start of reporting.

b. Period for infrastructure development and testing. Roundtable participants, DTCC, ISDA, SIFMA, Global Forex, MFA, WGCEF, and Dominion Resources emphasized that reporting should not be required to begin until the industry has time to implement or modify and to test automated systems to be used for reporting. In order to allow for such infrastructure development and testing, commenters urged that the initial compliance date for reporting should be set at least six to nine months following issuance of the final rule.

c. Conditions precedent to reporting. EEI, the Electric Coalition, and roundtable participants commented that reporting should not be required to begin until after issuance of all the Commission's Dodd-Frank Act rules, or at least of certain key rules including definitions of "swap," "swap dealer," and "major swap participant." ISDA, SIFMA, Global Forex, MFA, and WGCEF argued that reporting should not be required to begin until at least one SDR accepting swaps in the asset class in question is fully functional, and DTCC and WGCEF suggested that reporting should begin only after both unique identifiers and data formats for reporting are finalized. MFA noted that beginning reporting after SDR registration and infrastructure are finalized could avoid giving current service providers an advantage over new entrants.

d. Other initial reporting suggestions. ISDA and SIFMA suggested that the CFTC and the SEC should harmonize when reporting will commence. Global Forex, DTCC, and Thomson Reuters suggested consideration of a partially voluntary, benchmark approach to implementation

of reporting, similar to the ODSG commitment letter approach used to initiate existing reporting to trade repositories.

2. PHASING IN THE START OF REPORTING.

A number of commenters also advocated phasing in the start of reporting.

a. Phasing by asset class. DTCC, Global Forex, and roundtable participants urged phasing in the start of reporting by asset class. They noted that that different swap asset classes are at different levels of automation and data normalization, with the credit and interest rate asset classes at a more advanced stage of development than the equity, foreign exchange, and other commodity asset classes.

b. Phasing by counterparty type. The Electric Coalition and Chatham Financial advocated phasing in the start of reporting according to the type and sophistication of the counterparty, with end users being phased in last as they have the least technological sophistication. Global Forex suggested that the phase-in design should include a gradual reduction of target reporting times to allow participants to improve their systems over time.

c. Phasing by product type. WGCEF and Thomson Reuters suggested that reporting for swaps executed on electronic platforms should be phased in more quickly than reporting for off-platform, bespoke transactions, and that the Commission should focus on the more liquid contracts which represent the bulk of the OTC market.

d. Other phasing suggestions. DTCC, Global Forex, and roundtable participants suggested that phasing in reporting of confirmation data to begin several months later than the reporting of PET data would take into account the need for additional time to prepare for reporting of the relative larger amount of data involved in confirmation data reporting, to develop ways to represent confirmation terms in machine-readable form, and to normalize and

create data fields for confirmation data. Eris Exchange suggested that voluntary reporting should precede mandatory reporting. MGEX called for a carefully thought out, staggered, and reasonable implementation schedule.

C. Determination of Compliance Dates.

The Commission has considered the above comments, and has determined to provide an implementation schedule and compliance dates for swap data reporting incorporating many of commenters' suggestions, as set forth below.

1. INITIAL COMPLIANCE DATES.

a. Clear compliance dates. The Commission agrees with comments calling for clear compliance dates for the beginning of full compliance with this part. The Commission has determined that each SEF, DCM, DCO, SDR, SD, MSP, and non-SD/MSP counterparty subject to the jurisdiction of the Commission must commence full compliance with this part on the applicable compliance date set forth below.[126]

b. Period for infrastructure development and testing. The Commission agrees with commenters and roundtable participants that it is important to provide a period of at least six months following issuance of the final data recordkeeping and reporting rule, in order to allow necessary infrastructure development and testing in light of the requirements of the final rule to occur before reporting is required to begin. The initial compliance date for swap data reporting set by the final rule provides such an infrastructure development and testing period. The Commission believes that a six month period should be sufficient for this purpose, and also believes that timely fulfillment of the important purposes of the Dodd-Frank Act would be

[126] The obligations of swap counterparties with respect to historical swaps, i.e., swaps executed prior to the applicable compliance date and in existence on or after July 15, 2010, the date of enactment of the Dodd-Frank Act, will be as provided in part 46 of this chapter.

frustrated if the start of swap data reporting were further delayed. In order to minimize confusion concerning the commencement of both regulatory reporting and real time reporting, and to reduce burdens on registered entities and swap counterparties required to report under both part 45 and part 43, the Commission has determined to set the same date as the initial compliance date for reporting under both part 45 and part 43.

c. Conditions precedent to reporting. The Commission recognizes that adequate preparation by registered entities and swap counterparties for the beginning of swap data reporting would be difficult in the absence of final Commission rules defining "swap," "swap dealer," and "major swap participant." The definition of "swap" is relevant to determining what transactions must be reported, while the definitions of SD and MSP are relevant to determining which counterparty is the reporting counterparty pursuant to this part. Accordingly, the Commission has determined that the initial compliance date provided in the final rule will be the later of (1) the date certain listed below, or (2) 60 days following issuance of the later of the Commission's final rules defining swap and defining SD and MSP. The Commission disagrees with comments calling for swap data reporting to be delayed until after all Commission rules under the Dodd-Frank Act are issued, because it believes that important purposes of the Dodd-Frank Act would be frustrated by additional delay.

d. Other initial reporting suggestions. The Commission has consulted extensively with the SEC concerning the Commission's swap data reporting rule and the SEC's security-based swap data reporting rule. Both Commissions have worked to coordinate and harmonize those rules to the extent practicable. Since the Dodd-Frank Act provides clear delineation of the jurisdiction of each Commission with respect to swaps, the Commission does not believe that it is necessary to delay the commencement of reporting pursuant to this part until issuance of the

SEC's final security-based swap data reporting rule. The Commission disagrees with comments calling for swap data reporting pursuant to this part to follow the voluntary, benchmark approach to implementation of reporting followed previously under the ODSG commitment letter approach used to initiate reporting to trade repositories, or to have voluntary reporting precede mandatory reporting. The Commission has consulted with ODSG and ODRF concerning experience gained from prior voluntary reporting. The Commission believes, however, that a "benchmark" approach involving flexible timetables is not appropriate for implementation of reporting under the Dodd-Frank Act. The uncertainty in such a reporting regime could burden the industry, and make effective oversight and enforcement more difficult.

2. PHASING IN THE START OF REPORTING.

a. Phasing by asset class. The Commission accepts the view of many market participants that differences between asset classes with respect to both existing automation and existing data normalization are significant and should be taken into account in order to ensure that data reporting required by the final rule is practicable to achieve by the applicable compliance dates. The Commission also believes that establishing deadlines for the commencement of reporting in all asset classes will serve as an important incentive for continued progress by the industry in these regards. Accordingly, the Commission has determined that swap data reporting should be phased in by asset class, with reporting for credit swaps and interest rate swaps beginning earlier than reporting for equity swaps, foreign exchange transactions, and other commodity swaps.

b. Phasing by counterparty type. The Commission agrees with comments suggesting that the initial compliance date for non-SD/MSP reporting counterparties should take into account the fact that such counterparties are less likely than SEFs, DCMs, DCOs, SDs, and MSPs, to have sophisticated automated systems for reporting, and the possible need of non-

SD/MSP reporting counterparties for additional time to prepare for reporting. The Commission has determined that swap data reporting should be phased in by counterparty type, with reporting by non-SD/MSP reporting counterparties in each asset class commencing 180 days after the start of reporting in that asset class by SEFs, DCMs, DCOs, SDs, and MSPs.[127] The Commission does not believe that reporting should be further phased in by registered entity or counterparty type. The Commission believes that SEFs, DCMs, DCOs, SDs, and MSPs have sufficient technological expertise to enable them to meet a compliance date which provides an appropriate, six-month preparation period, without further phase-in.

c. Phasing by product type. In light of the phasing by asset class and by counterparty type to be provided in the final rule as noted above, the Commission does not believe that additional phasing by product type is necessary. The Commission does not believe that it is technologically necessary to delay reporting for off-facility, uncleared swaps. Where an SD or MSP is the reporting counterparty for a bespoke swap, reporting systems should be available. In the relatively few instances where a non-SD/MSP counterparty is the reporting counterparty for a bespoke swap, the final rule already provides an additional six-month phase-in period and extended reporting deadlines.

d. Other phasing suggestions. As discussed above, the Commission believes that confirmation data is essential to fulfilling the purposes of the Dodd-Frank Act, and should be reported starting with the applicable compliance date. However, the Commission also recognizes that for some swap counterparties, and particularly for non-SD/MSP reporting counterparties, reporting confirmation data normalized in data fields may not yet be

[127] The Commission notes that one consequence of this approach is that continuation data reporting by a non-SD/MSP reporting counterparty for an on-facility swap in some cases may begin as much as six months after the creation data report for that swap by the SEF or DCM on which the swap was executed. The Commission believes this is acceptable in light of the burden reduction provided to non-SD/MSP reporting counterparties by phasing in their swap data reporting.

technologically practicable when reporting begins. These considerations are less applicable in the case of swaps executed on a SEF or DCM or cleared by a DCO, since in such cases, as discussed above, execution on the SEF or DCM or clearing on the DCO will be required to include all terms of the confirmation of the swap. Therefore, as discussed above in the section addressing creation data reporting, the final rule provides as follows. For off-facility, uncleared swaps, during the first six months following the applicable compliance date, while PET data will have to be reported electronically with data normalized in data fields, reporting counterparties for whom reporting confirmation data normalized in data fields is not yet technologically practicable may report required confirmation data by transmitting an image of all documents recording the confirmation. This will allow needed additional time for development of schemas for data reporting and implementation by non-SD/MSP counterparties. Electronic reporting of all confirmation data normalized in data fields will be required after this six month period.

3. COMPLIANCE DATES.

For the reasons set forth above, the Commission has determined that each swap execution facility, designated contract market, derivatives clearing organization, swap data repository, swap dealer, major swap participant, and non-SD/MSP counterparty subject to the jurisdiction of the Commission shall commence full compliance with all provisions of this part on the applicable compliance dates set forth below. The obligations of swap counterparties with respect to swaps executed prior to the applicable compliance date as provided in this section and in existence on or after July 21, 2010, the date of enactment of the Dodd-Frank Act, are set forth in part 46 of this chapter.

a. Compliance dates for swap execution facilities, designated contract markets, derivatives clearing organizations, swap data repositories, swap dealers, and major swap participants.

Swap execution facilities, designated contract markets, derivatives clearing organizations, swap data repositories, swap dealers, and major swap participants shall commence full compliance with all provisions of this part as follows:

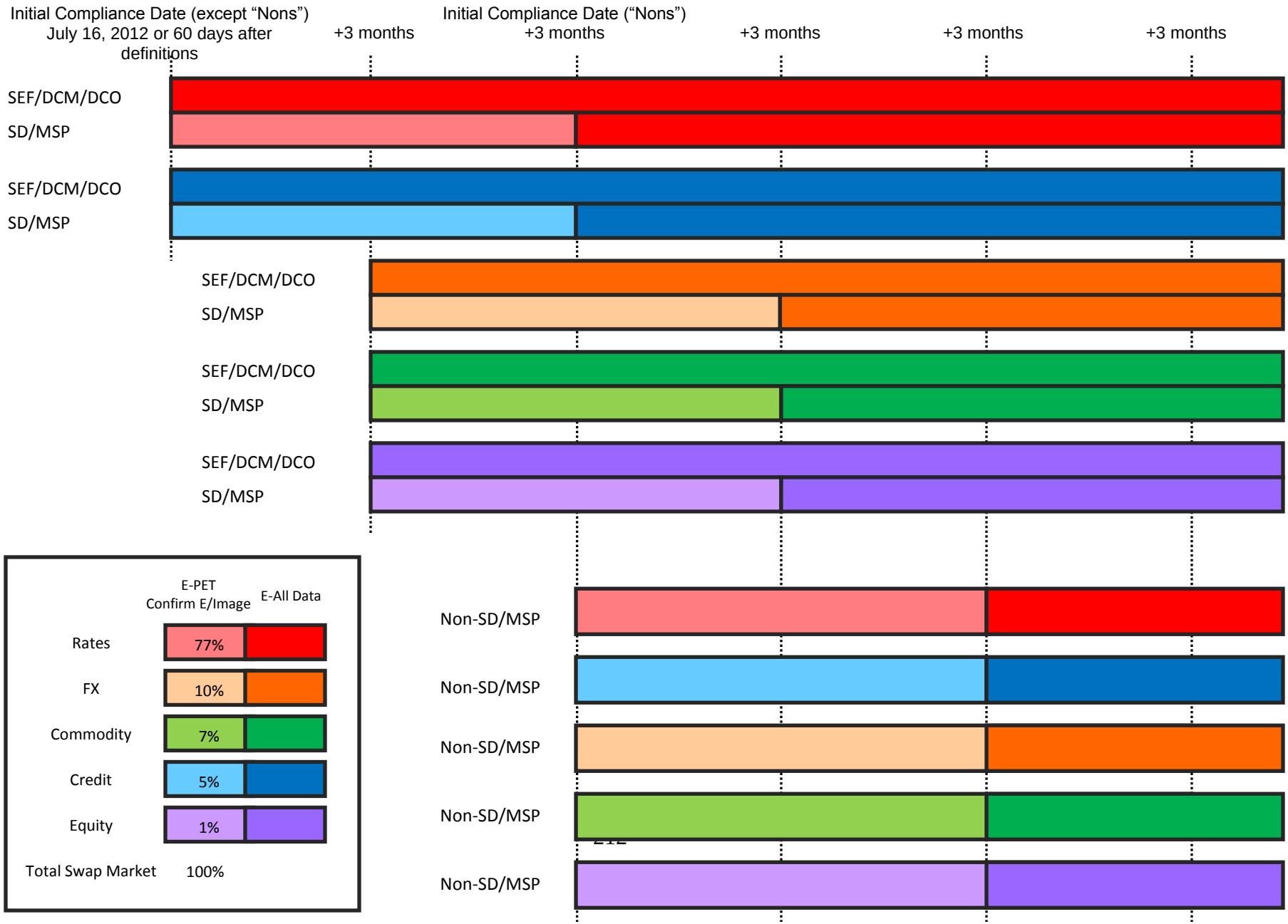
Credit swaps and interest rate swaps. Compliance date 1, the compliance date with respect to credit swaps and interest rate swaps, shall be the later of: July 16, 2012; or 60 calendar days after the publication in the Federal Register of the later of the Commission's final rule defining the term "swap" or the Commission's final rule defining the terms "swap dealer" and "major swap participant."

Equity swaps, foreign exchange swaps, and other commodity swaps. Compliance date 2, the compliance date with respect to equity swaps, foreign exchange swaps, and other commodity swaps, shall be 90 calendar days after compliance date 1.

Compliance date for non-SD/MSP counterparties. Non-SD/MSP counterparties shall commence full compliance with all provisions of this part for all swaps on compliance date 3, which shall be 90 calendar days after compliance date 2.

The phasing in of swap data reporting under the final rule is shown graphically in the following table.

Phasing – Data Reporting



FINAL RULES

List of subjects in 17 CFR Part 45

Swaps, data recordkeeping requirements and data reporting requirements

In consideration of the foregoing, and pursuant to the authority of the Commodity Exchange Act as amended, and in particular sections 8a(5) and 21 of the Act, the Commission hereby adopts an amendment to Chapter 1 of Title 17 of the Code of Federal Regulation by adding a new part 45 as follows:

Part 45--Swap Data Recordkeeping and Reporting Requirements

Sec.

45.1 Definitions

45.2 Swap recordkeeping

45.3 Swap data reporting: creation data

45.4 Swap data reporting: continuation data

45.5 Unique swap identifiers

45.6 Legal entity identifiers

48.8 Unique product identifiers

45.8 Determination of which counterparty must report

45.9 Third-party facilitation of data reporting

45.10 Reporting to a single swap data repository

45.11 Data reporting for swaps in a swap asset class not accepted by any swap data repository

45.12 Voluntary supplemental reporting

45.13 Required data standards

45.14 Reporting of errors and omissions in previously reported data

Appendix 1 to Part 45—Tables of minimum primary economic terms data

Authority: 7 U.S.C. §§ 6r, 7, 7a-1, 7b-3, 12a and 24, as amended by Title VII of the Wall Street Reform and Consumer Protection Act of 2010, Pub. L. No. 111-203, 124 Stat. 1376 (2010),

unless otherwise noted.

§ 45.1 Definitions.

As used in this part:

Asset class means the broad category of goods, services or commodities, including any "excluded commodity" as defined in CEA § 1a(19), with common characteristics underlying a swap. The asset classes include credit, equity, foreign exchange (excluding cross-currency), interest rate (including cross-currency), 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 reporting counterparty or registered entity reporting data for the swap.

Business hours means consecutive hours during one or more consecutive business days.

Compliance date means the applicable 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 this part, as set forth in the preamble to this part.

Confirmation ("confirming") means the consummation (electronically or otherwise) of legally binding documentation (electronic or otherwise) that memorializes the agreement of the parties to all terms of a swap. A confirmation must be in writing (whether electronic or otherwise) and must legally supersede any previous agreement (electronically or otherwise).

Confirmation data means all of the terms of a swap matched and agreed upon by the counterparties in confirming the swap. For cleared swaps, confirmation data also includes the internal identifiers assigned by the automated systems of the derivatives clearing organization to the two transactions resulting from novation to the clearing house.

Credit swap means any swap that is primarily based on instruments of indebtedness, including, without limitation: any swap primarily based on one or more broad-based indices related to instruments of indebtedness; and any swap that is an index credit swap or total return swap on one or more indices of debt instruments.

Derivatives clearing organization has the meaning set forth in CEA Section 1a(9), and any Commission regulation implementing that Section, including, without limitation, § 39.5 of this chapter.

Designated contract market has the meaning set forth in CEA Section 5, and any Commission regulation implementing that Section.

Electronic confirmation (confirmation "occurs electronically") means confirmation that is done by means of automated electronic systems.

Electronic reporting ("report electronically") means the reporting of data normalized in data fields 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.

Electronic verification (verification "occurs electronically") means verification that is done by means of automated electronic systems.

Financial entity has the meaning set forth in CEA § 2(h)(7)(C).

Foreign exchange forward has the meaning set forth in CEA Section 1a(24).

Foreign exchange instrument means an instrument that is both defined as a swap in part 1 of this chapter and included in the foreign exchange asset class. Instruments in the foreign exchange asset class include: any currency option, foreign currency option, foreign exchange option, or foreign exchange rate option; any foreign exchange forward as defined in CEA section

1a(24); any foreign exchange swap as defined in CEA section 1a(25); and any non-deliverable forward involving foreign exchange.

Foreign exchange swap has the meaning set forth in CEA Section 1a(25). It does not include swaps primarily based on rates of exchange between different currencies, changes in such rates, or other aspects of such rates (sometimes known as "cross-currency swaps").

Interest rate swap means any swap which is primarily based on one or more interest rates, such as swaps of payments determined by fixed and floating interest rates; or any swap which is primarily based on rates of exchange between different currencies, changes in such rates, or other aspects of such rates (sometimes known as "cross-currency swaps").

International swap means a swap required by U.S. law and the law of another jurisdiction to be reported both to a swap data repository and to a different trade repository registered with the other jurisdiction.

Life cycle event means any event that would result in either a change to a primary economic term of a swap or to any primary economic terms 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 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).

Life cycle event data means all of the data elements necessary to fully report any life cycle event.

Major swap participant has the meaning set forth in CEA Section 1a(33) and in part 1 of this chapter.

Mixed swap has the meaning set forth in CEA § 1a(47)(D), and refers to an instrument that is in part a swap subject to the jurisdiction of the Commission, and in part a security-based swap subject to the jurisdiction of the SEC.

Multi-asset swap means a swap that does not have one easily identifiable primary underlying notional item, but instead involves multiple underlying notional items within the Commission's jurisdiction that belong to different asset classes.

Non-SD/MSP counterparty means a swap counterparty that is neither a swap dealer nor a major swap participant.

Non-electronic confirmation (confirmation "does not occur electronically") means confirmation that is done manually rather than by means of automated electronic systems.

Non-electronic verification (verification "does not occur electronically") means verification that is done manually rather than by means of automated electronic systems.

Off-facility swap means a swap not executed on or pursuant to the rules of a swap execution facility or designated contract market.

Other commodity swap means any swap not included in the credit, equity, foreign exchange, or interest rate asset classes, including, without limitation, any swap for which the primary underlying item is a physical commodity or the price or any other aspect of a physical commodity.

Primary economic terms means all of the terms of a swap matched or affirmed by the counterparties in verifying the swap, including at a minimum each of the terms included in the most recent Federal Register release by the Commission listing minimum primary economic

terms for swaps in the swap asset class in question. The Commission's current lists of minimum primary economic terms for swaps in each swap asset class are found in Appendix 1 to Part 45.

Primary economic terms data means all of the data elements necessary to fully report all of the primary economic terms of a swap in the swap asset class of the swap in question.

Quarterly reporting ("reported quarterly") means reporting four times each fiscal year, following the end of each fiscal year quarter, making each quarterly report within 30 calendar days of the end of the fiscal year quarter.

Reporting counterparty means the counterparty required to report swap data pursuant to this part, selected as provided in § 45.8.

Required swap creation data means all primary economic terms data for a swap in the swap asset class in question, and all confirmation data for the swap.

Required swap continuation data means 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 swap data repository remains current and accurate, and includes all changes to the primary economic terms of the swap occurring during the existence of the swap. For this purpose, required swap continuation data includes: (1) all life cycle event data for the swap if the swap is reported using the life cycle reporting method, or all state data for the swap if the swap is reported using the snapshot reporting method; and (2) all valuation data for the swap.

State data means all of the data elements necessary to provide a snapshot view, on a daily basis, of all of the primary economic terms of a swap in the swap asset class of the swap in question, including any change to any primary economic term or to any previously-reported primary economic terms data since the last snapshot. At a minimum, state data must include each of the terms included in the most recent Federal Register release by the Commission listing

minimum primary economic terms for swaps in the swap asset class in question. The Commission's current lists of minimum primary economic terms for swaps in each swap asset class are found in Appendix 1 to Part 45.

Swap data repository has the meaning set forth in CEA Section 1a(48), and in part 49 of this chapter.

Swap dealer has the meaning set forth in CEA Section 1a(49), and in part 1 of this chapter.

Swap execution facility has the meaning set forth in CEA Section 1a(50) and in part 37 of this chapter.

Valuation data means all of the data elements necessary to fully describe the daily mark of the transaction, pursuant to CEA § 4s(h)(3)(B)(iii), and to § 23.431 of this chapter if applicable.

Verification ("verify", "verified", or "verifying") means the matching by the counterparties to a swap of each of the primary economic terms of a swap, at or shortly after the time the swap is executed.

§ 45.2 Swap recordkeeping.

(a) *Recordkeeping by swap execution facilities, designated contract markets, derivatives clearing organizations, swap dealers, and major swap participants*. Each swap execution facility, designated contract market, derivatives clearing organization, swap dealer, and major swap participant subject to the jurisdiction of the Commission shall keep full, complete, and systematic records, together with all pertinent data and memoranda, of all activities relating to the business of such entity or person with respect to swaps, as prescribed by the Commission. Such records shall include, without limitation, the following:

(1) For swap execution facilities, all records required by part 37 of this chapter.

(2) For designated contract markets, all records required by part 38 of this chapter.

(3) For derivatives clearing organizations, all records required by part 39 of this chapter.

(4) For swap dealers and major swap participants, all records required by part 23 of this chapter, and all records demonstrating that they are entitled, with respect to any swap, to elect the clearing requirement exception pursuant to CEA § 2(h)(7).

(b) *Recordkeeping by non-SD/MSP counterparties*. All non-SD/MSP counterparties subject to the jurisdiction of the Commission shall keep full, complete, and systematic records, together with all pertinent data and memoranda, with respect to each swap in which they are a counterparty, including, without limitation, all records demonstrating that they are entitled, with respect to any swap, to elect the clearing requirement exception in CEA § 2(h)(7).

(c) *Record retention*. All records required to be kept pursuant to this section shall be retained with respect to each swap throughout the life of the swap and for a period of at least five years following the final termination of the swap.

(d) *Retention form*. Records required to be kept pursuant to this section must be kept as required by paragraph (d)(1) or (d)(2) of this section, as applicable.

(1) Records required to be kept by swap execution facilities, designated contract markets, derivatives clearing organizations, swap dealers, or major swap participants may be kept in electronic form, or kept in paper form if originally created and exclusively maintained in paper form, so long as they are retrievable, and information in them is reportable, as required by this section.

(2) Records required to be kept by non-SD/MSP counterparties may be kept in either electronic or paper form, so long as they are retrievable, and information in them is reportable, as required by this section.

(e) *Record retrievability*. Records required to be kept by swap execution facilities, designated contract markets, derivatives clearing organizations, or swap counterparties pursuant to this section shall be retrievable as provided in paragraphs (e)(1) and (e)(2) of this section, as applicable.

(1) Each record required by this section or any other section of the CEA to be kept by a swap execution facility, designated contract market, derivatives clearing organization, swap dealer, or major swap participant shall be readily accessible via real time electronic access by the registrant throughout the life of the swap and for two years following the final termination of the swap, and shall be retrievable by the registrant within three business days through the remainder of the period following final termination of the swap during which it is required to be kept.

(2) Each record required by this section or any other section of the CEA to be kept by a non-SD/MSP counterparty shall be retrievable by that counterparty within five business days throughout the period during which it is required to be kept.

(f) *Recordkeeping by swap data repositories*. Each swap data repository registered with the Commission shall keep full, complete, and systematic records, together with all pertinent data and memoranda, of all activities relating to the business of the swap data repository and all swap data reported to the swap data repository, as prescribed by the Commission. Such records shall include, without limitation, all records required by part 49 of this chapter.

(g) *Record retention and retrievability by swap data repositories*. All records required to be kept by a swap data repository pursuant to this section must be kept by the swap data repository both:

(1) 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 by the swap data repository and available to the Commission via real time electronic access; and

(2) Thereafter, for a period of at least ten additional years in archival storage from which they are retrievable by the swap data repository within three business days.

(h) *Record inspection*. All records required to be kept pursuant to this section by any registrant or its affiliates or by any non-SD/MSP counterparty subject to the jurisdiction of the Commission shall be open to inspection upon request by any representative of the Commission, the United States Department of Justice, or the Securities and Exchange Commission, or by any representative of a prudential regulator as authorized by the Commission. Copies of all such records shall be provided, at the expense of the entity or person required to keep the record, to any representative of the Commission upon request. Copies of records required to be kept by any registrant shall be provided either by electronic means, in hard copy, or both, as requested by the Commission, with the sole exception that copies of records originally created and exclusively maintained in paper form may be provided in hard copy only. Copies of records required to be kept by any non-SD/MSP counterparty subject to the jurisdiction of the Commission that is not a Commission registrant shall be provided in the form, whether electronic or paper, in which the records are kept.

§ 45.3 Swap Data Reporting: Creation Data

Registered entities and swap counterparties must report required swap creation data electronically to a swap data repository as set forth in this Section. This obligation commences on the applicable compliance date set forth in the preamble to this part. The reporting obligations of swap counterparties with respect to swaps executed prior to the applicable compliance date and in existence on or after July 21, 2010, the date of enactment of the Dodd-Frank Act, are set forth in part 46 of this chapter. This Section and § 45.4 establish the general swap data reporting obligations of swap dealers, major swap participants, non-SD/MSP counterparties, swap execution facilities, designated contract markets, and derivatives clearing organizations to report swap data to a swap data repository. In addition to the reporting obligations set forth in this Section and § 45.4, registered entities and swap counterparties are subject to other reporting obligations set forth in this chapter, including, without limitation, the following: Swap dealers, major swap participants, and non-SD/MSP counterparties are also subject to the reporting obligations with respect to corporate affiliations reporting set forth in § 45.6; swap execution facilities, designated contract markets, swap dealers, major swap participants, and non-SD/MSP counterparties are subject to the reporting obligations with respect to real time reporting of swap data set forth in part 43 of this chapter; counterparties to a swap for which the clearing requirement exception in CEA § 2(h)(7) has been elected are subject to the reporting obligations set forth in part 39 of this chapter; and, where applicable, swap dealers, major swap participants, and non-SD/MSP counterparties are subject to the reporting obligations with respect to large traders set forth in parts 17 and 18 of this chapter.

(a) *Swaps executed on or pursuant to the rules of a swap execution facility or designated contract market.*

(1) 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 must report all required swap creation data, as soon as technologically practicable after execution of the swap. This report must include all confirmation data for the swap, as defined in part 23 and in § 45.1, and all primary economic terms data for the swap, as defined in § 45.1.

(2) If such a swap is accepted for clearing by a derivatives clearing organization, the derivatives clearing organization must report all confirmation data for the swap, as defined in part 39 and in § 45.1, as soon as technologically practicable after clearing. The derivatives clearing organization shall fulfill this requirement by reporting all confirmation data for the swap, as defined in part 39 and in this § 45.1, which must include all primary economic terms data for the swap as defined in § 45.1, and must include the internal identifiers assigned by the automated systems of the derivatives clearing organization to the two transactions resulting from novation to the clearing house.

(b) *Off-facility swaps subject to mandatory clearing*. For all off-facility swaps subject to the mandatory clearing requirement, except for those off-facility swaps excepted from that requirement pursuant to CEA § 2(h)(7) and those off-facility swaps covered by CEA § 2(a)(13)(C)(iv), required swap creation data must be reported as provided in paragraph (b) of this section.

(1) The reporting counterparty, as determined pursuant to § 45.8, must report all primary economic terms data for the swap, within the applicable reporting deadline set forth in paragraph (b)(1)(i) or (b)(1)(ii) of this section. However, if the swap is voluntarily submitted for clearing

and accepted for clearing by a derivatives clearing organization before the applicable reporting deadline set forth in paragraphs (b)(1)(i) or (b)(1)(ii) of this section, and if the swap is accepted for clearing before the reporting counterparty reports any primary economic terms data to a swap data repository, then the reporting counterparty is excused from reporting required swap creation data for the swap.

(i) If the reporting counterparty is a swap dealer or a major swap participant, the reporting counterparty must report all primary economic terms data for the swap as soon as technologically practicable after execution, but no later than: 30 minutes after execution during the first year following the compliance date; and 15 minutes after execution thereafter.

(ii) If the reporting counterparty is a non-SD/MSP counterparty, the reporting counterparty must report all primary economic terms data for the swap as soon as technologically practicable after execution, but no later than: four business hours after execution during the first year following the compliance date; two business hours after execution during the second year following the compliance date; and one business hour after execution thereafter.

(2) If the swap is accepted for clearing by a derivatives clearing organization, the derivatives clearing organization must report all confirmation data for the swap, as defined in part 39 and in § 45.1, as soon as technologically practicable after clearing. The derivatives clearing organization shall fulfill this requirement by reporting all confirmation data for the swap, as defined in part 39 and in this § 45.1, which must include all primary economic terms data for the swap as defined in § 45.1, and must include the internal identifiers assigned by the automated systems of the derivatives clearing organization to the two transactions resulting from novation to the clearing house.

(3) If the swap is not accepted for clearing, the reporting counterparty must report all confirmation data for the swap, as defined in § 45.1, within the applicable reporting deadline set forth in paragraph (b)(3)(i) or (b)(3)(ii) of this section. During the first 180 calendar days following the compliance date, if reporting confirmation data normalized in data fields is not yet technologically practicable for the reporting counterparty, the reporting counterparty may report confirmation data to the swap data repository by transmitting to the swap data repository an image of the document or documents constituting the confirmation, until such time as electronic reporting of confirmation data is technologically practicable for the reporting counterparty. Beginning 180 days after the compliance date, the reporting counterparty must report all confirmation data to the swap data repository electronically.

(i) If the reporting counterparty is a swap dealer or major swap participant, the reporting counterparty must report all confirmation data as soon as technologically practicable following confirmation, but no later than: 30 minutes after confirmation if confirmation occurs electronically; or 24 business hours after confirmation if confirmation does not occur electronically.

(ii) If the reporting counterparty is a non-SD/MSP counterparty, the reporting counterparty must report all confirmation data as soon as technologically practicable following confirmation, but no later than: the end of the second business day after the date of confirmation during the first year following the compliance date; and the end of the first business day after the date of confirmation thereafter.

(c) *Off-facility swaps not subject to mandatory clearing, with a swap dealer or major swap participant reporting counterparty.* For all off-facility swaps not subject to the mandatory clearing requirement set forth in CEA § 2(h), all off-facility swaps for which the clearing

requirement exception in CEA § 2(h)(7) has been elected, and all off-facility swaps covered by CEA § 2(a)(13)(C)(iv), for which a swap dealer or major swap participant is the reporting counterparty, required swap creation data must be reported as provided in paragraph (c) of this section.

(1) *Credit, equity, foreign exchange, and interest rate swaps*. For each such credit swap, equity swap, foreign exchange instrument, or interest rate swap:

(i) The reporting counterparty, as determined pursuant to § 45.8, must report all primary economic terms data for the swap, within the applicable reporting deadline set forth in paragraph (c)(1)(i)(A) or (c)(1)(i)(B) of this section. However, if the swap is voluntarily submitted for clearing and accepted for clearing by a derivatives clearing organization before the applicable reporting deadline set forth in paragraphs (c)(1)(i)(A) or (c)(1)(i)(B) of this section, and if the swap is accepted for clearing before the reporting counterparty reports any primary economic terms data to a swap data repository, then the reporting counterparty is excused from reporting required swap creation data for the swap.

(A) If the non-reporting counterparty is a swap dealer, a major swap participant, or a non-SD/MSP counterparty that is a financial entity as defined in CEA § 2(h)(7)(C), or if the non-reporting counterparty is a non-SD/MSP counterparty and verification of primary economic terms occurs electronically, then the reporting counterparty must report all primary economic terms data for the swap as soon as technologically practicable after execution, but no later than: one hour after execution during the first year following the compliance date; and 30 minutes after execution thereafter.

(B) If the non-reporting counterparty is a non-SD/MSP counterparty, and if verification of primary economic terms does not occur electronically, then the reporting counterparty must

report all primary economic terms data for the swap as soon as technologically practicable after execution, but no later than: 24 business hours after execution during the first year following the compliance date; 12 business hours after execution during the second year following the compliance date; and 30 minutes after execution thereafter.

(ii) If the swap is accepted for clearing by a derivatives clearing organization, the derivatives clearing organization must report all confirmation data for the swap, as defined in part 39 and in § 45.1, as soon as technologically practicable after clearing. The derivatives clearing organization shall fulfill this requirement by reporting all confirmation data for the swap, as defined in part 39 and in this § 45.1, which must include all primary economic terms data for the swap as defined in § 45.1, and must include the internal identifiers assigned by the automated systems of the derivatives clearing organization to the two transactions resulting from novation to the clearing house.

(iii) If the swap is not voluntarily submitted for clearing, the reporting counterparty must report all confirmation data for the swap, as defined in § 45.1, as soon as technologically practicable after confirmation, but no later than: 30 minutes after confirmation if confirmation occurs electronically; or 24 business hours after confirmation if confirmation does not occur electronically. During the first 180 calendar days following the compliance date, if reporting confirmation data normalized in data fields is not yet technologically practicable for the reporting counterparty, the reporting counterparty may report confirmation data to the swap data repository by transmitting to the swap data repository an image of the document or documents constituting the confirmation, until such time as electronic reporting of confirmation data is technologically practicable for the reporting counterparty. Beginning 180 days after the

compliance date, the reporting counterparty must report all confirmation data to the swap data repository electronically.

(2) *Other commodity swaps*. For each such other commodity swap:

(i) The reporting counterparty, as determined pursuant to § 45.8, must report all primary economic terms data for the swap, within the applicable reporting deadline set forth in paragraph (c)(2)(i)(A) or (c)(2)(i)(B) of this section. However, if the swap is voluntarily submitted for clearing and accepted for clearing by a derivatives clearing organization before the applicable reporting deadline set forth in paragraphs (c)(2)(i)(A) or (c)(2)(i)(B) of this section, and if the swap is accepted for clearing before the reporting counterparty reports any primary economic terms data to a swap data repository, then the reporting counterparty is excused from reporting required swap creation data for the swap.

(A) If the non-reporting counterparty is a swap dealer, a major swap participant, or a non-SD/MSP counterparty that is a financial entity as defined in CEA § 2(h)(7)(C), or if the non-reporting counterparty is a non-SD/MSP counterparty and verification of primary economic terms occurs electronically, then the reporting counterparty must report all primary economic terms data for the swap as soon as technologically practicable after execution, but no later than: four hours after execution during the first year following the compliance date; and two hours after execution thereafter.

(B) If the non-reporting counterparty is a non-SD/MSP counterparty, and if verification of primary economic terms does not occur electronically, then the reporting counterparty must report all primary economic terms data for the swap as soon as technologically practicable after execution, but no later than: 48 business hours after execution during the first year following the

compliance date; 24 business hours after execution during the second year following the compliance date; and two hours after execution thereafter.

(ii) If the swap is accepted for clearing by a derivatives clearing organization, the derivatives clearing organization must report all confirmation data for the swap, as defined in part 39 and in § 45.1, as soon as technologically practicable after clearing. The derivatives clearing organization shall fulfill this requirement by reporting all confirmation data for the swap, as defined in part 39 and in this § 45.1, which must include all primary economic terms data for the swap as defined in § 45.1, and must include the internal identifiers assigned by the automated systems of the derivatives clearing organization to the two transactions resulting from novation to the clearing house.

(iii) If the swap is not voluntarily submitted for clearing, the reporting counterparty must report all confirmation data for the swap, as defined in § 45.1, as soon as technologically practicable after confirmation, but no later than: 30 minutes after confirmation if confirmation occurs electronically; or 24 business hours after confirmation if confirmation does not occur electronically. During the first 180 calendar days following the compliance date, if reporting confirmation data normalized in data fields is not yet technologically practicable for the reporting counterparty, the reporting counterparty may report confirmation data to the swap data repository by transmitting to the swap data repository an image of the document or documents constituting the confirmation, until such time as electronic reporting of confirmation data is technologically practicable for the reporting counterparty. Beginning 180 days after the compliance date, the reporting counterparty must report all confirmation data to the swap data repository electronically.

(d) *Off-facility swaps not subject to mandatory clearing, with a non-SD/MSP reporting counterparty.* For all off-facility swaps not subject to the mandatory clearing requirement set forth in CEA § 2(h), all off-facility swaps for which the clearing requirement exception in CEA § 2(h)(7) has been elected, and all off-facility swaps covered by CEA § 2(a)(13)(C)(iv), in all asset classes, for which a non-SD/MSP counterparty is the reporting counterparty, required swap creation data must be reported as provided in this section (d).

(1) The reporting counterparty, as determined pursuant to § 45.8, must report all primary economic terms data for the swap, as soon as technologically practicable after execution, but no later than: 48 business hours after execution during the first year following the compliance date; 36 business hours after execution during the second year following the compliance date; and 24 business hours after execution thereafter. However, if the swap is voluntarily submitted for clearing and accepted for clearing by a derivatives clearing organization before the applicable reporting deadline set forth in paragraph (d)(1)(i)(A) of this section, and if the swap is accepted for clearing before the reporting counterparty reports any primary economic terms data to a swap data repository, then the reporting counterparty is excused from reporting required swap creation data for the swap.

(2) If the swap is accepted for clearing by a derivatives clearing organization, the derivatives clearing organization must report all confirmation data for the swap, as defined in part 39 and in § 45.1, as soon as technologically practicable after clearing. The derivatives clearing organization shall fulfill this requirement by reporting all confirmation data for the swap, as defined in part 39 and in this § 45.1, which must include all primary economic terms data for the swap as defined in § 45.1, and must include the internal identifiers assigned by the

automated systems of the derivatives clearing organization to the two transactions resulting from novation to the clearing house.

(3) If the swap is not voluntarily submitted for clearing, the reporting counterparty must report all confirmation data for the swap, as defined in § 45.1, as soon as technologically practicable after confirmation, but no later than: 48 business hours after confirmation during the first year following the compliance date; 36 business hours after confirmation during the second year following the compliance date; and 24 business hours after confirmation thereafter. During the first 180 calendar days following the compliance date, if reporting confirmation data normalized in data fields is not yet technologically practicable for the reporting counterparty, the reporting counterparty may report confirmation data to the swap data repository by transmitting to the swap data repository an image of the document or documents constituting the confirmation, until such time as electronic reporting of confirmation data is technologically practicable for the reporting counterparty. Beginning 180 days after the compliance date, the reporting counterparty must report all confirmation data to the swap data repository electronically.

(e) *Allocations*. For swaps involving allocation, required swap creation data shall be reported to a single swap data repository as follows.

(i) *Initial swap between reporting counterparty and agent.* The initial swap transaction between the reporting counterparty and the agent shall be reported as required by §§ 45.3(a) through 45.3(d) of this part. A unique swap identifier for the initial swap transaction must be created as provided in § 45.5 of this part.

(ii) *Post-allocation swaps.*

(A) *Duties of the agent*. In accordance with this section, the agent shall inform the reporting counterparty of the identities of the reporting counterparty's actual counterparties resulting from allocation, as soon as technologically practicable after execution, but not later than eight business hours after execution.

(B) *Duties of the reporting counterparty*. The reporting counterparty must report all required swap creation data for each swap resulting from allocation, to the same swap data repository to which the initial swap transaction is reported, as soon as technologically practicable after it is informed by the agent of the identities of its actual counterparties. The reporting counterparty must create a unique swap identifier for each such swap as required in § 45.5 of this part.

(C) *Duties of the swap data repository*. The swap data repository to which the initial swap transaction and the post-allocation swaps are reported must map together the unique swap identifiers of the original swap transaction and of each of the post-allocation swaps.

(f) *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 making the first report of required swap creation data pursuant to this section. The registered entity or reporting counterparty making the first report of required swap creation data pursuant to this section shall report all primary economic terms for each asset class involved in the swap.

(g) *Mixed swaps*.

(1) For each mixed swap, required swap creation data and required swap continuation data shall be reported to a swap data repository registered with the Commission 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 making the first report of required swap creation data pursuant to this section shall ensure that the same unique swap identifier is recorded for the swap in both the swap data repository and the security-based swap data repository.

(g) *International swaps*. For each international swap, the reporting counterparty shall report as soon as practicable to the swap data repository the identity of the non-U.S. trade repository not registered with the Commission to which the swap is also reported and the swap identifier used by the non-U.S. trade repository to identify the swap. If necessary, the reporting counterparty shall obtain this information from the non-reporting counterparty.

§ 45.4 Swap Data Reporting: Continuation Data

Registered entities and swap counterparties must report required swap continuation data electronically to a swap data repository as set forth in this Section. This obligation commences on the applicable compliance date set forth in the preamble to this part. The reporting obligations of registered entities and swap counterparties with respect to swaps executed prior to the applicable compliance date and in existence on or after July 21, 2010, the date of enactment of the Dodd-Frank Act, are set forth in part 46 of this chapter. This Section and § 45.3 establish the general swap data reporting obligations of swap dealers, major swap participants, non-

SD/MSP counterparties, swap execution facilities, designated contract markets, and derivatives clearing organizations to report swap data to a swap data repository. In addition to the reporting obligations set forth in this Section and § 45.3, registered entities and swap counterparties are subject to other reporting obligations set forth in this chapter, including, without limitation, the following: Swap dealers, major swap participants, and non-SD/MSP counterparties are also subject to the reporting obligations with respect to corporate affiliations reporting set forth in § 45.6; swap execution facilities, designated contract markets, swap dealers, major swap participants, and non-SD/MSP counterparties are subject to the reporting obligations with respect to real time reporting of swap data set forth in part 43 of this chapter; and, where applicable, swap dealers, major swap participants, and non-SD/MSP counterparties are subject to the reporting obligations with respect to large traders set forth in parts 17 and 18 of this chapter.

(a) *Continuation data reporting method*. For each swap, regardless of asset class, reporting counterparties and derivatives clearing organizations required to report swap continuation data must do so in a manner sufficient to ensure that all data in the swap data repository concerning the swap remains current and accurate, and includes all changes to the primary economic terms of the swap occurring during the existence of the swap. Reporting entities and counterparties fulfill this obligation by reporting either life cycle event data or state data for the swap within the applicable deadlines set forth in this section. Reporting counterparties and derivatives clearing organizations required to report swap continuation data for a swap may fulfill their obligation to report either life cycle event data or state data by reporting:

(1) Life cycle event data to a swap data repository that accepts only life cycle event data reporting;

(2) State data to a swap data repository that accepts only state data reporting; or

(3) Either life cycle event data or state data to a swap data repository that accepts both life cycle event data and state data reporting.

(b) *Continuation data reporting for cleared swaps.* For all swaps cleared by a derivatives clearing organization, required continuation data must be reported as provided in this section.

(1) *Life cycle event data or state data reporting.* The derivatives clearing organization must report to the swap data repository either:

(i) All life cycle event data for the swap, reported on the same day that any life cycle event occurs with respect to the swap; or

(ii) All state data for the swap, reported daily.

(2) *Valuation data reporting*. Valuation data for the swap must be reported as follows:

(i) By the derivatives clearing organization, daily; and

(ii) If the reporting counterparty is a swap dealer or major swap participant, by the reporting counterparty, daily. Non-SD/MSP reporting counterparties are not required to report valuation data for cleared swaps.

(c) *Continuation data reporting for uncleared swaps.* For all swaps that are not cleared by a derivatives clearing organization, the reporting counterparty must report all required swap continuation data as provided in this section.

(1) *Life cycle event data or state data reporting.* The reporting counterparty for the swap must report to the swap data repository either all life cycle event data for the swap or all state data for the swap, within the applicable deadline set forth in paragraphs (c)(1)(i) or (c)(1)(ii) of this section.

(i) If the reporting counterparty is a swap dealer or major swap participant:

(A) Life cycle event data must be reported on the same day that any life cycle event occurs, with the sole exception that life cycle event data relating to a corporate event of the non-reporting counterparty must be reported no later than the second business day after the day on which such event occurs.

(B) State data must be reported daily.

(ii) If the reporting counterparty is a non-SD/MSP counterparty:

(A) Life cycle event data must be reported no later than: the end of the second business day following the date of any life cycle event during the first year after the applicable compliance date; and the end of the first business day following the date of any life cycle event thereafter; with the sole exception that life cycle event data relating to a corporate event of the non-reporting counterparty must be reported no later than the end of the third business day following the date of such event during the first year after the compliance date, and no later than the end of the second business day following such event thereafter.

(B) State data must be reported daily.

(2) *Valuation data reporting*. Valuation data for the swap must be reported by the reporting counterparty for the swap as follows:

(i) If the reporting counterparty is a swap dealer or major swap participant, the reporting counterparty must report all valuation data for the swap, daily.

(ii) If the reporting counterparty is a non-SD/MSP counterparty, the reporting counterparty must report the current daily mark of the transaction as of the last day of each fiscal quarter. This report must be transmitted to the swap data repository within 30 calendar days of the end of each fiscal quarter. If a daily mark of the transaction is not available for the swap, the

reporting counterparty satisfies this requirement by reporting the current valuation of the swap recorded on its books in accordance with applicable accounting standards.

§ 45.5 Unique swap identifiers.

Each swap subject to the jurisdiction of the Commission shall be identified in all recordkeeping and all swap data reporting pursuant to this part by the use of a unique swap identifier, which shall be created, transmitted, and used for each swap as provided in paragraphs (a) through (c) of this section.

(a) *Swaps executed on a swap execution facility or designated contract market*. For each swap executed on a swap execution facility or designated contract market, the swap execution facility or designated contract market shall create and transmit a unique swap identifier as provided in paragraphs (a)(1)(i) and (a)(1)(ii) of this section.

(1) *Creation*. The swap execution facility or designated contract market shall generate and assign a unique swap identifier at, or as soon as technologically practicable following, the time of execution of the swap, and prior to the reporting of required swap creation data. The unique swap identifier shall consist of a single data field that contains two components:

(i) The unique alphanumeric code assigned to the swap execution facility or designated contract market by the Commission for the purpose of identifying the swap execution facility or designated contract market with respect to unique swap identifier creation; and

(ii) An alphanumeric code generated and assigned to that swap by the automated systems of the swap execution facility or designated contract market, which shall be unique with respect to all such codes generated and assigned by that swap execution facility or designated contract market.

(2) *Transmission.* The swap execution facility or designated contract market shall transmit the unique swap identifier electronically as follows:

(i) To the swap data repository to which the swap execution facility or designated contract market reports required swap creation data for the swap, as part of that report.

(ii) To each counterparty to the swap, as soon as technologically practicable after execution of the swap;

(iii) To the derivatives clearing organization, if any, to which the swap is submitted for clearing, as part of the required swap creation data transmitted to the derivatives clearing organization for clearing purposes.

(b) *Off-facility swaps with a swap dealer or major swap participant reporting counterparty*. For each off-facility swap where the reporting counterparty is a swap dealer or major swap participant, the reporting counterparty shall create and transmit a unique swap identifier as provided in paragraphs (a)(2)(i) and (a)(2)(ii) of this section.

(1) *Creation*. The reporting counterparty shall generate and assign a unique swap identifier as soon as technologically practicable after execution of the swap and prior to both the reporting of required swap creation data and the transmission of data to a derivatives clearing organization if the swap is to be cleared. The unique swap identifier shall consist of a single data field that contains two components:

(i) the unique alphanumeric code assigned to the swap dealer or major swap participant by the Commission at the time of its registration as such, for the purpose of identifying the swap dealer or major swap participant with respect to unique swap identifier creation; and

(ii) An alphanumeric code generated and assigned to that swap by the automated systems of the swap dealer or major swap participant, which shall be unique with respect to all such codes generated and assigned by that swap dealer or major swap participant.

(2) *Transmission.* The reporting counterparty shall transmit the unique swap identifier electronically as follows:

(i) To the swap data repository to which the reporting counterparty reports required swap creation data for the swap, as part of that report;

(ii) To the non-reporting counterparty to the swap, as soon as technologically practicable after execution of the swap; and

(iii) To the derivatives clearing organization, if any, to which the swap is submitted for clearing, as part of the required swap creation data transmitted to the derivatives clearing organization for clearing purposes.

(c) *Off-facility swaps with a non-SD/MSP reporting counterparty*. For each off-facility swap for which the reporting counterparty is a non-SD/MSP counterparty, the swap data repository to which primary economic terms data is reported by the reporting counterparty shall create and transmit a unique swap identifier as provided in paragraphs (a)(3)(i) and (a)(3)(ii) of this section.

(1) *Creation*. The swap data repository shall generate and assign a unique swap identifier as soon as technologically practicable following receipt of the first report of required swap creation data concerning the swap. The unique swap identifier shall consist of a single data field that contains two components:

(i) The unique alphanumeric code assigned to the swap data repository by the Commission at the time of its registration as such, for the purpose of identifying the swap data repository with respect to unique swap identifier creation; and

(ii) An alphanumeric code generated and assigned to that swap by the automated systems of the swap data repository, which shall be unique with respect to all such codes generated and assigned by that swap data repository.

(2) *Transmission.* The swap data repository shall transmit the unique swap identifier electronically as follows:

(i) To the counterparties to the swap, as soon as technologically practicable following creation of the unique swap identifier; and

(ii) To the derivatives clearing organization, if any, to which the swap is submitted for clearing, as soon as technologically practicable following creation of the unique swap identifier.

(d) *Allocations*. For swaps involving allocation, unique swap identifiers shall be created and transmitted as follows.

(i) *Initial swap between reporting counterparty and agent.* The unique swap identifier for the initial swap transaction between the reporting counterparty and the agent shall be created as required by paragraph (a) through (c) of this section, and shall be transmitted as follows:

(A) If the unique swap identifier is created by a swap execution facility or designated contract market, the swap execution facility or designated contract market must include the unique swap identifier in its swap creation data report to the swap data repository, and must transmit the unique identifier to the reporting counterparty and to the agent.

(B) If the unique swap identifier is created by the reporting counterparty, the reporting counterparty must include the unique swap identifier in its swap creation data report to the swap data repository, and must transmit the unique identifier to the agent.

(ii) *Post-allocation swaps.* The reporting counterparty must create a unique swap identifier for each of the individual swaps resulting from allocation, as soon as technologically practicable after it is informed by the agent of the identities of its actual counterparties, and must transmit each such unique swap identifier to:

(A) The non-reporting counterparty for the swap in question.

(B) The agent.

(C) The derivatives clearing organization, if any, to which the swap is submitted for clearing, as part of the required swap creation data transmitted to the derivatives clearing organization for clearing purposes.

(D) The same swap data repository to which the initial swap transaction is reported, as part of the report of required swap creation data to the swap data repository.

(e) *Use*. Each registered entity or swap counterparty subject to the jurisdiction of the Commission shall include the unique swap 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 swap identifier as provided in this section, throughout the existence of the swap and for as long as any records are required by the CEA or Commission regulations to be kept by that registered entity or counterparty concerning the swap, regardless of any life cycle events or any changes to state data concerning the swap, including, without limitation, any changes with respect to the counterparties to or the ownership of the swap. 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 a swap data repository, the Commission, or another regulator of such internally generated identifiers in addition to the reporting of the unique swap identifier.

§ 45.6 Legal entity identifiers

Each counterparty to any swap subject to the jurisdiction of the Commission shall be identified in all recordkeeping and all swap data reporting pursuant to this part by means of a single legal entity identifier as specified in this section.

(a) *Definitions.* As used in this section:

Control ("controlling," "controlled by," "under common control with") means, for the purposes of § 45.6, the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting interest, by contract, or otherwise. A person is presumed to control another person if the person: is a director, general partner or officer exercising executive responsibility (or having similar status or functions); directly or indirectly has the right to vote 25 percent or more of a class of voting interest or has the power to sell or direct the sale of 25 percent or more of a class of voting interest; or, in the case of a partnership, has the right to receive upon dissolution, or has contributed, 25 percent or more of the capital.

Legal identifier system means an LEI utility conforming with the requirements of this section that issues or is capable of issuing an LEI conforming with the requirements of this section, and is capable of maintaining LEI reference data as required by this section.

Level one reference data means the minimum information needed to identify, on a verifiable basis, the legal entity to which a legal entity identifier is assigned. Level one reference data shall include, without limitation, all of the data elements included in ISO Standard 17442.

Examples of level one reference data include, without limitation, a legal entity's official legal name, its place of incorporation, and the address and contact information of its corporate headquarters.

Level two reference data means information concerning the corporate affiliations or company hierarchy relationships of the legal entity to which a legal entity identifier is assigned. Examples of level two reference data include, without limitation, the identity of the legal entity's ultimate parent.

Parent means, for the purposes of § 45.6, a legal person that controls a counterparty to a swap required to be reported pursuant to this section, or that controls a legal entity identified or to be identified by a legal entity identifier provided by the legal identifier system designated by the Commission pursuant to this section.

Self-registration means submission by a legal entity of its own level one or level two reference data, as applicable.

Third-party registration means submission of level one or level two reference data, as applicable, for a legal entity that is or may become a swap counterparty, made by an entity or organization other than the legal entity identified by the submitted reference data. Examples of third-party registration include, without limitation, submission by a swap dealer or major swap participant of level one or level two reference data for its swap counterparties, and submission by a national numbering agency, national registration agency, or data service provider of level one or level two reference data concerning legal entities with respect to which the agency or service provider maintains information.

Ultimate parent means, for the purposes of § 45.6, a legal person that controls a counterparty to a swap required to be reported pursuant to this section, or that controls a legal

entity identified or to be identified by a legal entity identifier provided by the legal identifier system designated by the Commission pursuant to this section, and that itself has no parent.

(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, following designation of the legal entity identifier system as provided in paragraph (c)(2) of this section, shall be issued under, and shall conform to, ISO Standard 17442, Legal Entity Identifier (LEI), issued by the International Organisation for Standardisation.

(b) *Technical principles for the legal entity identifier*. The legal entity identifier used in all recordkeeping and all swap data reporting required by this part shall conform to the technical principles set forth in paragraphs (b)(1) through (b)(6) of this section.

(1) *Uniqueness*. Only one legal entity identifier shall be assigned to any legal entity, and no legal entity identifier shall ever be reused. Each entity within a corporate organization or group structure that acts as a counterparty in any swap shall have its own legal entity identifier.

(2) *Neutrality*. To ensure the persistence of the legal entity identifier, it shall have a format consisting of a single data field, and shall contain either no embedded intelligence or as little embedded intelligence as practicable. Entity characteristics of swap counterparties identified by legal entity identifiers shall constitute separate elements within a reference data system as set forth in paragraphs (a), (c)(2), (d), and (e) of this section.

(3) *Reliability*. The legal entity identifier shall be supported by a trusted and auditable method of verifying the identity of the legal entity to which it is assigned, both initially and at appropriate intervals thereafter. The issuer of legal entity identifiers shall maintain minimum reference or identification data sufficient to verify that a user has been correctly identified. Issuance and maintenance of the legal entity identifier, and storage and maintenance of all

associated data, shall involve robust quality assurance practices and system safeguards. At a minimum, such system safeguards shall include the system safeguards applied to swap data repositories by part 49 of this chapter.

(4) *Open Source*. The schema for the legal entity identifier shall have an open standard that ensures to the greatest extent practicable that the legal entity identifier is compatible with existing automated systems of financial market infrastructures, market participants, and regulators.

(5) *Extensibility*. The legal entity identifier shall be capable of becoming the single international standard for unique identification of legal entities across the financial sector on a global basis. Therefore, it shall be sufficiently extensible to cover all existing and potential future legal entities of all types that may be counterparties to swap, OTC derivative, or other financial transactions; that may be involved in any aspect of the financial issuance and transactions process; or that may be subject to required due diligence by financial sector entities.

(6) *Persistence*. The legal entity identifier assigned to an entity shall persist despite all corporate events. When a corporate event results in a new entity, the new entity shall receive a new legal entity identifier, while the previous legal entity identifier or identifiers continue to identify the predecessor entity or entities in the record.

(c) *Governance principles for the legal entity identifier*. The legal entity identifier used in all recordkeeping and all swap data reporting required by this part shall conform to the governance principles set forth in paragraphs (c)(1) through (c)(4) of this section.

(1) *International governance*. The issuance of the legal entity identifier used pursuant to this section, and any legal entity identifier utility formed for the purpose of issuing legal entity

identifiers that are used pursuant to this section, shall be subject to international supervision as follows:

(i) With respect to operations, by a governance structure that includes the Commission and other financial regulators in any jurisdiction requiring use of the legal entity identifier pursuant to applicable law. The governance structure shall have authority sufficient to ensure, and shall ensure, that issuance and maintenance of the legal entity identifier system adheres on an ongoing basis to the principles set forth in this section.

(ii) With respect to adherence to ISO Standard 17442, by the International Organisation for Standardisation.

(2) *Reference data access*. Access to reference data associated with the legal entity identifier shall enable use of the legal entity identifier as a public good, while respecting applicable law regarding data confidentiality. Accordingly:

(i) Reference data associated with the legal entity identifier that is public under applicable law shall be available publicly and free of charge. Such data shall include, without limitation, level one reference data (i.e., the minimum reference data needed to verify the identity of the legal entity receiving each legal entity identifier), and a current directory of all issued legal entity identifiers.

(ii) Collection and maintenance of, and access to, reference data associated with the legal entity identifier shall comply with applicable laws on data protection and confidentiality.

(3) *Non-profit operation and funding*. Funding of both start-up and ongoing operation of the legal entity identifier system, including, without limitation, any legal entity identifier utility formed for the purpose of issuing legal entity identifiers that are used pursuant to this section,

shall be conducted on a non-profit, reasonable cost-recovery basis, and shall be subject to international governance as provided in paragraph (c)(1) of this section.

(4) *Unbundling and non-restricted use*. Issuance of the legal entity identifier shall not be tied to other services, if any, offered by the issuer, and information concerning the issuance process for new legal entity identifiers must be available publicly and free of charge. Restrictions shall not be imposed on use of the legal entity identifier by any person in its own products and services, or on use of the legal entity identifier and associated reference data by any financial regulator. Any intellectual property created as part of the legal entity identifier system shall be treated in a manner consistent with open source principles.

(5) *Commercial advantage prohibition*. The legal entity identifier utility providing legal entity identifiers for use in compliance with this part shall not make any commercial or business use (other than the operation of the utility) of any reference data associated with the legal entity identifier that is not available to the public free of charge. This restriction shall also apply to any entity or person that participates in the utility, that is legally or otherwise affiliated or associated with the utility, or that provides third-party services to the utility or to any component, partner, affiliate, or associate thereof.

(e) *Designation of the legal entity identifier system*.

(1) The Commission shall determine, as provided in paragraphs (e)(1)(i), (3)(1)(ii), and (e)(1)(ii) of this section, whether a legal entity identifier system that satisfies the requirements set forth in this section is available to provide legal entity identifiers for registered entities and swap counterparties required to comply with this part.

(i) In making this determination, the Commission shall consider, without limitation, the following factors:

(A) Whether the LEI provided by the LEI utility is issued under, and conforms to, *ISO Standard 17442, Legal Entity Identifier (LEI)*.

(B) Whether the LEI provided by the LEI utility complies with all of the technical principles set forth in this rule.

(C) Whether the LEI utility complies with all of the governance principles set forth in this rule.

(D) Whether the LEI utility has demonstrated that it in fact can provide LEIs complying with this section for identification of swap counterparties in swap data reporting commencing as of the compliance dates set forth in § 45.5.

(E) The acceptability of the LEI utility to industry participants required to use the LEI in complying with this part.

(ii) In making this determination, the Commission shall consider all candidates meeting the criteria set forth in paragraph (e)(1)(i) of this section, but shall not consider any candidate that does not demonstrate that it in fact can provide LEIs for identification of swap counterparties in swap data reporting commencing as of the compliance dates set forth in this part.

(iii) The Commission shall make this determination at a time it believes is sufficiently prior to the compliance dates set forth this part to enable issuance of LEIs far enough in advance of those compliance dates to enable compliance with this part.

(2) If the Commission determines pursuant to paragraph (e)(1) of this section that such a legal entity identifier system is available, the Commission shall designate the legal entity identifier system as the provider of legal entity identifiers to be used in recordkeeping and swap data reporting pursuant to this part, by means of a Commission order that is published in the

Federal Register and on the website of the Commission, as soon as practicable after such determination is made. The order shall include notice of this designation, the contact information of the LEI utility, and information concerning the procedure and requirements for obtaining legal entity identifiers.

(3) If the Commission determines pursuant to paragraph (e)(1) of this section that such a legal entity identifier system is not yet available, the Commission shall publish notice of the determination in the Federal Register and on the website of the Commission, as soon as practicable after the determination is made. If the Commission later determines, pursuant to paragraphs (e)(1)(i) and (e)(1)(ii) of this section, that such a legal entity identifier system has become available, the Commission shall designate the legal entity identifier system as the provider of legal entity identifiers to be used in recordkeeping and swap data reporting pursuant to this part, by means of a Commission order that is published in the Federal Register and on the website of the Commission, as soon as practicable after such determination is made. The order shall include notice of this designation, the contact information of the LEI utility, and information concerning the procedure and requirements for obtaining legal entity identifiers.

(e) *Reference data reporting*.

(1) *Reporting of level one reference data*. Level one reference data for each counterparty to any swap subject to the jurisdiction of the Commission shall be reported, by means of self-registration, third-party registration, or both, into a public level one reference database maintained by the issuer of the legal entity identifier designated by the Commission pursuant to paragraph (d) of this section. Such level one reference data shall be reported at a time sufficient to ensure that the counterparty's legal entity identifier is available for inclusion in recordkeeping and swap data reporting as required by this section. All subsequent changes and corrections to

level one reference data previously reported shall be reported to the issuer, by means of self-registration, third-party registration, or both, as soon as technologically practicable following occurrence of any such change or discovery of the need for a correction.

(2) *Reporting of level two reference data*.

(i) Level two reference data for each counterparty to any swap subject to the jurisdiction of the Commission, consisting of the identity of the counterparty's ultimate parent, shall be reported, by means of self-registration, third-party registration, or both, into a level two reference database. Where applicable law forbids such reporting, that fact and the citation of the law in question shall be reported in place of the data to which such law applies.

(ii) All non-public level two reference data reported to the level two reference database shall be confidential, non-public, and available only to financial regulators in any jurisdiction requiring use of the legal entity identifier pursuant to applicable law.

(iii) The Commission shall determine the location of the level two reference database by means of a Commission order that is published in the Federal Register and on the website of the Commission, as soon as practicable after such determination is made. The order shall include notice of the location of the level two reference database, and information concerning the procedure and requirements for reporting level two reference data to the database.

(iv) The obligation to report level two reference data does not apply until the Commission has determined the location of the level two reference database as provided in paragraph (e)(2)(iii) of this section.

(v) After the Commission determines the location of the level two reference database pursuant to paragraph (e)(2)(iii) of this section, required level two reference data shall be reported at a time sufficient to ensure that it is included in the database when the counterparty's

legal entity identifier is included in recordkeeping and swap data reporting as required by this section.

(vi) All subsequent changes and corrections to required level two reference data previously reported shall be reported into the level two reference database, by means of self-registration, third-party registration, or both, as soon as technologically practicable following occurrence of any such change or discovery of the need for a correction.

(f) *Use of the legal entity identifier system by registered entities and swap counterparties*.

(1) When a legal entity identifier system has been designated by the Commission pursuant to paragraph (e) of this section, each registered entity and swap counterparty shall use the legal entity identifier provided by that system in all recordkeeping and swap data reporting pursuant to this part.

(2) 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 a swap data repository in all recordkeeping and swap data reporting pursuant to this part, as follows:

(i) When a swap involving one or more counterparties for which no substitute counterparty identifier has yet been created and assigned is reported to a swap data repository, the swap data repository shall create a substitute counterparty identifier for each such counterparty as provided in paragraph (f)(2)(ii) of this section, and assign the substitute counterparty identifier to that counterparty, as soon as technologically practicable after that swap is first reported to the swap data repository. In lieu of creating a substitute identifier as provided in paragraph (f)(2)(ii), the swap data repository may assign a unique substitute identifier

provided by a third party service provider, if such identifier complies with all of the principles for LEIs set forth in this part.

(ii) Each such substitute counterparty identifier created by a swap data repository shall consist of a single data field that contains two components, including:

(A) The unique alphanumeric code assigned to the swap data repository by the Commission for the purpose of identifying the swap data repository; and

(B) An alphanumeric code generated and assigned to that counterparty by the automated systems of the swap data repository, which shall be unique with respect to all such substitute counterparty identifier codes generated and assigned by that swap data repository.

(iii) The swap data repository shall transmit each substitute counterparty identifier thus created to each counterparty to the swap, to each other registered entity associated with the swap, to each registered entity or swap counterparty who has made any report of any swap data to the swap data repository, and to each swap data repository registered with the Commission, as soon as technologically practicable after creation and assignment of the substitute counterparty identifier.

(iv) Once any swap data repository has created and assigned such a substitute counterparty identifier to a swap counterparty and has transmitted it as required by paragraph (f)(2)(iii) of this section, all registered entities and swap counterparties shall use that substitute counterparty identifier to identify that counterparty in all swap data recordkeeping and reporting, until such time as the Commission designates a legal entity identifier system pursuant to paragraph (e) of this section.

(3) For swaps reported pursuant to this part prior to Commission designation of a legal entity identifier system, after such designation 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.

(4) Prior to October 15, 2012, if a legal entity identifier system has been designated by the Commission as provided in this section, but a reporting counterparty's automated systems are not yet prepared to include legal entity identifiers in recordkeeping and swap data reporting pursuant to this part, the counterparty shall be excused from complying with paragraph (f)(1) of this section, and shall instead comply with paragraph (f)(2) of this section, until its automated systems are prepared with respect to legal entity identifiers, at which time it must commence compliance with paragraph (f)(1) of this section. This paragraph shall have no effect on or after October 15, 2012.

§ 45.7 Unique product identifiers.

Each swap subject to the jurisdiction of the Commission shall be identified in all recordkeeping and all swap data reporting pursuant to this part by means of a unique product identifier and product classification system as specified in this section. Each swap sufficiently standardized to receive a unique product identifier shall be identified by a unique product identifier. Each swap not sufficiently standardized for this purpose shall be identified by its description using the product classification system.

(a) The unique product identifier and product classification system shall identify and describe the swap asset class and the sub-type within that asset class to which the swap belongs, and the underlying product for the swap, with sufficient distinctiveness and specificity to enable the Commission and other financial regulators to fulfill their regulatory responsibilities and to assist in real time reporting of swaps as provided in the Act and part 43 of this chapter. The level

of distinctiveness and specificity which the unique product identifier will provide shall be determined separately for each swap asset class.

(b) *Designation of the unique product identifier and product classification system.*

(1) The Commission shall determine when a unique product identifier and product classification system that is acceptable to the Commission and satisfies the requirements set forth in this section is available for use in compliance with this section.

(2) When the Commission determines that such a unique product identifier and product classification system is available, the Commission shall designate the unique product identifier and product classification system to be used in recordkeeping and swap data reporting pursuant to this part, by means of a Commission order that is published in the Federal Register and on the website of the Commission, as soon as practicable after such determination is made. The order shall include notice of this designation, the contact information of the issuer of such unique product identifiers, and information concerning the procedure and requirements for obtaining unique product identifiers and using the product classification system.

(c) *Use of the unique product identifier and product classification system by registered entities and swap counterparties*.

(1) When a unique product identifier and product classification system has been designated by the Commission pursuant to paragraph (b) of this section, each registered entity and swap counterparty shall use the unique product identifier and product classification system in all recordkeeping and swap data reporting pursuant to this part.

(2) Before a unique product identifier and product classification system has been designated by the Commission, each registered entity and swap counterparty shall use the

internal product identifier or product description used by the swap data repository to which a swap is reported in all recordkeeping and swap data reporting pursuant to this part.

§ 45.7 Determination Of Which Counterparty Must Report.

The determination of which counterparty is the reporting counterparty for a swap shall be made as provided in this section.

(a) If only one counterparty is a swap dealer, the swap dealer shall be the reporting counterparty.

(b) If neither counterparty is a swap dealer, and only one counterparty is a major swap participant, the major swap participant shall be the reporting counterparty.

(c) If both counterparties are non-SD/MSP counterparties, and only one counterparty is a financial entity as defined in CEA § 2(h)(7)(C), the counterparty that is a financial entity shall be the reporting counterparty.

(d) If both counterparties are swap dealers, or both counterparties are major swap participants, or both counterparties are non-SD/MSP counterparties that are financial entities as defined in CEA § 2(h)(7)(C), or both counterparties are non-SD/MSP counterparties and neither counterparty is a financial entity as defined in CEA § 2(h)(7)(C):

(1) For a swap executed on or pursuant to the rules of a swap execution facility or designated contract market, the counterparties shall agree which counterparty shall be the reporting counterparty. The counterparties shall make this agreement after the swap execution facility or designated contract market notifies the counterparties, as provided in paragraph (h)(2) of this section, that paragraph (d) of this section applies to them, and not later than the end of the first business day following the date of execution of the swap. After this agreement is reached,

the reporting counterparty shall report to the swap data repository that it is the reporting counterparty.

(2) For an off-facility swap, the counterparties shall agree as one term of their swap which counterparty shall be the reporting counterparty.

(e) Notwithstanding the provisions of paragraphs (a) through (d) of this section, if both counterparties to a swap are non-SD/MSP counterparties and only one counterparty is a U.S. person, that counterparty shall be the reporting counterparty.

(f) Notwithstanding the provisions of paragraphs (a) through (e) of this section, if neither counterparty to a swap is a U.S. person, but the swap is executed on a swap execution facility or designated contract market or otherwise executed in the United States, or is cleared by a derivatives clearing organization:

(1) For such a swap executed on or pursuant to the rules of a swap execution facility or designated contract market, the counterparties shall agree which counterparty shall be the reporting counterparty. The counterparties shall make this agreement after the swap execution facility or designated contract market notifies the counterparties, as provided in paragraph (h)(2) of this section, that neither counterparty is a U.S. person, and not later than the end of the first business day following the date of execution of the swap. After this agreement is reached, the reporting counterparty shall report to the swap data repository that it is the reporting counterparty.

(2) For an off-facility swap, the counterparties shall agree as one term of their swap which counterparty shall be the reporting counterparty.

(g) If a reporting counterparty selected pursuant to paragraphs (a) through (f) of this section ceases to be a counterparty to a swap due to an assignment or novation, the reporting

counterparty for reporting of required swap continuation data following the assignment or novation shall be selected from the two current counterparties as provided in paragraphs (g)(1) through (g)(4) of this section.

(1) If only one counterparty is a swap dealer, the swap dealer shall be the reporting counterparty and shall fulfill all counterparty reporting obligations.

(2) If neither counterparty is a swap dealer, and only one counterparty is a major swap participant, the major swap participant shall be the reporting counterparty and shall fulfill all counterparty reporting obligations.

(3) If both counterparties are non-SD/MSP counterparties, and only one counterparty is a U.S. person, that counterparty shall be the reporting counterparty and shall fulfill all counterparty reporting obligations.

(4) In all other cases, the counterparty that replaced the previous reporting counterparty by reason of the assignment or novation shall be the reporting counterparty, unless otherwise agreed by the counterparties.

(h) For all swaps executed on or pursuant to the rules of a swap execution facility or designated contract market, the rules of the swap execution facility or designated contract market must require each swap counterparty to provide sufficient information to the swap execution facility or designated contract market to enable the swap execution facility or designated contract market to report all swap creation data as provided in this part.

(1) To achieve this, the rules of the swap execution facility or designated contract market must require each market participant placing an order with respect to any swap traded on the swap execution facility or designated contract market to include in the order, without limitation:

(i) The legal entity identifier of the market participant placing the order, if available.

(ii) A yes/no indication of whether the market participant is a swap dealer with respect to the product with respect to which the order is placed.

(iii) A yes/no indication of whether the market participant is a major swap participant with respect to the product with respect to which the order is placed.

(iv) A yes/no indication of whether the market participant is a financial entity as defined in CEA § (2)(h)(7)(C).

(v) A yes/no indication of whether the market participant is a U.S. person.

(vi) If applicable, an indication that the market participant will elect the clearing requirement exception in CEA § (2)(h)(7) for any swap resulting from the order.

(vii) If the swap will be allocated:

(A) An indication that the swap will be allocated.

(B) The legal entity identifier of the agent.

(C) An indication of whether the swap is a post-allocation swap.

(D) If the swap is a post-allocation swap, the unique swap identifier of the original transaction between the reporting counterparty and the agent.

(2) To achieve this, the swap execution facility or designated contract market must use the information obtained pursuant to paragraph (h)(1) of this section to identify the counterparty that is the reporting counterparty pursuant to the CEA and this section, wherever possible. If the swap execution facility or designated contract market cannot identify the reporting counterparty from the information available to it as specified in paragraph (h) of this section, the swap execution facility or designated contract market shall:

(i) Notify each counterparty, as soon as technologically practicable after execution of the swap, that it cannot identify whether that counterparty is the reporting counterparty, and, if applicable, that neither counterparty is a U.S. person; and

(ii) Transmit to each counterparty the LEI (or substitute identifier as provided in this section) of the other counterparty.

§ 45.9 Third-party facilitation of data reporting.

Registered entities and swap counterparties required by this part to report required swap creation data or required swap continuation data, while remaining fully responsible for reporting as required by this part, may contract with third-party service providers to facilitate reporting.

§ 45.10 Reporting to a single swap data repository.

All swap data for a given swap must be reported to a single swap data repository, which shall be the swap data repository to which the first report of required swap creation data is made pursuant to this part.

(a) *Swaps executed on a swap execution facility or designated contract market*. To ensure that all 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 that reports required swap creation data as required by § 45.3 shall report all such data to a single swap data repository. As soon as technologically practicable after execution, 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, both:

(i) The identity of the swap data repository to which required swap creation data is reported by the swap execution facility or designated contract market; and

(ii) The unique swap identifier for the swap, created pursuant to § 45.5.

(2) Thereafter, all required swap creation data and all required swap continuation data reported for the swap reported by any registered entity or counterparty shall be reported to that same swap data repository (or to its successor in the event that it ceases to operate, as provided in part 49 of this chapter).

(b) *Off-facility swaps with a swap dealer or major swap participant reporting counterparty*. To ensure that all swap data for such swaps is reported to a single swap data repository:

(1) If the reporting counterparty reports primary economic terms data to a swap data repository as required by § 45.3:

(i) The reporting counterparty shall report primary economic terms data to a single swap data repository.

(ii) As soon as technologically practicable after execution, but no later than as required pursuant to § 45.3, the reporting counterparty shall transmit to the other counterparty to the swap both the identity of the swap data repository to which primary economic terms data is reported by the reporting counterparty, and the unique swap identifier for the swap created pursuant to § 45.5.

(iii) If the swap will be cleared, the reporting counterparty shall transmit to the derivatives clearing organization at the time the swap is submitted for clearing both the identity of the swap data repository to which primary economic terms data is reported by the reporting counterparty, and the unique swap identifier for the swap created pursuant to § 45.5.

(2) If the reporting counterparty is excused from reporting primary economic terms data as provided in § 45.3(b) or § 45.3(c):

(i) Paragraph (b)(1) of this section shall not apply.

(ii) At the time the swap is submitted for clearing, the reporting counterparty shall transmit to the derivatives clearing organization the unique swap identifier for the swap created pursuant to § 45.5, and notify the derivatives clearing organization that the reporting counterparty has not reported any required swap creation data for the swap to a swap data repository.

(iii) The derivatives clearing organization shall report all required swap creation data for the swap to a single swap data repository. As soon as technologically practicable after clearing, the derivatives clearing organization shall transmit to both counterparties to the swap the identity of the swap data repository to which required swap creation data is reported by the derivatives clearing organization, and shall transmit to the non-reporting counterparty the unique swap identifier for the swap.

(3) Thereafter, 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 swap data repository to which swap data has been reported pursuant to paragraph (b)(1) or (b)(2) of this section (or to its successor in the event that it ceases to operate, as provided in part 49 of this chapter).

(c) *Off-facility swaps with a non-SD/MSP reporting counterparty*. To ensure that all swap data for such swaps is reported to a single swap data repository:

(1) If the reporting counterparty reports primary economic terms data to a swap data repository as required by § 45.3:

(i) The reporting counterparty shall report primary economic terms data to a single swap data repository.

(ii) As soon as technologically practicable after execution, but no later than as required pursuant to § 45.3, the reporting counterparty shall transmit to the other counterparty to the swap the identity of the swap data repository to which primary economic terms data was reported by the reporting counterparty.

(iii) If the swap will be cleared, the reporting counterparty shall transmit to the derivatives clearing organization at the time the swap is submitted for clearing the identity of the swap data repository to which primary economic terms data was reported by the reporting counterparty.

(2) If the reporting counterparty will be excused from reporting primary economic terms data as provided in § 45.3(b) or § 45.3(c):

(i) Paragraph (c)(1) of this section shall not apply.

(ii) At the time the swap is submitted for clearing, the reporting counterparty shall notify the derivatives clearing organization that the reporting counterparty has not reported any required swap creation data for the swap to a swap data repository.

(iii) The derivatives clearing organization shall report all required swap creation data for the swap to a single swap data repository. As soon as technologically practicable after clearing, the derivatives clearing organization shall transmit to both counterparties to the swap the identity of the swap data repository to which required swap creation data is reported by the derivatives clearing organization.

(3) The swap data repository to which the swap is reported as provided in paragraph (c) of this section shall transmit the unique swap identifier created pursuant to § 45.5 to both counterparties and to the derivatives clearing organization, if any, as soon as technologically practicable after creation of the unique swap identifier.

(4) Thereafter, 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 swap data repository to which swap data has been reported pursuant to paragraph (c)(1) or (c)(2) of this section (or to its successor in the event that it ceases to operate, as provided in part 49 of this chapter).

§ 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 registered with the Commission currently accepts swap data, each registered entity or counterparty required by this part to report any required swap creation data or required swap continuation data with respect to a swap in that asset class must report that same data to the Commission.

(b) Data reported to the Commission pursuant to this section shall be reported at times announced by the Commission and in an electronic file in a format acceptable to the Commission.

(c) *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 (c) 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 paragraph (c) of this section 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 paragraphs (a) and (b) of this section.

(2) The authority to determine whether the Commission may permit or require use by reporting entities or counterparties in reporting pursuant to this section of one or more particular data standards (such as FIX, FpML, ISO 20022, or some other standard), in order to accommodate the needs of different communities of users.

(3) The dates and times at which required swap creation data or required swap continuation data shall be reported pursuant to this section.

(d) 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 this section.

§ 45.12 Voluntary supplemental reporting

(1) For purposes of this section, the term *voluntary, supplemental report* means any report of swap data to a swap data repository that is not required to be made pursuant to this part or any other part in this chapter.

(2) A voluntary, supplemental report may be made only by a counterparty to the swap in connection with which the voluntary, supplemental report is made, or by a third-party service provider acting on behalf of a counterparty to the swap.

(3) A voluntary, supplemental report may be made either to the swap data repository to which all required swap creation data and all required swap continuation data is reported for the swap pursuant to § 45.3 and § 45.10, or to a different swap data repository.

(3) A voluntary, supplemental report must contain:

(i) An indication that the report is a voluntary, supplemental report.

(ii) The unique swap identifier created pursuant to § 45.5 and § 45.9. Therefore, no voluntary, supplemental report may be made until after the unique swap identifier has been created pursuant to § 45.5 and § 45.9 and has been transmitted to the counterparty making the voluntary, supplemental report.

(iii) The identity of the swap data repository to which all required swap creation data and all required swap continuation data is reported for the swap pursuant to § 45.3 and § 45.10, if the voluntary supplemental report is made to a different swap data repository.

(iv) The legal entity identifier (or substitute identifier) required by § 45.6 for the counterparty making the voluntary, supplemental report.

(v) If applicable, an indication that the voluntary, supplemental report is made pursuant to the laws or regulations of any jurisdiction outside the United States.

(4) If a counterparty that has made a voluntary, supplemental report discovers any errors in the swap data included in the voluntary, supplemental report, the counterparty must report a correction of each such error to the swap data repository to which the voluntary, supplemental report was made, as soon as technologically practicable after discovery of any such error.

§ 45.13 Required data standards.

(a) *Data maintained and furnished to the commission by swap data repositories.* A swap data repository shall maintain all swap data reported to it in a format acceptable to the Commission, and shall transmit all swap data requested by the Commission to the Commission in an electronic file in a format acceptable to the Commission.

(b) *Data reported to swap data repositories.* In reporting swap data to a swap data repository as required by this part, each reporting entity or counterparty 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. A swap data repository 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 paragraph (a) of this section with respect to maintenance and transmission of swap data.

(c) *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 (c) 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 paragraph (c) of this section 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 paragraph (a) of this section.

(2) The authority to determine whether the Commission may permit or require use by reporting entities or counterparties, or by swap data repositories, of one or more particular data standards (such as FIX, FpML, ISO 20022, or some other standard), in order to accommodate the

needs of different communities of users, or to enable swap data repositories to comply with paragraph (a) of this section.

(d) 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, and electronic data transmission methods and procedures acceptable to the Commission.

§ 45.14 Reporting of errors and omissions in previously reported data.

(a) Each registered entity and swap counterparty required by this part to report swap data to a swap data repository, to any other registered entity or swap counterparty, or to the Commission shall report any errors and omissions in the data so reported. Corrections of errors or omissions shall be reported as soon as technologically practicable after discovery of any such error or omission. With respect to swaps for which required swap continuation data is reported using the snapshot reporting method, reporting counterparties fulfill the requirement to report errors or omissions in state data previously reported by making appropriate corrections in their next daily report of state data as required by this part.

(b) Each counterparty to a swap that is not the reporting counterparty as determined pursuant to § 45.8, and that discovers any error or omission with respect to any swap data reported to a swap data repository for that swap, shall promptly notify the reporting counterparty of each such error or omission. Upon receiving such notice, the reporting counterparty shall report a correction of each such error or omission to the swap data repository as provided in paragraph (a) of this section.

(c) Unless otherwise approved by the Commission, or by the Chief Information Officer pursuant to § 45.13, each registered entity or swap counterparty reporting corrections to errors or omissions in data previously reported as required by this section shall report such corrections in

the same format as it reported the erroneous or omitted data. Unless otherwise approved by the Commission, or by the Chief Information Officer pursuant to § 45.13, a swap data repository shall transmit corrections to errors or omission in data previously transmitted to the Commission in the same format as it transmitted the erroneous or omitted data.

APPENDIX 1 TO PART 45

Tables of Minimum Primary Economic Terms Data

EXHIBIT A **Minimum Primary Economic Terms Data** **CREDIT SWAPS AND EQUITY SWAPS** (Enter N/A for fields that are not applicable)	
Data categories and fields	Comment
The Unique Swap Identifier for the swap	As provided in § 45.5
The Legal Entity Identifier of the reporting counterparty*	As provided in § 45.6. If no CFTC-designated Legal Entity Identifier for the reporting counterparty* is yet available, enter the internal identifier for the reporting counterparty* used by the swap data repository. If no repository identifier yet exists, the repository fills in this field after creating its identifier
An indication of whether the reporting counterparty* is a swap dealer with respect to the swap	Yes/No
An indication of whether the reporting counterparty* is a major swap participant with respect to the swap	Yes/No
If the reporting counterparty* is not a swap dealer or a major swap participant with respect to the swap, an indication of whether the reporting counterparty* is a financial entity as defined in CEA § 2(h)(7)(C)	Yes/No
An indication of whether the reporting counterparty* is a U.S. person.	Yes/No
An indication that the swap will be allocated	Yes/No
If the swap will be allocated, or is a post-allocation swap, the Legal Entity Identifier of the agent	As provided in § 45.6. If no CFTC-designated Legal Entity Identifier for the agent is yet available, enter the internal identifier for the agent used by the swap data repository. If no repository identifier yet exists, the repository fills in this field after creating its identifier
An indication that the swap is a post-allocation swap	Yes/No
If the swap is a post-allocation swap, the unique swap identifier of the original transaction between the reporting counterparty and the agent	As provided in § 45.5
The Legal Entity Identifier of the non-reporting party**	As provided in § 45.6
If no CFTC-approved Legal Entity Identifier for the non-reporting counterparty** is yet available, the internal identifier for the non-reporting counterparty** used by the swap data repository	If no repository identifier yet exists, the repository fills in this field after creating its identifier
An indication of whether the non-reporting counterparty** is a swap dealer with respect to the swap	Yes/No

An indication of whether the non-reporting counterparty** is a major swap participant with respect to the swap	Yes/No
If the non-reporting counterparty** is not a swap dealer or a major swap participant with respect to the swap, an indication of whether the non-reporting counterparty** is a financial entity as defined in CEA § 2(h)(7)(C)	Yes/No
An indication of whether the non-reporting counterparty** is a U.S. person.	Yes/No
The Unique Product Identifier assigned to the swap	As provided in § 45.7
If no Unique Product Identifier is available for the swap because the swap is not sufficiently standardized, the taxonomic description of the swap pursuant to the CFTC-approved product classification system	
If no CFTC-approved UPI and product classification system is yet available, the internal product identifier or product description used by the swap data repository	
An indication that the swap is a multi-asset swap	Field values: Yes, Not applicable
For a multi-asset class swap, an indication of the primary asset class	Generally, the asset class traded by the desk trading the swap for the reporting counterparty. Field values: credit, equity, FX, rates, other commodity
For a multi-asset class swap, an indication of the secondary asset class(es)	Field values: credit, equity, FX, rates, other commodity
An indication that the swap is a mixed swap	Field values: Yes, Not applicable
For a mixed swap reported to two non-dually-registered swap data repositories, the identity of the other swap data repository (if any) to which the swap is or will be reported	
An indication of the counterparty purchasing protection	Field values: LEI if available, or substitute identifier as above if LEI is not yet available
An indication of the counterparty selling protection	Field values: LEI if available, or substitute identifier as above if LEI is not yet available
Information identifying the reference entity	The entity that is the subject of the protection being purchased and sold in the swap. Field values: LEI if available, or substitute identifier as above if LEI is not yet available, or name
Contract type	E.g., swap, swaption, forward, option, basis swap, index swap, basket swap
Block trade indicator	Indication (Yes/No) of whether the swap qualifies as a block trade or large notional swap. Until the CFTC determines an appropriate minimum block size for the swap asset class involved, pursuant to part 43, enter N/A
Execution timestamp	The date and time of the trade, expressed using Coordinated Universal Time ("UCT")

Execution venue	The swap execution facility or designated contract market on or pursuant to the rules of which the swap was executed. Field values: Identifier (if available) or name of the swap execution facility or designated contract market, or "off-facility" if not so executed
Start date	The date on which the swap starts or goes into effect
Maturity, termination or end date	The date on which the swap expires
The price	E.g., strike price, initial price, spread
The notional amount, and the currency in which the notional amount is expressed	
The amount and currency (or currencies) of any up-front payment	
Payment frequency of the reporting counterparty	A description of the payment stream of the reporting counterparty, e.g., coupon
Payment frequency of the non-reporting counterparty	A description of the payment stream of the non-reporting counterparty, e.g., coupon
Timestamp for submission to swap data repository	Time and date of submission to the swap data repository, expressed using Coordinated Universal Time ("UCT"), as recorded by an automated system where available, or as recorded manually where an automated system is not available
Clearing indicator	Yes/No indication of whether the swap will be cleared by a derivatives clearing organization
Clearing venue	Identifier (if available) or name of the derivatives clearing organization
If the swap will not be cleared, an indication of whether the clearing requirement exception in CEA § (2)(h)(7) was elected	Yes/No
The identity of the counterparty electing the clearing requirement exception in CEA § (2)(h)(7)	Field values: LEI if available, or substitute identifier as above if LEI is not yet available
Indication of collateralization	Is the swap collateralized, and if so to what extent? Field values: Uncollateralized, partially collateralized, one-way collateralized, fully collateralized
Any other term(s) of the swap matched or affirmed by the counterparties in verifying the swap	Use as many fields as required to report each such term

* Applies to counterparty 1 if a swap execution facility or designated contract market reports and does not know which counterparty is the reporting counterparty

** Applies to counterparty 2 if a swap execution facility or designated contract market reports and does not know which counterparty is the non-reporting counterparty

EXHIBIT B **Minimum Primary Economic Terms Data** **FOREIGN EXCHANGE TRANSACTIONS** **(OTHER THAN CROSS-CURRENCY SWAPS)** (Enter N/A for fields that are not applicable)	
Data fields	Comments
The Unique Swap Identifier for the swap	As provided in § 45.5
The Legal Entity Identifier of the reporting counterparty*	As provided in § 45.6. If no CFTC-designated Legal Entity Identifier for the reporting counterparty* is yet available, enter the internal identifier for the reporting counterparty* used by the swap data repository. If no repository identifier yet exists, the repository fills in this field after creating its identifier
An indication of whether the reporting counterparty* is a swap dealer with respect to the swap	Yes/No
An indication of whether the reporting counterparty* is a major swap participant with respect to the swap	Yes/No
If the reporting counterparty* is not a swap dealer or a major swap participant with respect to the swap, an indication of whether the reporting counterparty* is a financial entity as defined in CEA § 2(h)(7)(C)	Yes/No
An indication of whether the reporting counterparty* is a U.S. person	Yes/No
An indication that the swap will be allocated	Yes/No
If the swap will be allocated, or is a post-allocation swap, the Legal Entity Identifier of the agent	As provided in § 45.6. If no CFTC-designated Legal Entity Identifier for the agent is yet available, enter the internal identifier for the agent used by the swap data repository. If no repository identifier yet exists, the repository fills in this field after creating its identifier
An indication that the swap is a post-allocation swap	Yes/No
If the swap is a post-allocation swap, the unique swap identifier of the original transaction between the reporting counterparty and the agent	As provided in § 45.5
The Legal Entity Identifier of the non-reporting party**	As provided in § 45.6
If no CFTC-approved Legal Entity Identifier for the non-reporting counterparty** is yet available, the internal identifier for the non-reporting counterparty** used by the swap data repository	If no repository identifier yet exists, the repository fills in this field after creating its identifier
An indication of whether the non-reporting counterparty** is a swap dealer with respect to the swap	Yes/No

An indication of whether the non-reporting counterparty** is a major swap participant with respect to the swap	Yes/No
If the non-reporting counterparty** is not a swap dealer or a major swap participant with respect to the swap, an indication of whether the non-reporting counterparty** is a financial entity as defined in CEA § 2(h)(7)(C)	Yes/No
An indication of whether the non-reporting counterparty** is a U.S. person.	Yes/No
The Unique Product Identifier assigned to the swap	As provided in § 45.7
If no Unique Product Identifier is available for the swap because the swap is not sufficiently standardized, the taxonomic description of the swap pursuant to the CFTC-approved product classification system	
If no CFTC-approved UPI and product classification system is yet available, the internal product identifier or product description used by the swap data repository	
An indication that the swap is a multi-asset swap	Field values: Yes, Not applicable
For a multi-asset class swap, an indication of the primary asset class	Generally, the asset class traded by the desk trading the swap for the reporting counterparty. Field values: credit, equity, FX, rates, other commodity
For a multi-asset class swap, an indication of the secondary asset class(es)	Field values: credit, equity, FX, rates, other commodity
An indication that the swap is a mixed swap	Field values: Yes, Not applicable
For a mixed swap reported to two non-dually-registered swap data repositories, the identity of the other swap data repository (if any) to which the swap is or will be reported	
Contract type	E.g., forward, non-deliverable forward (NDF), non-deliverable option (NDO), vanilla option, simple exotic option, complex exotic option
Block trade indicator	Indication (Yes/No) of whether the swap qualifies as a block trade or large notional swap. Until the CFTC determines an appropriate minimum block size for the swap asset class involved, pursuant to part 43, enter N/A
Execution timestamp	The date and time of the trade, expressed using Coordinated Universal Time ("UCT")
Execution venue	The swap execution facility or designated contract market on or pursuant to the rules of which the swap was executed. Field values: Identifier (if available) or name of the swap execution facility or designated contract market, or "off-facility" if not so executed
Currency 1	ISO code
Currency 2	ISO code
Notional amount 1	For currency 1

Notional amount 2	For currency 2
Exchange rate	Contractual rate of exchange of the currencies
Delivery type	Physical (deliverable) or cash (non-deliverable)
Settlement or expiration date	Settlement date, or for an option the contract expiration date
Timestamp for submission to swap data repository	Time and date of submission to the swap data repository, expressed using Coordinated Universal Time ("UCT"), as recorded by an automated system where available, or as recorded manually where an automated system is not available
Clearing indicator	Yes/No indication of whether the swap will be cleared by a derivatives clearing organization
Clearing venue	Identifier (if available) or name of the derivatives clearing organization
If the swap will not be cleared, an indication of whether the clearing requirement exception in CEA § (2)(h)(7) was elected	Yes/No
The identity of the counterparty electing the clearing requirement exception in CEA § (2)(h)(7)	Field values: LEI if available, or substitute identifier as above if LEI is not yet available
Indication of collateralization	Is the trade collateralized, and if so to what extent? Field values: Uncollateralized, partially collateralized, one-way collateralized, fully collateralized
Any other term(s) of the trade matched or affirmed by the counterparties in verifying the trade	E.g., for options, premium, premium currency, premium payment date; for non-deliverable trades, settlement currency, valuation (fixing) date; indication of the economic obligations of the counterparties. Use as many fields as required to report each such term

* Applies to counterparty 1 if a swap execution facility or designated contract market reports and does not know which counterparty is the reporting counterparty

** Applies to counterparty 2 if a swap execution facility or designated contract market reports and does not know which counterparty is the non-reporting counterparty

EXHIBIT C **Minimum Primary Economic Terms Data** **INTEREST RATE SWAPS (INCLUDING CROSS-CURRENCY SWAPS)** (Enter N/A for fields that are not applicable)	
Data field	Comment
The Unique Swap Identifier for the swap	As provided in § 45.5
The Legal Entity Identifier of the reporting counterparty*	As provided in § 45.6. If no CFTC-designated Legal Entity Identifier for the reporting counterparty* is yet available, enter the internal identifier for the reporting counterparty* used by the swap data repository. If no repository identifier yet exists, the repository fills in this field after creating its identifier
An indication of whether the reporting counterparty* is a swap dealer with respect to the swap	Yes/No
An indication of whether the reporting counterparty* is a major swap participant with respect to the swap	Yes/No
If the reporting counterparty* is not a swap dealer or a major swap participant with respect to the swap, an indication of whether the reporting counterparty* is a financial entity as defined in CEA § 2(h)(7)(C)	Yes/No
An indication of whether the reporting counterparty* is a U.S. person.	Yes/No
An indication that the swap will be allocated	Yes/No
If the swap will be allocated, or is a post-allocation swap, the Legal Entity Identifier of the agent	As provided in § 45.6. If no CFTC-designated Legal Entity Identifier for the agent is yet available, enter the internal identifier for the agent used by the swap data repository. If no repository identifier yet exists, the repository fills in this field after creating its identifier
An indication that the swap is a post-allocation swap	Yes/No
If the swap is a post-allocation swap, the unique swap identifier of the original transaction between the reporting counterparty and the agent	As provided in § 45.5
The Legal Entity Identifier of the non-reporting counterparty**	As provided in § 45.6
If no CFTC-approved Legal Entity Identifier for the non-reporting counterparty** is yet available, the internal identifier for the non-reporting counterparty** used by the swap data repository	If no repository identifier yet exists, the repository fills in this field after creating its identifier
An indication of whether the non-reporting counterparty** is a swap dealer with respect to the swap	Yes/No

An indication of whether the non-reporting counterparty** is a major swap participant with respect to the swap	Yes/No
If the non-reporting counterparty** is not a swap dealer or a major swap participant with respect to the swap, an indication of whether the non-reporting counterparty** is a financial entity as defined in CEA § 2(h)(7)(C)	Yes/No
An indication of whether the non-reporting counterparty** is a U.S. person.	Yes/No
The Unique Product Identifier assigned to the swap	As provided in § 45.7
If no Unique Product Identifier is available for the swap because the swap is not sufficiently standardized, the taxonomic description of the swap pursuant to the CFTC-approved product classification system	
If no CFTC-approved UPI and product classification system is yet available, the internal product identifier or product description used by the swap data repository	
An indication that the swap is a multi-asset swap	Field values: Yes, Not applicable
For a multi-asset class swap, an indication of the primary asset class	Generally, the asset class traded by the desk trading the swap for the reporting counterparty. Field values: credit, equity, FX, rates, other commodity
For a multi-asset class swap, an indication of the secondary asset class(es)	Field values: credit, equity, FX, rates, other commodity
An indication that the swap is a mixed swap	Field values: Yes, Not applicable
For a mixed swap reported to two non-dually-registered swap data repositories, the identity of the other swap data repository (if any) to which the swap is or will be reported	
Contract type	E.g., swap, swaption, option, basis swap, index swap
Block trade indicator	Indication (Yes/No) of whether the swap qualifies as a block trade or large notional swap. Until the CFTC determines an appropriate minimum block size for the swap asset class involved, pursuant to part 43, enter N/A
Execution timestamp	The date and time of the trade, expressed using Coordinated Universal Time ("UCT")
Execution venue	The swap execution facility or designated contract market on or pursuant to the rules of which the swap was executed. Field values: Identifier (if available) or name of the swap execution facility or designated contract market, or "off-facility" if not so executed
Start date	The date on which the swap starts or goes into effect
Maturity, termination or end date	The date on which the swap expires or ends
Day count convention	

Notional amount (leg 1)	The current active notional amount
Notional currency (leg 1)	ISO code
Notional amount (leg 2)	The current active notional amount
Notional currency (leg 2)	ISO code
Payer (fixed rate)	Is the reporting party a fixed rate payer? Yes/No/Not applicable
Payer (floating rate leg 1)	If two floating legs, the payer for leg 1
Payer (floating rate leg 2)	If two floating legs, the payer for leg 2
Direction	For swaps: whether the principal is paying or receiving the fixed rate. For float-to-float and fixed-to-fixed swaps: indicate N/A. For non-swap instruments and swaptions: indicate the instrument that was bought or sold.
Option type	E.g., put, call, straddle
Fixed rate	
Fixed rate day count fraction	E.g., actual 360
Floating rate payment frequency	
Floating rate reset frequency	
Floating rate index name/rate period	E.g., USD-Libor-BBA
Timestamp for submission to swap data repository	Time and date of submission to the swap data repository, expressed using Coordinated Universal Time ("UCT"), as recorded by an automated system where available, or as recorded manually where an automated system is not available
Clearing indicator	Yes/No indication of whether the swap will be cleared by a derivatives clearing organization
Clearing venue	Identifier (if available) or name of the derivatives clearing organization
If the swap will not be cleared, an indication of whether the clearing requirement exception in CEA § (2)(h)(7) was elected	Yes/No
The identity of the counterparty electing the clearing requirement exception in CEA § (2)(h)(7)	Field values: LEI if available, or substitute identifier as above if LEI is not yet available
Indication of collateralization	Is the swap collateralized, and if so to what extent? Field values: Uncollateralized, partially collateralized, one-way collateralized, fully collateralized
Any other term(s) of the swap matched or affirmed by the counterparties in verifying the swap	E.g., early termination option clause. Use as many fields as required to report each such term

* Applies to counterparty 1 if a swap execution facility or designated contract market reports and does not know which counterparty is the reporting counterparty

** Applies to counterparty 2 if a swap execution facility or designated contract market reports and does not know which counterparty is the non-reporting counterparty

EXHIBIT D **Minimum Primary Economic Terms Data** **OTHER COMMODITY SWAPS** (Enter N/A for fields that are not applicable)	
Data field	Comment
The Unique Swap Identifier for the swap	As provided in § 45.5
The Legal Entity Identifier of the reporting counterparty*	As provided in § 45.6. If no CFTC-designated Legal Entity Identifier for the reporting counterparty* is yet available, enter the internal identifier for the reporting counterparty* used by the swap data repository. If no repository identifier yet exists, the repository fills in this field after creating its identifier
An indication of whether the reporting counterparty* is a swap dealer with respect to the swap	Yes/No
An indication of whether the reporting counterparty* is a major swap participant with respect to the swap	Yes/No
If the reporting counterparty* is not a swap dealer or a major swap participant with respect to the swap, an indication of whether the reporting counterparty* is a financial entity as defined in CEA § 2(h)(7)(C)	Yes/No
An indication of whether the reporting counterparty* is a U.S. person.	Yes/No
An indication that the swap will be allocated	Yes/No
If the swap will be allocated, or is a post-allocation swap, the Legal Entity Identifier of the agent	As provided in § 45.6. If no CFTC-designated Legal Entity Identifier for the agent is yet available, enter the internal identifier for the agent used by the swap data repository. If no repository identifier yet exists, the repository fills in this field after creating its identifier
An indication that the swap is a post-allocation swap	Yes/No
If the swap is a post-allocation swap, the unique swap identifier of the original transaction between the reporting counterparty and the agent	As provided in § 45.5
The Legal Entity Identifier of the non-reporting party**	As provided in § 45.6
If no CFTC-approved Legal Entity Identifier for the non-reporting counterparty** is yet available, the internal identifier for the non-reporting counterparty** used by the swap data repository	If no repository identifier yet exists, the repository fills in this field after creating its identifier
An indication of whether the non-reporting counterparty** is a swap dealer with respect to the swap	Yes/No

An indication of whether the non-reporting counterparty** is a major swap participant with respect to the swap	Yes/No
If the non-reporting counterparty** is not a swap dealer or a major swap participant with respect to the swap, an indication of whether the non-reporting counterparty** is a financial entity as defined in CEA § 2(h)(7)(C)	Yes/No
An indication of whether the non-reporting counterparty** is a U.S. person.	Yes/No
The Unique Product Identifier assigned to the swap	As provided in § 45.7
If no Unique Product Identifier is available for the swap because the swap is not sufficiently standardized, the taxonomic description of the swap pursuant to the CFTC-approved product classification system	
If no CFTC-approved UPI and product classification system is yet available, the internal product identifier or product description used by the swap data repository	
An indication that the swap is a multi-asset swap	Field values: Yes, Not applicable
For a multi-asset class swap, an indication of the primary asset class	Generally, the asset class traded by the desk trading the swap for the reporting counterparty. Field values: credit, equity, FX, rates, other commodity
For a multi-asset class swap, an indication of the secondary asset class(es)	Field values: credit, equity, FX, rates, other commodity
An indication that the swap is a mixed swap	Field values: Yes, Not applicable
For a mixed swap reported to two non-dually-registered swap data repositories, the identity of the other swap data repository (if any) to which the swap is or will be reported	
Contract type	E.g., swap, swaption, option, basis swap, index swap
Block trade indicator	Indication (Yes/No) of whether the swap qualifies as a "block trade" or "large notional off-facility swap" as defined in part 43 of the CFTC's regulations. Until the CFTC determines an appropriate minimum block size for the swap asset class involved, pursuant to part 43, enter N/A
Execution timestamp	The date and time of the trade, expressed using Coordinated Universal Time ("UCT"), as recorded by an automated system where available, or as recorded manually where an automated system is not available
Execution venue	The swap execution facility or designated contract market on or pursuant to the rules of which the swap was executed. Field values: Identifier (if available) or name of the swap execution facility or designated contract market, or "off-facility" if not so executed

Timestamp for submission to swap data repository	Time and date of submission to the swap data repository, expressed using Coordinated Universal Time ("UCT"), as recorded by an automated system where available, or as recorded manually where an automated system is not available
Start date	The date on which the swap commences or goes into effect (e.g., in physical oil, the pricing start date)
Maturity, termination, or end date	The date on which the swap expires or ends (e.g., in physical oil, the pricing end date)
Buyer	The counterparty purchasing the product: e.g., the payer of the fixed price (for a swap), or the payer of the floating price on the underlying swap (for a put swaption), or the payer of the fixed price on the underlying swap (for a call swaption). Field values: LEI if available, or substitute identifier as above if LEI is not yet available
Seller	The counterparty offering the product: e.g., the payer of the floating price (for a swap), the payer of the fixed price on the underlying swap (for a put swaption), or the payer of the floating price on the underlying swap (for a call swaption). Field values: LEI if available, or substitute identifier as above if LEI is not yet available
Quantity unit	The unit of measure applicable for the quantity on the swap. E.g., barrels, bushels, gallons, pounds, tons
Quantity	The amount of the commodity (the number of quantity units) quoted on the swap
Quantity frequency	The rate at which the quantity is quoted on the swap. E.g., hourly, daily, weekly, monthly
Total quantity	The quantity of the commodity for the entire term of the swap
Settlement method	Physical delivery or cash
Price	The price of the swap. For options, the strike price
Price unit	The unit of measure applicable for the price of the swap
Price currency	ISO code
Buyer pay index	The published price as paid by the buyer (if applicable). For swaptions, applies to the underlying swap
Buyer pay averaging method	The averaging method used to calculate the index of the buyer pay index. For swaptions, applies to the underlying swap
Seller pay index	The published price as paid by the seller (if applicable). For swaptions, applies to the underlying swap
Seller pay averaging method	The averaging method used to calculate the index of the seller pay index. For swaptions, applies to the underlying swap

Grade	If applicable, the grade of the commodity to be delivered, e.g., the grade of oil or refined product
Option type	Descriptor for the type of option transaction. E.g., put, call, straddle
Option style	E.g., American, European, European Daily, European Monthly, Asian
Option premium	The total amount paid by the option buyer
Hours from through	For electric power, the hours of the day for which the swap is effective
Hours from through time zone	For electric power, the time zone prevailing for the hours during which electricity is transmitted
Days of week	For electric power, the profile applicable for the delivery of power
Load type	For electric power, the load profile for the delivery of power
Clearing indicator	Yes/No indication of whether the swap will be cleared by a derivatives clearing organization
Clearing venue	Identifier (if available) or name of the derivatives clearing organization
If the swap will not be cleared, an indication of whether the clearing requirement exception in CEA § (2)(h)(7) was elected	Yes/No
The identity of the counterparty electing the clearing requirement exception in CEA § (2)(h)(7)	Field values: LEI if available, or substitute identifier as above if LEI is not yet available
Indication of collateralization	Is the swap collateralized, and if so to what extent? Field values: Uncollateralized, partially collateralized, one-way collateralized, fully collateralized
Any other term(s) of the swap matched or affirmed by the counterparties in verifying the swap	Use as many fields as required to report each such term

* Applies to counterparty 1 if a swap execution facility or designated contract market reports and does not know which counterparty is the reporting counterparty

** Applies to counterparty 2 if a swap execution facility or designated contract market reports and does not know which counterparty is the non-reporting counterparty

Issued in Washington, DC on December 20, 2011, by the Commission

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David A. Stawick
Secretary of the Commission
6351-01

Appendices to Swap Data Recordkeeping and Reporting Requirements—Commission Voting Summary and Statements of Commissioners

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

Appendix 2—Commission Voting Summary

On this matter, Chairman Gensler and Commissioners Sommers, Chilton, O'Malia and Wetjen voted in the affirmative; no Commissioner voted in the negative.

Appendix 3—Statement of Chairman Gary Gensler

I support the final rule establishing swap data recordkeeping and reporting requirements for registered entities and counterparties involved in swaps transactions. The final rule will ensure that complete, timely, and accurate data on all swaps is available to the Commodity Futures Trading Commission and other regulators.

The final rule requires that data be consistently maintained and reported to swap data repositories (SDRs) by swap execution facilities, designated contract markets, derivatives clearing organizations, swap dealers, major swap participants, and other swap counterparties. It requires reporting when the transaction is executed and over the lifetime of the swap.

The rule has a streamlined data reporting regime – the entities with the easiest, fastest, and cheapest access to the data will report to SDRs. It also extends and phases in reporting deadlines, particularly for counterparties that are not swap dealers or major swap participants.

The rule's Legal Entity Identifier, Unique Swap Identifier and Unique Product Identifier regimes will be crucial regulatory tools for linking data together across counterparties, asset classes,

repositories, and transactions. They also will improve risk management, operational efficiency, and data processing for market participants. The rule phases in the start of compliance by both asset class and counterparty type.