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COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 23

RIN 3038-[__]

**Reporting, Recordkeeping, Daily Trading Records, and Swap Documentation
Requirements for Swap Dealers and Major Swap Participants; Corrections**

AGENCY: Commodity Futures Trading Commission.

ACTION: Correcting amendments.

SUMMARY: The Commission is making correcting amendments in Part 23 of its regulations to conform to previous amendments of other regulations, and to correct other minor errors. These correcting amendments do not substantively affect any Commission requirements.

DATES: *Effective date:* The effective date for this final rule is [insert date that is 30 days from date of publication].

FOR FURTHER INFORMATION CONTACT: Matthew Jones, Attorney Advisor, (202) 418-6710, majones@cftc.gov, or Philip Newsom, Attorney Advisor; pnewsom@cftc.gov, Market Participants Division, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581.

SUPPLEMENTARY INFORMATION:

In September 2020, the Commodity Futures Trading Commission (Commission) adopted final rules to revise, among other things, Part 45 of its regulations on swap data recordkeeping and reporting requirements for swap data repositories, derivatives clearing organizations, swap execution facilities, designated contract markets, swap dealers (SDs), major swap participants (MSPs), and swap counterparties that are neither SDs nor

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MSPs.¹ Part 23 of the Commission’s regulations contains multiple cross-references to, and relies on terms defined in, Part 45 of the Commission’s regulations. The Commission has identified the following errors in Part 23 relating to Part 45 as well as certain other similar errors, and is correcting them as shown in the regulatory text in this **Federal Register** release.

In accordance with the Administrative Procedure Act, the Commission has good cause to find that it is unnecessary to provide the public prior notice and an opportunity to comment on these technical amendments.² As more fully described below, the amendments make only typographical and clerical changes that are necessary to avoid confusion or mistakes. There is no substantive change on which the public could comment. As the revisions to the Commission’s regulations in this rulemaking are only technical in nature and will not cause any party to undertake any new obligations, the Commission has determined to publish this rulemaking without prior notice and comment. Similarly, because the Commission is not promulgating, changing, or deleting any regulatory requirement, consideration of costs and benefits and consideration of the public interest to be protected by the antitrust laws are not required by the Commodity Exchange Act.³ Finally, these correcting amendments do not implicate any requirements under the Paperwork Reduction Act of 1995.⁴

A. Correcting cross-references

¹ Swap Data Recordkeeping and Reporting Requirements, 85 FR 75503 (Nov. 25, 2020) (the “2020 Final Rule”) (updating the Commission regulations in Part 45 in addition to Parts 46 and 49).

² See 5 U.S.C. § 553(b)(3)(B).

³ See 7 U.S.C. § 19(b).

⁴ See 44 U.S.C. 3501 *et seq.*

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Commission regulation 23.202 (Daily trading records)⁵ erroneously cross-references Commission regulations 45.4(a), 45.4(b), and 45.4(c). The Commission is correcting the cross-references to Commission regulations 45.5, 45.6, and 45.7, respectively.

Commission regulation 23.205(a) (Real-time public reporting of swap transaction and pricing data)⁶ erroneously cross-references the real-time public “recording” requirements in Part 43 of the Commission’s regulations. The Commission is correcting the reference to replace the word “recording” with the word “reporting.”

B. Updating the term “Unique Transaction Identifier”

The Commission is replacing the term unique swap identifier (USI) with the term unique transaction identifier (UTI). The Commission previously updated Part 45 to make this change,⁷ but did not make the necessary conforming changes in Part 23 where it is referenced.⁸

C. Updating the term “Legal Entity Identifier”

The Commission is updating and conforming its references to a counterparty’s identifier to clarify that a counterparty must provide its legal entity identifier (LEI) or, when applicable, an alternate identifier.⁹ Part 23 does not consistently use the term LEI

⁵ 17 CFR 23.202.

⁶ 17 CFR 23.205(a).

⁷ See 2020 Final Rule at 75515 (“The Commission is amending § 45.5 to adopt requirements for UTIs, the globally accepted transaction identifier, replacing USIs in existing § 45.5.”)

⁸ See 17 CFR 23.202(a)(2)(iii) and 17 CFR Part 23, Subpart I, Appendix 1, Exhibits A through D.

⁹ The Commission previously updated Part 45 to allow a counterparty that is not eligible to receive an LEI to use an alternate identifier. See 2020 Final Rule at 75527.

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(in one instance using the term unique counterparty identifier instead),¹⁰ and does not clearly address the full set of circumstances when a counterparty may use an alternate identifier in lieu of an LEI, but rather only provides for the use of an alternate identifier where the counterparty is a natural person.¹¹

D. Updating use of the term “Unique Product Identifier”

The Commission is updating and conforming its references to a swap’s unique product identifier (UPI) to clarify that the swap trading record shall include the UPI and description using the product classification system as prescribed in Part 45, when applicable.¹² Commission regulation 23.202(a)(2)(vii) does not address the possibility that a swap may not have a UPI.¹³

E. Updating example of a floating rate

The Commission is replacing the example floating rate in Exhibit C of Part 23, Subpart I, Appendix 1 to use “Fed Funds.” Exhibit C currently uses the outdated “USD-Libor-BBA” as an example for the field labeled Floating rate index name/rate period.¹⁴

List of Subjects in 17 CFR Part 23

Swaps, Reporting and recordkeeping requirements, Trading records.

¹⁰ See 17 CFR 23.202(a)(2)(v).

¹¹ See 17 CFR Part 23, Subpart I, Appendix 1, Exhibits A through D.

¹² See Swap Data Recordkeeping and Reporting Requirements, 77 FR 2136, 2166 (Jan. 13, 2012) (explaining that each swap must be identified by a UPI and product classification system, when applicable).

¹³ See 17 CFR 23.202(a)(2)(vii).

¹⁴ 17 CFR Part 23, Subpart I, Appendix 1, Exhibit C. The British Bankers Association no longer administers the London Interbank Offered Rate (LIBOR), and the ICE Benchmark Administration Limited has decided to cease the publication of all remaining LIBOR settings on June 30, 2023. See Announcements on the end of LIBOR, March 5, 2021, available at: <https://www.fca.org.uk/news/press-releases/announcements-end-libor>. See also ICE Benchmark Administration Publishes Feedback Statement for the Consultation on Its Intention to Cease the Publication of LIBOR® Settings, March 5, 2021, available at: <https://ir.theice.com/press/news-details/2021/ICE-Benchmark-Administration-Publishes-Feedback-Statement-for-the-Consultation-on-Its-Intention-to-Cease-the-Publication-of-LIBOR-Settings/default.aspx>.

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For the reasons stated in the preamble, the Commission hereby amends chapter I of title 17 of the Code of Federal Regulations as follows:

PART 23—SWAP DEALERS AND MAJOR SWAP PARTICIPANTS

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

Authority: 7 U.S.C. 1a, 2, 6, 6a, 6b, 6b–1, 6c, 6p, 6r, 6s, 6t, 9, 9a, 12, 12a, 13b, 13c, 16a, 18, 19, 21. Section 23.160 also issued under 7 U.S.C. 2(i); Sec. 721(b), Pub. L. 111-203, 124 Stat. 1641 (2010).

2. In § 23.202, revise paragraphs (a)(2)(iii), (v), and (vii) to read as follows:

§ 23.202 Daily trading records.

(a) * * *

(2) * * *

(iii) The unique transaction identifier, as required by § 45.5, for each swap;

(iv) * * *

(v) The name of the counterparty with which each such swap was executed, including its legal entity identifier or alternate identifier, as required by § 45.6;

(vi) * * *

(vii) The product name of each swap, including its unique product identifier and description using the product classification system, as required by § 45.7;

* * * * *

3. In § 23.205, revise paragraph (a) to read as follows:

§ 23.205 Real-time public reporting.

(a) *Real-time public reporting of swap transaction and pricing data.* Each swap dealer and major swap participant shall report all information and swap transaction

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and pricing data required to be reported in accordance with the real-time public reporting requirements in part 43 of this chapter.

* * * * *

4. Revise Appendix I in Part 23, Subpart I to remove the word or words indicated in the left column from wherever they appear in the Appendix, and add in their place the word or words indicated in the right column.

Unique Swap Identifier	Unique Transaction Identifier
USI	UTI
Legal Entity Identifier	Legal Entity Identifier or alternate identifier
§ 45.6, or substitute identifier for a natural person.	§ 45.6.
LEI, or substitute identifier for a natural person	LEI, or alternate identifier
USD-Libor-BBA	Fed Funds
LEI, if available, or substitute identifier, for a natural person	LEI, if available, or alternate identifier
LEI, or substitute identifier, for a natural person	LEI, or alternate identifier

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Issued in Washington, DC on [DATE], by the Commission.

Christopher Kirkpatrick,
Secretary of the Commission.