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Amendments to Swap Data Recordkeeping and Reporting Requirements  
for Cleared Swaps; Final Rule

## COMMODITY FUTURES TRADING COMMISSION

### 17 CFR Part 45

RIN 3038-AE12

### Amendments to Swap Data Recordkeeping and Reporting Requirements for Cleared Swaps

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commodity Futures Trading Commission (“Commission” or “CFTC”) is adopting final regulations relating to swap data reporting in connection with cleared swaps for swap data repositories (“SDRs”), derivatives clearing organizations (“DCOs”), designated contract markets (“DCMs”), swap execution facilities (“SEFs”), swap dealers (“SDs”), major swap participants (“MSPs”), and swap counterparties who are neither SDs nor MSPs. Commodity Exchange Act (“CEA” or “Act”) provisions relating to swap data recordkeeping and reporting were added by the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”). These regulations adopt without change revisions to the Commission regulations as proposed in the Notice of Proposed Rulemaking (“NPRM”) issued August 31, 2015. These revisions clarify regulations to clearly delineate the swap data reporting requirements associated with each of the swaps involved in a cleared swap transaction. Additionally, these revisions leave the choice of SDR for each swap in a cleared swap transaction to the entity submitting the first report on such swap.

**DATES:** This rule is effective July 27, 2016 except for the removal of § 45.4(b)(2)(ii) which is effective June 27, 2016.

**Compliance Date:** The compliance date for all revisions and additions to part 45 of the Commission’s regulations under this final rule is December 27, 2016. Until such date, all existing reporting obligations under part 45 (other than those contained in removed paragraph (b)(2)(ii) of § 45.4), including existing obligations on reporting continuation data on original swaps and creation and continuation data on clearing swaps, shall remain in effect.

**FOR FURTHER INFORMATION CONTACT:** Daniel Bucsa, Deputy Director, Division of Market Oversight, 202–418–5435, [dbucsa@cftc.gov](mailto:dbucsa@cftc.gov); Andrew Ridenour, Special Counsel, Division of Market Oversight, 202–418–5438, [aridenour@cftc.gov](mailto:aridenour@cftc.gov); Owen J. Kopon, Attorney-

Advisor, Division of Market Oversight, 202–418–5360, [okopon@cftc.gov](mailto:okopon@cftc.gov); Benjamin DeMaria, Special Counsel, Division of Market Oversight, 202–418–5988, [bdemaria@cftc.gov](mailto:bdemaria@cftc.gov); Aaron Brodsky, Special Counsel, Division of Market Oversight, 202–418–5349, [abrodsky@cftc.gov](mailto:abrodsky@cftc.gov); or Esen Onur, Economist, Office of the Chief Economist, 202–418–6146, [eonur@cftc.gov](mailto:eonur@cftc.gov).

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#### I. Background

##### A. Introduction

On July 21, 2010, President Obama signed into law the Dodd-Frank Act.<sup>1</sup> Title VII of the Dodd-Frank Act amended the CEA<sup>2</sup> 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 SDs and MSPs; imposing clearing and trade execution requirements on standardized derivative

<sup>1</sup> See Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 1376 (2010). The text of the Dodd-Frank Act may be accessed at <http://www.cftc.gov/Law/Regulation/DoddFrankAct/index.htm>.

<sup>2</sup> 7 U.S.C. 1, *et seq.*

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. Statutory Authority

To enhance transparency, promote standardization, and reduce systemic risk, section 727 of the Dodd-Frank Act added to the CEA section 2(a)(13)(G),<sup>3</sup> which requires all swaps, whether cleared or uncleared, to be reported to SDRs.<sup>4</sup> SDRs are 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 available to the Commission and other regulators.<sup>5</sup> Section 21(b) of the CEA,<sup>6</sup> added by section 728 of the Dodd-Frank Act, directs the Commission to prescribe standards for swap data recordkeeping and reporting, which are to apply to both registered entities and counterparties involved with swaps,<sup>7</sup> and which are to be comparable to standards for clearing organizations in connection with their clearing of swaps.<sup>8</sup>

##### C. Regulatory History—Final Part 45 Rulemaking

On December 20, 2011, the Commission adopted part 45 of the Commission’s regulations (“Final Part 45 Rulemaking”).<sup>9</sup> Part 45 implements the requirements of section 21 of the CEA by setting forth the manner and content of reporting to SDRs, and requires electronic reporting both when a swap is initially executed, referred to as “creation” data,<sup>10</sup> and over the course

<sup>3</sup> 7 U.S.C. 2(a)(13)(G).

<sup>4</sup> See also 7 U.S.C. 1a(40)(E), 1a(48).

<sup>5</sup> Regulations governing core principles and registration requirements for, and the duties of, SDRs are the subject of part 49 of this chapter.

<sup>6</sup> 7 U.S.C. 24a(b).

<sup>7</sup> 7 U.S.C. 24a(b)(1)(A).

<sup>8</sup> 7 U.S.C. 24a(b)(3).

<sup>9</sup> See Swap Data Recordkeeping and Reporting Requirements, Final Rule, 77 FR 2136 (Jan. 13, 2012).

<sup>10</sup> See 17 CFR 45.1 (defining “required swap creation data” as all primary economic terms data for a swap in the swap asset class in question, and all confirmation data for the swap.). “Primary economic terms data” is defined as 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, while “confirmation data” is defined as all of the terms of a swap matched and agreed upon by the counterparties in confirming the swap. *Id.* For cleared swaps, confirmation data also

of the swap's existence, referred to as "continuation" data.<sup>11</sup> Additionally, part 45 sets forth varying reporting timeframes depending on the type of reporting, counterparty, execution, or product.<sup>12</sup>

As part of the Commission's ongoing efforts to improve swap transaction data quality and to improve the Commission's ability to utilize the data for regulatory purposes, Commission staff has continued to evaluate issues in connection with reporting under part 45, including those related to cleared swaps in particular. To this end, Commission staff formed an interdivisional staff working group ("IDWG") to identify, and to recommend resolutions to, reporting challenges associated with certain swaps transaction data recordkeeping and reporting provisions, including the provisions adopted in the Final Part 45 Rulemaking.<sup>13</sup>

Based in large part on those efforts, the Commission published a request for comment on a variety of swap data reporting and recordkeeping provisions to help determine how such provisions were being applied, and to determine whether or what clarifications or enhancements to these provisions may be appropriate (the "IDWG Request for Comment").<sup>14</sup> One of the subjects of the IDWG Request for Comment was the reporting of cleared swaps, and, in particular, the manner in which the swap data reporting rules should address cleared swaps.<sup>15</sup> After considering the comments submitted in response to the IDWG Request for Comment relating to the reporting of

includes the internal identifiers assigned by the automated systems of the DCO to the two transactions resulting from novation to the clearing house. *Id.* See also 17 CFR 45.3.

<sup>11</sup> See 17 CFR 45.1 (defining "required swap continuation data" as 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). See also 17 CFR 45.4.

<sup>12</sup> See 17 CFR 45.3(a), 45.3(b), 45.3(c), and 45.3(d).

<sup>13</sup> See Press Release, CFTC to Form an Interdivisional Working Group to Review Regulatory Reporting (Jan. 21, 2014), available at <http://www.cftc.gov/PressRoom/PressReleases/pr6837-14>.

<sup>14</sup> See Review of Swap Data Recordkeeping and Reporting Requirements, Request for Comment, 79 FR 16689 (Mar. 26, 2014). The IDWG Request for Comment was referred to simply as the "Request for Comment" in the NPRM. The Commission has changed the short form citation for that document in the final release to distinguish it from the subsequent request for comment related to draft technical specifications, referenced throughout this release.

<sup>15</sup> 79 FR 16689, 16694.

cleared swaps,<sup>16</sup> the Commission issued a Notice of Proposed Rulemaking (the "NPRM") in which it proposed changes to part 45 as they relate to the reporting of cleared swaps transactions.<sup>17</sup> In response to the NPRM, the Commission received 17 comments letters addressing its proposed revisions to part 45.<sup>18</sup> This release will address the comments received on specific aspects of the NPRM, and on specific issues raised in the IDWG Request for Comment, in

<sup>16</sup> The comment file for responses to the IDWG Request for Comment is available at <http://comments.cftc.gov/PublicComments/CommentList.aspx?id=1484>. Commenters responding to the IDWG Request for Comment included: The American Gas Association, May 27, 2014; American Petroleum Institute, May 27, 2014; Americans for Financial Reform, May 27, 2014 ("AFR"); Australian Bankers' Association, May 27, 2014 ("ABA"); Better Markets, Inc., May 27, 2014, ("Better Markets"); B&F Capital Markets, Inc., May 27, 2014; CME Group, May 27, 2014 ("CME"); Coalition for Derivatives End-Users, May 27, 2014 ("CDEU"); Coalition of Physical Energy Companies, May 27, 2014; Commercial Energy Working Group, May 27, 2014 ("CEWG"); Commodity Markets Council, May 27, 2014 ("CMC"); The Depository Trust & Clearing Corporation, May 27, 2014 ("DTCC"); EDF Trading North America, LLC, May 27, 2014; Edison Electric Institute, May 27, 2014 ("EEI"); Financial InterGroup Holdings Ltd, May 27, 2014; Financial Services Roundtable ("FSR"), May 27, 2014; Fix Trading Community, May 27, 2014; The Global Foreign Exchange Division of the Global Financial Markets Association, May 27, 2014 ("GFMA"); HSBC, May 27, 2014; Interactive Data Corporation, May 27, 2014; ICE Trade Vault, LLC, May 27, 2014 ("ITV"); International Energy Credit Association, May 27, 2014; International Swaps and Derivatives Association, Inc., May 23, 2014 ("ISDA"); Japanese Bankers Association, May 27, 2014 ("JBA"); Just Energy Group Inc., May 27, 2014; LCH.Clearnet Group Limited, May 29, 2014 ("LCH"); Managed Funds Association, May 27, 2014 ("MFA"); Markit, May 27, 2014; Natural Gas Supply Association, May 27, 2014 ("NGSA"); NFP Electric Associations (National Rural Electric Cooperative Association, American Public Power Association, and Large Public Power Council), May 27, 2014 ("NFPEA"); OTC Clearing Hong Kong Limited, May 27, 2014 ("OTC Hong Kong"); Securities Industry and Financial Markets Association Asset Management Group, May 27, 2014 ("SIFMA"); SWIFT, May 27, 2014; Swiss Re, May 27, 2014; Thomson Reuters (SEF) LLC, May 27, 2014 ("TR SEF"); and TriOptima, May 27, 2014. Discussions of comments on reporting of cleared swaps received in response to the IDWG Request for Comment are included in the preamble to the NPRM.

<sup>17</sup> See Amendments to Swap Data Recordkeeping and Reporting Requirements for Cleared Swaps, Notice of Proposed Rulemaking, 80 FR 52544 (Aug. 31, 2015).

<sup>18</sup> The comment file for responses to the NPRM is available at <http://comments.cftc.gov/PublicComments/CommentList.aspx?id=1614>. Commenters to the NPRM included: Better Markets, October 30, 2015; CME, October 30, 2015; COPE, October 30, 2015; CEWG, October 30, 2015; CMC, October 30, 2015; DTCC, October 30, 2015; EEI/EPSA, October 30, 2015; Eurex Clearing AG ("Eurex"); FSR, October 30, 2015; ITV, October 30, 2015; ISDA, October 30, 2015; JBA, October 30, 2015; LCH, October 30, 2015; MFA and Alternative Investment Management Association ("AIMA"), October 30, 2015; Markit, October 30, 2015; and North American Derivatives Exchange, Inc., October 30, 2015 ("Nadex").

connection with explaining each of the amended regulations adopted herein.<sup>19</sup>

The swap data reporting framework adopted in the original Final Part 45 Rulemaking was largely based on the mechanisms for the trading and execution of uncleared swaps. Under such a regime, swap data reporting was premised upon the existence of one continuous swap for reporting and data representation purposes. The Commission has since had additional opportunities to consult with industry and has observed how the part 45 regulations function in practice with respect to swaps that are cleared, including how the implementation of part 45 interacts with the implementation of part 39 of the Commission's regulations, which contains provisions applicable to DCOs.

In particular, § 39.12(b)(6) provides that upon acceptance of a swap by a DCO for clearing, that original swap is extinguished and replaced by equal and opposite swaps, with the DCO as the counterparty to each resulting swap.<sup>20</sup> The original swap that is extinguished upon acceptance for clearing is commonly referred to by market participants as the "alpha" swap and the equal and opposite swaps that replace the original swap are commonly referred to as "beta" and "gamma" swaps. The process of extinguishing the "alpha" swap and creating the "beta" and "gamma" swaps is generally referred to as a novation. The Commission has observed that certain provisions of part 45 could better accommodate the cleared swap framework set forth in § 39.12(b)(6). The new regulations in this release are intended to provide clarity to swap counterparties and registered entities of their part 45 reporting obligations with respect to the swaps involved in a cleared swap transaction. These amendments and new regulations are also intended to improve the efficiency of data collection and maintenance associated with the reporting of the

<sup>19</sup> Unless otherwise noted, references to "commenters" throughout this release refer to those who submitted comment letters to the NPRM.

<sup>20</sup> See 17 CFR 39.12(b)(6) (requiring a DCO that clears swaps to have rules providing that, upon acceptance of a swap by the DCO for clearing: (i) The original swap is extinguished; (ii) the original swap is replaced by an equal and opposite swap between the [DCO] and each clearing member acting as principal for a house trading or acting as agent for a customer trade). The Commission reaffirmed its position regarding the composition of a cleared swap in a statement regarding Chicago Mercantile Exchange ("CME") Rule 1001. See Statement of the Commission on the Approval of CME Rule 1001 (Mar. 6, 2013), at 6, available at <http://www.cftc.gov/ucm/groups/public/@newsroom/documents/file/statementofthecommission.pdf>.

swaps involved in a cleared swap transaction.

#### *D. Consultation With Other U.S. Financial Regulators*

In developing these rules, Commission staff has engaged in extensive consultations with other U.S. financial regulators, including the Securities and Exchange Commission (“SEC”), the Federal Reserve Board of Governors, the Federal Housing Finance Agency, the Federal Deposit Insurance Corporation, Office of Comptroller of the Currency, and the Farm Credit Administration. As noted in the NPRM,<sup>21</sup> the Commission endeavored to harmonize the regulations in this release with the approach proposed by the SEC in its release proposing certain new rules and rule amendments to Regulation SBSR—Reporting and Dissemination of Security-Based Swap Information (“Regulation SBSR”).<sup>22</sup>

#### *E. Summary of Revisions and Additions to Part 45*

The Commission is making revisions and additions to §§ 45.1, 45.3, 45.4, 45.5, 45.8, 45.10, and appendix 1 to part 45 in order to provide clarity to swap counterparties as well as to registered entities regarding their respective part 45 reporting obligations in connection with each of the swaps involved in a cleared swap transaction.<sup>23</sup> The Commission is adopting the following amendments, each of which is discussed in greater detail in Section II of this release:

- Amendments to § 45.1 revise the definition of “derivatives clearing organization” to update a cross-reference and to clarify that the definition covers only registered DCOs. Revised § 45.1 also adds new definitions for “original swaps” and “clearing swaps.” These terms are used throughout amended part 45 to help clarify reporting obligations for the swaps involved in a cleared swap transaction.

- Amendments to § 45.3 modify and clarify DCO creation data reporting obligations for swaps that result from the clearing process; establish which entity has the obligation to choose the SDR to which creation data is reported; eliminate confirmation data reporting obligations for swaps that are intended to be submitted to a DCO for clearing at

the time of execution; and make conforming changes.

- Amendments to § 45.4 modify and clarify continuation data reporting obligations for original swaps, including the obligation of a clearing DCO to report original swap terminations to the SDR to which the original swap was reported; modify and clarify the obligation to report data providing for the linking of original and clearing swaps and the original and clearing swap SDRs; remove the requirement for SD/MSP reporting counterparties to report daily valuation data for cleared swaps; and make conforming changes.

- Amendments to § 45.5 set forth a DCO’s obligations to create, transmit, and use unique swap identifiers (“USIs”) to identify clearing swaps.

- Amendments to § 45.8 provide that the DCO will be the reporting counterparty for clearing swaps.

- Amendments to § 45.10 provide that all swap data for a given clearing swap, and all swap data for each clearing swap that replaces a particular original swap (and each equal and offsetting clearing swap that is created upon execution of the same transaction and that does not replace an original swap), must be reported to a single SDR. Amendments also make conforming changes.

- Amendments to appendix 1 modify certain existing primary economic term (“PET”) data fields and certain explanatory notes in the Comment sections for existing PET data fields, and add several new PET data fields to account for the clarifications provided in this release for the reporting of clearing swaps.

## **II. Revised and New Regulations**

Throughout Section II of this release, the Commission will discuss each amendment and the related comments. The Commission is also including several examples to demonstrate how cleared swap reporting workflows would function under the new regulations.

The Commission received some general comments on the proposed amendments to part 45 relating to data quality. Better Markets was generally supportive of the proposals, and commented that the NPRM integrated many of the technical public comments on the concept release to address the small but important fixes on reporting of cleared swap transactions.<sup>24</sup> COPE was also generally supportive of the NPRM on the “guiding principal” that end-users should not be unduly burdened by the Commission’s swap reporting

regulations.<sup>25</sup> COPE requested that the Commission clarify that, under the proposed amendments, end-users would not have reporting obligations on swaps executed pursuant to the rules of a SEF or DCM and then cleared by a DCO.<sup>26</sup>

#### *A. Definitions—Amendments to § 45.1*

##### 1. Existing § 45.1

Existing § 45.1 defines “derivatives clearing organization” for purposes of part 45 by cross-referencing section 1a(9) of the CEA<sup>27</sup> and any Commission regulations implementing that section, including but not limited to § 39.5. Existing § 45.1 does not include definitions of either “original swap” or “clearing swap.”

##### 2. Proposed Amendments and Additions to § 45.1

###### i. “Derivatives Clearing Organization”

The Commission proposed to revise the definition of “derivatives clearing organization” in § 45.1 so that it cross-references the definition provided in § 1.3(d) of the Commission’s regulations and so that it explicitly refers to a DCO registered with the Commission under section 5b(a) of the CEA.<sup>28</sup> This modification redefines a “derivatives clearing organization” for purposes of part 45 to mean a derivatives clearing organization, as defined by § 1.3(d) of this chapter, that is registered with the Commission.<sup>29</sup>

###### ii. “Original Swap” and “Clearing Swap”

The Commission proposed to add definitions of “original swap” and “clearing swap” to part 45 so that the part 45 reporting rules will be more consistent with the regulations

<sup>25</sup> See COPE Oct. 30, 2015 Letter, at 2.

<sup>26</sup> See COPE Oct. 30, 2015 Letter, at 2. In response to COPE’s request for clarification, the Commission notes that under the final rule being adopted, a non-SD/MSP would likely have no reporting obligations on a swap executed on a SEF or DCM that is intended to be cleared at the time of execution. However, the original swap reporting counterparty as determined by the reporting hierarchy under § 45.8 could have obligations to report any amendments or modifications of PET data fields, as well as any continuation data on a swap between the execution of the swap and its acceptance for clearing, such as a novation, allocation or termination. In such circumstances, the reporting counterparty on the original swap would have a reporting obligation under either § 45.3 or § 45.4, respectively. Separately, end-users may also have obligations to correct errors or omissions discovered in swap data for which the end-user is the reporting counterparty pursuant to § 45.14(a), or to notify the reporting counterparty of such errors or omissions if the end-user is not the reporting counterparty pursuant to § 45.14(b).

<sup>27</sup> 7 U.S.C. 1a(9).

<sup>28</sup> 7 U.S.C. 7a–1(a).

<sup>29</sup> See 80 FR 52544, 52547.

<sup>21</sup> 80 FR 52544, 52545–46.

<sup>22</sup> See Regulation SBSR—Reporting and Dissemination of Security-Based Swap Information, 80 FR 14740 (Mar. 19, 2015).

<sup>23</sup> The Commission is also amending the part 45 authority citation to replace a reference to 7 U.S.C. 24 with a reference to 7 U.S.C. 24a.

<sup>24</sup> See Better Markets Oct. 30, 2015 Letter, at 2.

applicable to DCOs set forth in § 39.12(b)(6).<sup>30</sup>

The Commission proposed to define “original swap” as a swap that has been accepted for clearing by a derivatives clearing organization and “clearing swap” as a swap created pursuant to the rules of a derivatives clearing organization that has a derivatives clearing organization as a counterparty, including any swap that replaces an original swap that was extinguished upon acceptance of such original swap by the derivatives clearing organization for clearing.

As noted above, while original swaps are commonly referred to as “alpha” swaps and while the equal and opposite swaps that replace the original swap are commonly referred to as “beta” and “gamma” swaps, the Commission will use the proposed defined terms “original swap” and “clearing swap” throughout this section of the release.

### 3. Comments

The Commission received comments on the proposed definitions from a variety of market participants. Many commenters were supportive of the proposed amendments to the definitions and the clarification that they provide. Other commenters supported clarification of the definitions, but suggested further modifications to the proposed definitions.

#### i. Derivatives Clearing Organization

Both ISDA and FSR commented that the proposed definition of “derivatives clearing organization” should be expanded to include derivatives clearing organizations that are exempt from registering with the Commission.<sup>31</sup> These commenters suggested that the reporting obligations should apply to the central counterparty regardless of whether that counterparty is registered with the Commission. ISDA also commented that the reporting obligations should apply to those derivatives clearing organizations that are currently in the process of registering with the Commission.<sup>32</sup>

#### ii. Clearing Swap

With respect to the proposed definition of “clearing swap,” ISDA reiterated its comment that the definition should include all swaps that are cleared through registered derivatives clearing organizations as well as those that are cleared through derivatives clearing organizations that

are in the process of registering or are exempt from registration.<sup>33</sup> LCH commented that the definition of clearing swap is incomplete as it may not capture cleared trades between a clearing member and its client in a principal clearing model, because the DCO is not a party to that transaction.<sup>34</sup>

#### iii. Original Swap

Regarding the definition of “original swap,” ISDA commented that it is supportive of the proposed definition and agrees that swaps submitted for clearing should be classified as original swaps.<sup>35</sup> LCH commented that the definition of original swap is sufficiently clear and complete.<sup>36</sup> ISDA requested clarification on guidance issued by the Commission’s Divisions of Clearing and Risk and Market Oversight,<sup>37</sup> specifically as to whether there is an original swap associated with CDS Clearing-Related Swaps that are created through a firm or forced trade process.<sup>38</sup> EEI/EPISA sought clarification from the Commission that the definition of original swap includes both off-facility swaps that are submitted for clearing, rejected, then resubmitted and accepted for clearing, and swaps that are not intended to be cleared when executed but are cleared at some point subsequent to execution.<sup>39</sup>

#### 4. Final Rule

Having reviewed all relevant comments, the Commission has determined to adopt the definitions as proposed in the NPRM. The Commission has noted the comments received from market participants on the limitation of “derivatives clearing organization” to DCOs registered with the Commission. The Commission notes that, as of the date of this release, it has granted exemptive relief to four non-U.S. central counterparties from registering as a DCO with the Commission, under section 5b(h) of the CEA, pursuant to Commission Orders (“DCO Exemptive Orders”).<sup>40</sup> The DCO

Exemptive Orders include reporting obligations that are consistent with those imposed on registered DCOs under amended part 45.<sup>41</sup> Therefore, the Commission believes that it is sufficient for the obligations on derivatives clearing organizations in part 45 to apply only to registered DCOs and, as a result, the definition of “derivatives clearing organization” under amended regulation 45.1 will cover only registered DCOs, as proposed.

The Commission notes general support for the definition of “clearing swap.” The Commission notes that the newly-defined term “clearing swap” would include any swap to which the DCO is a counterparty, regardless of whether such swap is replacing an original swap.<sup>42</sup> While a cleared swap transaction generally comprises an original swap that is terminated upon novation and the equal and opposite swaps that replace it, the Commission is aware of certain circumstances in which a cleared swap transaction may not involve the replacement of an original swap.<sup>43</sup> Accordingly, the revised definition of “clearing swap” is intended to encompass: (1) Swaps to which the DCO is a counterparty and that replace an original swap (*i.e.*, swaps commonly known as betas and gammas) and (2) all other swaps to which the DCO is a counterparty (even if such swap does not replace an original swap).

ASX to the SDR to which the original swap was reported.

<sup>41</sup> The Commission also notes ISDA’s comment concerning entities that are in the process of registering as a DCO. Because there is no temporary or provisional registration of DCOs, such entities should not be entering into swaps that must be reported under part 45 without full registration.

<sup>42</sup> The Commission has noted LCH’s request for guidance concerning reporting clearing swaps under the principal model of clearing more commonly used outside of the United States. The Commission declines to include such guidance at this time, but would note that this issue of reporting principal versus agency model clearing swaps is under consideration as part of the Technical Specifications Request for Comment issued by the Commission’s Office of Data and Technology and the Division of Market Oversight on December 22, 2015 relating to draft technical specifications for certain swap data elements (“Technical Specifications Request for Comment”). See Draft Technical Specifications for Certain Swap Data Elements, Request for Comment (Dec. 22, 2015), available at <http://www.cftc.gov/idc/groups/public/@newsroom/documents/file/specificationsswapdata122215.pdf>.

<sup>43</sup> For example, in the preamble to the part 39 adopting release, the Commission noted that “open offer” systems are acceptable under § 39.12(b)(6), stating that: Effectively, under an open offer system there is no “original” swap between executing parties that needs to be novated; the swap that is created upon execution is between the DCO and the clearing member, acting either as principal or agent. Derivatives Clearing Organization General Provisions and Core Principles, Final Rule 76 FR 69334, 69361 (Nov. 8, 2011).

<sup>33</sup> See *Id.* at 3.

<sup>34</sup> See LCH Oct. 30, 2015 Letter, at 2.

<sup>35</sup> See ISDA Oct. 30, 2015 Letter, at 3.

<sup>36</sup> See LCH Oct. 30, 2015 Letter, at 2.

<sup>37</sup> See CFTC Letter No. 15–51 (Sept. 18, 2015).

<sup>38</sup> ISDA also commented that it is not clear whether the associated clearing swaps are publicly reportable swap transactions for Part 43 purposes. See ISDA Oct. 30, 2015 Letter, at 3.

<sup>39</sup> See EEI/EPISA Oct. 30, 2015 Letter, at 3.

<sup>40</sup> As of the date of this final release, the Commission has issued DCO Exemptive Orders to ASX Clear (Futures) Pty Ltd. (“ASX”), Japan Securities Clearing Corp., Korea Exchange Inc., and OTC Clear Hong Kong Ltd. (“OTC Clear”). The Commission amended ASX’s DCO Exemptive Order on January 28, 2016 to require ASX to report the termination of any swap accepted for clearing by

<sup>30</sup> See 80 FR 52544, 52547.

<sup>31</sup> See ISDA Oct. 30, 2015 Letter, at 2–3; FSR Oct. 30, 2015 Letter, at 5.

<sup>32</sup> See ISDA Oct. 30, 2015 Letter, at 2–3.

The Commission also notes the broad support for the newly-defined term “original swap.”<sup>44</sup> In addressing ISDA’s request for clarification on firm or forced trades at the DCO, the Commission notes that guidance from its Divisions of Clearing and Risk and Market Oversight states that swaps arising out of a DCO’s firm or forced trade process would constitute “clearing swaps.”<sup>45</sup> The Divisions’ guidance also states that DCOs should be the reporting counterparty of such swaps.

The proposed definition of original swap will provide clarity with respect to certain continuation data reporting requirements for such swaps by tying such obligations to a specific point in time in the life of a swap that is either intended to be submitted to a DCO for clearing at the time of execution, or that is not intended to be cleared at the time of execution but is later submitted to a DCO for clearing. The Commission notes that under the proposed definition, a swap that is submitted to a DCO for clearing can become an original swap by virtue of the DCO’s acceptance of such swap for clearing, irrespective of: (1) Whether such swap is executed on or pursuant to the rules of a SEF or DCM or off-facility; (2) whether or not such swap is subject to the clearing requirement; and (3) whether such swap is intended to be cleared at the time of execution or not intended to be cleared at the time of execution, but subsequently submitted to a DCO for clearing.<sup>46</sup>

In addressing EEI/EPISA’s comment on whether the term “original swaps” would include off-facility swaps rejected and then resubmitted for clearing, or swaps not intended to be cleared at execution but subsequently submitted for clearing, the Commission notes that a swap becomes an “original swap” once it is accepted for clearing by a DCO. The definition would apply regardless of whether the swap had previously been rejected for clearing, or whether it was not intended to be cleared at the time of execution.

### B. Swap Data Reporting: Creation Data—Amendments to § 45.3

#### 1. Existing § 45.3

Regulation 45.3 requires reporting to an SDR of two types of “creation data” generated in connection with a swap’s creation: “primary economic terms

data” (“PET data”) and “confirmation data.” Additionally, § 45.3 governs what creation data must be reported, who must report it, and deadlines for its reporting.

The swap data reporting requirements under § 45.3 concerning both PET data and confirmation data differ for reporting counterparties and entities depending on whether the swap is executed on or pursuant to the rules of a SEF or DCM (§ 45.3(a)), is subject to mandatory clearing and executed off-facility (§ 45.3(b)), or is not subject to mandatory clearing and executed off-facility (§ 45.3(c) and (d)). Regulation 45.3 also addresses specific creation data reporting requirements in circumstances where a swap is accepted for clearing by a DCO,<sup>47</sup> including the excusal of the reporting counterparty from reporting creation data in certain circumstances.<sup>48</sup>

#### 2. Proposed Amendments to § 45.3

As noted above, the Commission has observed how the part 45 regulations function in practice with respect to swaps that are cleared. While CEA section 2(a)(13)(G) requires each swap (whether cleared or uncleared) to be reported to a registered SDR, the Commission believes that the interplay between the § 45.3 reporting requirements applicable to SEFs, DCMs and reporting counterparties, and the reporting requirements applicable to DCOs, should be clarified in the context of a cleared swap transaction.

Accordingly, the Commission proposed several amendments to § 45.3 to better delineate the creation data reporting requirements associated with each swap involved in a cleared swap transaction.

#### i. Proposed Revised References to Clearing Requirement Exceptions and Exemptions

References to the end-user exception to the swap clearing requirement set forth in section 2(h)(7) of the CEA are included in existing §§ 45.3 and 45.8. Following the publication of the Final Part 45 Rulemaking, the Commission codified the end-user exception in § 50.50 and published two exemptions to the swap clearing requirement: The inter-affiliate exemption in § 50.52, and the financial cooperative exemption in § 50.51. Therefore, the Commission proposed revisions to the introductory language of § 45.3, §§ 45.3(b)–(d), and 45.8(h)(1)(vi) to reflect that exceptions to, and exemptions from, the clearing

requirement are now codified in part 50 of the Commission’s regulations.<sup>49</sup>

#### ii. Proposed Addition of § 45.3(e)—Clearing Swaps

Paragraphs (a)–(d) of § 45.3 govern creation data reporting in connection with swaps executed on or pursuant to the rules of a SEF or DCM and for off-facility swaps, but do not separately address creation data reporting for swaps created through the clearing process by a DCO (*i.e.*, clearing swaps). Accordingly, the Commission proposed renumbering existing paragraph (e) (Allocations) of § 45.3 as paragraph (f), and adding new paragraph (e) to § 45.3, which will exclusively govern creation data reporting requirements for clearing swaps. The Commission also proposed revising the introductory language of § 45.3 to clarify that paragraphs (a)–(d) apply to all swaps except clearing swaps, while paragraph (e) applies to clearing swaps.<sup>50</sup> The Commission did not propose to change the existing requirements for who reports creation data for those swaps that become original swaps. Creation data for such swaps will continue to be reported by the reporting counterparty, as determined pursuant to § 45.8, or by the SEF/DCM in the case of on-facility swaps.

Under the proposed revisions to § 45.3(e), a DCO would be required as reporting counterparty under new § 45.8(i)<sup>51</sup> to report all required swap creation data for each clearing swap, either as soon as technologically practicable after an original swap is accepted by the DCO for clearing (in the event that the clearing swap replaced an original swap), or as soon as technologically practicable after execution of a clearing swap (in the event that the clearing swap does not replace an original swap). Additionally, under the proposed revisions to § 45.3(e), required swap creation data for clearing swaps must be provided to a registered SDR electronically by the DCO and must include all PET data and all confirmation data for each clearing swap.

As noted above, CEA section 2(a)(13)(G)<sup>52</sup> requires each swap

<sup>49</sup> See 80 FR 52544, 52548.

<sup>50</sup> See 80 FR 52544, 52548–49.

<sup>51</sup> The Commission proposed adding § 45.8(i), which establishes the DCO as the reporting counterparty for all clearing swaps. This change is discussed in greater detail in Section II.E. of this release. The Commission also proposed conforming amendments to § 45.4(b)(1) and (2) to add the phrase “as reporting counterparty” after “derivatives clearing organization” to make clear that the DCO will be the reporting counterparty for purposes of those provisions. See Section II.C.

<sup>52</sup> 7 U.S.C. 2(a)(13)(G).

<sup>44</sup> See ISDA Oct. 30, 2015 Letter, at 3; LCH Oct. 30, 2015 Letter, at 2.

<sup>45</sup> CFTC Letter No. 15–51 (Sept. 18, 2015).

<sup>46</sup> See 17 CFR 39.12(b)(6). Clearing swaps would not be executed on or pursuant to the rules of a SEF or DCM as such swaps are created pursuant to the rules of a DCO.

<sup>47</sup> See 17 CFR 45.3(a)(2), (b)(2), (c)(1)(ii), (c)(2)(ii), and (d)(2).

<sup>48</sup> See 17 CFR 45.3(b)(1), (c)(1)(i), (c)(2)(i), and (d)(1).

(whether cleared or uncleared) to be reported to a registered SDR. Proposed revisions to paragraphs (a)–(d) and new paragraph (e) of § 45.3 will thus cover creation data reporting requirements for all swaps: Revised § 45.3(a) applies to each swap executed on or pursuant to the rules of a SEF or DCM, revised § 45.3(b)–(d) applies to “all off-facility swaps,” and proposed new § 45.3(e) would apply to clearing swaps. The proposed amendments to § 45.3(a)–(d) would thus exclude clearing swaps. Under the proposed amendments to § 45.3, a SEF/DCM or counterparty other than the DCO will not have swap data reporting obligations with respect to clearing swaps. Additionally, revised § 45.3(a)–(d) will govern the creation data reporting requirements for swaps, including swaps commonly known as “alpha” swaps, regardless of whether they later become original swaps by virtue of their acceptance for clearing.<sup>53</sup>

### iii. Proposed Removal of Provisions

As noted above, several provisions of existing § 45.3 impose certain creation data reporting requirements on a DCO in circumstances where a swap is accepted for clearing by a DCO. To ensure consistency with § 39.12(b)(6), the Commission proposed to remove these creation data reporting provisions (current §§ 45.3(a)(2),<sup>54</sup> (b)(2), (c)(1)(ii), (c)(2)(ii), and (d)(2)), and replacing them with new proposed § 45.3(e), as described above.<sup>55</sup>

Additionally, the Commission proposed to remove portions of §§ 45.3(b)(1), (c)(1)(i), (c)(2)(i), and (d)(1).<sup>56</sup> Previously, where both a DCO and reporting counterparty had obligations under § 45.3 for reporting creation data for the same swap, the reporting counterparty would be excused from reporting creation data if the swap is accepted for clearing before any PET data is reported by the

reporting counterparty. Under the proposed regulation, these excusal provisions are no longer necessary because the proposed rules require DCOs to report creation data only for clearing swaps, and not for swaps accepted for clearing (*i.e.*, original swaps).

### iv. Proposed Removal of Certain Confirmation Data Reporting Requirements

Existing §§ 45.3(a)–(d) requires the SEF/DCM (under § 45.3(a)) or the reporting counterparty (under §§ 45.3(b)–(d)) to report both PET and confirmation data in order to comply with creation data reporting obligations. The Commission believes that the confirmation data requirements for clearing swaps in new § 45.3(e) will provide the Commission with a sufficient representation of the confirmation data for a cleared swap transaction, because the original swap is extinguished upon acceptance for clearing and replaced by equal and opposite clearing swaps.

Accordingly, for swaps that are intended to be submitted to a DCO for clearing at the time of execution, the Commission proposed to amend §§ 45.3(a), (b), (c)(1)(iii), (c)(2)(iii), and (d)(2) to remove the existing confirmation data reporting requirements.<sup>57</sup>

### v. Proposed Revisions to § 45.3(f)—Allocations

The Commission proposed renumbering existing § 45.3(e), which governs creation data reporting for swaps involving allocation, as § 45.3(f).<sup>58</sup> The Commission also proposed replacing the phrase “original swap transaction” in §§ 45.3(f)(2) and 45.8(h)(1)(vii)(D), and in the PET data tables found in appendix 1 to part 45, with “initial swap transaction” to avoid confusion with the term “original swap,” which is defined in § 45.1.<sup>59</sup>

### vi. Proposed Addition of § 45.3(j): Choice of SDR

The Commission proposed adding § 45.3(j) in order to explicitly establish which entity has the obligation to choose the SDR to which the required swap creation data is reported.<sup>60</sup> New § 45.3(j) provides that: For swaps executed on or pursuant to the rules of a SEF or DCM (including swaps that may later become original swaps), the

SEF or DCM has the obligation to choose the SDR; for all other swaps (including off-facility swaps and/or clearing swaps) the reporting counterparty (as determined in § 45.8) will have the obligation to choose the SDR.<sup>61</sup>

Under the proposed addition of § 45.3(j) and the proposed revisions to § 45.10,<sup>62</sup> the entity with the obligation to report the initial required swap creation data will select the SDR to which all subsequent swap creation and continuation data for that swap will be reported by choosing the SDR to which such initial required swap creation data is reported. Thereafter, all required swap creation data and all required swap continuation data for a given swap will be reported to the same SDR used by the registered entity or counterparty.<sup>63</sup>

Finally, the Commission notes that it is aware of certain situations wherein SEFs, DCMs and reporting counterparties for off-facility swap transactions may report the part 43 data for a swap to an SDR prior to reporting the part 45 required creation data for the same swap. In such situations, the registered entity or reporting counterparty has effectively chosen the SDR for the swap prior to submitting the part 45 data, since, pursuant to revisions to § 45.10 adopted in this release, all swap data reported pursuant to parts 43 and 45 for a given swap is required to be reported to a single SDR.<sup>64</sup> For example, if a swap is executed on or pursuant to the rules of SEF A, and SEF A immediately upon execution reports the part 43 data to SDR B, prior to reporting part 45 data, SEF A has effectively chosen SDR B as the SDR for all required creation data for the swap, because revised § 45.10 requires that all part 43 and 45 swap data for a given swap must be reported to a single SDR.<sup>65</sup> Accordingly, in this example,

<sup>61</sup> Regulation 45.3(j) generally reflects the language included in the preamble to the original Final Part 45 Rulemaking, which provides 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. See 77 FR 2136, 2146 (Jan. 13, 2012). Under the new rule, the DCO will have the obligation to choose the SDR for clearing swaps.

<sup>62</sup> Revisions to § 45.10 are discussed in Section II.F below. As will be discussed in Section II.F below, by operation of § 45.10, DCOs will be obligated to report all required continuation data for original swaps to the registered SDR (as selected by the SEF, DCM, or reporting counterparty pursuant to proposed § 45.3(j)) to which required creation data for the swap was reported pursuant to §§ 45.3(a)–(d).

<sup>63</sup> See Proposed § 45.10. See also Section II.F.2, *infra*.

<sup>64</sup> *Id.*

<sup>65</sup> *Id.*

<sup>53</sup> Swaps created by a DCO under § 39.12(b)(6) are a type of clearing swap as defined in this release, and thus could not be executed on or pursuant to the rules of a SEF or DCM. Additionally, a DCO would not report creation data for a swap that was executed on or pursuant to the rules of a SEF or DCM, or for an off-facility swap that is submitted to the DCO for clearing, because, under § 45.3(a)–(d), the SEF/DCM or reporting counterparty would be responsible for reporting creation data for such swaps after execution. Under the revisions to § 45.3, a DCO will not have creation data reporting obligations for swaps that are not clearing swaps. The Commission notes that the revisions to § 45.3 in this release are consistent with the prior no action relief and guidance issued by Commission staff relating to firm or forced trades at DCOs. See CFTC Letter No. 15–51 (Sept. 18, 2015); CFTC No-Action Letter No. 14–119 (Sept. 29, 2014).

<sup>54</sup> The Commission is also renumbering § 45.3(a)(1) as § 45.3(a).

<sup>55</sup> See 80 FR 52544, 52548–49.

<sup>56</sup> See 80 FR 52544, 52549.

<sup>57</sup> See 80 FR 52544, 52549–50.

<sup>58</sup> The Commission also proposed renumbering § 45.3 paragraphs (f), (g), and (h) as paragraphs (g), (h), and (i), respectively.

<sup>59</sup> See 80 FR 52544, 52550.

<sup>60</sup> See 80 FR 52544, 52550.

part 45 required creation data must be reported to SDR B.

### vii. Proposed Removal of Expired Compliance Date References

The Commission proposed to remove the references to the expired compliance dates in §§ 45.3(b)(1)(i), (b)(1)(ii), (b)(2), (b)(2)(ii), (c)(1)(i)(A), (c)(1)(i)(B), (c)(2)(i)(A), (c)(2)(i)(B), (d)(1), and (d)(3), and in the introductory language to § 45.3.<sup>66</sup> These references to phase-in compliance dates are no longer necessary as they have expired.

### 3. Comments

The Commission received a number of comments in response to its proposed revisions to § 45.3. Many of these comments focused on the proposed reporting of creation data associated with clearing swaps and related reporting obligations concerning original swaps. Other comments addressed the new choice of SDR provision set out in § 45.3(j). And, finally, some commenters discussed the new clearing swaps rules in the context of principal model clearing.<sup>67</sup>

#### i. Creation Data Reporting for Clearing Swaps

With respect to the reporting of clearing swaps, commenters generally supported the Commission's proposal to require DCOs to report creation data for clearing swaps.<sup>68</sup> FSR and CMC agreed that the DCO is in the best position to report creation data for clearing swaps.<sup>69</sup> ISDA,<sup>70</sup> DTCC, and LCH also noted support for requiring DCOs to

report data for clearing swaps.<sup>71</sup> CME likewise supported the requirement for DCOs to report creation data for clearing swaps, recommending that the DCO be assigned all reporting obligations for original and clearing swaps.<sup>72</sup> Markit recommended an alternative approach whereby the reporting counterparty to the original swap would be permitted to choose whether it reports creation data for the clearing swaps, while allowing the reporting counterparty to delegate the reporting responsibilities to a DCO.<sup>73</sup>

LCH requested that the Commission change references to "execution of a clearing swap" in proposed § 45.3(e) to "creation of a clearing swap" in order to more clearly address compression events. LCH also suggested cross-referencing re-numbered § 45.3(f) to new § 45.3(e), to cover situations where block trades are allocated post-clearing.<sup>74</sup>

#### ii. Removal of Confirmation Data Reporting Requirements for Intended To Be Cleared Swaps

With respect to swaps that become original swaps, commenters were generally supportive of the Commission's proposal to eliminate the requirement for reporting confirmation data on intended to be cleared swaps.<sup>75</sup> FSR commented that the reporting of confirmation data for clearing swaps should provide sufficient confirmation data for a cleared swap transaction.<sup>76</sup> Markit, on the other hand, commented that eliminating the requirement for reporting confirmation data for swaps that are intended to be cleared, while still maintaining the requirement to report primary economic terms data, will not benefit reporting workflows and that there is little incremental cost to report confirmation data as reporting systems are set up to capture that information already.<sup>77</sup>

#### iii. Creation Data Reporting for Swaps That Become Original Swaps

While the proposed amendments to part 45, aside from the removal of the excusal provisions noted above, do not change creation data reporting requirements for swaps that become

original swaps, several commenters commented on which entity should be responsible for reporting creation data for swaps that will become original swaps. Some commenters suggested that if reporting of creation data for swaps that become original swaps continues, the DCO, rather than the reporting counterparty, should be responsible for reporting the creation data for that swap.<sup>78</sup> CME commented that assigning all the reporting obligations for original and clearing swaps to the DCO is a better and simpler way to address alpha swap reporting, and would eliminate the need to reconcile original and clearing swaps across SDRs.<sup>79</sup> CMC similarly commented that DCOs are best positioned to report on swaps that they accept or reject for clearing and should assume all reporting obligations for cleared swaps, including all reporting of swaps that are intended to be cleared.<sup>80</sup> AIMA likewise suggested that if the Commission continues to require the reporting of original swaps, assigning the reporting obligations to the DCO will remove reporting burdens and the risk of data fragmentation across SDRs.<sup>81</sup>

Other commenters recommended that the Commission continue requiring the reporting counterparty to report creation data for those swaps that will become original swaps.<sup>82</sup> LCH commented that the reporting counterparty should always be a party to the transaction and therefore, in the case of a swap that will become an original swap, the DCO would not be better suited than the SEF, DCM, or reporting counterparty to report the creation data.<sup>83</sup> Eurex suggested that assigning the reporting obligation of original swap creation data to the DCO may present a timeliness issue depending on when the DCO receives the necessary information from the counterparties.<sup>84</sup> ISDA likewise agreed that the obligation to report swaps that become original swaps should remain with the reporting counterparty for that swap.<sup>85</sup>

<sup>78</sup> See e.g., CME Oct. 30, 2015 Letter, at 2–3; CMC Oct. 30, 2015 Letter, at 2–3; AIMA Oct. 30, 2015 Letter, at 6; CEWG Oct. 30, 2015 Letter, at 3.

<sup>79</sup> See CME Oct. 30, 2015 Letter, at 3.

<sup>80</sup> See CMC Oct. 30, 2015 Letter, at 2.

<sup>81</sup> See AIMA Oct. 30, 2015 Letter, at 6.

<sup>82</sup> See ISDA Oct. 30, 2015 Letter, at 4; LCH Oct. 30, 2015 Letter, at 2; Eurex Oct. 30, 2015 Letter, at 4.

<sup>83</sup> See LCH Oct. 30, 2015 Letter, at 2.

<sup>84</sup> See Eurex Oct. 30, 2015 Letter, at 4.

<sup>85</sup> ISDA also commented in support of the Commission's proposal to remove the provisions in § 45.3 that excused a reporting counterparty from reporting creation data for a swap accepted for clearing before the primary economic terms reporting deadline. See ISDA Oct. 30, 2015 Letter, at 4.

<sup>66</sup> See 80 FR 52544, 52550.

<sup>67</sup> FSR requested that the Commission codify no action relief issued by the Division of Clearing and Risk and the Division of Market Oversight on April 5, 2013, providing relief to non-SD/MSPs from reporting requirements for swaps between wholly-owned affiliates. See FSR Oct. 30, 2015 Letter, at 5 (referencing CFTC No-Action Letter No. 13–09 (Apr. 5, 2013)). This request is beyond the scope of the NPRM and will not be addressed in this release.

<sup>68</sup> See FSR Oct. 30, 2015 Letter, at 2; CMC Oct. 30, 2015 Letter, at 2; ISDA Oct. 30, 2015 Letter, at 4; LCH Oct. 30, 2015 Letter, at 2; DTCC Oct. 30, 2015 Letter, at 3.

<sup>69</sup> See FSR Oct. 30, 2015 Letter, at 2; CMC Oct. 30, 2015 Letter, at 2.

<sup>70</sup> ISDA also commented that currently not all DCOs report clearing swaps in a consistent manner in instances where an affiliate of a clearing member enters into a swap that is subsequently cleared through its affiliated clearing member. ISDA suggested that the Commission make clear that the submission of a swap for clearing should not result in a change in the name of the counterparty that is reported to an SDR and that the report submitted by the DCO for the clearing swap has to reflect the relevant affiliate and not the clearing member as the legal counterparty to the clearing swap with the derivatives clearing organization. See ISDA Oct. 30, 2015 Letter, at 12. While noting this comment, the Commission declines to address this as beyond the scope of the NPRM.

<sup>71</sup> See ISDA Oct. 30, 2015 Letter, at 4; DTCC Oct. 30, 2015 Letter, at 3 (distinguishing between reporting obligations and the ability to select the SDR to which data related to clearing swaps is reported); LCH Oct. 30, 2015 Letter, at 2.

<sup>72</sup> See CME Oct. 30, 2015 Letter, at 3.

<sup>73</sup> See Markit Oct. 30, 2015 Letter, at 5.

<sup>74</sup> See LCH Oct. 30, 2015 Letter, at 2.

<sup>75</sup> See FSR Oct. 30, 2015 Letter, at 3; ISDA Oct. 30, 2015 Letter, at 4; EEI/EPSC Oct. 30, 2015 Letter, at 3.

<sup>76</sup> See FSR Oct. 30, 2015 Letter, at 3.

<sup>77</sup> See Markit Oct. 30, 2015 Letter, at 2–3.

Some commenters suggested that the reporting of any creation data for swaps that will become original swaps is unnecessary.<sup>86</sup> AIMA commented that eliminating reporting for swaps that are intended to be cleared at the time of execution will significantly reduce complexity in the reporting regime and streamline the reported data.<sup>87</sup> AIMA also commented that the Commission's proposed reporting approach for original swaps will not reduce data fragmentation.<sup>88</sup> Similarly, EEI/EPISA suggested that there is little to no benefit to original swap reporting for swaps that are intended to be cleared at the time of execution and that counterparties should not be required to report any creation data for such swaps.<sup>89</sup> Other commenters, in response to the IDWG Request for Comment, supported the continued reporting of creation data for swaps that will become original swaps.<sup>90</sup>

#### iv. Choice of SDR Provisions

The Commission received a number of comments on its proposal regarding the selection of the SDR to which the required swap creation data should be reported. Some commenters were supportive of the Commission's proposed addition of § 45.3(j) and proposed modifications to § 45.10 relating to the choice of the SDR for a particular swap. As discussed below, other commenters suggested modifications to the Commission's proposal and changes to the manner in which the SDR is selected for a particular swap.

With respect to clearing swaps, commenters were divided as to which entity should have the ability to select the SDR. FSR, LCH, and ISDA all supported allowing the DCO to select the SDR for purposes of reporting creation data for clearing swaps, as the DCO has the sole obligation to report clearing swaps.<sup>91</sup> CME and LedgerX similarly supported the proposal to allow DCOs to select the SDR for

clearing swaps.<sup>92</sup> CME supports the Commission's proposal to assign all clearing swap reporting obligations, and the right to select the SDR to which it reports, to the DCO. CME also recommended that the Commission assign all original swap reporting obligations, and associated SDR selection rights, to the DCO, which would, in CME's opinion, ensure that all data for a cleared swap transaction is housed in the same SDR, thereby avoiding data fragmentation.<sup>93</sup>

Other commenters suggested that the reporting counterparty to the swap that becomes the original swap should select the SDR to which the clearing swaps are reported. DTCC commented that the DCO for a clearing swap should have the obligation to report the clearing swap to the SDR selected by the reporting counterparty to the swap that became the original swap, or selected by the SEF or DCM for on-facility swaps.<sup>94</sup> DTCC commented that this "single SDR approach" would be vital for providing a full audit trail and the ability to efficiently aggregate data.<sup>95</sup> DTCC also commented that allowing the DCO to select the SDR for clearing swaps creates a competition problem due to vertically integrated SDRs and DCOs.<sup>96</sup> DTCC explained that permitting a DCO to report to an affiliated SDR when the original swap data had been reported to another SDR, allows DCOs to bundle services and further entrenches DCOs' vertical integration of trade execution, clearing, and data reporting.<sup>97</sup> Markit recommended that the Commission allow the reporting counterparty to the swap that becomes the original swap to select the SDR to which the clearing swap is reported, while also allowing that reporting counterparty to delegate the selection of the swap data repository to the DCO. Markit commented that this counterparty choice approach would result in a more competitive DCO marketplace.<sup>98</sup>

Other commenters suggested that, for on-facility swaps that are not cleared by a DCO, the party responsible for reporting continuation data for the swap should not be bound by the SEF or DCM's choice of SDR for the reporting of creation data.<sup>99</sup> ISDA commented that in such cases the selection of the SDR should not be assigned to the entity that

has the first obligation to report, but rather should be assigned to the entity that has the longest, recurring, or most frequent obligation to report.<sup>100</sup>

#### v. Reporting of Principal Model Cleared Swaps

Finally, a few comments focused on swaps that are cleared through a principal, rather than agency, model. Eurex commented that it is not clear under the proposal which entity is to be reported as the counterparty to the DCO with regard to a clearing swap in the principal model.<sup>101</sup>

#### 4. Final Rule

The Commission has considered the comments that it received in response to the proposed changes to § 45.3. As discussed above, some of the proposed changes to § 45.3 received widespread support among commenters, while other proposed changes received both support and objection from commenters. The Commission has decided to adopt the changes to § 45.3 as proposed in the NPRM for the following reasons.<sup>102</sup>

##### i. Creation Data Reporting for Clearing Swaps

As discussed above, the Commission's proposal to require DCOs to report creation data for clearing swaps received support from commenters.<sup>103</sup> The Commission agrees with these commenters that the DCO is in the best position to report creation data for clearing swaps. As for Markit's proposed counterparty choice alternative, the Commission recognizes the flexibility that Markit's proposal could offer parties to the clearing swap. However, the Commission believes Markit's proposal would likely result in additional complexity in the reporting process and could obscure, to the Commission, which entity has the ultimate responsibility for reporting the clearing swap. After considering the comments received, the Commission continues to believe that the DCO is the entity with the easiest and quickest access to full information with respect to PET data and confirmation data for clearing swaps. Commission regulation

<sup>86</sup> See AIMA Oct. 30, 2015 Letter, at 2–6; EEI/EPISA Oct. 30, 2015 Letter, at 3; CEWG Oct. 30, 2015 Letter, at 2.

<sup>87</sup> See AIMA Oct. 30, 2015 Letter, at 3.

<sup>88</sup> See AIMA Oct. 30, 2015 Letter, at 4 (noting that reporting original swap creation data to one SDR and reporting clearing swap data to a different SDR may undermine data quality for the Commission's supervisory purposes).

<sup>89</sup> See EEI/EPISA Oct. 30, 2015 Letter, at 3.

<sup>90</sup> See NPRM, 80 FR 52544, 52549 at nn. 37–39 (citing DTCC May 27, 2014 Letter at 17–18; AFR May 27, 2014 Letter at 5; Markit May 27, 2014 Letter at 25; TR SEF May 27, 2014 Letter at 10).

<sup>91</sup> See FSR Oct. 30, 2015 Letter, at 2; LCH Oct. 30, 2015 Letter, at 2; ISDA Oct. 30, 2015 Letter, at 4.

<sup>92</sup> See CME Oct. 30, 2015 Letter, at 1–2; LedgerX Oct. 30, 2015 Letter, at 1.

<sup>93</sup> See CME Oct. 30, 2015 Letter, at 2–3.

<sup>94</sup> See DTCC Oct. 30, 2015 Letter, at 3.

<sup>95</sup> See *id.* at 4.

<sup>96</sup> See *id.* at 7.

<sup>97</sup> See *id.*

<sup>98</sup> See Markit Oct. 30, 2015 Letter, at 5.

<sup>99</sup> See ISDA Oct. 30, 2015 Letter, at 4–5; JBA Oct. 30, 2015 Letter, at 1.

<sup>100</sup> See ISDA Oct. 30, 2015 Letter, at 4–5.

<sup>101</sup> See Eurex Oct. 30, 2015 Letter, at 9; see also FSR Oct. 30, 2015 Letter, at 5.

<sup>102</sup> The Commission has made one non-substantive conforming change to final § 45.3(b), changing the phrase "exception or exemption from the clearing requirement" to "exception to, or exemption from, the clearing requirement," to make this provision consistent with other uses of the phrase throughout § 45.3.

<sup>103</sup> See FSR Oct. 30, 2015 Letter, at 2; CMC Oct. 30, 2015 Letter, at 2; ISDA Oct. 30, 2015 Letter, at 4; DTCC Oct. 30, 2015 Letter, at 3; LCH Oct. 30, 2015 Letter, at 2.

§ 39.12(b)(6) requires DCOs to have rules providing that, upon acceptance of a swap by the DCO for clearing, the original swap is extinguished and replaced by an equal and opposite swap between the DCO and each clearing member acting as either principal for a house trade or agent for a customer trade.<sup>104</sup> Because the DCO must replace an original swap with clearing swaps when accepting the original swap for clearing, the Commission believes that the DCO should be the entity that reports creation data for clearing swaps, and adopts its proposal to require DCOs to report creation data for clearing swaps.

The Commission notes LCH's comments that, when establishing the timing requirement for reporting clearing swaps that do not replace original swaps in § 45.3(e), the term "creation of a clearing swap" may better capture compression events than "execution of a clearing swap." The Commission believes that the phrase "execution of a clearing swap," for purposes of part 45, is sufficiently clear to cover reporting obligations for all clearing swaps that do not replace original swaps. The Commission also believes that the adopted reporting requirements for clearing swaps would cover post-clearing allocations of block trades raised by LCH. If a block trade is allocated after clearing, then any allocations of that block would have a DCO as one counterparty. Thus, such post-allocation swaps would be clearing swaps and must be reported by the DCO pursuant to § 45.3(e).

#### ii. Removal of Confirmation Data Reporting Requirements for Intended To Be Cleared Swaps

Under the new rules, SEFs/DCMs and reporting counterparties will continue to be required to report PET data as part of their creation data reporting, but will be required to report confirmation data only for swaps that, at the time of execution, are not intended to be submitted to a DCO for clearing. For swaps that, at the time of execution, are intended to be submitted to a DCO for clearing, SEFs/DCMs and reporting counterparties will not be required to report confirmation data. If the swap is accepted for clearing by a DCO, the DCO will be required to report confirmation data for the clearing swaps pursuant to proposed § 45.3(e).<sup>105</sup>

With respect to swaps that will become original swaps, the Commission received widespread support of the proposed elimination of the requirement to report confirmation data associated with these swaps.<sup>106</sup> One commenter did suggest that there is little incremental cost to continuing to require reporting of confirmation data for swaps that will become original swaps.<sup>107</sup> However, the Commission continues to believe that the confirmation data requirements for clearing swaps provide the Commission with a sufficient representation of the confirmation data for a cleared swap transaction, as the original swap is extinguished upon acceptance for clearing and replaced by equal and opposite clearing swaps. Accordingly, the Commission is adopting its proposal to remove the confirmation data reporting requirement for swaps that are intended to be cleared at the time of execution.

#### iii. Creation Data Reporting for Swaps That Become Original Swaps

With the exception of the removal of excusal provisions, the Commission has not proposed to change the existing requirement to report creation data for swaps that will become original swaps. As noted in the NPRM, CEA section 2(a)(13)(G) requires each swap, whether cleared or uncleared, to be reported to a registered SDR.<sup>108</sup> The Commission did, however, receive some comments urging the Commission to eliminate the existing requirement to report swaps that will become original swaps. The Commission also received, in response to the IDWG Request for Comment, comments in support of continued reporting of creation data for swaps that will become original swaps.<sup>109</sup>

Having reviewed the comments regarding reporting of swaps that become original swaps, the Commission continues to interpret CEA section 2(a)(13)(G) as requiring all swaps to be reported, which would include swaps that become original swaps as distinct swaps from resulting clearing swaps under § 39.12(b)(6). Further, the Commission continues to believe that original swaps contain essential information regarding the origins of cleared swap transactions for market surveillance and audit-trail purposes,

including but not limited to the identity of the original counterparties, the execution venue, and the timestamp of the original transaction between the original counterparties. Such essential information could not be easily determined if only resulting clearing swaps were to be reported. The Commission's ability to trace the history of a cleared swap transaction from execution between the original counterparties to clearing novation relies on this information. The Commission also notes that the continued reporting of swaps that become original swaps is consistent with the SEC's proposed Regulation SBSR—Reporting and Dissemination of Security-Based Swap Information.<sup>110</sup> Finally, the continued reporting of original swaps, including original swap terminations, will aid the Commission's ability to analyze cleared swap activity and review swap activity for compliance with the clearing requirement. For these reasons the Commission, in this final rule, continues to require reporting of swaps that will become original swaps.

The Commission received divided comments as to which entity should be responsible for reporting creation data for those swaps that will become original swaps. Some commenters suggested that the DCO should be the reporting counterparty,<sup>111</sup> while other commenters recommended that the reporting counterparty report creation data for those swaps that will become original swaps.<sup>112</sup> After careful consideration of the comments received on this issue, the Commission believes that the creation data reporting requirements for those swaps that will become original swaps should remain as they currently exist, aside from the removal of excusal provisions noted above. The Commission recognizes that reporting counterparties and registered entities have invested substantial time and resources to report swaps (both cleared and not cleared) to SDRs and that DCOs have invested substantial resources to report clearing swaps. The Commission believes that maintaining the existing requirement for the reporting counterparty, rather than for the DCO, to report creation data of the swap that will become an original swap will help to prevent disruption of established industry workflows. The Commission also continues to believe that the SEF/DCM or reporting

<sup>106</sup> See FSR Oct. 30, 2015 Letter, at 3; ISDA Oct. 30, 2015 Letter, at 4; EEI/EPSA Oct. 30, 2015 Letter, at 3.

<sup>107</sup> See Markit Oct. 30, 2015 Letter, at 2–3.

<sup>108</sup> See 80 FR 52544, 52548.

<sup>109</sup> See NPRM, 80 FR 52544, 52549, nn. 37–39 (citing DTCC May 27, 2014 Letter at 17–18; AFR May 27, 2014 Letter at 5; Markit May 27, 2014 Letter at 25; TR SEF May 27, 2014 Letter at 10).

<sup>110</sup> See Regulation SBSR, 80 FR 14740.

<sup>111</sup> See CME Oct. 30, 2015 Letter, at 2–3; CMC Oct. 30, 2015 Letter, at 2–3; AIMA Oct. 30, 2015 Letter, at 6; CEWG Oct. 30, 2015 Letter, at 2.

<sup>112</sup> See ISDA Oct. 30, 2015 Letter, at 4; LCH Oct. 30, 2015 Letter, at 2; Eurex Oct. 30, 2015 Letter, at 4.

<sup>104</sup> See 17 CFR 39.12(b)(6).

<sup>105</sup> The Commission notes that this change only impacts certain confirmation data reporting and recordkeeping requirements in § 45.3, and does not alter existing obligations to generate or exchange confirmations under other Commission regulations.

counterparty has the easiest and fastest access to initial creation data for swaps that become original swaps.

As discussed in its Final Part 45 Rulemaking, the Commission believes that requiring all swaps that become original swaps to be reported only to SDRs chosen by the DCO of the resulting clearing swaps could create an uneven playing field between DCO affiliated SDRs and non-DCO affiliated SDRs.<sup>113</sup> Likewise, if the reporting counterparty or SEF/DCM were to report creation data, or select the SDR to which such data is reported, an SDR in which swap dealers have an ownership interest may obtain a dominant market position. This Final Rule avoids injecting the Commission into a market decision by maintaining the requirement that creation data for swaps that become original swaps is reported by the reporting counterparty for that swap, or the SEF/DCM, and the resulting clearing swaps are reported by the DCO.

The Commission acknowledges the data fragmentation concerns raised by those that recommend DCOs report original swap creation data, however, the Commission also recognizes that requiring the DCOs, rather than the original reporting counterparty, to report original swap creation data may also present challenges. For example, Eurex noted that there could be a timeliness issue depending on when the DCO receives necessary information from counterparties to report creation data.<sup>114</sup> The Commission also is concerned that, should DCOs report original swaps, potential delays in clearing could delay real-time swaps reporting pursuant to part 43. The Commission believes that accurate and timely reporting of the required data fields by all parties, in particular the clearing swap PET fields and data elements specific to terminations of original swaps, will alleviate data fragmentation concerns for those situations where the original swap and clearing swaps are reported to different SDRs.

#### iv. Choice of SDR Provisions

The Commission received a variety of comments on its proposed addition of § 45.3(j) and modifications to § 45.10 regarding the choice of the SDR for a particular swap. With respect to clearing swaps, some commenters recommended that the DCO should select the SDR,<sup>115</sup>

while other commenters suggested the reporting counterparty to the original swap should select the SDR to which the clearing swap must be reported.<sup>116</sup> The Commission has considered these comments and continues to believe, as discussed above, that placing the obligation to choose the SDR on the registered entity or counterparty that is required to first report the required swap creation data, rather than on another entity, will result in more efficient data reporting. Allowing the first entity to report data on a swap to choose the SDR will allow reporting entities to select an SDR to which they have established connections; giving another entity the ability to choose the SDR could require the first reporting entities to connect to multiple SDRs. The Commission also believes allowing the first reporting registered entity or counterparty to choose the SDR will also promote competition among SDRs to provide SDR services to a broad array of reporting entities.

Requiring this method of SDR selection also avoids inserting anyone other than a party to the swap (or facility where the transaction is executed) into the decision as to how a registered entity or counterparty fulfills its regulatory obligation to report initial required swap creation data. As with the “first-touch” approach taken with respect to the creation of USIs in part 45,<sup>117</sup> the Commission believes that the entity with the first reporting obligation should select the SDR for that report. The Commission believes that this method of SDR selection will avoid delays in real-time reporting for part 43 purposes. If DCOs were to select the SDR for an original swap, the DCO would not be in a position to make such selection until after a swap was accepted for clearing. Any delays in clearing would translate into delays in reporting for both part 43 real-time reporting and part 45 reporting.

The registered entity or counterparty that is required to report a swap pursuant to § 45.8 may select an SDR to which its technological systems are most suited or to which it already has an established relationship, providing for the efficient and accurate reporting of swap data. The Commission notes that this Final Rule does not prohibit a registered entity or counterparty from choosing an SDR based on consideration

*original swaps are reported*); LedgerX Oct. 30, 2015 Letter, at 1.

<sup>116</sup> See DTCC Oct. 30, 2015 Letter, at 3; Markit Oct. 30, 2015 Letter, at 5 (Markit also suggested the counterparty have the option to delegate the selection of the SDR to the DCO).

<sup>117</sup> See Final Part 45 Rulemaking, 77 FR 2136, 2158.

of market preference or other factors, however, the obligation to choose the SDR will rest solely with the registered entity or counterparty set forth in amended § 45.8. The Commission recognizes that this may result in original swaps and clearing swaps being reported to different SDRs, however, the Commission believes that the required data fields, such as original swap USI included in clearing swap reporting, and clearing swap USIs included in original swap reporting, will allow the Commission to efficiently and accurately link data across SDRs and perform its regulatory mandate.

The Commission has also noted ISDA’s proposed alternative that the entity with the “longest, recurring, or most frequent obligation to report” be given choice of SDR. In particular, ISDA expressed concern that market participants would be required, due to the made available to trade mandate, to trade certain swaps at a particular SEF, and therefore be required to report to that SEF’s chosen SDR. However, the Commission notes that any swaps made available to trade would be subject to the clearing mandate. As discussed above, counterparties to cleared, on-facility swaps would likely have no reporting obligations.<sup>118</sup> Therefore, the concern raised by ISDA would not likely impact a large percentage of on-facility swaps. Moreover, ISDA notes that its proposed alternative would require amending various other provisions in part 45, including assignment of reporting counterparty designation and USI creation. Additionally, the Commission notes that the “longest, recurring, or most frequent obligation to report” may be difficult to determine at the outset of a swap, creating potential confusion as to who could select the SDR. Because amended § 45.3(j) codifies current industry practice,<sup>119</sup> the Commission believes the choice of SDR provisions adopted in this final rule create the least disruption in the market while achieving the goal of consistent and timely swaps reporting.

#### v. Reporting of Principal Model Clearing Swaps

The Commission has noted comments from Eurex on reporting of clearing swaps under the principal clearing model. The Commission is aware of issues surrounding the reporting of principal model clearing swaps, but is

<sup>118</sup> See *supra*, n. 26, discussing reporting obligations for counterparties to cleared, on-facility swaps.

<sup>119</sup> See NPRM, 80 FR 52544, 52550.

<sup>113</sup> See 77 FR 2136, 2149.

<sup>114</sup> See Eurex Oct. 30, 2015 Letter, at 4.

<sup>115</sup> See FSR Oct. 30, 2015 Letter, at 2; LCH Oct. 30, 2015 Letter, at 2; ISDA Oct. 30, 2015 Letter, at 4; CME Oct. 30, 2015 Letter, at 2–3 (CME also suggested that the DCO select the SDR to which

not providing further guidance at this time.

### C. Swap Data Reporting: Continuation Data—Amendments to § 45.4

#### 1. Existing § 45.4

Regulation 45.4 governs the reporting of swap continuation data to an SDR during a swap's existence through its final termination or expiration. This provision establishes the manner in which continuation data, including life cycle event data or state data, and valuation data,<sup>120</sup> must be reported (§ 45.4(a)), and sets forth specific continuation data reporting requirements for both cleared (§ 45.4(b)) and uncleared (§ 45.4(c)) swaps. For cleared swaps, § 45.4(b) currently requires that life cycle event data or state data be reported by the DCO, and that valuation data be reported by both the DCO and by the reporting counterparty (if the reporting counterparty is an SD or MSP).

For uncleared swaps, § 45.4(c) requires the reporting counterparty to report all required swap continuation data, including life cycle event data or state data, and valuation data.

#### 2. Proposed Amendments to § 45.4

The Commission understands that § 45.4 could be clarified regarding continuation data reporting responsibilities for each of the swaps involved in a cleared swap transaction. Accordingly, the Commission proposed several amendments to § 45.4 to better delineate the continuation data reporting requirements associated with each swap involved in a cleared swap transaction.<sup>121</sup> In particular, the Commission proposed conforming changes to existing § 45.4(a), revisions to existing § 45.4(b) and to existing § 45.4(c) (proposed to be renumbered as § 45.4(d)), and the addition of new § 45.4(c). Each proposed amendment is discussed in detail below.

#### i. Proposed Conforming Changes to § 45.4(a)

The Commission proposed to revise the heading of § 45.4(a) to read

<sup>120</sup> “Required swap continuation data” is defined in § 45.1 and includes “life cycle event data” or “state data” (depending on which reporting method is used) and “valuation data.” Each of these data types is defined in § 45.1. “Life cycle event data” means all of the data elements necessary to fully report any life cycle event. “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. “Valuation data” means all of the data elements necessary to fully describe the daily mark of the transaction, pursuant to CEA section 4s(h)(3)(B)(iii), and to § 23.431 if applicable. 17 CFR 45.1.

<sup>121</sup> See 80 FR 52544, 52551.

“Continuation data reporting method generally” to reflect that the continuation data reporting method requirements in § 45.4(a) apply to all swaps, regardless of asset class or whether the swap is an original swap, clearing swap or uncleared swap, whereas the continuation data reporting requirements in proposed § 45.4(b), (c), and (d) would apply to clearing swaps, original swaps, and uncleared swaps, respectively.<sup>122</sup>

#### ii. Proposed Revisions to § 45.4(b)

Regulation 45.4(b) currently governs continuation data reporting obligations for “cleared swaps,” but does not distinguish among the different swaps involved in a cleared swap transaction (*i.e.* original and clearing swaps). The Commission thus proposed to revise the introductory language of § 45.4(b) to replace the terms “cleared swaps” and “swaps cleared by a derivatives clearing organization,” which were not defined in the Final Part 45 Rulemaking, with the defined term “clearing swaps.”<sup>123</sup>

The Commission proposed to remove existing § 45.4(b)(2)(ii), which requires a reporting counterparty that is an SD or MSP to report valuation data for cleared swaps daily, in addition to the valuation data that is required to be reported by the DCO pursuant to § 45.4(b)(2)(i). For clearing swaps, the DCO would be the only swap counterparty required to report continuation data, including valuation data.<sup>124</sup>

#### iii. Proposed Addition of § 45.4(c): Continuation Data Reporting for Original Swaps

Existing § 45.4(c) governs continuation data reporting for uncleared swaps. The Commission proposed renumbering § 45.4(c) as § 45.4(d) (for reasons discussed below), and proposed the addition of a new § 45.4(c), which would set forth the continuation data reporting requirements for original swaps.<sup>125</sup>

Specifically, proposed § 45.4(c) would require a DCO to report all required continuation data for original swaps, including original swap terminations, to the original swap SDR pursuant to

§ 45.3(a) through (d).<sup>126</sup> As proposed, § 45.4(c) would also reference the existing requirement that all continuation data must be reported in the manner provided in § 45.13(b), and that the SDR, in order to comply with § 49.10, must also “accept and record” such data, including original swap terminations.<sup>127</sup> The proposed addition of a reference to § 49.10 is consistent with an IDWG commenter's request for clarification regarding the obligation of the SDR to accept and process the termination message from the DCO.<sup>128</sup>

As proposed, § 45.4(c)(1) would require a DCO to report all life cycle event data for an original swap on the same day that any life cycle event occurs, or to report all state data for the original swap, daily.

The continuation data reporting requirements of proposed § 45.4(c)

<sup>126</sup> As discussed above, under the proposed revisions to §§ 45.3(a)–(d), a SEF/DCM or reporting counterparty would be required to report creation data for all swaps except clearing swaps (including for swaps that later become original swaps by virtue of their acceptance for clearing by a DCO). See Section II.B.4., *supra*. See also §§ 45.10 (a)–(c) (providing that all required swap continuation data reported for a swap must be reported to the same SDR to which required swap creation data was first reported pursuant to § 45.3). The Commission notes that pursuant to existing regulation § 45.13, each reporting entity and/or counterparty is required to use the facilities, methods, or data standards provided or required by the SDR to which the entity or counterparty reports the data. 17 CFR 45.13.

<sup>127</sup> SDR regulation § 49.10(a) provides that an SDR shall accept and promptly record all swap data in its selected asset class and other regulatory information that is required to be reported pursuant to part 45 and part 43 by DCMs, DCOs, SEFs, SDs, MSPs and/or non-swap dealer/non-major swap participant counterparties. Section 49.10(a)(1) further provides that for purposes of accepting all swap data as required by part 45 and part 43, the registered SDR shall adopt policies and procedures, including technological protocols, which provide for electronic connectivity between the SDR and DCMs, DCOs, SEFs, SDs, MSPs and/or certain other non-swap dealer/non-major swap participant counterparties who report such data. It further states that the technological protocols established by a SDR shall provide for the receipt of swap creation data, swap continuation data, real-time public reporting data, and all other data and information required to be reported to such SDR. Additionally, § 49.10(a)(1) provides that the SDR shall ensure that its mechanisms for swap data acceptance are reliable and secure. 17 CFR 49.10. The Commission also proposed conforming changes to the introductory language of § 45.3 and § 45.4 to make clear that all required swap creation and continuation data must be reported to the relevant SDR in the manner provided in § 45.13, and pursuant to § 49.10, which sets forth rules governing the acceptance and recording of such data.

<sup>128</sup> See ITV May 27, 2014 Letter, at 4 (noting that failure to accept the termination message can produce inaccurate swap data due to double reporting and that the rejection of the termination message could distort notional amounts and market risks, and stating that amending the reporting rules to place the reporting obligation on the DCO for intended to be cleared swaps simplifies the reporting flows and places the responsibility on the party best-suited to accurately report cleared swap data).

<sup>122</sup> See 80 FR 52544, 52551.

<sup>123</sup> See 80 FR 52544, 52551–52.

<sup>124</sup> This proposal would codify certain no-action letters issued by the Commission's Division of Market Oversight. See CFTC No-Action Letter No. 12–55 (Dec. 17, 2012); CFTC No-Action Letter No. 13–34 (Jun. 26, 2013); and CFTC No-Action Letter No. 14–90 (Jun. 30, 2014). Staff no-action relief from the requirements of § 45.4(b)(2)(ii) has been in effect since the initial compliance date for part 45 reporting.

<sup>125</sup> See 80 FR 52544, 52552.

would apply to a swap that has been submitted to a DCO for clearing and that becomes an original swap by virtue of the DCO's acceptance of such swap for clearing. The DCO's continuation data reporting obligations for a swap to which it is not a counterparty (*i.e.*, for swaps other than clearing swaps) will only be triggered if a swap is accepted for clearing (and thus becomes an original swap). If a swap is submitted to a DCO for clearing and is not accepted for clearing, then the DCO will not have continuation data reporting obligations for the swap, because the swap is not an original swap or a clearing swap.

#### iv. Proposed Additional Continuation Data Fields To Be Reported by DCOs

Proposed § 45.4(c) would require DCOs to report additional data fields when reporting continuation data on original swaps.<sup>129</sup> These fields would be the LEI of the SDR to which the DCO reported clearing swaps replacing the original swap; the USI of the original swap being replaced; and the USIs of each clearing swap that is replacing the original swap. As discussed in the NPRM,<sup>130</sup> the Commission proposed these additional data fields to enable the Commission to track the complete life of a cleared swap transaction. Inclusion of these data fields in continuation data on the original swap, taken in conjunction with existing requirements to reporting original swap information in reports clearing swaps, will aid the Commission in linking the original swap and all clearing swaps replacing it.

#### v. Proposed Revisions to § 45.4(d)

As mentioned above, the Commission proposed to renumber § 45.4(c) (Continuation data reporting for uncleared swaps) as § 45.4(d). The Commission also proposed to amend § 45.4(d), which applies to all swaps that are not cleared by a derivatives clearing organization, to add the phrase "including swaps executed on or pursuant to the rules of a swap execution facility or designated contract market."<sup>131</sup> This proposed change would clarify the existing requirement that reporting counterparties report all required swap continuation data for an uncleared swap, irrespective of whether the swap was executed off-facility (in which case the reporting counterparty must report required swap creation data), or whether the swap was executed on or pursuant to the rules of a SEF or DCM (in which case the SEF or DCM

must report the required swap creation data).<sup>132</sup>

Finally, the Commission proposed to modify the introductory language to § 45.4 and § 45.4(d)(1)(ii)(A) to remove outdated references to compliance dates that have already expired.<sup>133</sup>

#### 3. Comments Received

The Commission received numerous comments on its proposed revisions to § 45.4.<sup>134</sup> Below is a summary of comments for each of the primary revisions and additions to § 45.4.

##### i. Comments on Proposed Revisions to § 45.4(b)

The proposed amendment to § 45.4(b)(2), requiring only DCOs to submit valuation data for clearing swaps, was widely supported in the comment letters. Although one commenter contended that valuation data from SD/MSP swap counterparties is valuable information and that the Commission should require such information from SD/MSP counterparties for all swaps, cleared or uncleared,<sup>135</sup> many commenters to the IDWG Request for Comment and NPRM stated that only the DCO should have the responsibility to report valuation data for cleared swaps, and that the Commission should eliminate the requirement for an SD or MSP to report valuation data for cleared swaps.<sup>136</sup> One commenter noted that valuation data and mark-to-market value data provided by DCOs are sufficient for the Commission to understand clearing swap valuations, particularly because the DCO's valuation method is the industry standard.<sup>137</sup>

<sup>129</sup> See 17 CFR 45.3(b)–(d) (creation data reporting requirements for off-facility swaps) and 17 CFR 45.3(a) (creation data reporting requirements for swaps executed on or pursuant to the rules of a SEF or DCM). See also Section II.B.4.iii *supra*.

<sup>130</sup> See 80 FR 52544, 52553.

<sup>131</sup> The Commission did not receive any comment directly addressing the conforming changes to § 45.4(a) or renumber and amended § 45.4(d). The Commission received a comment from FSR on continuation data for amortizing swaps. See FSR Oct. 30, 2015 Letter, at 4. Because the NPRM was limited to revisions of § 45.4 as it relates to clearing swaps, FSR's request is beyond the scope of this rulemaking.

<sup>132</sup> See Markit May 27, 2014 Letter, at 10–11 (arguing that the Commission might receive valuable information from valuations reported by counterparties).

<sup>133</sup> See ABA May 27, 2014 Letter, at 2; CME May 27, 2014 Letter, at 9–10; FSR May 27, 2014 Letter, at 2; ITV May 27, 2014 Letter, at 2, 10, 15; ISDA May 27, 2014 Letter, at 13–14; JBA May 27, 2014 Letter, at 2–3; MFA May 27, 2014 Letter, at 2, 4; NGSMA May 27, 2014 Letter, at 4–5; AIMA Oct. 30, 2015 Letter, at 6; ISDA Oct. 30, 2015 Letter, at 5; JBA Oct. 30, 2015 Letter, at 2; FSR Oct. 30, 2015 Letter, at 3.

<sup>134</sup> See Eurex Oct. 30, 2015 Letter, at 6. Eurex also stated that information on posted collateral could

##### ii. Comments on Proposed Revisions to § 45.4(c)

Commenters were split on support of proposed § 45.4(c), which would require the DCO to report continuation data on the original swaps once they are accepted for clearing to the SDR to which the original swap was originally reported. ISDA strongly supported the revision, stating that it would eliminate the issue of cleared "alpha" swaps that had not been terminated, which negatively affects data quality. ISDA commented that DCOs should be allowed to report continuation data as either lifecycle event data or state data.<sup>138</sup> DTCC, in its response to the IDWG Request for Comment, also supported requiring DCOs to report terminations of original swaps.<sup>139</sup> However, DTCC commented that some DCOs fail to submit termination of original swaps to DTCC according to DTCC's technical standards.<sup>140</sup> CEWG commented that DCOs were in the best position to report all data on original and clearing swaps, although it believes the original swap should not be reported.<sup>141</sup>

CME commented that under the proposed division of reporting obligations for original swaps and clearing swaps, DCOs are dependent on original swap counterparties providing sufficient information on the original swaps to fulfill reporting obligations on terminations of the original swap.<sup>142</sup> CME noted that counterparties rarely provided this information, meaning that DCOs cannot effectively terminate original swaps. As an alternative, CME proposed that DCOs should be the reporting party for creation and continuation data for both original and clearing swaps.<sup>143</sup>

In contrast, some commenters recommended that the clearing member, and not the DCO, should report termination of the original swap to the

be a useful data point for the Commission, but the original counterparties would be in a better position than the DCO to report such information. Eurex also stated that DCOs could provide information on margin, but that such data would require more effort.

<sup>138</sup> See ISDA Oct. 30, 2015 Letter, at 5.

<sup>139</sup> See DTCC May 27, 2014 Letter, at 7 (stating that when an alpha swap is novated, the Commission should require a DCO to submit information about the beta and gamma swaps in addition to the termination notice for the alpha swap).

<sup>140</sup> See DTCC Oct. 30, 2015 Letter, at 8.

<sup>141</sup> See CEWG Oct. 30, 2015 Letter, at 3. See Section II.B.3, above, for discussion of CEWG's and other commenters' positions on reporting of creation data on an original swap.

<sup>142</sup> See CME Oct. 30, 2015 Letter, at 3.

<sup>143</sup> See CME Oct. 30, 2015 Letter, at 3.

<sup>129</sup> See 80 FR 52544, 52552–53.

<sup>130</sup> See 80 FR 52544, 52552–53.

<sup>131</sup> See 80 FR 52544, 52553.

SDR.<sup>144</sup> Eurex stated that the clearing member would already have information on the original swap and a connection to the SDR where the original swap was reported, putting the original reporting party in the best position to report a termination.<sup>145</sup> LCH commented that having the original reporting party report any continuation events would avoid reporting gaps on events occurring between creation and clearing.<sup>146</sup> LCH commented that requiring DCOs to submit cancellations of original swaps would be inconsistent with reporting obligations under the European Markets Infrastructure Regulation (“EMIR”).<sup>147</sup> LCH also commented that the choice of original swap SDR could become an eligibility criterion for clearing, and that DCOs could potentially reject swaps from clearing based on the original swap SDR.<sup>148</sup> Eurex and LCH both noted that the requirement would force DCOs to connect to all registered SDRs and report terminations according to the technical requirements of each SDR.<sup>149</sup> As an alternative, Eurex proposed that DCOs be allowed to select the SDR to which they report the termination of the original swap.<sup>150</sup>

Regarding timing of reporting continuation data for original swaps, ISDA supported the provision in new § 45.4(c) allowing DCOs to report continuation data on original swaps daily and via either lifecycle event data or state data.<sup>151</sup> The Japanese Bankers Association commented that original swaps should be terminated as soon as technologically practicable, to align

<sup>144</sup> See OTC Hong Kong May 27, 2014 Letter, at 2–3. OTC Hong Kong stated that requiring the original counterparty to report termination of the alpha would be more cost-effective because the original reporting counterparty is already required to report creation data and life cycle event data of such alpha to an SDR, and thus would already have in place a technical and operational interface with the SDR of its choice. The commenter also stated that imposing an additional requirement on a DCO to report termination of the alpha does not appear to increase or improve the quantity and quality of information already available to the Commission, and that the burden on DCOs of the additional reporting requirement appears to outweigh the benefits to the Commission. See also LCH May 29, 2014 Letter, at 8 (stating that reporting entities should already report terminations under the obligation to report continuation data); LedgerX Oct. 30, 2015 Letter, at 3.

<sup>145</sup> See Eurex Oct. 30, 2015 Letter, at 3.

<sup>146</sup> See LCH Oct. 30, 2015 Letter, at 3.

<sup>147</sup> See *id.*

<sup>148</sup> See *id.*

<sup>149</sup> Eurex Oct. 30, 2015 Letter, at 4–5; LCH Oct. 30, 2015 Letter, at 3.

<sup>150</sup> Eurex also suggested that reporting of terminations could be foregone entirely, as an original swap, by definition, has been accepted for clearing and ceases to exist. See Eurex Oct. 30, 2015 Letter, at 5.

<sup>151</sup> ISDA Oct. 30, 2015 Letter, at 5.

reporting on clearing swaps with reporting on cleared futures transactions under § 1.74.<sup>152</sup> Eurex commented that terminations were the only lifecycle events for original swaps that would need to be reported as continuation data.<sup>153</sup>

DTCC requested that the Commission offer guidance on how SDRs, DCOs, and any other affected entities should address previously reported cleared swaps for which the original swap had not been terminated.<sup>154</sup>

#### iii. Comments on Proposed Additional Continuation Data Fields To Be Reported by DCOs

Several commenters asserted that the most cost-effective method for establishing a link between the original swaps and the swaps that replace the original swap upon acceptance for clearing is to include the USI of the original swap as a prior USI for the beta and gamma swaps.<sup>155</sup> Several commenters to the IDWG Request for Comment supported the concept of requiring that the DCO provide USIs for clearing swaps to the counterparties to those swaps under proposed Section 45.5(d)(2).<sup>156</sup> ISDA, DTCC and Markit

<sup>152</sup> JBA Oct. 30, 2015 Letter, at 2; see also LedgerX Oct. 30, 2015 Letter, at 3 (commenting that termination of original swap should be reported as soon as technologically practicable, but commenting that reporting party of original swap should have obligation to report termination).

<sup>153</sup> Eurex Oct. 30, 2015 Letter, at 6. ISDA noted that bunched orders may be cleared either pre- or post-allocation, potentially creating multiple clearing swaps for a single original swap. See ISDA Oct. 30, 2015 Letter, at 6. ISDA commented that, where allocation is done after clearing, DCOs should report the USI of the pre-allocation swap as the “prior ISO” on clearing swaps for the allocations. Eurex commented that, in the event of default by a clearing member, it attempts to auction off the clearing swap. See Eurex Oct. 30, 2015 Letter, at 3. Eurex commented that it was unclear whether the novation of an auctioned clearing swap should be reported to the original swap SDR.

<sup>154</sup> See DTCC Oct. 30, 2015 Letter, at 9.

<sup>155</sup> See CME May 27, 2014 Letter, at 10 (“The most effective and efficient method for achieving linkage for all such events that have a one-to-one relationship (*i.e.*, assignment or exercise) or a one-to-many relationship (*i.e.*, clearing, novation, allocation) is by the inclusion of a prior USI(s).”); DTCC letter appendix at 3 (stating that a new swap can generally be linked to an existing swaps through the use of a “prior USI” data field); ISDA May 23, 2014 Letter, at 11 (“Related swaps sent to different SDRs can also be linked via use of the USI. . . .”); Markit May 27, 2014 Letter, at 8 (arguing that the most effective method to establish a link between new and existing swaps is to store the USI of the original swap as a prior USI).

<sup>156</sup> See AIMA Oct. 30, 2015 Letter, at 7; Eurex Oct. 30, 2015 Letter, at 7; ISDA Oct. 30, 2015 Letter, at 7. ITV also commented on requirements for SDRs to transmit USIs to non-reporting counterparties for swaps between non-swap dealers or major swap participants, not executed on a DCM or SEF under existing Section 45.5(c)(2). ITV Oct. 30, 2015 Letter, at 4. Because the NPRM did not propose to amend § 45.5(c)(2), this comment is beyond the scope of the proposed rule.

generally supported the requirement that DCOs include the USI of the original swap when reporting clearing swaps, but objected to requiring additional fields linking original and clearing swaps as redundant.<sup>157</sup> LCH suggested that there should be a standardized format for reporting terminations of original swaps that must be accepted by all SDRs.<sup>158</sup>

#### 4. Final Rule Text

Having considered the comments received, the Commission has decided to adopt the amendments to § 45.4 as proposed.

##### i. Conforming Changes to § 45.4(a)

Receiving no comments on the conforming changes to § 45.4(a), the Commission adopts these changes as proposed. The changes clarify that the standards for reporting continuation data in § 45.4(a) apply to all continuation events regardless of asset class or whether the swap is uncleared, an original swap, or a clearing swap.

##### ii. Revisions to § 45.4(b)

The Commission notes support among market participants for the amendment to § 45.4 removing the requirement that SDs and MSPs report valuation data for clearing swaps. The Commission adopts this revision, codifying existing no-action relief,<sup>159</sup> as proposed.

##### iii. Addition of § 45.4(c)—Continuation Data Reporting for Original Swaps

The Commission notes the different opinions offered by commenters on the proposed addition of § 45.4(c), which would require DCOs to report continuation data, including terminations, of original swaps. The Commission has considered the alternative approaches to reporting original swap terminations that were proposed by commenters, such as requiring original swap reporting parties to report terminations; requiring DCOs to report both original and clearing swaps; and allowing DCOs to select the SDR for original swap terminations. The Commission believes that its proposed method best incorporates existing industry practice, whereby DCOs generally report clearing swaps as well as submitting termination messages on original swaps, thereby limiting additional costs. It may be more burdensome for the counterparties to the original swaps to report terminations because they would have

<sup>157</sup> See ISDA Oct. 30, 2015 Letter, at 6; DTCC Oct. 30, 2015 Letter, at 8; Markit Oct. 30, 2015 Letter, at 3.

<sup>158</sup> See LCH Oct. 30, 2015 Letter, at 4.

<sup>159</sup> See CFTC Letter 15–38 (Jun. 12, 2015).

to receive messages from the DCO confirming that the original swap was accepted for clearing, then translate that message from the DCO into a termination message to the SDR. This may be particularly burdensome for commercial end-users executing swaps on SEFs or DCMs who might otherwise have no reporting obligations and who may not have the infrastructure in place to report as quickly or as efficiently as DCOs.<sup>160</sup>

On the other hand, requiring DCOs to report creation and continuation data for both original and clearing swaps could slow the reporting of original swaps for part 43 and part 45 purposes. DCOs would need to receive messages from the counterparties, or from the SEF or DCM where executed on-facility, with all information necessary to report the swap that becomes an original swap. The DCO would then need to transmit such information to the SDR of its choice. Introducing an extra step in reporting would inherently slow reporting, which must be done as soon as technologically practicable particularly for transparency reasons. At the same time, requiring DCOs to report original swaps for part 43 and part 45 purposes would require DCOs to obtain information beyond what would be needed for clearing purposes, thus increasing the burden on DCOs.

Finally, the Commission has considered the alternative proposal that DCOs be allowed to report an original swap termination to an SDR other than that where the original swap was reported. Adoption of this alternative approach could result in significant data fragmentation, as data on a single swap could be housed at more than one SDR. Additionally, this alternative approach would render useless any position reports generated by an SDR, as the SDR (or market participant accessing its own data on an SDR) could not determine if the swaps it housed are still in effect, thereby removing a potential validation tool for market participants.<sup>161</sup>

Having considered these alternatives as suggested by commenters, the

<sup>160</sup> See *supra*, n. 26, for discussion of reporting obligations for on-facility cleared swaps.

<sup>161</sup> The Commission notes that the approach adopted could generate some degree of data fragmentation, as reports on the original swaps may be housed at a different SDR from reports on its clearing swaps. However, the Commission believes this issue can be overcome for its regulatory purposes—namely risk analysis and market surveillance—if the Commission is able to pull accurate data on individual swaps from each of the registered SDRs. Moreover, accurate reporting of original swap USIs and SDR identities in clearing swaps reporting, and accurate clearing swaps USIs and SDR identities in original swaps terminations, would allow for easy tracking of the lifecycle of a cleared swap transaction.

Commission has determined to adopt the amendments to § 45.4 as it has proposed. The Commission believes that DCOs are in the best position to report the termination of an original swap because the DCO, through the clearing process, has all information needed to report such terminations. By virtue of its decision to accept a swap for clearing and to extinguish the swap upon acceptance,<sup>162</sup> a DCO will be the first entity to know that clearing occurred and that the original swap should be terminated, putting the DCO in the best position to report terminations quickly. DCOs can build original swap terminations into their systems architecture, allowing for fast, consistent, and accurate terminations.<sup>163</sup>

DCOs will also have all information needed to terminate the original swap based on the swap submitted for clearing. Data required for such termination messages would either be generated by the DCO itself (such as clearing swap USIs and clearing swap SDR LEIs) or could be included in any message submitting a swap for clearing (such as the USI of the original swap and the LEI of the original swap SDR). While CME commented that clearing members have not consistently included original swap USI and LEI of the original swap SDR in messages transmitted to the DCO for clearing, the Commission notes that DCOs could require their clearing members to provide such information. As proposed, § 45.4(c) would require DCOs to report these fields. DCOs must obtain the relevant information from their clearing members.

#### iv. Addition of Continuation Data Fields To Be Reported by DCOs

The Commission has considered the comments opposing the creation of required continuation data fields to be reported by DCOs for original swaps. The Commission has also considered ISDA's comment regarding the potential redundancy of having USIs of clearing swaps transmitted in the termination message for the original swap, as well as

<sup>162</sup> See 17 CFR 39.12(b)(6). Through its rules, the DCO determines whether or not a swap that is submitted for clearing becomes an original swap.

<sup>163</sup> The Commission has also considered LCH's comment that EMIR puts the original swap termination obligation on the original swap parties. Placing reporting obligations on one party under CFTC regulations, and on another party under EMIR, would not create a direct conflict as both parties would be able to satisfy their respective regulatory obligations. The Commission recognizes that this situation could result in two termination messages for the same original swap, but this should not have a negative impact on the quality of SDR data.

having the USI of the original swap in the creation data for the clearing swaps.

The Commission believes that reporting the clearing swaps USIs as continuation data for the original swap is an efficient mechanism for linking clearing swaps to the original swap that they replace and should be used for this purpose. New § 45.4(c)(2) will thus require DCOs to include the following additional enumerated data elements when reporting continuation data for original swaps pursuant to proposed § 45.4(c)(1): (i) The legal entity identifier ("LEI") of the SDR to which each clearing swap for a particular original swap was reported by the DCO pursuant to new § 45.3(e); (ii) the USI of the original swap that was replaced by the clearing swaps;<sup>164</sup> and (iii) the USI for the clearing swaps that replace the original swap.

As adopted, these data fields will enable the DCO to fulfill its continuation data reporting obligations, enable the SDR to maintain the accuracy and completeness of swap transaction data, enable the Commission to track the life of a cleared swap transaction, and enable the Commission to monitor compliance with the clearing mandate. In particular, inclusion within an original swap termination message the LEI of the clearing swap SDR will permit the Commission and other regulators to ascertain the SDR where the clearing swaps associated with a particular original swap reside, which will enable the Commission and other regulators to review and more effectively associate data available at multiple SDRs in circumstances where the reporting entity or counterparty selects one SDR for the original swap and the DCO selects a different SDR for the clearing swaps under § 45.3.

Inclusion of the original swap's USI is necessary to enable the original swap SDR to associate continuation data reported by the DCO with the initial creation data reported by a SEF/DCM or reporting counterparty pursuant to § 45.3(a) through (d).<sup>165</sup> These data will

<sup>164</sup> See existing §§ 45.5(a)(2)(iii), (b)(2)(iii), & (c)(2)(ii) (requiring the entity that created the USI to transmit the USI of a swap to the DCO, 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). Proposed revisions to § 45.5 are described in Section II.D of this release.

<sup>165</sup> For instance, inclusion of the USI of the original swap in DCO continuation data reporting will permit the SDR receiving such continuation data to associate data regarding a life cycle event such as termination with the existing data maintained for the swap. This will help ensure that data in the SDR remains current and accurate and will enable the Commission and other regulators to ascertain whether a swap remains in existence or

allow SDRs to validate termination messages reported by DCOs by ensuring that the termination message has the same USI as the original report. Similarly, in the case of clearing swaps that replace an original swap, inclusion of the USIs of the clearing swaps will permit the Commission and other regulators to identify the specific clearing swaps that replaced an original swap, thereby presenting a full history of the cleared swap transaction.

Together, the revisions to § 45.4(b) and the addition of § 45.4(c) will require the reporting of continuation data for original swaps and clearing swaps. Accordingly, the Commission expects that records of original swaps that have been terminated would include the USIs for the clearing swaps that replaced the original swap and the LEI of the clearing swap SDR, such that review of an original swap would permit the identification of the resulting clearing swaps and the SDR where they resides. These provisions will reflect the regulations applicable to DCOs outlined in part 39 of the Commission's regulations and will clearly delineate the continuation data reporting obligations associated with each swap involved in a cleared swap transaction.<sup>166</sup>

The Commission is mindful of LCH's suggestion that there be an industry-wide standard for original swap termination messages and DTCC's comment that termination reports often do not comply with SDR specifications. To help DCOs comply with the requirements of amended § 45.4, the Commission encourages DCOs and SDRs to develop an industry-wide standard for original swap termination messages. The Commission anticipates that original swap termination messages could be standardized given the limited number of data elements that must be transmitted, such as clearing swap USIs, DCO LEIs, and clearing swap SDR LEIs. Standardization also would alleviate LCH's concern that the original swap's SDR would become a factor in determining whether a swap was eligible for clearing.

The Commission has also considered conflicting comments on whether original swap terminations should be reported at the end of the day or as soon as technologically practicable. The Commission has determined to adopt the amendment as proposed and require

reporting original swap terminations at the end of the day, as this would be consistent with reporting other types of continuation data under § 45.4.

#### v. Revisions to § 45.4(d)

The Commission received no comments on the proposed revisions to § 45.4(d), and is adopting those revision as proposed.

#### D. Unique Swap Identifiers— Amendments to Section 45.5

##### 1. Existing § 45.5

Existing § 45.5 requires that each swap subject to the Commission's jurisdiction be identified in all recordkeeping and all swap data reporting by the use of a USI. The rule establishes different requirements for the creation and transmission of USIs depending on whether the swap is executed on a SEF or DCM (§ 45.5(a)), executed off-facility with an SD or MSP reporting counterparty (§ 45.5(b)), or executed off-facility with a non-SD/MSP reporting counterparty (§ 45.5(c)). Existing § 45.5 provides that for swaps executed on a SEF or DCM, the SEF or DCM creates the USI, and for swaps not executed on a SEF or DCM, the USI is created by an SD or MSP reporting counterparty, or by the SDR if the reporting counterparty is not an SD or MSP.<sup>167</sup>

With the exception of swaps with a non-SD/MSP reporting counterparty, the existing rule generally requires USI creation and transmission to be carried out by the entity or counterparty required to report all required swap creation data for the swap. Existing § 45.5 thus does not distinguish between original and clearing swaps, does not provide USI creation and transmission requirements specifically for DCOs, and consequently does not provide for the issuance to DCOs of a USI "namespace," which is one of two component parts of a USI.<sup>168</sup>

The Commission understands that, in practice, SEFs/DCMs and reporting counterparties, or SDRs in the case of non-SD/MSP reporting counterparties, generate and assign USIs for swaps that would become original swaps under the proposed rules, and that DCOs generate and assign USIs to swaps that would qualify as clearing swaps in connection with reporting required swap creation data for clearing swaps to SDRs.

##### 2. Proposed Amendments to § 45.5

The Commission proposed to renumber existing § 45.5(d) as § 45.5(e), and to create a new § 45.5(d) that would set forth requirements regarding the creation and transmission of USIs for clearing swaps.<sup>169</sup>

As proposed, § 45.5(d)(1) would require a DCO to generate and assign a USI for each clearing swap upon, or as soon as technologically practicable after, acceptance of an original swap by the DCO for clearing (or execution of a clearing swap that does not replace an original swap), and prior to reporting the required swap creation data for each clearing swap.<sup>170</sup> Proposed § 45.5(d)(1) would also require that the USI for each clearing swap consist of two data components: A unique alphanumeric code assigned to the DCO by the Commission for the purpose of identifying the DCO with respect to USI creation, and an alphanumeric code generated and assigned to that clearing swap by the automated systems of the DCO. These proposed USI creation requirements and data components for DCOs and clearing swaps are consistent with those currently required by part 45 for other registered entities such as SEFs, DCMs, and SDRs.<sup>171</sup>

As proposed, § 45.5(d)(2) would require a DCO to transmit the USI for a clearing swap electronically to the SDR to which the DCO reports required swap creation data for the clearing swap, as part of that report, and to the DCO's counterparty with respect to that clearing swap, as soon as technologically practicable after either acceptance of the original swap by the DCO for clearing or execution of a clearing swap that does not replace an original swap.<sup>172</sup>

Finally, the Commission proposed to amend §§ 45.5(a), 45.8(f), and 45.10(a) to incorporate the language "or pursuant to the rules of" to the phrase "swaps executed on a swap execution facility or designated contract market" to make clear that those provisions currently apply to all swaps executed on or pursuant to the rules of a SEF or DCM.<sup>173</sup>

##### 3. Comments Received

The Commission received several comments regarding its proposed amendments to § 45.5.<sup>174</sup> All comments

has been extinguished upon acceptance for clearing by a DCO.

<sup>166</sup> See 17 CFR 39.12(b)(6). Part 45 currently requires all swap data and information reported to and maintained by an SDR regarding a given swap to be "current and accurate" and to include "all changes" to a swap. See 17 CFR 45.4(a).

<sup>167</sup> See 17 CFR 45.5(a)–(c).

<sup>168</sup> See, e.g., 17 CFR 45.5(a)(1)(i), (b)(1)(i) and (c)(1)(i) (the data component of a USI commonly referred to as a namespace is the unique alphanumeric code assigned to the registered entity responsible for generating the USI for the purpose of identifying such registered entity with respect to USI creation).

<sup>169</sup> The Commission also proposes conforming amendments to renumber existing § 45.5(e) as § 45.5(f).

<sup>170</sup> See 80 FR 52544, 52554.

<sup>171</sup> See, e.g., 17 CFR 45.5(a), 45.5(c).

<sup>172</sup> See 80 FR 52544, 52554.

<sup>173</sup> See 80 FR 52544, 52554.

<sup>174</sup> ITV requested that the Commission remove the obligation for SDRs, when a swap is executed

received were supportive of the amendment to § 45.5(d)(1), which requires DCOs to generate USIs for clearing swaps.<sup>175</sup>

FSR requested that the Commission adopt ISDA best practices for identifying international swaps, including allowing for the use of a USI as a unique transaction identifier (“UTI”) for reporting swaps in other jurisdictions.<sup>176</sup> FSR commented that adopting the ISDA best practice concerning USIs would avoid potential double-counting when an international swap is reported to two separate SDRs in two jurisdictions.<sup>177</sup>

ISDA commented that, in principal model clearing, the DCO should ensure that both the DCO’s clearing member and the ultimate counterparty (if not the clearing member) receive the clearing swap USIs.<sup>178</sup> ISDA further noted that the current Orders of Exemption issued to foreign DCOs do not include an obligation for those exempt DCOs to generate the USIs for reportable clearing swaps.<sup>179</sup>

#### 4. Final Rule Text of § 45.5

Having considered the comments relating to the purpose and scope of the proposed amendments to § 45.5, the Commission is adopting amended § 45.5 as proposed. The proposed § 45.5(d) provisions that would govern creation and assignment of USIs by the DCO with respect to clearing swaps would be consistent with the Commission’s “first-touch” approach to USI creation for SEFs, DCMs, SDs, MSPs, and SDRs.<sup>180</sup>

The Commission notes ISDA’s request for guidance on whether DCOs must ensure, in the principal clearing mode, that the ultimate counterparty (when not the clearing member) receive the USI of the clearing swaps. As noted

between two non-SD/MSPs and the SDR is obligated to create the USI, to transmit the USI to the counterparties. ITV commented that this could create obligations for SDRs to transmit information to parties not enrolled with the SDR. The Commission has noted this comment, but it is beyond the scope of the NPRM.

<sup>175</sup> See ITV Oct. 30, 2015 Letter, at 3 (but noting that generation of the USI for a clearing swap by the SDR would slow acceptance of swaps in the clearing process); ISDA Oct. 30, 2015 Letter, at 7 (also suggesting that the Commission require the namespace component of USIs for each DCO be made publicly available); AIMA Oct. 30, 2015 Letter, at 7.

<sup>176</sup> See FSR Oct. 30, 2015 Letter, at 4.

<sup>177</sup> See *id.*

<sup>178</sup> See ISDA Oct. 30, 2015 Letter, at 6.

<sup>179</sup> See ISDA Oct. 30, 2015 Letter, at 6.

<sup>180</sup> See Final Part 45 Rulemaking, 77 FR 2136, 2158 (Jan. 13, 2012). The Commission’s approach with respect to SEFs, DCMs, SDs, MSPs, and SDRs was designed to foster efficiency by taking advantage of the technological sophistication and capabilities of such entities, while ensuring that a swap is identified by a USI from its inception.

above, the Commission is aware of various issues relating to reporting of principal model clearing but will not offer further guidance at this time. The Commission notes ISDA’s comment that the current Orders of Exemption for foreign DCOs do not include a requirement that the DCO generate USIs for reportable clearing swaps. Finally, the Commission notes FSR’s request for the Commission to align the use of USIs and UTIs for reporting international swaps. While the Commission declines to address the issue in this release as it is beyond the scope of the NPRM, the Commission is cognizant of the need to harmonize reporting across jurisdictions and will continue to work with other regulators to address this and other issues.

#### E. Determination of Which Counterparty Must Report—Amendments to § 45.8

##### 1. Existing § 45.8

Existing § 45.8 sets forth a hierarchy under which the reporting counterparty for a particular swap depends on the nature of the counterparties involved in the transaction. Regulation 45.8 assigns a reporting counterparty for off-facility swaps, for which the reporting counterparty must report all required swap creation data, as well as for swaps executed on or pursuant to the rules of a SEF or DCM, for which the SEF or DCM must report all required swap creation data.

##### 2. Proposed Amendments to § 45.8

The Commission proposed to add paragraph (i) to § 45.8 in order to explicitly provide that the DCO will be the reporting counterparty for clearing swaps.<sup>181</sup> The Commission also proposed to amend the introductory language of § 45.8 to make clear that the reporting counterparty for all swaps except clearing swaps will be made as provided in paragraphs (a) through (h) of § 45.8, while the reporting counterparty for clearing swaps will be made as provided in paragraph (i) of § 45.8. The Commission further proposed to remove the language “if available” from § 45.8(h)(1)(i) to ensure consistency with proposed changes to appendix 1 to part 45. As discussed below in addressing changes to the PET data fields in appendix 1, the “if available” language was only relevant prior to availability of the LEI system.<sup>182</sup>

The Commission proposed to further amend § 45.8 to remove part of paragraphs (d)(1) and (f)(1) and to remove part of paragraph (h)(2) and all of paragraphs (h)(2)(i) and (ii), which

require SEFs to notify counterparties to a swap if it cannot determine who would be the reporting counterparty. Finally, the Commission proposed conforming changes to explanatory notes in the PET data tables in appendix 1 to part 45 that reference the situation described in § 45.8(h)(2).

#### 3. Comments Received

The Commission received six comments in connection with its proposed amendments to § 45.8. One commenter supported proposed § 45.8(i) as it would promote efficiency in reporting by explicitly designating the DCO as the reporting party for clearing swaps.<sup>183</sup>

ISDA noted a potential inconsistency between reporting obligations under parts 43 and 45 for clearing swaps, as DCOs are not included in the hierarchy under § 43.3 for determining reporting party of real-time reporting.<sup>184</sup> ISDA suggested that this could result in duplicative reporting obligations for DCOs and clearing members in situations where a clearing swap does not replace an original swap.

EEL/EPISA requested that the Commission not remove, as proposed, the provisions in §§ 45.8(d)(1) and (f)(1), which currently require the counterparties to select the reporting party, where the swap is executed on a SEF or DCM and both counterparties have the same SD, MSP or financial entity status.<sup>185</sup> The commenter requested that the provisions be left in place because the proposed rule did not set out how the reporting party would be determined. ITV argued that the reporting hierarchy in existing §§ 45.8(c) and (e), when applied to uncleared swaps between end-users, particularly in the commodity asset class, can preclude end-users from negotiating between themselves who the reporting party would be.<sup>186</sup> This may result in the selection of a reporting party who has less technical infrastructure than the non-reporting counterparty.<sup>187</sup> ISDA recommended that the Commission encourage SEFs to adopt the ISDA asset class tie-breaker logic (the “ISDA RCP”) for determining reporting party for on-SEF swaps.<sup>188</sup>

Two commenters noted that, with the addition of proposed § 45.8(i)

<sup>183</sup> See AIMA Oct. 30, 2015 Letter, at 6.

<sup>184</sup> See ISDA Oct. 30, 2015 Letter, at 7.

<sup>185</sup> See EEL/EPISA Oct. 30, 2015 Letter, at 4.

<sup>186</sup> See ITV Oct. 30, 2015 Letter, at 4 and 6.

<sup>187</sup> ITV also commented that it believes counterparties should be permitted to select the reporting party for a swap when both counterparties are non-SD/MSPs, regardless of financial entity status or U.S. person status. See ITV Oct. 30, 2015 Letter, at 4.

<sup>188</sup> See ISDA Oct. 30, 2015 Letter, at 7.

<sup>181</sup> See 80 FR 52544, 52554–55.

<sup>182</sup> See, *infra*, Section II.H.1.i.

addressing the reporting of clearing swaps, the phrase “or is cleared by a derivatives clearing organization” in § 45.8(f) would become inapplicable.<sup>189</sup> The commenters recommended that the Commission remove this clause from existing § 45.8(f).

#### 4. Final Rule Text of § 45.8

For the reasons expressed more fully below, the Commission has decided to adopt the amendments to § 45.8 as proposed.

The Commission has considered ISDA’s comment that the inclusion of DCOs in the part 45 reporting hierarchy could create inconsistencies between part 43 and part 45 reporting obligations for clearing swaps that do not replace original swaps. Existing § 43.3(a)(3) sets out the reporting hierarchy for real-time reporting of off-facility swaps. DCOs are not included in this hierarchy, but the hierarchy is applicable unless otherwise agreed to by the parties prior to the execution of the publicly reportable swap transaction.<sup>190</sup> To the extent that clearing swaps are reportable events under part 43, the Commission notes that DCOs and their clearing members could agree that the DCO should be the reporting party for part 43 purposes pursuant to the “unless otherwise agreed” clause of § 43.3(a)(3). It is only if the DCO and its clearing member did not so agree would the clearing member have part 43 reporting obligations for some clearing swaps pursuant to the reporting hierarchy under § 43.3. The Commission therefore declines in this rule release to include DCOs in the part 43 real-time reporting hierarchy.

The Commission has also considered comments from EEI/EPISA and ITV regarding the removal of provisions in §§ 45.8(d)(1) and (f)(1) governing the selection of reporting parties for swaps executed on SEFs and DCMs. As was explained in the preamble to the NPRM, the Commission proposed to remove these provisions to help preserve parties’ anonymity on SEFs and DCMs, in particular for swaps cleared through a straight-through-processing mechanism.<sup>191</sup> SEFs have adopted various formulas to determine who will be the reporting party when both counterparties have the same SD, MSP, financial entity, and U.S. Person status. These formulas will ensure that reporting parties are selected consistently. Therefore, the Commission is adopting amendments to §§ 45.9(d)(1) and (f)(1) as proposed. In addressing

ISDA’s comment regarding the ISDA RCP, the Commission declines to adopt or impose any particular formula at this time for selecting the reporting party, instead leaving such determinations to the SEFs.

The Commission has also considered EEI/EPISA’s and CMC’s comments regarding the continued inclusion of the phrase “or is cleared by a derivatives clearing organization” in § 45.8(f). The Commission notes that existing § 45.8(f) addresses reporting hierarchy for certain categories of reportable swaps executed between two non-U.S. Persons; one category of such reportable swaps is a swap cleared through a DCO. The Commission notes that the swap “cleared by a derivatives clearing organization” in this provision relates to the original swap between the original counterparties, and not the clearing swaps with the DCO. The Commission is adopting § 45.8(f) as proposed, with the continued inclusion of the phrase “cleared by a derivatives clearing organization.”

#### F. Reporting to a Single Swap Data Repository—Amendments to § 45.10

##### 1. Existing § 45.10

Existing § 45.10 requires “all swap data for a given swap” to be reported to a single SDR, which must be the same SDR to which creation data for that swap is first reported. The time and manner in which such data must be reported to a single SDR depends on whether the swap is executed on a SEF or DCM,<sup>192</sup> executed off-facility with an SD/MSP reporting counterparty,<sup>193</sup> or executed off-facility with a non-SD/MSP reporting counterparty.<sup>194</sup> Currently, § 45.10(b) and (c) also provide circumstances in which a reporting counterparty is excused from reporting PET data to an SDR because the swap is accepted for clearing by a DCO before the applicable reporting deadline.

##### 2. Proposed Amendments to § 45.10

In order to further clarify that “all swap data for a given swap” encompasses all swap data required to be reported pursuant to parts 43 and 45 of the Commission’s regulations, the Commission proposed to add language to this effect to paragraphs (a) through (c) and to the introductory language of § 45.10.<sup>195</sup> This proposed additional language would clarify the existing requirement that registered entities and reporting counterparties must provide all swap data required under parts 43

and 45 to a single SDR for a given swap.<sup>196</sup>

The Commission also proposed to remove § 45.10(b)(2) and (c)(2),<sup>197</sup> which are no longer applicable because they reference provisions in § 45.3(b)(1), (c)(1)(i), and (c)(2)(i) that, as discussed above, the Commission proposed to remove.<sup>198</sup>

Additionally, the Commission proposed to add new § 45.10(d), which would govern clearing swaps and would establish explicit requirements that DCOs report all required swap creation data and all required swap continuation data for each clearing swap to a single SDR.<sup>199</sup> Specifically, proposed § 45.10(d)(1) would require a DCO to report all required swap creation data for a particular clearing swap to a single SDR. As proposed, § 45.10(d)(1) would also require the DCO to transmit the LEI of the SDR to which it reported the required swap creation data for each clearing swap to the counterparty of each clearing swap, as soon as technologically practicable after either acceptance of the original swap by the DCO for clearing or execution of a clearing swap that does not replace an original swap.<sup>200</sup>

As proposed, § 45.10(d)(2) would require a DCO to report all required swap creation data and all required swap continuation data for a particular clearing swap to the same SDR that received the initial swap creation data for the clearing swap required by § 45.10(d)(1). In the event there are two or more clearing swaps that replace a particular original swap, and in the event there are equal and opposite clearing swaps that are created upon execution of the same transaction and that do not replace an original swap, proposed § 45.10(d)(3) would require the DCO to report all required swap creation and continuation data for each such clearing swap to a single SDR.<sup>201</sup>

<sup>196</sup> The Commission also proposed to repeat the language “Off-facility swaps with a swap dealer or major swap participant reporting counterparty” from the title of § 45.10(b) in the body of that regulation to make clear that the requirement pertains to off-facility swaps with an SD or MSP.

<sup>197</sup> The Commission also proposed conforming amendments to § 45.10 to renumber paragraph (b)(3) as (b)(2), paragraph (c)(3) as (c)(2), and paragraph (c)(4) as (c)(3). The Commission also proposed to remove a reference to § 45.10(c)(2) from existing § 45.10(c)(4) because the Commission proposed to remove § 45.10(c)(2).

<sup>198</sup> See Section II.B.2.ii, *supra*.

<sup>199</sup> See 80 FR 52544, 52555–56.

<sup>200</sup> See 80 FR 52544, 52555–56.

<sup>201</sup> The Commission notes that proposed § 45.10(d)(3) would require any equal and opposite clearing swaps, including those resulting from the operation of § 39.12(b)(6) of the Commission’s regulations, to be reported to a single SDR, regardless of whether such clearing swaps replaced an original swap.

<sup>189</sup> See EEI/EPISA Oct. 30, 2015 Letter, at 4; CMC Oct. 30, 2015 Letter, at 3.

<sup>190</sup> 17 CFR 43.3(a)(3).

<sup>191</sup> See 80 FR 52544, 52555.

<sup>192</sup> See 17 CFR 45.10(a).

<sup>193</sup> See 17 CFR 45.10(b).

<sup>194</sup> See 17 CFR 45.10(c).

<sup>195</sup> See 80 FR 52544, 52555–56.

Accordingly, all required creation and continuation data for all clearing swaps that can be traced back to the same original swap (and for all equal and opposite clearing swaps that are created upon execution of the same transaction but that do not replace an original swap) will be reported to a single SDR.

The Commission noted in its proposal that by operation of proposed new § 45.8(i) and (j) and proposed § 45.3(e), there may be scenarios in which the SEF/DCM or reporting counterparty reports required swap creation data for the swap that became the original swap to one SDR, and the DCO reports required swap creation data for the clearing swaps that replace the original swap to a different SDR.<sup>202</sup> The Commission proposed to require that all swap data for the clearing swaps that can be traced back to the same original swap be reported to the same SDR, but did not require that the clearing swaps be reported to the same SDR as the original swap.<sup>203</sup>

The Commission included in the NPRM the following example to illustrate the application of proposed § 45.10:<sup>204</sup>

Swap 1 is intended to be submitted to a DCO for clearing and executed on or pursuant to the rules of a SEF. The SEF reports all required creation data for such swap to registered SDR A pursuant to § 45.3(a), which was selected by the SEF pursuant to proposed § 45.3(j)(1), and submits the swap to the DCO for clearing. Upon acceptance of Swap 1 for clearing, the DCO extinguishes Swap 1 and replaces it with Swap 2 and Swap 3, both of which are clearing swaps. Swap 1 is now an original swap.

Proposed § 45.4(c) would require the DCO to report the termination of Swap 1 to SDR A,<sup>205</sup> reflecting that Swap 1, now an original swap, has been terminated through clearing novation.<sup>206</sup> The DCO would also report all required swap creation data for clearing Swap 2 to a single SDR of its choice (say, for example, SDR B) pursuant to proposed §§ 45.3(e) and (j)(2), and 45.10(d).<sup>207</sup> Similarly, the DCO would be required to report all required swap creation data for clearing Swap 3 to a single SDR, in this case SDR

B. Pursuant to proposed § 45.10(d)(3), the DCO would be required to report all required swap creation data for clearing Swap 2 and clearing Swap 3 to the same SDR (SDR B) because Swap 2 and Swap 3 replaced Swap 1. Thereafter, proposed § 45.10(d)(2) would require the DCO to report all required swap creation data and continuation data to the SDR where the first report of required swap creation data for both clearing Swap 2 and clearing Swap 3 was made (SDR B).

### 3. Comments Received

The Commission received three comments addressing its proposed amendments to § 45.10.<sup>208</sup> AIMA supported the Commission's proposal clarifying that the DCO is obligated to report creation and continuation data for clearing swaps to a single SDR.<sup>209</sup>

ISDA opposed the requirement in proposed § 45.10(d)(1) that a DCO transmit to the counterparties of clearing swaps the LEI of the SDR to which the clearing swaps were reported.<sup>210</sup> ISDA doubted the value of such information for the clearing swap counterparties, and opined that counterparties are unlikely to build mechanisms to retain such information on a transactional basis.<sup>211</sup> ISDA also noted that a DCO would be separately required to send a termination of the original swap to the original swap's SDR, and this report would include the LEI of the SDR to which the clearing swaps are reported, making a report of such data to the counterparties redundant.<sup>212</sup>

DTCC opposed the provision in proposed § 45.10(d)(1) that would allow a DCO to select the SDR for reporting clearing swaps, instead arguing that clearing swaps should be reported to the same SDR as the original swap.<sup>213</sup> DTCC argued that such reporting would create data fragmentation between the original swap and related clearing swaps.

### 4. Final Rule Text of § 45.10

Having considered all of the comments relating to the purpose and scope of the proposed amendments to § 45.10, including amendments to §§ 45.10(a) through (c) and new § 45.10(d), the Commission is adopting amended § 45.10 as proposed. The requirements for DCOs demonstrated in the above example and contained in

proposed § 45.10(d)(1) and (2) are consistent with the existing requirements for SEFs, DCMs, and other reporting counterparties under current § 45.10. By requiring that all swap data for each clearing swap be reported to a single SDR, proposed §§ 45.10(d)(1) and (2) further the Commission's stated purpose in creating § 45.10, and part 45 generally, of reducing fragmentation of data for a given swap across multiple SDRs.<sup>214</sup>

The proposed requirement in §§ 45.10(d)(3) that the DCO report to a single SDR all swap data for each clearing swap that can be traced back to the same original swap also supports the goal of avoiding fragmentation of swap data. Though clearing swaps are new individual swaps, all clearing swaps that issue from the same original swap are component parts of a cleared swap transaction. Fragmentation among clearing swaps would needlessly impair the ability of the Commission and other regulators to view or aggregate all the data concerning the related clearing swaps.

While proposed § 45.10 ensures that each swap comprising a cleared swap transaction is reported to a single SDR, the Commission notes DTCC's comments on data fragmentation where original swaps are reported to different SDRs than their resulting clearing swaps. However, as long as DCOs properly identify the original swap's USI and SDR in reports on clearing swaps, and report clearing swaps' USIs and SDR in terminations of the original swaps, the Commission believes it will be able to reconcile those transactions when performing risk and other analysis. As discussed in Section II.C.4.iii above, the Commission has considered various alternatives to the adopted rules. The Commission believes that the adopted amendments will provide the Commission with the information it needs to perform its regulatory obligations while minimizing

<sup>214</sup> See, e.g., Final Part 45 Rulemaking, 77 FR 2136, 2139 ("To avoid fragmentation of data for a given swap across multiple SDRs, the [Notice of Proposed Rulemaking] [for part 45] would require that all data for a particular swap must be reported to the same SDR."); at 2143 ("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 the same SDR."); and at 2168 ("The Commission believes the 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.").

<sup>202</sup> See 80 FR 52556.

<sup>203</sup> See *id.*

<sup>204</sup> See 80 FR 52544, 52556.

<sup>205</sup> Pursuant to proposed § 45.10(a)(2), (b)(2), and (c)(3), continuation data for original swaps must be reported to the SDR where the first report of required swap creation data was made for the swap.

<sup>206</sup> Pursuant to existing § 45.13(b), the DCO shall use the facilities, methods, or data standards provided or required by SDR A. 17 CFR 45.13(b).

<sup>207</sup> The Commission notes that pursuant to proposed §§ 45.10(a)–(d), the DCO in this example could select an SDR other than SDR A.

<sup>208</sup> An additional comment letter addressed the issue of "portability" of swaps reporting between SDRs. See *ITV Oct. 30, 2015 Letter*, at 3–4. The portability issue is beyond the scope of the NPRM.

<sup>209</sup> See *AIMA Oct. 30, 2015 Letter*, at 7.

<sup>210</sup> See *ISDA Oct. 30, 2015 Letter*, at 8.

<sup>211</sup> *Id.*

<sup>212</sup> *Id.*

<sup>213</sup> See *DTCC Oct. 30, 2015 Letter*, at 6.

costs to market participants, SDRs, and DCOs.

In response to ISDA's comment that counterparties were unlikely to build mechanisms to retain information on the SDR to which clearing swaps were reported, the Commission believes that all swaps counterparties should be aware of the SDR to which their swaps are reported. The Commission notes that under existing § 45.14(b) non-reporting parties to swaps have obligations to correct any errors or omissions in swaps data of which they become aware.

### G. Examples of Cleared Swap Reporting Workflows Under the Adopted Revisions

The following examples demonstrate the manner in which the adopted revisions and additions to part 45 rules would operate in hypothetical scenarios involving: (1) An off-facility swap not subject to the clearing requirement with an SD/MSP reporting counterparty; and (2) a swap executed on or pursuant to the rules of a SEF or DCM. All references to part 45 appearing in the following examples refer to the rules as adopted in this release. These examples are provided only for illustrative purposes to demonstrate the applicability of certain rules adopted in this release in hypothetical scenarios. The examples are not intended to dictate any aspect of compliance, reporting or other related processes and are not intended to cover all possible reporting circumstances.

#### 1. Off-Facility Swap Not Subject to the Clearing Requirement With SD/MSP Reporting Counterparty

An off-facility swap that is not subject to the clearing requirement is executed with an SD reporting counterparty. The SD generates and assigns a USI for the swap pursuant to § 45.5(b) and reports all required swap creation data for the swap to SDR A pursuant to § 45.3(c). The SD submits the swap to a DCO for clearing and, pursuant to § 45.10(b), transmits to the DCO, at the time the swap is submitted for clearing, the identity of SDR A and the USI for the swap.

The DCO accepts the swap for clearing, extinguishing it and replacing it with clearing swaps; the swap that was submitted for clearing is now an original swap. The DCO generates and assigns a USI to each clearing swap pursuant to § 45.5(d) and, pursuant to § 45.3(e), reports all required swap creation data for the clearing swaps, including the original swap USI and all additional data fields applicable to

clearing swaps,<sup>215</sup> to SDR B, which the DCO in this example selected pursuant to § 45.3(j)(2).

Pursuant to § 45.4(c), the DCO would report continuation data for the original swap, including the original swap termination notice, to SDR A using either the life cycle or state data methods, and using the facilities, methods, or data standards provided or required by SDR A.<sup>216</sup> In addition to all other necessary continuation data, original swap continuation data reported by the DCO, including the original swap termination notice, would also include: The LEI of SDR B (the SDR to which creation data for each clearing swap that replaced the particular original swap was reported);<sup>217</sup> the USI of the original swap as transmitted to the DCO by the SD at the time the swap was submitted for clearing; and the USI for each clearing swap.

The DCO would also transmit to each counterparty to the clearing swaps, as soon as technologically practicable after acceptance for clearing, the USI of each clearing swap pursuant to § 45.5(d)(2) and the LEI of the SDR to which the clearing swap was reported pursuant to § 45.10(d)(1).

The DCO would have no further continuation data reporting obligations with respect to the original swap thereafter. However, the Commission notes that pursuant to § 45.14, registered entities and counterparties required to report swap data to an SDR must report any known errors and omissions in the data reported.<sup>218</sup> Additionally, non-

<sup>215</sup> Modifications to appendix 1 would require that PET data include the original swap USI and all data categories and fields applicable to clearing swaps. See *infra*, Section II.H.3.

<sup>216</sup> See 17 CFR 45.13(b).

<sup>217</sup> The Commission notes that the amended § 45.4(c)(2)(i) requirement that the DCO include the LEI of the SDR to which all required swap creation data for each clearing swap was reported by the DCO applies whether or not swap data for the original and clearing swaps is reported to the same SDR or to different SDRs. The Commission expects that this information will be useful for regulators with respect to their review of data pertaining to cleared swap transactions, and to SDRs with respect to their processing of swap data received, even when the original and clearing swaps reside in the same SDR.

<sup>218</sup> While the DCO would have no additional continuation data reporting requirement with respect to the original swap after reporting the termination upon acceptance for clearing, the DCO remains obligated under § 45.14 to correct errors and omissions in the data reported by the DCO, including the termination notice. For example, if a swap is submitted to, and accepted by, a DCO for clearing, the DCO would report the termination notice of the original swap to the SDR to which the creation data for the original swap was reported. After submission of the termination notice to the SDR, if the DCO should become aware of an error or omission in the termination notice, the DCO is required, pursuant to § 45.14, to correct any errors and omissions in the data so reported as soon as

reporting counterparties are required to notify the reporting counterparty of such errors or omissions.<sup>219</sup> Finally, pursuant to § 49.10(a), SDR A would be required to accept and record any original swap continuation data, including the original swap termination.

#### 2. Swaps Executed on or Pursuant to the Rules of a SEF or DCM

A swap is executed on or pursuant to the rules of a SEF or DCM. The SEF/DCM generates and assigns a USI for the swap pursuant to § 45.5(a) and reports all required swap creation data to SDR A pursuant to § 45.3(a). The SEF/DCM submits the swap to a DCO for clearing and, pursuant to § 45.10(a), transmits to the DCO, at the time the swap is submitted for clearing, the identity of SDR A and the USI for the swap.

The DCO accepts the swap for clearing, extinguishing it and replacing it with clearing swaps; the swap that was submitted for clearing is now an original swap. Under §§ 45.5(d) and 45.3(e), the DCO would generate and assign a USI to each clearing swap and report all required swap creation data, including the original swap USI and all additional data fields applicable to clearing swaps, for the clearing swaps to registered SDR A, which, in this example, the DCO selected pursuant to § 45.3(j)(2).<sup>220</sup>

Pursuant to § 45.4(c), the DCO would report continuation data for the original swap, including the original swap termination notice, to SDR A using either the life cycle or state data methods, and using the facilities, methods, or data standards provided or required by SDR A. Such continuation data would include the LEI of SDR A (the SDR to which creation data for each clearing swap that replaced the particular original swap was reported), the USI of the original swap as transmitted to the DCO by the SEF/DCM at the time the swap was submitted for clearing, and the USI for each clearing swap.

The DCO would also transmit to each counterparty to the clearing swaps, as soon as technologically practicable after

is technologically practicable after discovery of such errors or omissions. Likewise, all reporting entities and swap counterparties also remain obligated under § 45.14 to correct errors and omissions in all data reported by or on behalf of each entity and swap counterparty to an SDR.

<sup>219</sup> Pursuant to § 45.14(b), if a counterparty to a swap that is not the reporting counterparty as determined by § 45.8 discovers any error or omission with respect to the continuation data, including termination notice of the original swap, such non-reporting counterparty is required to notify the DCO of each such error or omission.

<sup>220</sup> Pursuant to § 45.3(j)(2), the DCO could have selected SDR B.

acceptance for clearing, the USI of each clearing swap pursuant to § 45.5(d)(2) and the LEI of the SDR to which the clearing swap was reported pursuant to § 45.10(d)(1).

The DCO would have no further continuation data reporting obligations with respect to the original swap thereafter. However, the Commission notes that pursuant to § 45.14, registered entities and counterparties required to report swap data to an SDR must report any known errors and omissions in the data reported. Additionally, non-reporting counterparties are also required to notify the reporting counterparty of such errors or omissions.<sup>221</sup> Finally, pursuant to § 49.10(a), SDR A would be required to accept and record the original swap termination.

#### H. Primary Economic Terms Data—Amendments to Appendix 1 to Part 45—Tables of Minimum Primary Economic Terms

The Commission's existing lists of minimum primary economic terms for swaps in each swap asset class are found in tables in Exhibits A–D of appendix 1 to part 45. Those tables include data elements that reflect generic economic terms and conditions common to most standardized products. They reflect the fact that PET data captures a swap's basic nature and essential economic terms, and are provided in order to ensure to the extent possible that all such essential terms, where applicable, are included when required primary economic terms are reported for each swap.

##### 1. Proposed Amendments and Additions to Primary Economic Data Fields

The Commission proposed the following revisions to Exhibits A–D of appendix 1, each of which is discussed in greater detail below: (1) Modifications to existing PET data fields; (2) the addition of three new PET data fields applicable to all reporting entities for all swaps; and (3) the addition of a number of new data fields that must be reported by DCOs for clearing swaps.<sup>222</sup>

<sup>221</sup> See notes 220–221, *supra*.

<sup>222</sup> The Commission also proposes to revise each of the data categories and fields that reference the clearing requirement exception in CEA section 2(h)(7) to reflect that exceptions to, and exemptions from, the clearing requirement, including the clearing requirement exception in CEA section 2(h)(7), are set forth under part 50 of the Commission's regulations. Additionally, the Commission is making non-substantive edits to the following fields in Exhibits A–D: Asset class; For a multi-asset class swap, an indication of the primary asset class; For a multi-asset class swap, an

##### i. Proposed Modifications to Existing PET Data Fields

The Commission proposed clarifying and conforming changes and minor corrective modifications to the following existing PET data fields:<sup>223</sup>

- The Unique Swap Identifier for the swap—The Commission proposed to remove the explanatory note in the Comment section to this data field in Exhibits A–D. The explanatory note is no longer necessary because under proposed § 45.5(d), the DCO would create the USI for each clearing swap.
- PET data fields that utilize a LEI<sup>224</sup>—The Commission proposed conforming changes to the Comment sections to data fields in Exhibits A–D that utilize the LEI to reflect that the CFTC has designated an LEI system<sup>225</sup> and to reflect that a substitute identifier may be reported for natural person swap counterparties.
  - If no CFTC-approved LEI for the non-reporting counterparty is yet available, the internal identifier for the non-reporting counterparty used by the swap data repository—The Commission proposed to remove this data field in each of the Exhibits. As noted above, the CFTC has designated an LEI, and these PET data fields are no longer 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—The Commission proposed to add an explanatory note to the Comment section for this data field in Exhibits A–D providing that the field value is the LEI of the other SDR to which the swap is or will be reported.
  - Block trade indicator—The Commission proposed to modify the Comment section to this data field in

indication of the secondary asset class(es); and to the Clearing member client account field in Exhibits C and D.

<sup>223</sup> See 80 FR 52544, 52558.

<sup>224</sup> These include the following fields in Exhibits A–D: The Legal Entity Identifier of the reporting counterparty; If the swap will be allocated, or is a post-allocation swap, the Legal Entity Identifier of the agent; The Legal Entity Identifier of the non-reporting party; Clearing venue; The identity of the counterparty electing an exception or exemption to the clearing requirement under Part 50 of this chapter (formerly The identity of the counterparty electing the clearing requirement exception in CEA section 2(h)(7)); Exhibit A: An indication of the counterparty purchasing protection; An indication of the counterparty selling protection; Information identifying the reference entity; Exhibit D: Buyer, Seller.

<sup>225</sup> The explanatory notes discussing a situation where no CFTC designated LEI is yet available are no longer applicable. See *generally* Order Extending the Designation of the Provider of Legal Entity Identifiers To Be Used in Recordkeeping and Swap Data Reporting Pursuant to the Commission's Regulations, 80 FR 44078 (Jul. 24, 2015).

Exhibits A–D to reflect that the CFTC has issued a final rulemaking regarding *Procedures To Establish Appropriate Minimum Block Sizes for Large Notional Off-Facility Swaps and Block Trades*.<sup>226</sup>

- Execution venue—The Commission proposed to modify the explanatory note in the Comment section to this data field in Exhibits A–D to reflect that the CFTC has designated an LEI system and to require the reporting of only the LEI of the SEF or DCM for swaps executed on or pursuant to the rules of a SEF or DCM.
- Clearing indicator—The Commission proposed modifications to the explanatory note in the Comment section to this data field in Exhibits A–D to provide for the reporting of a Yes/No indication of whether the swap will be submitted for clearing to a DCO.
- Clearing venue—The Commission proposed modifications to the Comment section of this data field in Exhibits A–D to provide for the reporting of only the LEI of the derivatives clearing organization.

##### ii. Proposed Addition of New PET Data Fields Applicable to All Reporting Entities for All Swaps

The Commission proposed to add to Exhibits A–D the following new PET fields which would be applicable to all reporting entities for all swaps:<sup>227</sup>

- Asset class—This data field would provide the specific asset class for the swap. Field values: Credit, equity, FX, interest rates and other commodities.
- An indication of whether the reporting counterparty is a derivatives clearing organization with respect to the swap.
- Clearing exception or exemption type—This field would provide the type of clearing exception or exemption being claimed. Field values: End user, Inter-affiliate or Cooperative.

##### iii. Proposed Addition of New PET Data Fields Applicable to DCOs for Clearing Swaps

The Commission also proposed to modify Exhibits A–D in order to add new PET fields specifically to be reported by DCOs for clearing swaps.<sup>228</sup> The proposed data fields that must be reported by DCOs for clearing swaps include the following:

- Clearing swap USIs—This data field would provide the USI for each clearing swap that replaces the original swap,

<sup>226</sup> See, *generally*, *Procedures To Establish Appropriate Minimum Block Sizes for Large Notional Off-Facility Swaps and Block Trades*, Final Rule, 78 FR 32866 (May 31, 2013).

<sup>227</sup> See 80 FR 52544, 52558–59.

<sup>228</sup> See 80 FR 52544, 52559.

other than the USI for which the PET data is currently being reported.

- Original swap USI—This data field would provide the USI for the original swap that was replaced by clearing swaps.<sup>229</sup>
- Original swap SDR—This data field would provide the LEI of the SDR to which the original swap was reported.<sup>230</sup>
- Clearing member LEI—This data field would provide the LEI of the clearing member.
- Clearing member client account—This data field would provide the account number for the client, if applicable, of the clearing member.
- Origin (house or customer)—This data field would provide information regarding whether the clearing member acted as principal for a house trade or agent for a customer trade.
- Clearing receipt timestamp—This data field would provide the date and time at which the DCO received the original swap that was submitted for clearing.
- Clearing acceptance timestamp—This data field would provide the date and time at which the DCO accepted the original swap that was submitted for clearing.

### 3. Comments Received

#### i. General Comments

Eurex commented that there are no additional fields for clearing swaps beyond those proposed which are necessary to understand a clearing swap or the mechanics of the clearing process.<sup>231</sup> JBA cautioned that the definitions used in the markets are not always consistent with those proposed by the NPRM, which places a significant burden on small-sized market participants.<sup>232</sup> JBA also noted potential difficulties in reporting hybrid instruments because swaps with multiple underlying assets may have their own market conventions that do not fall under the categories in the proposed rules.<sup>233</sup>

Several commenters addressed how PET data fields can operate in the context of agency and principal clearing models. LCH recommended that the Commission require a PET data field indicating if a swap is cleared following

<sup>229</sup> See also §§ 45.10(a)(1), (b)(1)(iii), (b)(2)(ii), (c)(1)(iii), (c)(2)(ii), and (c)(3) (requiring entities with reporting obligations to transmit to the DCO for swaps submitted for clearing “the identity of the swap data repository to which required swap creation data is reported” and the USI for the swap).

<sup>230</sup> *Id.*

<sup>231</sup> See Eurex Oct. 30, 2015 Letter, at 8.

<sup>232</sup> See JBA Oct. 30, 2015 Letter, at 2–3.

<sup>233</sup> See JBA Oct. 30, 2015 Letter, at 3.

an agency or principal model.<sup>234</sup> ISDA recommended combining the “Clearing indicator” and “Origin (house or customer)” fields into a single “Cleared” field with four possible values—not cleared, intended to be cleared, cleared (principal), and cleared (agency).<sup>235</sup> ISDA commented that the current reporting system results in DCOs reporting principal cleared trades in a manner designed for agency clearing model. ISDA commented that this is at odds with European Union requirements and may result in data reported to multiple jurisdictions that is not reconcilable.<sup>236</sup> Eurex commented that, in the principal model, the DCO may not know the identity of the clearing member’s client; if the DCO is required to report that client’s identity, it would be necessary for anyone trading part 45 reportable swaps to possess an LEI.<sup>237</sup>

LCH commented that the “Original swap USI,” “Original swap SDR,” and “Clearing member client account” PET fields for clearing swaps should only be required “if applicable.”<sup>238</sup>

#### ii. Comments on Specific Proposed PET Fields<sup>239</sup>

ISDA supported the proposed modification of the clearing venue and execution venue PET fields to require the submission of an LEI for such venues.<sup>240</sup> ISDA also supported the addition of the “Asset class” PET data field for all swaps.<sup>241</sup> ISDA also commented on the removal of internal counterparty identifiers as a valid submission for various counterparty identification fields, noting that not all global regulators require swap counterparties to obtain LEIs.<sup>242</sup> ISDA requested that the Commission continue to work with global regulators to ensure uniform adoption of the LEI standard across jurisdictions.

ISDA commented that the PET field for “Block trade indicator” should be removed rather than amended because block trade status only affects part 43 reporting.<sup>243</sup> ISDA questioned the value that block trade status would provide the Commission when evaluating swap

data.<sup>244</sup> Further, block trade status may change over the life of a swap and there is no guidance in part 43 or part 45 on how to deal with such changes.<sup>245</sup>

Finally, ISDA commented on the proposed “Clearing exception or exemption type” PET field, which would require the reporting party to identify the clearing exception or exemption exercised for a particular swap.<sup>246</sup> ISDA commented that it could be challenging and costly for firms to implement this change, while providing duplicative information because exemption elections must already be provided to SDRs.<sup>247</sup> ISDA recommended that the “Clearing exception or exemption type” PET field acceptable values be limited to “inter-affiliate” and “other,” because inter-affiliate trades can be identified under existing reporting standards.

#### 4. Final Rule Text

Having considered the comments provided in response to the NPRM, the Commission is adopting the revisions to Appendix 1 of part 45 as proposed.<sup>248</sup> In response to the IDWG Request for Comment, some commenters argued that the Commission should not require additional data fields for reporting and should reduce the number of fields currently required.<sup>249</sup> The Commission explained in the NPRM that the proposed modifications to existing PET data fields will add clarity to the current reporting requirements. In regards to the additional fields, the NPRM explained that the new fields will require the reporting of information that is essential to the efficient operation of reporting of

<sup>244</sup> See *id.* at 8.

<sup>245</sup> See *id.* at 8.

<sup>246</sup> See *id.* at 9.

<sup>247</sup> See *id.* at 9.

<sup>248</sup> The Commission has also noted ITV’s comment requesting the addition of an indicator that a swap was part of a package transaction. See ITV Oct. 30, 2015 Letter, at 3. While this comment is beyond the scope of the NPRM, the Commission would note that the Technical Specifications Request for Comment solicits input on this topic.

<sup>249</sup> See CMC May 27, 2014 Letter, at 3 (recommending that the Commission reduce the number and complexity of data fields required to improve data reporting); CME letter at 17–19 (providing recommendations on modification for specific data fields and arguing against requiring certain additional reporting); DTCC May 27, 2014 Letter, at 3, appendix at 15 (suggesting that the Commission consider whether requiring fewer data elements would better enable the Commission and other regulators to fulfill their regulatory obligations); International Energy Credit Association May 27, 2014 Letter, at 5–6 (arguing that existing swap data reporting requirements do not need to be expanded and that data reporting would be improved by reducing the current reporting burden); Swiss Re May 27, 2014 Letter, at 5 (describing reporting difficulties for specific data fields).

<sup>234</sup> See LCH Oct. 30, 2015 Letter, at 4.

<sup>235</sup> See ISDA Oct. 30, 2015 Letter, at 9–10.

<sup>236</sup> See ISDA Oct. 30, 2015 Letter, at 11.

<sup>237</sup> See Eurex Oct. 30, 2015 Letter, at 8.

<sup>238</sup> See LCH Oct. 30, 2015 Letter, at 4.

<sup>239</sup> DTCC also commented on the proposed PET field for “Clearing swap USIs,” “Original swap USIs,” and “Original swap SDRs.” See DTCC Oct. 30, 2015 Letter, at 8–9. These comments are addressed in the discussions on proposed revisions to §§ 45.5 and 45.8, *supra* Sections II.D and II.E.

<sup>240</sup> See ISDA Oct. 30, 2015 Letter, at 8.

<sup>241</sup> See *id.* at 9.

<sup>242</sup> See *id.*, at 8.

<sup>243</sup> See *id.* at 8.

the swaps involved in a cleared swap transaction.<sup>250</sup>

Regarding the proposed PET fields for clearing swaps, as noted in the NPRM, the Commission believes such data elements would more accurately capture the additional, unique features of clearing swaps that are not relevant to uncleared swaps.<sup>251</sup> The Commission has noted the number of comments addressing the issue of reporting swaps cleared under the principal, as opposed to agency, model of clearing. In particular, the Commission has reviewed ISDA's comment on combining the "Clearing indicator" and "Origin (house or customer)" fields. While the Commission is adopting those fields as proposed, the Commission would note that in the Technical Specifications Request for Comment, the Commission solicited input on a potential data element indicating agency versus principal clearing model, and on reporting package transactions.<sup>252</sup>

The Commission notes LCH's comment that certain PET data elements should only be reported "if applicable." The Commission notes that appendix 1 to part 45 states that reporting parties should "[e]nter N/A for fields that are not applicable," which is repeated in the header to every column in appendix 1. To ensure that reported swap data is complete, the Commission would reiterate that any PET data field that is not applicable to a particular swap should be marked "N/A" and not left blank. Otherwise, the Commission cannot determine if a field is inapplicable or if an applicable data element is missing.

The Commission declines to remove the "Block trade indicator" as requested by ISDA because this indicator is necessary for a proper review of market activity for surveillance and enforcement purposes. The Commission would note that block trade status is most relevant for part 43 real-time reporting purposes. Therefore, in response to ISDA's request for guidance, the Commission would note that a swap's block trade status should be determined as of the time of execution; subsequent changes to notional amounts should not impact whether the swap met the block trade threshold originally.

As for the "Clearing exception or exemption type" PET field, the Commission has noted ISDA's comment

that this field may be difficult to implement. However, the Commission believes that additional PET fields indicating clearing exception and exemption type are necessary for the Commission to track compliance with Commission regulation § 50.50. While reporting counterparties are required under existing § 50.50(b) to provide clearing exemption election forms with SDRs, the existing swaps data reporting rules do not require that the reporting counterparty indicate that such clearing exemption was elected for a particular swap. Without such information provided as part of transaction-specific swaps data, the Commission is unable to determine which counterparties are relying on an exemption and how often such elections are being made.<sup>253</sup> This additional PET field will aid the Commission in tracking compliance with the clearing mandate by providing transaction specific information on why certain swaps were uncleared.

The asset class data field will assist the Commission in identifying the asset class for swaps reported to registered SDRs pursuant to part 45. The indication of whether the reporting counterparty is a DCO with respect to the swap data field is consistent with proposed § 45.8(i), which designates the DCO as the reporting counterparty for clearing swaps, and the existing PET data fields that require certain information related to the registration status of the counterparties to be included in PET data reporting.

### III. Related Matters

#### A. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA") requires federal agencies, in promulgating rules, to consider the impact of those rules on small entities.<sup>254</sup> The rules proposed herein will have a direct effect on SDRs, DCOs, SEFs, DCMs, SDs, MSPs, and non-SD/MSP counterparties who are counterparties to one or more swaps and subject to the Commission's jurisdiction. The Commission has previously established certain definitions of "small entities" to be used by the Commission in evaluating the impact of its rules on small entities in accordance with the RFA.<sup>255</sup> The Commission has previously determined

that DCMs<sup>256</sup> and DCOs<sup>257</sup> are not small entities for the purpose of the RFA. The Commission has also previously proposed that SDRs, SEFs, SDs, and MSPs should not be considered to be small entities.<sup>258</sup>

The Final Part 45 Rulemaking and preceding proposal discussed how certain non-SD/MSP counterparties could be considered small entities in certain limited situations, but concluded that part 45 does not have a significant impact on a substantial number of small entities.<sup>259</sup> The modifications to part 45 adopted herein do not affect that conclusion, or the reasoning behind it, and therefore the Commission does not believe that these adopted rules will have a significant economic impact on a substantial number of small entities. To the extent that this rulemaking has any significant impact on small entities, it removes some reporting obligations by explicitly putting the obligation to terminate original swaps on DCOs accepting those swaps.

Therefore, the Chairman, on behalf of the Commission, pursuant to 5 U.S.C. 605(b), hereby certifies that the adopted rules will not have a significant economic impact on a substantial number of small entities.

#### B. Paperwork Reduction Act

The purposes of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.* ("PRA") are, among other things, to minimize the paperwork burden to the private sector, to ensure that any collection of information by a government agency is put to the greatest possible uses, and to minimize duplicative information collections across the government.<sup>260</sup> The PRA applies to all information, regardless of form or format, whenever the government is obtaining, causing to be obtained, or soliciting information, and includes required disclosure to third parties or the public, of facts or opinions, when the information collection calls for answers to identical questions posed to, or identical reporting or recordkeeping requirements imposed on, ten or more persons.<sup>261</sup> The

<sup>250</sup> *Id.*

<sup>251</sup> 66 FR 45604, 45609, Aug. 29, 2001.

<sup>252</sup> Swap Data Recordkeeping and Reporting, Notice of Proposed Rulemaking, ("Part 45 NPRM") 75 FR 76574, 76595 (Dec. 8, 2010) (discussing why SDRs, SEFs, SDs, and MSPs should not be considered small entities).

<sup>253</sup> Final Part 45 Rulemaking, 77 FR 2136, 2170-71 (discussion for non-SD/MSP counterparties); Part 45 NPRM, 75 FR 76574, 76595 (discussion for non-SD/MSP counterparties).

<sup>254</sup> See 44 U.S.C. 3501.

<sup>255</sup> See 44 U.S.C. 3502.

<sup>250</sup> See 80 FR 52544, 52559.

<sup>251</sup> See 80 FR 52544, 52559.

<sup>252</sup> See Draft Technical Specifications for Certain Swap Data Elements, Request for Comment (Dec. 22, 2015), available at <http://www.cftc.gov/idc/groups/public/@newsroom/documents/file/specificationsswapdata122215.pdf>. ("Technical Specifications Request for Comment").

<sup>253</sup> As noted above, in addition to the end-user exception to the swap clearing requirement set forth in section 2(h)(7) of the CEA and codified in part 50 of the Commission's regulations, the Commission has published two exemptions to the swap clearing requirement: The inter-affiliate exemption (§ 50.52) and the financial cooperative exemption (§ 50.51).

<sup>254</sup> See 5 U.S.C. 601 *et seq.*

<sup>255</sup> 47 FR 18618, 18618-21, Apr. 30, 1982.

PRA requirements have been determined to include not only mandatory but also voluntary information collections, and include both written and oral communications.<sup>262</sup> Under the PRA, 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 from the Office of Management and Budget (“OMB”). The OMB control number for the information collection associated with part 45 swaps reporting is 3038–0096.<sup>263</sup> Because reporting entities under part 45 would also be required to report swaps pursuant to part 43, where applicable, some of the burden associated with swaps reporting under part 45 is covered in the information collection covering real-time swaps reporting pursuant to part 43.<sup>264</sup>

The Commission intends to amend existing collection 3038–0096 to account for adjustments to reporting entities’ swaps data reporting systems necessitated by this release. Information collection 3038–0096<sup>265</sup> includes an estimate of burden hours and costs associated with various requirements of part 45 swaps reporting and recordkeeping,<sup>266</sup> including the reporting of creation data under § 45.3 and continuation data under § 45.4.<sup>267</sup>

<sup>262</sup> See 5 CFR 1320.3(c)(1).

<sup>263</sup> The NPRM improperly cited information collection 3038–0089, rather than 3038–0096, as the collection relating to swaps reporting under part 45. However, the NPRM’s discussion of what information is collected and the burden estimates for swaps reporting under part 45 correctly described collection 3038–0096, which is the basis of this PRA discussion.

<sup>264</sup> See Information Collection 3038–0070; see also 77 FR 2136, 2174. (“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 needed 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.”).

<sup>265</sup> The Commission issued a notice of intent to renew information collection 3038–0096 on August 7, 2015. See Notice of Intent to Renew Collection 3038–0096, 80 FR 47477 (Aug. 7, 2015). The Commission received no comments on this notice of intent to renew. The comment file is available at <http://comments.cftc.gov/PublicComments/CommentList.aspx?id=1608>. The Office of Management and Budget approved without change the renewal of this information collection on December 21, 2015.

<sup>266</sup> Supporting documentation for the renewal of information collection 3038–0096 is available at [http://www.reginfo.gov/public/do/PRAViewDocument?ref\\_nbr=201508-3038-002](http://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=201508-3038-002).

<sup>267</sup> “Creation data” under § 45.3 includes all PET data fields listed in appendix 1 to part 45, as well as all “confirmation data,” which includes all terms of the swap matched and agreed upon by the parties. “Continuation data” reporting under § 45.4 requires a reporting entity to ensure that all data on

the maintenance of an internal order management system (“OMS”), and personnel needed to maintain a compliance program in support of an OMS system. The intended amendment to the collection will add an estimate for the burden associated (a) with changing reporting systems to comply with changes to the required data to be reported under § 45.3 and § 45.4, and (b) with requirements that DCOs potentially connect to all registered SDRs. The Commission will be filing to update this information collection with OMB prior to the effective date of this release. This update will be publicly noticed and made available for comment in the **Federal Register**.

The Commission received several comments on the costs associated with part 45 swaps reporting that could implicate PRA burdens.<sup>268</sup> Regarding the addition of PET fields applicable to all swaps, ISDA commented that the PET field for “clearing exception or exemption type” would be “very challenging and costly” to implement.<sup>269</sup> However, neither ISDA nor any other commenter provided information quantifying the cost to update reporting systems to account for the modified and additional PET fields. As discussed more extensively in Section III.C.9, the information required to be reported in the modified “clearing exception or exemption type” is also already in the possession of the reporting entity; changes to reporting systems required to report this field would involve adding a known piece of information to the message reported to an SDR. Regarding new PET fields for clearing swaps, Eurex commented that DCOs would need to collect data from the original swap counterparties or trading venue to be able to report these fields.<sup>270</sup> The information required to report these PET fields is either

a swap is kept current and accurate, including any changes to primary economic terms.

<sup>268</sup> In addition, FSR requested that the Commission promulgate rules to standardize data elements. See FSR Oct. 30, 2015 Letter, at 4. While this comment would relate to the burden of reporting for part 45 purposes, it is beyond the scope of the NPRM. The Commission would note Commission staff’s efforts in connection with the Technical Specifications Request for Comment, discussed in n. 42. The Commission also received some comments suggesting that the Commission not require the reporting of intended-to-be-cleared original swaps, or require DCOs to report such swaps. See, e.g., CEWG Oct. 30, 2015 Letter, at 2–3; CMC Oct. 30, 2015 Letter, at 2. While not requiring such reporting would reduce the burden on original swap reporting entities, the NPRM and adopted amendments to part 45 do not change the existing requirement to report such swaps. Therefore, this comment is beyond the scope of the NPRM. See, *supra*, Section I.B.4.iii.

<sup>269</sup> ISDA Oct. 30, 2015 Letter, at 9.

<sup>270</sup> See Eurex Oct. 30, 2015 Letter, at 5.

generated by the DCO itself (such as clearing swap USI, clearing member LEI, clearing member internal identifier, house/customer account flag, and receipt and clearing timestamps) or should be included in the clearing member’s submission of a swap to the DCO for clearing (such as the original swap USI and original swap SDR). While the Commission believes that reporting entities already possess information required to report the added and amended PET fields, the Commission intends to amend collection 3038–0096 to account for changes that reporting entities must make to their reporting systems to comply with these new and amended fields.

Some commenters raised concerns that requiring DCOs to report continuation data for original swaps to the SDR to which the original swap was reported could increase costs for DCOs as they may need to connect to SDRs to which they do not currently have a connection.<sup>271</sup> The Commission understands that DCOs already may report terminations to the original SDR, and to the extent these reporting systems are already implemented the new rules will not introduce additional costs for these DCOs. Moreover, the costs of additional SDR connections that may not yet be in place are addressed by the Commission more fully below at III.C.5. However, the Commission recognizes that requiring DCOs to potentially connect to more than one SDR in order to report continuation data for original swaps may require an update to the existing information collection 3038–0096. The Commission will be filing to update this information collection with OMB prior to the effective date of this release. This update will be publicly noticed and made available for comment in the **Federal Register**.

### C. Cost-Benefit Considerations

#### 1. Introduction

Section 15(a) of the CEA requires the Commission to consider the costs and benefits of its actions before promulgating a regulation under the CEA or issuing certain orders.<sup>272</sup> Section 15(a) further specifies that the costs and benefits shall be evaluated in light of five broad areas of market and public concern: (1) Protection of market

<sup>271</sup> See e.g., Eurex Oct. 30, 2015 Letter, at 5, 9; LedgerX Oct. 30, 2015 Letter, at 2; LCH Oct. 30, 2015 Letter, at 3. The Commission notes that another commenter stated that “DCOs have already made connections with the major CFTC-registered SDRs.” (DTCC Oct. 30, 2015, Letter at 5).

<sup>272</sup> 7 U.S.C. 19(a).

participants and the public; (2) efficiency, competitiveness, and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations. The Commission considers the costs and benefits resulting from its discretionary determinations with respect to the section 15(a) factors.

The Commission is amending and making additions to §§ 45.1, 45.3, 45.4, 45.5, 45.8, 45.10, and appendix 1 to part 45 in order to provide clarity to counterparties to a swap and registered entities regarding their part 45 reporting obligations with respect to cleared swap transactions and to improve the efficiency of data collection and maintenance associated with the reporting of the swaps involved in a cleared swap transaction. The final rule adopts revisions to part 45 as proposed in the NPRM.

## 2. Background

The swap data reporting framework adopted in the Final Part 45 Rulemaking<sup>273</sup> was largely based on the mechanisms for the trading and execution of uncleared swaps. The plain language of the existing part 45 rules presumes the existence of a single, continuous swap both prior to and after acceptance of a swap for clearing by a DCO. Under that framework, registered entities and counterparties would each report data with respect to a single swap when such swap is initially executed, referred to as “creation data,” and over the course of the swap’s existence, referred to as “continuation data.”<sup>274</sup>

The Commission has since had additional opportunities to consult with industry and with other regulators, including the SEC,<sup>275</sup> and to observe how the part 45 regulations function in practice with respect to swaps that are cleared, including how the implementation of part 45 interacts with the implementation of part 39 of the

Commission’s regulations, which contains provisions applicable to DCOs.

In particular, § 39.12(b)(6) provides that upon acceptance of a swap by a DCO for clearing, the original swap is extinguished and replaced by equal and opposite swaps, with the DCO as the counterparty to each such swap.<sup>276</sup> The original swap that is extinguished upon acceptance for clearing is commonly referred to as the “alpha” swap and the equal and opposite swaps that replace the original swap are commonly referred to as “beta” and “gamma” swaps. The Commission is of the view that the existing part 45 regulations should be amended to better accommodate the multi-swap framework of § 39.12(b)(6) by explicitly addressing beta and gamma swaps as distinct swaps for purposes of part 45 reporting.<sup>277</sup>

The existing part 45 regulations do not explicitly address the reporting of “alpha,” “beta,” and “gamma” swaps; however, industry practice has evolved to address such reporting. The Commission understands that market participants generally report part 45 data for cleared swap transactions in conformance with the framework described in § 39.12(b)(6), where separate swaps (alphas, betas, and gammas) are represented individually in reported swap data. The Commission understands that under existing market practice: SEFs, DCMs and reporting counterparties generally report required swap creation data for alpha swaps to the SDR of their choice; DCOs that accept alpha swaps for clearing generally report required swap creation data for the beta and gamma swaps that result from clearing novation of the alpha swap to the SDR of their choice

(which may be different than the SDR to which the alpha swap was reported); such DCOs do not in all cases include the USI of the alpha swap in creation data reported for the beta and gamma swaps; and that DCOs may inconsistently report, and SDRs may inconsistently accept and process, alpha swap terminations.<sup>278</sup>

The gaps between the existing part 45 regulations, § 39.12(b)(6), and certain industry practices, including those outlined above, have likely contributed to a lack of certainty regarding the applicability of the part 45 regulations to beta and gamma swaps, including which registered entity or counterparty is required to report creation data and/or continuation data for such swaps, and the manner in which such swaps must be reported. The Commission understands that this uncertainty presents compliance challenges for registered entities and reporting counterparties.

Additionally, the lack of clarity regarding existing part 45 obligations with respect to beta and gamma swaps has impacted the accuracy, quality, and usefulness of data that is reported for cleared swaps. For instance, inconsistent DCO reporting of alpha swap USIs in creation data for beta and gamma swaps hinders the Commission’s ability to trace the history of a cleared swap transaction from execution between the original counterparties to clearing novation. Even in cases where the Commission can ascertain the USI of a specific alpha swap that was replaced by beta and gamma swaps, SDR data available to the Commission at times misleadingly shows some alpha swaps as remaining open between the original counterparties, when in actuality such swaps have been extinguished through clearing novation. The inability to determine whether an alpha swap has been terminated impedes the Commission’s ability to analyze cleared swap activity and to review swap activity for compliance with the clearing

<sup>276</sup> See 17 CFR 39.12(b)(6) (requiring a DCO that clears swaps to have rules providing that, upon acceptance of a swap by the [DCO] for clearing: (i) The original swap is extinguished; (ii) the original swap is replaced by an equal and opposite swap between the [DCO] and each clearing member acting as principal for a house trading or acting as agent for a customer trade). Subsequent to adoption of the Final Part 45 Rulemaking, the Commission affirmed that the multi-swap framework (comprising separate and unique original and resulting swaps) should apply for part 45 reporting purposes. See Statement of the Commission on the Approval of Chicago Mercantile Exchange Rule 1001 (Mar. 6, 2013), at 6, available at: <http://www.cftc.gov/ucm/groups/public/@newsroom/documents/file/statementofthecommission.pdf>.

<sup>277</sup> The Commission also notes that a single swap reporting framework for cleared swaps, as opposed to a multi-swap framework like the one contemplated by § 39.12(b)(6), would likely not be consistent with the approach proposed by the SEC in its release proposing certain new rules and rule amendments to Regulation SBSR. See Regulation SBSR—Reporting and Dissemination of Security-Based Swap Information, 80 FR 14740 (Mar. 19, 2015). The Commission discusses the benefits associated with harmonizing its approach with that of other regulators later in this release.

<sup>278</sup> While the above reflects the Commission’s general understanding of industry practice with respect to the reporting of component parts of a cleared swap transaction, the Commission does not possess complete information regarding certain details and nuances of the reporting practices of different registered entities and reporting counterparties. For instance, in some cases, the Commission generally does not possess sufficient information to ascertain the period of time between the DCO’s acceptance of an alpha swap for clearing and the DCO’s report of creation data for beta and gamma swaps. The Commission posed questions eliciting specific details or nuances of industry practice that are likely to have cost/benefit implications in the relevant sections of the NPRM.

<sup>273</sup> See 77 FR 2136.

<sup>274</sup> Section 45.1 defines “required swap creation data” as primary economic terms data and confirmation data. Section 45.1 defines “primary economic terms data” as 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 and defines “confirmation data” as all of the terms of a swap matched and agreed upon by the counterparties in confirming the swap. 17 CFR 45.1. 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. *Id.*

<sup>275</sup> The SEC proposed certain new rules and rule amendments to Regulation SBSR governing reporting in the context of security-based swaps. See Regulation SBSR—Reporting and Dissemination of Security-Based Swap Information, 80 FR 14740 (Mar. 19, 2015).

requirement.<sup>279</sup> If alpha swaps have been terminated, yet appear to remain open, then a risk of double counting swap notional exposures can result, which would impede the Commission's ability to analyze and study swaps market activity using accurate information. The inability to link the different swaps in a cleared swap transaction also impedes the Commission's ability to assess exposures of market participants in the uncleared and cleared swaps markets. Additionally, certain creation data fields that are currently populated for beta and gamma swaps prove difficult to interpret by the Commission, and thus can result in inconsistencies in their application and reporting among alpha, beta, and gamma swaps, hindering the Commission's ability to interpret and analyze data regarding beta and gamma swaps.

The revisions and additions that are being adopted in this final rulemaking would amend part 45 to differentiate reporting requirements for cleared and uncleared swap transactions, and which explicitly address swap counterparty and registered entity reporting requirements for each component (e.g., alpha, beta, and gamma) of a cleared swap transaction. This rulemaking will remove uncertainty as to which counterparty to a swap is responsible for reporting creation data for each of the various components of a cleared swap transaction. The final rule makes clear whose obligation it is to report the termination of the original swap upon acceptance of a swap by a DCO for clearing. These additional details include where, when, and how to report the swap data pertaining to the establishment of the beta and gamma swaps and the reporting of the termination message to the SDR that originally received the swap data for the alpha swap. This final rule is also intended to improve the efficiency of data collection and maintenance associated with the reporting of the swaps involved in a cleared swap transaction and to improve the accuracy, quality, and usefulness of data that is reported for cleared swaps and

<sup>279</sup> Commission staff recently noted difficulty in evaluating the proper *de minimis* level of activity for swap dealer registration under Commission regulation 1.3(ggg), in part due to difficulties linking alpha swaps with resulting beta and gamma swaps. See Swap Dealer *De Minimis* Exception Preliminary Report (Nov. 18, 2015), at 13–14, available at [http://www.cftc.gov/idc/groups/public/@swaps/documents/file/dfreport\\_sddeminis\\_1115.pdf](http://www.cftc.gov/idc/groups/public/@swaps/documents/file/dfreport_sddeminis_1115.pdf). In the report, Staff noted that the finalization and implementation of this final rule release for reporting of cleared swaps should help to mitigate this issue going forward.

alpha swaps that have been extinguished due to clearing novation.

The Commission believes that the baseline for this consideration of costs and benefits is generally the existing part 45 regulations, which were adopted in 2011.<sup>280</sup> However, as described above, in certain circumstances, industry practice has been informed by certain provisions of part 39 and by subsequent industry developments, and thus does not necessarily reflect the plain language of the existing part 45 regulations. In those circumstances, the baseline for this consideration of costs and benefits will be industry practice.

The following consideration of costs and benefits is organized according to the rules and rule amendments put forth in this final rulemaking. For each rule, the Commission summarizes the amendments<sup>281</sup> and identifies and discusses the costs and benefits attributable to them, including a discussion of the commenters' suggestions with regards to the costs and benefits of the amendments present in the IDWG Request for Comment and the NPRM.<sup>282</sup> The Commission then considers the costs and benefits of certain alternatives to the rules put forth in this final rulemaking, as well as the costs and benefits of all of the rules jointly in light of the five public interest considerations set out in section 15(a) of the CEA.

The Commission notes that this consideration of costs and benefits is based on the understanding that the swaps market functions internationally, with many transactions involving U.S. firms taking place across international boundaries, with some Commission registrants being organized outside of the United States, with leading industry members typically conducting operations both within and outside the United States, and with industry members commonly following substantially similar business practices wherever located. Where the Commission does not specifically refer to matters of location, the below discussion of costs and benefits refers to the effects of the proposed rules on all

<sup>280</sup> See Swap Data Recordkeeping and Reporting Requirements, Final Rule, 77 FR 2136 (Jan. 13, 2012).

<sup>281</sup> As described in detail throughout Section II of this final release, the Commission is also adopting a number of non-substantive, conforming rule amendments in this release, such as renumbering certain provisions and modifying the wording of existing provisions to ensure consistency with the wording in newly proposed definitions. Non-substantive amendments of this nature will not be discussed in the cost-benefit portion of this final release.

<sup>282</sup> See IDWG Request for Comment, 79 FR 16689 (Mar. 26, 2014); NPRM, 80 FR 52544, 52570 (Aug. 31, 2015).

swaps activity subject to the amended regulations, whether by virtue of the activity's physical location in the United States or by virtue of the activity's connection with or effect on U.S. commerce under CEA section 2(i).<sup>283</sup> The Commission also notes that the existing part 45 regulations generally contemplate situations where a swap may be required to be reported pursuant to U.S. law and the law of another jurisdiction.<sup>284</sup>

### 3. Definitions—Amendments to § 45.1

The adopted amendments to § 45.1 revise the definition of “derivatives clearing organization” for purposes of part 45 to update a reference to an existing definition of “derivatives clearing organization” and make clear that part 45 applies to DCOs registered with the Commission. The adopted amendments to § 45.1 will also add new definitions for “original swaps” (swaps that have been accepted for clearing by a DCO, commonly referred to as “alpha” swaps) and “clearing swaps” (swaps created pursuant to the rules of a DCO that have a DCO as a counterparty, including, but not limited to, any swap that replaces an original swap that was extinguished upon acceptance for clearing, commonly referred to as “beta” and “gamma” swaps).

The terms original swap and clearing swaps will be used throughout amended part 45 to help clarify reporting obligations for each swap involved in a cleared swap transaction. Likewise, the Commission will use the defined terms “original swaps” and “clearing swaps” throughout this consideration of costs and benefits. Given that these terms are a product of this release and are not yet part of industry nomenclature, the Commission will also use the terms “alpha, beta, and gamma” throughout this consideration of costs and benefits when discussing existing industry

<sup>283</sup> 7 U.S.C. 2(i). Section 2(i)(1) makes the swaps provisions of the Dodd-Frank Act, and Commission regulations promulgated under those provisions, applicable to activities outside the United States that “have a direct and significant connection activities in, or effect on, commerce of the United States;” while section 2(i)(2) makes them applicable to activities outside the United States that contravene Commission rules promulgated to prevent evasion of Dodd-Frank. Application of section 2(i)(1) to the existing part 45 regulations with respect to SDs/MSPs and non-SD/non-MSP counterparties is discussed in the Commission's non-binding Interpretive Guidance and Policy Statement Regarding Compliance With Certain Swap Regulations, 78 FR 45292 (July 26, 2013).

<sup>284</sup> See 17 CFR 45.1 (defining “International swap” to mean 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.); see also 17 CFR 45.3(h) (prescribing requirements with respect to international swaps).

practice and when helpful for purposes of clarification.<sup>285</sup>

The Commission notes that commenters did not submit any comments relevant to the costs and benefits of the proposed amendments to § 45.1.

#### i. Costs

The Commission does not anticipate that these definitions, in and of themselves, impose additional costs on DCOs or market participants. However, these definitions will be referenced in other proposed substantive provisions and the costs and benefits of those substantive requirements will be discussed in the relevant sections below.

#### ii. Benefits

As discussed earlier in this release, the plain language of the existing part 45 regulations presumes the existence of one continuous swap and does not explicitly acknowledge distinct reporting requirements for the individual components (*i.e.*, alphas, betas, and gammas) of a cleared swap transaction. However, industry practice is generally to report part 45 data for cleared swap transactions in conformance with the multi-swap framework described in § 39.12(b)(6) (*i.e.*, to report alphas, betas, and gammas separately). The definitions of original and clearing swaps, along with the other revisions to part 45 covered in this release, will help align the part 45 regulations with part 39 and with certain industry practices and will explicitly delineate the swap data reporting obligations associated with each of the swaps involved in a cleared swap transaction.<sup>286</sup>

#### 4. Creation Data Reporting by DCOs—Amendments to § 45.3

Existing § 45.3 requires reporting to an SDR of two types of “creation data”

<sup>285</sup> The Commission determined to utilize the proposed to be defined terms “original swap” and “clearing swaps” in this release rather than the industry terms “alpha, beta, and gamma” because while a cleared-swap transaction generally comprises an original swap that is terminated upon novation and the equal and opposite swaps that replace it, the Commission is aware of certain circumstances in which a clearing swap may not involve the replacement of an original swap (*e.g.*, an open offer swap, as discussed earlier in this release). See *supra*, Section II.A.

<sup>286</sup> The Commission acknowledges that the alternative approaches to the reporting of cleared swap transactions separately discussed in Section III.C.10, Consideration of Alternatives, later in this release could also provide these benefits for registered entities and swap counterparties. However, for the reasons explained in that section, the Commission is of the view that the proposed approach is more consistent with industry practice than the alternatives.

generated in connection with a swap’s creation: “primary economic terms data” and “confirmation data.”<sup>287</sup> Regulation 45.3 governs what creation data must be reported, who must report it, and deadlines for its reporting.

Amended § 45.3(e) will govern creation data reporting requirements for swaps that fall under the proposed definition of clearing swaps. Amended § 45.3(e) will also require a DCO, as reporting counterparty under adopted § 45.8(i),<sup>288</sup> to report all required swap creation data for each clearing swap as soon as technologically practicable after acceptance of an original swap by a DCO for clearing (in the event that the clearing swap replaces an original swap) or as soon as technologically practicable after execution of the clearing swap (in the event that the clearing swap does not replace an original swap).<sup>289</sup>

Swaps other than clearing swaps, including swaps that later become original swaps by virtue of their acceptance for clearing by a DCO, will continue to be reported as currently required under existing § 45.3(a)–(d). The Commission is thus following an approach to creation data reporting that will require reporting counterparties or SEFs/DCMs to report creation data for swaps commonly known as alpha swaps, and that will require DCOs to report creation data for swaps commonly known as beta and gamma

<sup>287</sup> Section 45.1 defines “required swap creation data” as primary economic terms data and confirmation data. Section 45.1 defines “primary economic terms data” as 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 and defines “confirmation data” as all of the terms of a swap matched and agreed upon by the counterparties in confirming the swap. 17 CFR 45.1. 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.” *Id.*

<sup>288</sup> As discussed in greater detail below, adopted § 45.8(i) will designate the DCO as the reporting counterparty for clearing swaps.

<sup>289</sup> As noted earlier in this release, the amended definition of “clearing swap” is intended to encompass: (1) Swaps that replace an original swap and to which the DCO is a counterparty (*i.e.*, swaps commonly known as betas and gammas) and (2) all other swaps to which the DCO is a counterparty (even if such swap does not replace an original swap). The Commission understands that there may be instances in which a clearing swap does not replace an original swap. For example, in the preamble to the part 39 adopting release, the Commission noted that “open offer” systems are acceptable under § 39.12(b)(6), stating that “Effectively, under an open offer system there is no ‘original’ swap between executing parties that needs to be novated; the swap that is created upon execution is between the DCO and the clearing member, acting either as principal or agent.” See Derivatives Clearing Organization General Provisions and Core Principles, Final Rule 76 FR 69334, 69361 (Nov. 8, 2011).

swaps, and for any other swaps to which the DCO is a counterparty.<sup>290</sup>

With respect to confirmation data reporting, for swaps that are intended to be cleared at the time of execution, the Commission is amending § 45.3(a), (b), (c)(1)(iii), (c)(2)(iii), and (d)(2) to remove certain existing confirmation data reporting requirements. Under the modified rules, SEFs/DCMs and reporting counterparties will continue to be required to report PET data as part of their creation data reporting, but will not be required to report confirmation data for swaps that are intended to be submitted to a DCO for clearing at the time of execution. Instead, the DCO will be required to report confirmation data for clearing swaps pursuant to proposed § 45.3(e).

The Commission is also amending § 45.3(j), which will provide that: for swaps executed on or pursuant to the rules of a SEF or DCM (including swaps that become original swaps), the SEF or DCM will have the obligation to choose the SDR for such swaps; for all other swaps (including for off-facility swaps and/or clearing swaps) the reporting counterparty (as determined under § 45.8) will have the obligation to choose the SDR.

The Commission has considered the letters sent by commenters to the cost-benefit considerations of proposed amendments to § 45.3. Several comments were received on the elimination of the requirement for reporting confirmation data for swaps that are intended to be cleared. On the cost-benefit considerations front, Markit commented that eliminating the requirement for reporting confirmation data for swaps that are intended to be cleared, while still maintaining the requirement to report primary economic terms data, will not benefit reporting workflows and that there is little incremental cost to report confirmation data as reporting systems are set-up to capture that information already.<sup>291</sup>

With regards to eliminating the requirement for reporting confirmation data, the Commission acknowledges that there might be incremental cost savings due to the elimination of this requirement, as suggested by commenters. Nevertheless, the Commission believes that there is no cost associated with the elimination of

<sup>290</sup> Because the reporting counterparty or SEF/DCM are currently required under Part 45 to report a swap that would become an original swap under this final release, there is no need to conduct a cost-benefit consideration of this requirement. Alternatives to the current reporting approach for original swaps are discussed in the Consideration of Alternatives section, Section III.C.10, below.

<sup>291</sup> See Markit Oct. 30, 2015 Letter, at 2–3.

this requirement and that confirmation data requirements for clearing swaps provide the Commission with a sufficient representation of the confirmation data for a cleared swap transaction. As a result, the Commission believes that there are benefits in the form of cost savings that need to be considered in the elimination of this requirement.

Other commenters responded to the question of which entity should be responsible for reporting creation data for swaps that will become original swaps. Commenters were split on this question. Some commenters suggested that the DCO, rather than the reporting counterparty, should be responsible for reporting the creation data for that swap.<sup>292</sup> CME commented that assigning all the reporting obligations for original and clearing swaps to the DCO is a better and simpler way to address alpha swap reporting, and will eliminate the need to reconcile original and clearing swaps across SDRs.<sup>293</sup> CMC similarly commented that DCOs are in the best position to report on swaps that are accepted or rejected for clearing and should assume all reporting obligations for cleared swaps, including all reporting of swaps that are intended to be cleared.<sup>294</sup> AIMA likewise suggested that if the Commission continues the reporting requirements associated with original swaps, assigning the reporting obligations to the DCOs will remove reporting burdens and the risk of data fragmentation across SDRs.<sup>295</sup>

Other commenters recommended that the Commission continue to require the reporting counterparty to report creation data for those swaps that will become original swaps.<sup>296</sup> LCH commented that the reporting counterparty of a trade should always be a party to the transaction and therefore, in the case of a swap that will become an original swap, the DCO would not be better suited than the SEF, DCM, or reporting counterparty to report the creation data.<sup>297</sup> Eurex suggested that assigning the reporting obligation of original swap creation data to the DCO may present a timeliness issue depending on when the DCO receives the necessary information from the counterparties.<sup>298</sup> ISDA

likewise agreed that the obligation to report swaps that become original swaps should remain with the reporting counterparty for that swap.<sup>299</sup>

Furthermore, certain commenters suggested that the reporting of any creation data for swaps that will become original swaps is unnecessary.<sup>300</sup> AIMA commented that eliminating reporting for swaps that are intended to be cleared at the time of execution will significantly reduce complexity in the reporting regime and streamline the reported data.<sup>301</sup> AIMA also commented that the proposed reporting approach for original swaps will not reduce data fragmentation.<sup>302</sup> Similarly, EEI/EPISA suggested that there is little to no benefit to original swap reporting for swaps that are intended to be cleared at the time of execution and that counterparties should not be required to report any creation data for such swaps.<sup>303</sup>

While the NPRM did not propose changing the existing obligation to report swaps that become original swaps, and is therefore beyond the scope of the NPRM, the Commission continues to believe that original swaps contain essential information regarding the origins of cleared swap transactions for market surveillance and audit-trail purposes. The Commission's ability to trace the history of a cleared swap transaction from execution between the original counterparties to clearing novation relies on this information and this is a significant benefit to the Commission in terms of understanding the market structure as well as for surveillance purposes.

With respect to the issue of who reports creation data for those swaps that will become original swaps, the Commission believes that the requirement that the reporting counterparty report creation data for those swaps that will become original swaps should remain. The Commission believes there are significant benefits associated with maintaining established industry workflows. Reporting counterparties and registered entities have invested substantial time and

resources to report swaps (both cleared and not cleared) to SDRs, and DCOs have invested substantial resources to report clearing swaps. The Commission believes it would be efficient to make use of this existing infrastructure and asking market participants to make changes to this established workflow might be costly. The Commission acknowledges the data fragmentation concerns raised by those that recommend DCOs report original swap creation data. However, the Commission also recognizes that requiring the DCOs, rather than the original reporting counterparty, to report original swap creation data may present challenges of its own.<sup>304</sup> The Commission also believes that there are significant benefits associated with maintaining accurate and timely reporting of the required data fields and that this will outweigh data fragmentation concerns for those situations where the original swap and clearing swaps are reported to different SDRs.

The Commission has considered arguments made by the commenters with respect to choice of SDR and believes that placing the obligation to choose the SDR on the registered entity or counterparty that is required to report the swap, rather than on another entity, will result in more efficient data reporting. Allowing the first entity to report data on a swap to choose the SDR will allow reporting entities to select an SDR to which they have established connections; giving another entity the ability to choose the SDR could require the first reporting entities to connect to multiple SDRs. The Commission also believes allowing the first reporting registered entity or counterparty to choose the SDR will also promote competition among SDRs to provide SDR services to a broad array of reporting entities.

This method of SDR selection also avoids the insertion of any entity other than a party to the swap or facility where the transaction is executed, into the decision as to how a registered entity or counterparty fulfills its regulatory obligation to report initial required swap creation data. As with the "first-touch" approach taken with respect to the creation of USIs in part 45,<sup>305</sup> the Commission believes that the entity with the first reporting obligation should select the SDR for that report. The Commission believes that such a

<sup>292</sup> See *e.g.*, CME Oct. 30, 2015 Letter, at 2–3; CMC Oct. 30, 2015 Letter, at 2–3; AIMA Oct. 30, 2015 Letter, at 6; CEWG Oct. 30, 2015 Letter, at 3.

<sup>293</sup> See CME Oct. 30, 2015 Letter, at 3.

<sup>294</sup> See CMC Oct. 30, 2015 Letter, at 2.

<sup>295</sup> See AIMA Oct. 30, 2015 Letter, at 6.

<sup>296</sup> See ISDA Oct. 30, 2015 Letter, at 4; LCH Oct. 30, 2015 Letter, at 2; Eurex Oct. 30, 2015 Letter, at 4.

<sup>297</sup> See LCH Oct. 30, 2015 Letter, at 2.

<sup>298</sup> See Eurex Oct. 30, 2015 Letter, at 4.

<sup>299</sup> ISDA also commented in support of the Commission's proposal to remove the provisions in § 45.3 that excused a reporting counterparty from reporting creation data for a swap accepted for clearing before the primary economic terms reporting deadline. See ISDA Oct. 30, 2015 Letter, at 4.

<sup>300</sup> See AIMA Oct. 30, 2015 Letter, at 2–6; EEI/EPISA Oct. 30, 2015 Letter, at 3; CEWG Oct. 30, 2015 Letter, at 2.

<sup>301</sup> See AIMA Oct. 30, 2015 Letter, at 3.

<sup>302</sup> See AIMA Oct. 30, 2015 Letter, at 4 (noting that reporting original swap creation data to one SDR and reporting clearing swap data to a different SDR may undermine data quality for the Commission's supervisory purposes).

<sup>303</sup> See EEI/EPISA Oct. 30, 2015 Letter, at 3.

<sup>304</sup> See *e.g.*, Eurex Oct. 30, 2015 Letter, at 4 (suggesting there could be timeliness issue depending on when the DCO receives necessary information from counterparties to report creation data).

<sup>305</sup> See Final Part 45 Rulemaking, 77 FR 2136, 2158 (Jan. 13, 2012).

method of SDR selection will avoid delays in real-time reporting for part 43 purposes. If DCOs were to select the SDR for an original swap, the DCO would not be in a position to make such selection until after a swap was accepted for clearing. Any delays in clearing would translate into delays in reporting for both part 43 real-time reporting and part 45 reporting. Additionally, the registered entity or counterparty that is required to report a swap pursuant to § 45.8 may select an SDR to which its technological systems are most suited or to which it already has an established relationship, providing for the efficient and accurate reporting of swap data. As a result, the Commission believes that amendments to § 45.3(j) simply codify existing practice and will not impose any additional connection costs for DCOs or SDRs. In addition, the Commission believes that allowing DCOs to choose the SDRs to which they report creation and continuation data is cost-minimizing for DCOs because it allows them to select the SDR which is most cost effective.

#### i. Costs

The Commission understands that under current industry practice, DCOs commonly report to SDRs creation data for swaps that would fall under the definition of clearing swaps. Accordingly, to the extent that DCOs already have been reporting in conformance with adopted § 45.3(e), the Commission does not expect the final rule to result in any additional costs.

With respect to registered DCOs organized outside of the United States, its territories, and possessions, that are subject to supervision and regulation in a foreign jurisdiction, a home country trade reporting regulatory regime may require the DCO to report swap data to a trade repository in the home country jurisdiction. For clearing swaps that a DCO would be required to report both to a registered SDR pursuant to the amendments to part 45, and to a foreign trade repository pursuant to a home country trade reporting regulatory regime, the Commission acknowledged in the NPRM that a DCO could be expected to incur some additional costs in satisfying both its CFTC and home country reporting obligations, relative to a DCO that would only be subject to part 45 reporting requirements. As also indicated in the NPRM, DCOs are not currently required to provide such cost information to the Commission, the Commission lacks access to the information needed to assess the magnitude of the costs relating to compliance with reporting obligations

in multiple jurisdictions. In addition, the Commission did not receive any comments on, nor estimates of, the costs relating to compliance with reporting obligations in multiple jurisdictions. In terms of any potential costs, the Commission expects that industry technological innovations may effectively allow for satisfaction of swap data reporting requirements across more than one jurisdiction by means of a single data submission, and that a streamlined reporting process or other technology and operational enhancements could mitigate the cost of satisfying reporting requirements for swaps that may be required to be reported to a foreign trade repository under a home country regulatory regime as well as to a registered SDR pursuant to amendments to part 45.<sup>306</sup> Additionally, the Commission anticipates that adopting an approach to the reporting of cleared swaps in the United States that is, to the extent possible, consistent with the approaches adopted in other jurisdictions may also minimize compliance costs for entities operating in multiple jurisdictions.<sup>307</sup> The Commission also notes that any costs arising from reporting swap data with respect to more than one jurisdiction could already have been realized, to the extent that DCOs located outside the United States are already reporting swap data to a registered SDR in addition to reporting swap data to a trade repository pursuant to a home country regulatory regime.

Finally, with respect to choice of SDR, the Commission believes that amendments to § 45.3(j) will not impose any additional costs because the amendments simply codify existing practice—the Commission understands that the workflows that apply the proposed choice of SDR obligations are already in place.

The Commission believes that allowing DCOs to choose the SDRs to which they report creation and continuation data is cost-minimizing for DCOs because it allows them to select the SDR which is most cost effective. As discussed in greater detail below, the Commission anticipates that DCOs that have affiliated SDRs will continue their

<sup>306</sup> As noted in the NPRM, the part 45 regulations contemplate situations where a swap may be required to be reported pursuant to U.S. law and the law of another jurisdiction. See 80 FR 52544, 52564 n. 138.

<sup>307</sup> The Commission understands that the approach followed in this final release for the reporting of cleared swaps (*e.g.*, requiring separate reporting of alphas, betas, and gammas) is largely consistent with the multi-swap approach adopted by a number of jurisdictions, including, for example, the European Union, Singapore, and Australia.

current practice of reporting clearing swaps to their affiliated SDRs.<sup>308</sup>

#### ii. Benefits

Amended § 45.3(e) will explicitly articulate DCO part 45 reporting obligations with respect to clearing swaps (*e.g.*, betas and gammas).<sup>309</sup> As explained above, existing § 45.3 does not explicitly acknowledge distinct reporting requirements for swaps commonly known as alphas, betas, and gammas. The amendments explicitly delineate creation data reporting obligations for each component of a cleared swap transaction, which will improve the Commission's ability to analyze data associated with such transactions.

Requiring DCOs to report required swap creation data for clearing swaps to SDRs in the manner outlined in this release is expected to result in uniform protocols and consistent reporting of the individual components of a cleared swap transaction. The Commission believes that the adopted reporting framework for cleared swaps will result in more consistent reporting of all components of a cleared swap transaction, including linkages between the related swaps, thereby increasing the efficiency of the SDR data collection function and enhancing the Commission's ability to utilize the data for regulatory purposes, including for systemic risk mitigation, market monitoring, and market abuse prevention.

With respect to confirmation data reporting, the Commission anticipates that the removal of certain confirmation data reporting requirements will result in decreased costs for swap counterparties and/or registered entities that are currently gathering and conveying electronically the information necessary to report

<sup>308</sup> The Commission acknowledges several commenters at both the IDWG Request for Comment and NPRM stages who commented on the costs to reporting counterparties when reporting original swaps. See, *e.g.*, CME Oct. 30, 2015 Letter, at 6–7; CMC Oct. 30, 2015 Letter, at 2. However, the Commission has noted that the revisions to part 45 adopted in this release do not change the existing obligation of those entities to report original swaps. Therefore, the costs currently incurred by such reporting counterparties are not a factor when considering the costs and benefits of the revisions adopted in this release. The Commission does discuss those costs in the Consideration of Alternatives, below at Section III.C.10.

<sup>309</sup> The Commission acknowledges that the alternatives separately discussed in the Consideration of Alternatives section later in this release could also provide these benefits for registered entities and swap counterparties. However, for the reasons explained in that section, the Commission is of the view that the proposed approach is more consistent with industry practice than the alternatives.

confirmation data for swaps that are intended to be submitted to a DCO for clearing at the time of execution.<sup>310</sup>

With respect to the adopted rule allowing the removal of certain confirmation data reporting requirements for swaps that are intended to be submitted to a DCO for clearing at the time of execution, the Commission is of the view that the adopted confirmation data reporting requirements for clearing swaps should provide the necessary confirmation data with respect to cleared swap transactions. Given that the adopted rules will require the DCO to report confirmation data for clearing swaps, requiring an additional set of confirmation data reporting for the now-terminated original swap, in addition to PET data, would be duplicative and therefore unnecessary.

Finally, with respect to choice of SDR, under adopted § 45.3(j), the party with the obligation to report the first data for a swap has the discretion to select the SDR of its choice. This can be an SDR with which the party already has a working relationship, an SDR which is, in the registered entity or reporting counterparty's estimation, most cost-effective, or an SDR that provides the best overall service and product. The Commission believes that this flexibility to select SDRs will minimize reporting errors and improve reporting efficiencies by allowing the reporting entity to select an SDR with which it has a connection and reporting systems in place. The Commission also believes this approach will foster competition between SDRs, as reporting entities such as SEFs/DCMs, SDs/MSPs, DCOs, and non-SD/MSPs can select the SDR to which they will report. Further, allowing the reporting entity to select the SDR will reduce costs, as reporting counterparties and registered entities (other than DCOs) should not have to establish a connection to more than one SDR unless they prefer to do so. The Commission understands that § 45.3(j) is consistent with industry practice.<sup>311</sup>

<sup>310</sup> See CEWG May 27, 2014 Letter, at 4–5 (stating that reporting confirmation data in addition to PET data is highly redundant because confirmation data simply includes all of the PET data matched and agreed to by the counterparties); ISDA May 27, 2014 Letter, at 6–8 (noting that “Confirmation data should not be required for an alpha trade that is intended for clearing at point of execution, whether due to the clearing mandate or bilateral agreement. Confirmation data for alpha swaps is not meaningful since they will be terminated and replaced with cleared swaps simultaneously or shortly after execution for which confirmation data will be reported by the DCO.”).

<sup>311</sup> The Commission notes that industry practice with respect to choice of SDR has likely been influenced in part by a variety of factors, including, among others, the Commission's statement

and thus that the benefits described above are already being realized.

#### 5. Continuation Data Reporting by DCOs—Adopted Amendments to § 45.4

The Commission's amendments to § 45.4, which governs the reporting of swap continuation data to an SDR during a swap's existence through its final termination or expiration, incorporate the distinction between original swaps and clearing swaps. The Commission is removing § 45.4(b)(2)(ii), which requires a reporting counterparty that is an SD or MSP to report valuation data for cleared swaps daily; instead, the DCO will be the only swap counterparty required to report swap continuation data, including valuation data, for clearing swaps.

Notably, amended § 45.4(c) will require a DCO to report all required continuation data for original swaps, including original swap terminations, to the SDR to which such original swap was reported. Finally, adopted § 45.4(c)(2) will require that continuation data reported by DCOs include the following data fields as life cycle event data or state data for original swaps pursuant to adopted § 45.4(c)(1): (i) The LEI of the SDR to which each clearing swap that replaced a particular original swap was reported by the DCO pursuant to new § 45.3(e); (ii) the USI of the original swap that was replaced by the clearing swaps; and (iii) the USIs for each of the clearing swaps that replace the original swap.

The Commission has considered the costs and benefits raised by commenters on the proposed addition of § 45.4(c) and its requirement that DCOs report continuation data for original swaps, including terminations. The Commission believes that the adopted revisions to § 45.4(c) are broadly in line with existing industry practice, and set out specific obligations that will ensure continuation data is properly reported and reflected in the data that the Commission uses to fulfill its regulatory obligations. The Commission notes that it may be more burdensome for the counterparties to the original swaps, rather than the DCO, to report terminations, as the counterparty would have to receive a message from the DCO confirming that the original swap was accepted for clearing and then translate that message from the DCO into a termination message to the SDR. Particularly, this may be most burdensome to commercial end-users

regarding CME Rule 1001. See Statement of the Commission on the Approval of CME Rule 1001 (Mar. 6, 2013), at 6. The Commission notes that other DCOs have adopted similar rules. See, e.g., ICE Clear Credit Rule 211.

executing swaps on SEFs or DCMs who might otherwise have no reporting obligations and who may not have the infrastructure in place to report as quickly or as efficiently as DCOs.<sup>312</sup> The Commission's proposed rules largely avoid these costs for commercial end-users.

#### i. Costs

Existing § 45.4(b)(2) requires that both SDs/MSPs and DCOs report daily valuation data for cleared swaps. The removal of § 45.4(b)(2)(ii) will eliminate the existing valuation data reporting requirement for SDs/MSPs, leaving DCOs as the sole entity responsible for daily valuation data reporting. As DCOs are currently required to report valuation data for cleared swaps, they will not bear any additional costs as a result of this proposed amendment.

While DCOs are currently required to report continuation data on “cleared swaps,” including terminations, to SDRs under existing § 45.4,<sup>313</sup> the adopted rule clarifies reporting obligations as they relate to swaps that become original swaps. The Commission understands that DCOs frequently assume responsibility to report the termination of swaps that become alpha swaps, but that DCOs do not consistently report such alpha swap terminations or do not report them in the form required by the alpha swap SDR. Some DCOs that do not currently have connectivity to the SDR where the SEF/DCM or original counterparties first reported the swap will incur costs associated with establishing such connectivity. DCOs will also realize costs associated with the termination notice and submissions correcting previously erroneously reported or omitted data. However, DCO reporting of alpha swap terminations has not been uniform and may vary by DCO and SDR. The Commission is aware that, in some instances, DCOs currently report alpha swap terminations to the original SDR that received the original submission of the intended to be cleared swap. To the extent that DCOs have implemented systems to report alpha swap terminations to the original swap SDR, the amended rules thus will not introduce any new costs for those DCOs.

The Commission received three comments concerning the costs and benefits of the proposed amendments to

<sup>312</sup> See, *supra*, n. 26, discussing reporting obligations for end-users trading on-facility cleared swaps.

<sup>313</sup> Section 45.4(b) as effective prior to this rule release, required DCOs to report continuation data on all swaps cleared by the derivatives clearing organization, including life cycle event data or state data.

§ 45.4 in two different contexts. In commenting on the NPRM, LCH and Eurex expressed concerns with the infrastructure required to have the DCO connected to every SDR chosen by the SD/MSP for which the DCO clears and report terminations according to the technical requirements of each SDR.<sup>314</sup> Eurex specifically indicated that the cost of implementing the required infrastructure would have significant time and financial costs. In commenting on the IDWG Request for Comment, one foreign central counterparty now acting pursuant to a DCO Exemptive Order cited a specific cost for connecting to a new SDR as involving at least 150 man-days.<sup>315</sup> Based on the most recent industry compensation reports, the median cost to a firm for 150 working days by a computer programmer in the finance industry would be \$61,000 per DCO to SDR connection.<sup>316</sup> Considering that each DCO must have a connection to at least one registered SDR currently to report beta and gamma swaps under current industry practice, and considering that there are only four registered SDRs, each DCO could be expected to incur at most \$183,000 to connect to all registered SDRs. This cost would be reduced to the extent that the DCO has existing connections to more than one SDR or if it clears swaps for clearing members whose original swaps are reported to a limited number of SDRs.

With respect to additional data fields, as discussed above, adopted § 45.4(c)(2) will add three data fields (the LEI of the SDR to which creation data for the clearing swaps was reported, the USI of the original swap, and USIs of the clearing swaps) to the life cycle event data or to state data reported by DCOs as continuation data for original

<sup>314</sup> See Eurex Oct. 30, 2015 Letter, at 4–5; LCH Oct. 30, 2015 Letter, at 3.

<sup>315</sup> See OTC Hong Kong May 27, 2014 Letter, at 2–3 (contending that setup, application development, and testing to interface with each SDR is likely to require at least 150 man-days, and that a more cost-effective framework would be to require the original counterparty to report termination of the alpha once it receives confirmation that the alpha has been accepted for clearing, and that the original counterparty would already have in place technical and operational interfaces with the SDR of its choice. The commenter also contended that the burden on DCOs of additional reporting outweighs the benefits to the CFTC).

<sup>316</sup> See SIFMA Report, Management & Professional Earnings in the Securities Industry 2013 (October 2013), available at <http://www.sifma.org/research/item.aspx?id=8589940603>. This estimate is based on the median total compensation for a Programmer (Code 1604) (\$91,050), on an hourly basis assuming 1,800 hours worked per year (\$50.83) and an eight hour work day.

swaps.<sup>317</sup> All three of these data fields are either already in use or can be created by the SDR and reported by the DCO. While requiring the reporting of additional fields imposes costs, DCOs should already possess the information needed for these fields, and the Commission believes that the extra costs to DCOs associated with adopted § 45.4(c)(2) would be minimal. The Commission requested relevant information and quantitative estimates regarding the costs associated with creating and using these fields but did not receive any. As discussed in Section II.C.4.iv above, the Commission would encourage SDRs and DCOs to standardize messages for terminating original swap, which should alleviate some of the burden on DCOs.

#### ii. Benefits

Adopted § 45.4(c) will ensure that data concerning original swaps remains current and accurate, allowing the Commission to ascertain whether an original swap was terminated through clearing novation. Original swap data that does not reflect the current state of the swap frustrates the use of swap data for regulatory purposes, including, but not limited to, assessing market exposures between counterparties and evaluating compliance with the clearing mandate.<sup>318</sup> The Commission is of the view that, to the extent that DCOs' current practices are not currently in conformance with the adopted rule, requiring the DCO to report continuation data for original swaps is the most efficient and effective method to ensure that data concerning original swaps remains current and accurate as the DCO, through its rules, determines when an original swap is terminated and thus has the quickest and easiest access to authoritative information concerning termination of the original swap.

Adopted § 45.4(c) will ensure that part 45 explicitly addresses DCO part 45 continuation data reporting obligations with respect to original swaps (*i.e.*, alphas).<sup>319</sup> Existing § 45.4(b), which

<sup>317</sup> "Required swap continuation data" is defined in § 45.1 and includes "life cycle event data" or "state data" (depending on which reporting method is used) and "valuation data." Each of these data types is defined in § 45.1. "Life cycle event data" means all of the data elements necessary to fully report any life cycle event. "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. 17 CFR 45.1.

<sup>318</sup> See Swap Dealer *De Minimis* Exception Preliminary Report, (Nov. 18, 2015), at 13–14, available at [http://www.cftc.gov/idc/groups/public/@swaps/documents/file/dftreport\\_sddeminis\\_1115.pdf](http://www.cftc.gov/idc/groups/public/@swaps/documents/file/dftreport_sddeminis_1115.pdf).

<sup>319</sup> The Commission acknowledges that the alternatives separately discussed in the

addresses "continuation data reporting for cleared swaps," requires DCOs to report continuation data for "all swaps cleared by a [DCO]," but does not explicitly address the multi-swap framework provided in § 39.12(b)(6).<sup>320</sup> Therefore, uncertainty persists as to whether, under existing § 45.4(b) the DCO must report continuation data for the alpha, beta and gamma swaps. The inconsistent interpretation of this reporting requirement leads to substantial differences in reporting of cleared swaps and presents challenges for regulatory oversight. The continuation data reporting requirements adopted in this rule will make explicit that the DCO has the obligation to report continuation data for original swaps that have been terminated and the clearing swaps that replace a terminated original swap.

The Commission believes that the removal of the requirement that SDs and MSPs report daily valuation data for cleared swaps from § 45.4(b)(2) can result in cost savings to the extent that any SDs and MSPs are not currently relying on no-action relief.<sup>321</sup> In addition, because there are fewer DCOs than non-DCO reporting counterparties, placing the responsibility to report valuation data solely on the DCO will result in a more consistent and standardized valuation reporting scheme, as there would be a dramatic decrease in the number of potential valuation data submitters to SDRs. This will benefit SDRs, regulators, and the public because it would facilitate data aggregation and improve the Commission's ability to analyze SDR data and to satisfy its risk and market oversight responsibilities, including measurement of the notional amount of outstanding swaps in the market.

Adopted § 45.4(c)(2) will require DCOs to report three important continuation data fields for original swaps which will assist regulators in tracing the history of, and associating

Consideration of Alternatives, Section III.C.10, could also provide these benefits for registered entities and swap counterparties. However, for the reasons explained in that section, the Commission is of the view that the proposed approach is superior to the alternatives.

<sup>320</sup> As discussed earlier in this release, § 39.12(b)(6) provides that upon acceptance of a swap by a DCO for clearing, the original swap is extinguished and replaced by equal and opposite swaps, with the DCO as the counterparty to each such swap. See 17 CFR 39.12(b)(6).

<sup>321</sup> See CFTC No-Action Letter No. 12–55 (Dec. 17, 2012); CFTC No-Action Letter No. 13–34 (Jun. 26, 2013); CFTC No-Action Letter No. 14–90 (Jun. 30, 2014); and CFTC No-Action Letter No. 15–38 (Jun. 15, 2015). Staff no-action relief from the requirements of § 45.4(b)(2)(ii) has been in effect since the initial compliance date for part 45 reporting.

the individual swaps involved in, a cleared swap transaction, from execution of the original swap through the life of each clearing swap that replaces an original swap, regardless of the SDR(s) to which the original and clearing swaps are reported. The newly required continuation data elements to be reported by the DCOs for original swaps will ensure that original swap continuation data includes sufficient information to identify, by USI, any clearing swaps created from the same original swap, as well as the SDR where those clearing swaps reside. As such, the Commission expects that review of any particular swap in a registered SDR will include a listing of all other relevant USIs with respect to that swap (e.g., original swap and clearing swaps). The Commission believes that this requirement will help ensure the availability of information necessary to link original swaps and clearing swaps, even if those swaps are reported to different SDRs. The ability to link original and clearing swaps across multiple SDRs will decrease data fragmentation and will increase the ability of the Commission to accurately aggregate cleared swap data across various SDRs. As a result, adopted § 45.4(c)(2) will improve the ease of use for cleared swaps data, which will enhance the Commission's ability to perform its regulatory duties, including to protect market participants and the public.

#### 6. USI Creation by DCOs—§ 45.5(d)

Existing § 45.5 requires that each swap subject to the Commission's jurisdiction be identified in all swap recordkeeping and data reporting by a USI. The rule establishes different requirements for the creation and transmission of USIs depending on whether the swap is executed on a SEF or DCM or executed off-facility with or without an SD or MSP reporting counterparty. Existing § 45.5 also provides that for swaps executed on or pursuant to the rules of a SEF or DCM, the SEF or DCM creates the USI, and for swaps not executed on or pursuant to the rules of a SEF or DCM, the USI is created by an SD or MSP reporting counterparty, or by the SDR if the reporting counterparty is not an SD or MSP.

Amended rule § 45.5(d) will require a DCO to generate and assign a USI for a clearing swap upon, or as soon as technologically practicable after, acceptance of an original swap by the DCO for clearing (in the event the clearing swap replaces an original swap) or execution of a clearing swap (in the event that the clearing swap does not

replace an original swap), and prior to reporting the required swap creation data for the swap. Amended § 45.5(d) contains provisions governing creation and assignment of USIs by the DCO that are consistent with analogous provisions governing creation and assignment of USIs by SEFs, DCMs, SDs, MSPs, and SDRs.

All comments received with respect to amended § 45.5(d) were supportive of the change and there were no comments with regards to the costs and benefits of this amendment.

#### i. Costs

The Commission believes that adopted § 45.5(d) is largely consistent with industry practice and will not result in any additional costs for DCOs. Any DCOs that will not be in complete conformance with the adopted rule may need to enhance their existing technological protocols in order to create USIs in house, but these marginal costs would likely be lower than the costs associated with obtaining a USI with a separate USI-creating entity. The Commission believes that creating USIs in-house, rather than with a different USI creating entity, is less costly for DCOs and the Commission did not receive any data on that comparison or on any other quantifiable cost structures associated with § 45.5(d).

#### ii. Benefits

As noted above, the existing part 45 regulations do not explicitly address the assignment of USIs to swaps that fall within the adopted definition of clearing swaps. Explicitly requiring DCOs to generate, assign, and transmit USIs for clearing swaps will provide regulatory certainty with respect to the generation and assignment of USIs for clearing swaps. The adopted rule will also help ensure consistent and uniform USI creation and assignment for such swaps and will allow regulators to better identify and trace the swaps generally involved in cleared swap transactions, from execution of the original swap through the life of each clearing swap.

#### 7. Determination of the Reporting Counterparty for Clearing Swaps—§ 45.8

Current § 45.8 establishes a hierarchy under which the reporting counterparty for a particular swap depends on the nature of the counterparties involved in the transaction. DCOs are not included in the existing § 45.8 hierarchy. The Commission is adopting § 45.8(i) in order to identify DCOs in the hierarchy as the reporting counterparty for clearing swaps.

One commenter supported proposed § 45.8(i) as it promoted efficiency in

reporting by explicitly designating the DCO as the reporting party for clearing swaps.<sup>322</sup> There were no other comments with respect to the costs and benefits of this amendment.

#### i. Costs

The Commission believes that the adopted amendments to § 45.8, in and of themselves, will not impose any additional costs on registered entities or reporting counterparties. The Commission believes that the rule simply reflects established reporting arrangements, which, to the Commission's understanding, is for the DCO to submit data to the SDR for swaps that would fall within the definition of clearing swaps.

#### ii. Benefits

As noted above, clearing swaps are not explicitly acknowledged in existing § 45.3, and DCOs are not identified as reporting counterparties in the reporting counterparty hierarchy of § 45.8. The Commission acknowledges the comment by AIMA that one benefit of proposed § 45.8(i) is that it improves efficiency in reporting by explicitly designating the DCO as the reporting party for clearing swaps. In addition, the Commission expects that modifications to the § 45.8 reporting counterparty hierarchy will eliminate ambiguity regarding which registered entity or swap counterparty is required to report required creation data for clearing swaps, explicitly delineating the nature and extent of DCO reporting obligations, and affording market participants and SDRs a more precise and accurate understanding of reporting obligations under part 45.

#### 8. Reporting to a Single Swap Data Repository—§ 45.10

Existing § 45.10 requires that all swap data for a given swap must be reported to a single SDR, which must be the same SDR to which creation data for that swap is first reported. The time and manner in which such data must be reported to a single SDR depends on whether the swap is executed on a SEF or DCM or executed off-facility with or without an SD/MSP reporting counterparty. The Commission is amending § 45.10 to require DCOs to report all data for a particular clearing swap to a single SDR. Moreover, consistent with current industry practice, amended § 45.10(d)(3) will require the DCO to report all required swap creation data for each clearing swap that replaces a particular original swap (i.e., the beta and gamma that

<sup>322</sup> See AIMA Oct. 30, 2015 Letter, at 6.

replace a particular alpha) to a single SDR, such that all required creation data and all required continuation data for all clearing swaps that can be traced back to the same original swap will be reported to the same SDR (although not necessarily the same SDR as the original swap).

i. Costs

The Commission does not expect DCOs to incur any new costs associated with ensuring that clearing swap data is reported to a single SDR because the requirements of the adopted rule are, to the Commission's understanding, consistent with current DCO reporting practice.

ii. Benefits

The Commission believes that the benefit of reporting data associated with each clearing swap to a single SDR is that all required creation data, all required continuation data for related clearing swaps and, by extension, USIs linking clearing swaps to the original swap, will be stored with the same SDR. This will minimize confusion on the part of SDRs and regulators regarding which swaps are still active and which ones have been terminated. The Commission notes that the benefits of reporting all data for clearing swaps to the same SDR are currently being realized, as it is current industry practice for DCOs to report swaps that will fall under the amended definition of clearing swaps in conformance with adopted § 45.10(d)(3).

9. PET Data—Adopted Amendments to the Primary Economic Terms Data Tables

The Commission's current lists of minimum (required) primary economic terms for swaps in each swap asset class are found in tables in Exhibits A–D of appendix 1 to part 45. With this final release, the Commission has modified the descriptions of some PET fields applicable to all swaps, added some PET fields applicable to all swaps, and added some PET fields applicable only to clearing swaps. For PET fields applicable to clearing swaps, the Commission is adding several new data elements under the heading "Additional Data Categories and Fields for Clearing Swaps" to Exhibits A–D in order to more accurately capture the additional, unique features of clearing swaps that are not relevant to original swaps or uncleared swaps. The newly proposed data fields include: The USI for the clearing swap; the USI for the original swap; the SDR to which the original swap was reported; clearing member LEI, clearing member client account

origin, house or customer account; clearing receipt timestamp; and clearing acceptance timestamp.

As for PET field modifications and additions relevant for all swaps, the Commission is also adding several new required data elements, which will be applicable to all swaps, and making conforming changes to some existing data elements. The newly added fields include: Asset class, an indication of whether the reporting counterparty is a DCO with respect to the swap, and clearing exception or exemption types.

The Commission has received various comments with respect to the proposed changes to the primary economic terms data but few that address the cost and benefits of the changes are summarized below.<sup>323</sup> ISDA commented on the proposed "Clearing exception or exemption type" PET field, which would require the reporting party to identify the clearing exemption exercised for a particular swap.<sup>324</sup> ISDA commented that it could be challenging and costly for firms to implement this change, while providing no new information because exception and exemption elections must already be provided to SDRs. Because existing reporting standards can identify inter-affiliate trades, ISDA recommended that the "Clearing exception or exemption type" PET field acceptable values be limited to "inter-affiliate" and "other."

With respect to ISDA's comment, SDs are already required already to submit to SDRs information on any clearing exception or exemption elections made by their counterparties pursuant to part 50. The Commission believes that reporting information on clearing exception or exemption elections on a transactional basis, in the manner described in the proposed changes to the primary economic terms, should not substantially increase costs on reporting counterparties.

i. Costs

The Commission emphasizes that, as a result of the amendments to the PET data tables for clearing swaps, the newly added data fields for clearing swaps will be reported exclusively by DCOs. While

there might be costs associated with reporting newly added data fields, the Commission believes that DCOs are better situated than swap counterparties to report the additional fields for clearing swaps without the substantial costs and operational burdens because DCOs already possess certain information, or other registered entities and swap counterparties are required to transmit the information to DCOs, regarding those fields. For example, the data necessary to report the adopted "original swap SDR" field is currently required to be transmitted to the DCO under existing § 45.5, and the Commission understands that data required by the amended "clearing receipt timestamp" and "clearing acceptance timestamp" fields may already be generated and present in DCO systems—such DCOs would just have to transfer those timestamps to the reporting system for each clearing swap. Similarly, the Commission understands that house or customer account designations are already collected and maintained in relation to certain part 39 reporting obligations. Hence, there will be no additional cost in collecting the information necessary to report the "origin (house or customer)" field, and marginal costs might stem from conveying the information in part 45 swap data reports. The Commission solicited comments on the extent to which DCOs may already possess the information required by the amended additional fields and the costs associated with obtaining and/or reporting such information but did not receive any comments or estimates on this topic.

While the Commission requested the data needed to quantify the cost of the addition of three data fields applicable to all reporting entities (asset class, DCO indicator, and clearing exception or exemption type), the Commission did not receive any quantifiable estimates of costs associated with creating and using these fields from commenters. The Commission believes that the costs associated with these additional fields will not be substantial since the information necessary to report these data elements is likely to be readily available in connection with the execution of swaps, with some marginal costs stemming from the requirement to include the information in PET data reported to an SDR (to the extent that such information is not already reported). The Commission understands that in at least some cases, market practice is to report some of the information required by the proposed

<sup>323</sup> One commenter cautioned that the definitions used in the markets are not always consistent with those proposed by the NPRM, which places a significant burden on small-sized market participants. See JBA Oct. 30, 2015 Letter, at 2–3. Because the only new fields either relate solely to clearing swap reporting (and therefore affect only DCOs), reference terms defined in the Regulations (such as "Asset class"), or reference the application of certain provisions of the Regulations (such as "Clearing Exception or Exemption Type"), the Commission believes the terms in the new PET data fields are sufficiently clear to avoid any costs or burden cited by this commenter.

<sup>324</sup> See ISDA Oct. 30, 2015 Letter, at 9.

three new data fields applicable to all reporting entities for all swaps.

## ii. Benefits

The Commission believes that the additions to the list of minimum primary economic terms will result in a variety of benefits. Clearing swap PET fields, such as USI for the original swap or the SDR to which the original swap was reported, can facilitate the monitoring of each original swap by SDRs and regulators. Clearing swap PET fields can also prevent potential double-counting of swap transactions or notional amounts, thus improving the accuracy of SDR data for use by the Commission in such activities as evaluating swap dealer *de minimis* thresholds. Other proposed fields such as clearing member LEI or clearing member client account information will facilitate the Commission's assessment of risk management of market participants, promoting the protection of the financial integrity of the markets and the protection of market participants and the public.

The new PET fields for all swaps also will benefit the Commission in performing its regulatory obligations. The asset class data field will assist the Commission in determining the asset class for swaps reported to SDRs, enhancing the Commission's ability to identify swaps activity in each asset class as well as the capability to use the data for regulatory purposes. The indication of whether the reporting counterparty is a DCO with respect to the swap data field will help the Commission monitor DCOs' compliance with reporting of clearing swap data elements, and improve the Commission's ability to analyze swap data relating to cleared swap transactions. The clearing exception or exemption types data field will enable the Commission to ascertain the specific exception or exemption from the clearing requirement that was elected and will assist in the evaluation of compliance with the clearing requirement, as well as assessing market activity in uncleared swaps.

## 10. Consideration of Alternatives

The Commission considered the costs and benefits of certain alternatives raised by commenters in response to the IDWG Request for Comment and the NPRM, including whether part 45 should require intended to be cleared swaps (original swaps) to be reported to registered SDRs. Some commenters noted that reporting of alpha swaps is beneficial and should continue to be

required,<sup>325</sup> while other commenters contended that alpha swaps should not be required to be reported to an SDR and questioned the benefits of requiring the reporting of alpha swaps.<sup>326</sup>

Some commenters stated that the Commission should require clearing swaps to be reported to the same SDR as original swaps, so that the entire history of a swap would reside at the same SDR.<sup>327</sup> A number of commenters suggested that part 45 should place swap data reporting obligations solely on DCOs, including with respect to swaps that are intended to be cleared at the time of execution and accepted for clearing by a DCO (swaps commonly known as "alpha" swaps) and swaps resulting from clearing (swaps commonly known as "beta" and "gamma" swaps).<sup>328</sup> However, other commenters noted that it would not be appropriate to require a DCO to report information related to the execution of an alpha swap.<sup>329</sup>

In light of these comments, the Commission considered the costs and benefits of six alternatives in comparison to the costs and benefits of the proposed rule: (1) Requiring original and clearing swaps to be reported to the same SDR chosen by the reporting counterparty or SEF/DCM; (2) requiring original and clearing swaps to be reported to the same SDR chosen by the DCO accepting the swap for clearing; (3) requiring only one report for each swap intended for clearing, that is, not requiring original (alpha) swaps to be reported separately from clearing swaps, with the SDR chosen by the reporting counterparty or SEF/DCM; (4) requiring only one report for each swap intended for clearing as in (3), but with the SDR chosen by the DCO accepting the swap for clearing; (5) requiring the DCO to

report both the original swap and all resulting clearing swaps, to the SDR of its choosing; and (6) requiring the original swap reporting counterparty to report the creation and the termination of the original swap.<sup>330</sup>

The first two alternatives each require swaps that become original swaps and the resulting clearing swaps to be reported to the same SDR. If such swaps were reported to the same SDR, there would be no need for certain requirements in proposed § 45.4(c) that extra fields, such as clearing swap SDR, be included in the report to the SDR for the clearing swap to link the clearing swap to an original swap on a different SDR. Similarly, the need for certain clearing swap PET data fields, such as the identity of the original SDR, intended to be used for linking purposes, might not be necessary. This would reduce costs to the extent that certain PET data fields would not be required to link the original and clearing swaps. The first approach would require DCOs to connect to multiple SDRs to the same extent as the adopted rules. However, the second approach could require reporting counterparties or SEFs/DCMs to connect to multiple SDRs, which could increase costs for a larger number of market participants.

Because the adopted rule more closely reflects current industry practice relative to the alternative, there would be some potentially significant one-time costs, including the costs of changes to existing systems, associated with changing practices to conform to the alternatives. Additionally, a substantial portion of aggregation costs for regulators, and, likely, market participants, arises from the current landscape, which includes multiple SDRs. The adopted requirements to link original and clearing swaps at multiple SDRs is a relatively minor burden compared with the existing burden on the Commission, and potentially other regulators, in reconciling swap data for a cleared swap transaction across multiple SDRs without data elements linking the original and clearing swaps. Additionally, costs associated with monitoring and aggregation would likely be mitigated by the continuation data fields of adopted § 45.4(c)(2), which would enable regulators to more effectively connect original swaps at one SDR with clearing swaps at another SDR. Also, as noted in Section II.B.4.iv, above, these options could also introduce delays in reporting under

<sup>325</sup> See TR SEF May 27, 2014 Letter, at 10; AFR May 27, 2014 Letter, at 5; Markit May 27, 2014 Letter, at 25; and DTCC May 27, 2014 Letter, at 17–18.

<sup>326</sup> See AIMA Oct. 30, 2015 Letter, at 2–6; EEI/EPISA Oct. 30, 2015 Letter, at 3; CEWG Oct. 30, 2015 Letter, at 2; SIFMA May 27, 2014 Letter, at 4; CEWG May 27, 2014 Letter, at 15; CME May 27, 2014 Letter, at 2–3.

<sup>327</sup> See DTCC Oct. 30, 2015 Letter, at 3; DTCC May 27, 2014 Letter, at 2–3, appendix at 4, 21 (arguing that the Commission should adopt a "single SDR" rule to ensure that all of the data for a swap is available in one SDR); ISDA May 27, 2014 Letter, at 44.

<sup>328</sup> See CMC Oct. 30, 2015 Letter, at 2–3; CME Oct. 30, 2015 Letter, at 2–3; AIMA Oct. 30, 2015 Letter, at 6; CEWG Oct. 30, 2015 Letter, at 3; CMC May 27, 2014 Letter, at 1, 3, 6; NFPEA May 27, 2014 Letter, at 12; EEI/EPISA May 27, 2014 Letter, at 3, 14; ITV May 27, 2014 Letter, at 3, 17; CEWG May 27, 2014 Letter, at 16; CME May 27, 2014 Letter, at 20; and NFP Electric Associations May 27, 2014 Letter, at 4.

<sup>329</sup> See ISDA Oct. 30, 2015 Letter, at 4; LCH Oct. 30, 2015 Letter, at 2; Eurex Oct. 30, 2015 Letter, at 4; LCH May 29, 2014 Letter, at 10.

<sup>330</sup> The Commission highlighted the first four alternatives in its NPRM, and added the last two in light of comments provided in response to the NPRM.

both part 43 and part 45, which could undermine the price discovery function of real-time reporting.

Regarding who would choose the single SDR, the SDR could be chosen by the reporting counterparty (or DCM or SEF) or by the DCO. Under either of the first two alternatives, one registered entity or counterparty's choice of SDR would bind a second registered entity or counterparty to also report to that SDR, which could be an SDR that the second registered entity or counterparty would not otherwise select. Allowing the reporting counterparty or SEF/DCM to choose the SDR would enable the reporting party to choose the SDR with the best combination of prices and service, and thus may promote competition among SDRs. Allowing the DCO to choose the SDR for both original and clearing swaps would likely result in the DCO always choosing the same SDR, which may be the SDR that is affiliated with the DCO (that is, shares the same parent company). This would reduce costs for DCOs since they would need to maintain connectivity with only one SDR, but would limit the ability of SDRs to compete since DCOs could choose to report only to SDRs with which they are affiliated.<sup>331</sup>

Under the third and fourth alternatives, there would be no requirement to report intended to be cleared swaps (original swaps) separately from the resulting clearing swaps. Rather, there would only be one report for each cleared swap transaction. This would be a change from current swap market practice. As with the first two alternatives, the choice of SDR could be made by the reporting counterparty as determined under current § 45.8, or by the DCO as under adopted § 45.8(i). If there is only one report for each cleared swap transaction, there would be ongoing cost savings associated with the need to make fewer reports to SDRs. As with the first two alternatives, there would be no need for the requirement in adopted § 45.4(c) that extra fields, such as clearing swap SDR, be included in the report to the SDR to link the clearing swap to an original swap on a different SDR, and market participants and the Commission could access all information about a single cleared swap transaction at a single SDR. This would also reduce costs relative to the adopted rule.

However, the benefits of separate reports for original and clearing swaps would be foregone and there may be a less complete record of the history of each cleared swap. Moreover, it would be more difficult for the Commission to determine the original counterparties, original execution time, and other vital information on the original swap for market surveillance or enforcement purposes. It may be possible to reclaim these benefits through requiring additional fields in each cleared swap report, although this would also increase costs and would require DCOs to receive and report information beyond what is otherwise required for clearing purposes. Additionally, because the adopted rule more closely reflects current industry practice relative to these alternatives, there would be some potentially significant one-time costs, including the costs of changes to existing systems, associated with changing practices to conform to the alternatives. The effects of who chooses the SDR are similar to the effects described for the first two alternatives.

Under the fifth alternative, the DCO would report both the swap that becomes the original swap (including creation data and termination) and all clearing swaps resulting from clearing of the original swap. While one DCO and some end-users supported this alternative as simplifying work flows and reducing costs to original swaps counterparties,<sup>332</sup> other DCOs opposed requiring DCOs to report original and clearing swaps because DCOs would not have all information required to report original swaps.<sup>333</sup> While recognizing that this alternative could reduce costs for reporting counterparties, the Commission declined to adopt this alternative as DCOs would not have all information necessary to submit such reports. Further, the Commission declined to adopt this alternative because of negative impacts on the timeliness of reporting real-time pricing information under part 43.

Finally, under the sixth alternative, the reporting counterparty to the original swap would be required to report the termination of that swap upon acceptance for clearing. As addressed above in the discussion of final § 45.4, the Commission believes that DCOs would be in a better position to report the termination of the original swap, and would have all information necessary to report such terminations.

The Commission has determined not to adopt the alternatives listed above because the final rule is more consistent with current industry practice than such alternatives. The Commission understands that reporting counterparties and registered entities are already set up to report alpha swaps to registered SDRs (whether or not such swaps are intended to be cleared at the time of execution) and that DCOs are already set up to report beta and gamma swaps that result from acceptance of a swap for clearing, and have been making such reports. Accordingly, the industry has already incurred the costs of setting up a system for reporting cleared swap transactions to SDRs (including separate reports for swaps that would fall within the proposed definitions of original and clearing swaps). Changing this system to conform to an alternative rule would have certain costs to reporting entities.

The Commission also believes that clarifying distinct reporting requirements in part 45 for alphas (swaps that become original swaps) and betas and gammas (clearing swaps that replace original swaps) presents a full history of each cleared swap transaction and permits the Commission and other regulators to identify and analyze each component part of such transactions. The Commission also continues to believe that placing the part 45 reporting obligation on the counterparty or registered entity closest to the source of, and with the easiest and fastest access to, complete and accurate data regarding a swap fosters accuracy and completeness in swap data reporting. In light of these benefits, the Commission will maintain the current industry practice of separately reporting both alpha swaps (*i.e.*, swaps that would become original swaps under the proposed rules) and beta and gamma swaps (*i.e.*, clearing swaps as defined under the proposed rules).

Additionally, the multi-swap reporting approach adopted in this rule is largely consistent with the approach proposed by the SEC in its release proposing certain new rules and rule amendments to Regulation SBSR,<sup>334</sup> and is also largely consistent with the approach adopted by several foreign regulators.<sup>335</sup> Given that the swaps market is global in nature, the Commission anticipates that adopting

<sup>331</sup> The Commission requested comment on the extent to which SDRs compete on the basis of price or service and the extent to which SDRs are chosen on the basis of relationships with registered entities and reporting counterparties. Markit commented on DCOs using affiliated SDRs for reporting, which is addressed in the Antitrust Considerations, Section I.I.D, below.

<sup>332</sup> See CME Oct. 30, 2015 Letter, at 6–7; CMC Oct. 30, 2015 Letter, at 2–3.

<sup>333</sup> See LCH Oct. 30, 2015 Letter, at 2; Eurex Oct. 30, 2015 Letter, at 4.

<sup>334</sup> See Regulation SBSR—Reporting and Dissemination of Security-Based Swap Information, 80 FR 14740 (Mar. 19, 2015).

<sup>335</sup> The Commission's understanding is that a number of jurisdictions, including the European Union, Singapore, and Australia, for example, also account for a multi-swap approach to the reporting of cleared swaps.

an approach to the reporting of cleared swaps in the United States that is consistent with the approaches adopted in other jurisdictions may minimize compliance costs for entities operating in multiple jurisdictions.

#### 11. Section 15(a) Factors

Section 15(a) of the CEA requires the Commission to consider the effects of its actions in light of the following five factors:

(1) *Protection of market participants and the public.* In the Final Part 45 Rulemaking, the Commission stated that the data reporting requirements of part 45 provided for protection of market participants and the public by providing regulatory agencies with a wealth of previously unavailable data in a unified format, greatly enhancing the ability of market and systemic risk regulators to perform their oversight and enforcement functions.<sup>336</sup> The Commission believes that the adopted amendments outlined in this final release will enhance these protections by explicitly providing how and by whom each of the swaps involved in a cleared swap transaction should be reported. In particular, by requiring DCOs to electronically report the creation data and continuation data for clearing swaps, the Commission believes that data on all clearing swaps associated with a specific original swap will be aggregated at the same SDR, provided by a single entity and readily available for accurate and complete analysis. This will also allow the Commission and other regulators to access all data pertaining to related clearing swaps from a single SDR. These enhancements should allow for efficiencies in oversight and enforcement functions, resulting in improved protection of market participants and the public.

(2) *The efficiency, competitiveness and financial integrity of the markets.* In the Final Part 45 Rulemaking, the Commission stated that the swap data reporting requirements of part 45 would enhance the financial integrity of swap markets.<sup>337</sup> The Commission also stated that part 45's streamlined reporting regime, including the counterparty hierarchy used to select the reporting counterparty, could 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.<sup>338</sup> The Commission believes that the amendments in this final release will

further enhance this efficiency by requiring DCOs to report where they are the party best equipped to do so.<sup>339</sup> In addition, by explicitly delineating reporting responsibilities associated with each component of a cleared swap transaction, the adopted rules should result in improved reliability and consistency of the swaps data reported, further enhancing the financial integrity of the swap markets.

The rule confirming that the reporting counterparty or SEF/DCM has the right to choose the SDR for the original swap can promote competition among SDRs. However, the Commission also acknowledges that by allowing DCOs to choose the SDR to which they report, competition for SDR services can be impacted as a result of DCOs reporting to their affiliated SDR, that is, an SDR that shares the same parent company as the DCO. Any such impact on competition will be a consequence of business decisions designed to realize costs savings associated with the affiliations between DCOs and SDRs. The Commission notes that section 21 of the CEA permits a DCO to register as an SDR.

(3) *Price Discovery.* In the Final Part 45 Rulemaking, the Commission stated that the swap data reporting requirements of part 45 did not have a material effect on the price discovery process.<sup>340</sup> The Commission believes that the adopted amendments also will not have a material effect on price discovery.

(4) *Risk Management.* In the Final Part 45 Rulemaking, the Commission stated that the data reporting requirements of part 45 did not have a material effect on sound risk management practices.<sup>341</sup> The Commission believes that the adopted amendments also will not have a material effect on sound risk management practices.

(5) *Other Public Interest Considerations.* In the Final Part 45 Rulemaking, the Commission stated that the data reporting requirements will allow regulators to readily acquire and analyze market data, thus streamlining the surveillance process.<sup>342</sup> The Commission preliminarily believes that the amendments outlined in this release will enhance this consideration by providing certainty about how and by whom each of the swaps involved in a

cleared swap transaction should be reported.

As noted earlier in this release, the multi-swap reporting approach proposed in this final release is largely consistent with the approaches proposed by the SEC and adopted by several foreign regulators. Given that the swaps market is global in nature, the Commission anticipates that adopting an approach that is consistent with the approaches adopted by other regulators may further other public interest considerations by reducing compliance costs for entities operating in multiple jurisdictions.

#### D. Antitrust Considerations

Section 15(b) of the CEA requires the Commission to take into consideration the public interest to be protected by the antitrust laws, and endeavor to take the least anticompetitive means of achieving the objectives of the CEA, in issuing any order or adopting any Commission rule or Regulation. The Commission evaluated the amendments to Part 45 in the context of 7 U.S.C. 2(a)(13)(G) and 7 U.S.C. 24a, which were adopted by Congress as part of the Dodd-Frank Act. These provisions require each swap, whether cleared or uncleared, to be reported to a registered SDR. The Dodd-Frank Act was enacted to reduce systemic risk, increase transparency, and promote market integrity by, among other things, creating rigorous data reporting regimes with respect to swaps, including real time reporting.<sup>343</sup> As noted in this release, the Commission has adopted these amendments to help ensure that cleared swaps transactions are reported to SDRs in a consistent and accurate way to allow the Commission to evaluate market risk and monitor for abusive trading practices.

In the Final Part 45 Rulemaking, the Commission identified choice of SDR as one area of the rules that could potentially have an impact on competition.<sup>344</sup> In that release, the Commission stated that the adopted rule governing who makes the initial creation data report and selects the SDR "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."<sup>345</sup>

In the NPRM proposing amendments on cleared swap reporting, the Commission asked for comments on any anticompetitive impacts of the proposed

<sup>336</sup> 77 FR 2136, 2188.

<sup>337</sup> *Id.* at 2189.

<sup>338</sup> *Id.*

<sup>339</sup> As noted earlier in this release, the Commission's understanding is that the DCO is the entity that should have the easiest and quickest access to full information with respect to PET data and confirmation data for clearing swaps, as well with respect to terminations of original swaps.

<sup>340</sup> 77 FR 2136, 2189 (Jan. 13, 2012).

<sup>341</sup> *Id.* at 2189.

<sup>342</sup> *Id.*

<sup>343</sup> 77 FR 2136, 2137.

<sup>344</sup> 77 FR 2136, 2149.

<sup>345</sup> 77 FR 2136, 2149.

cleared swaps reporting rules.<sup>346</sup> In response to the NPRM, the Commission received two comments directly addressing competitive concerns. DTCC and Markit both commented that allowing a DCO to select the SDR for clearing swaps will impact competition as some DCOs have affiliated SDRs, which may allow DCOs to bundle clearing services with SDR services.<sup>347</sup>

DTCC commented that allowing the DCO to report to an affiliated SDR, particularly after the original swap has already been reported to a different SDR, will further entrench DCOs' vertical integration in trade execution, clearing, and data reporting.<sup>348</sup> DTCC argued that this would, in turn, increase barriers to entry for exchanges, clearinghouses, and independent SDRs that are unaffiliated with DCOs.<sup>349</sup> As an alternative, DTCC proposed to grant the registered entity or reporting counterparty that is obligated to report the original swap the ability to select the SDR to which the clearing swaps must be reported by the DCO.<sup>350</sup>

Markit argued that allowing the DCO to select the SDR to which clearing swaps are reported would provide regulatory approval for anticompetitive tying of clearing and reporting services.<sup>351</sup> Markit contrasted the current marketplace for clearing services with what existed in March 2013 when the Commission approved CME Rule 1001, and alleged that concentration has increased since 2013.<sup>352</sup> In support, Markit argued that one DCO—which is affiliated with an SDR—clears 87 percent of global credit index swaps.<sup>353</sup> As an alternative to the Commission's proposal, Markit proposed that the reporting counterparty for an original swap be permitted, at its discretion, to both report the resulting clearing swaps and select the SDR to which the clearing swaps are reported. Under Markit's proposal, the reporting counterparty to the original swap would also be permitted to delegate this reporting and SDR selection responsibility to the DCO.<sup>354</sup>

The Commission has taken into consideration the public interest to be protected by the antitrust laws, and endeavored to take the least anticompetitive means of achieving the objectives of the CEA in adopting this

final rule. Having considered the comments raised by DTCC and Markit, the Commission believes that the amendments to part 45 concerning choice of SDR announced in this release meet this least-anticompetitive-means standard.

The mix of entities reporting swaps to the various SDRs illustrates how the choice of SDR currently operates in the marketplace. Presently there are four registered SDRs to which swaps may be reported. Two of the SDRs (CME and ICE Trade Vault) are affiliated with DCOs and contain swaps data reported by those DCOs, as well as data reported by SEFs, SDs, and non-SD/MSP market participants. These SDRs receive swap data on uncleared swaps, as well as both the original swaps and clearing swaps from cleared swap transactions. One SDR (DTCC) is a subsidiary of a large financial services utility and has ownership and governance ties to a number of swap dealers. DTCC receives swap data from a number of those swap dealers, as well as SEFs, non-SD/MSP market participants, and at least one DCO. DTCC receives swaps reporting for a large number of uncleared swaps, as well as original swaps whose associated clearing swaps are reported at either DTCC or a DCO-affiliated SDR. The fourth SDR (Bloomberg) is corporately affiliated with a SEF and available to accept data from, among others, SEFs/DCMs, DCOs, and reporting counterparties. Also relevant to this discussion, some SD/MSPs and SEFs report swaps to multiple SDRs. Some SDs and SEFs, even those with corporate affiliations or ownership links to SDRs, report some swaps to SDRs to which they have no such connections. The mix of swaps reported to each SDR (uncleared, original and clearing swaps) and the mix of reporting entities using each SDR are the result of market participants' decisions on how to fulfill reporting obligations.

Consumers of SDR services under these amendments are the entities with the first reporting obligation on a swap: SEFs/DCMs for uncleared or original swaps executed on-facility; reporting counterparties (primarily swap dealers, but also non-SD/MSP market participants) for uncleared or original swaps executed off-facility; and DCOs for clearing swaps. The amendments place the choice of SDR for each individual swap with the entity first required to report data on that swap. The amendments do not place the choice of SDR with a single entity or counterparty with respect to more than one swap. In other words, the choice of SDR will be made as to a particular swap when a registered entity or

reporting counterparty that is required to report the swap makes the first report of all creation data on a particular swap.<sup>355</sup> Because each reporting entity responsible for the first report of a swap would have its choice of SDR, the Commission does not believe that the amendments to Part 45 in this release will significantly impact the mix of swaps reported to each SDR and the mix of reporting entities using each SDR, as described above.

In determining which entity may select the SDR for the original and separately for clearing swap components of a cleared swap transaction, the Commission considered three alternatives that potentially could achieve the objectives of the CEA: (a) Allowing the entity initially reporting an original swap to select the SDR for both the original and clearing swaps, by requiring clearing swaps to be reported to the same SDR as the original swaps they replace; (b) allowing the DCO to select the SDR for both the original and clearing swaps; or (c) allowing the entity first reporting a swap to select the SDR, specifically by allowing the original swap reporting entity to select the SDR for the original swap and the DCO to select the SDR for the clearing swaps. Of the three, the Commission considers its ultimate decision—option (c)—to be the least anticompetitive to satisfy its regulatory objectives. Both option (a) and (b) hold significant potential for a particular constituency group—namely swap dealers or DCOs, respectively—to assume an outsized role in shaping the evolving SDR landscape to favor the competitive interests of particular SDRs to which they have financial ties.<sup>356</sup> In contrast, option (c) minimizes this potential by diffusing the SDR selection role across different categories of reporting entities. No reporting entity (such as an individual DCO) or group of similarly situated reporting entities

<sup>355</sup> As discussed in section III.C.4. above, § 45.3(j) provides that the registered entity or counterparty required to report swap creation data has the choice of SDR when fulfilling its obligations under §§ 45.3(a)–(e).

<sup>356</sup> As noted, DTCC has ownership and governance ties to a number of swap dealers. Additionally, some swap dealers in the DTCC ownership consortium have ownership and/or governance ties to certain SEFs. Accordingly, the Commission sees a strong incentive for swap dealers and swap dealer-affiliated SEFs to select DTCC as the SDR to the extent this part 45 amendment grants them authority to do so.

Conversely, the Commission foresees a strong likelihood that DCOs that have affiliate SDRs, will select their respective SDR affiliates to the extent this part 45 amendment grants them authority to do so and doing so is consistent with their core principle obligations. As discussed below, the CME Group DCO currently has a rule providing that all swaps that it clears be reported to the CME-affiliated SDR.

<sup>346</sup> 80 FR 52571.

<sup>347</sup> See Markit Oct. 30, 2015 Letter, at 3–5; DTCC Oct. 30, 2015 Letter, at 7.

<sup>348</sup> See DTCC Oct. 30, 2015 Letter, at 7.

<sup>349</sup> See DTCC Oct. 30, 2015 Letter, at 7.

<sup>350</sup> See DTCC Oct. 30, 2015 Letter, at 7.

<sup>351</sup> See Markit Oct. 30, 2015 Letter, at 4.

<sup>352</sup> See Markit Oct. 30, 2015 Letter, at 4.

<sup>353</sup> See Markit Oct. 30, 2015 Letter, at 4–5.

<sup>354</sup> See Markit Oct. 30, 2015 Letter, at 5.

(such as SDRs that have an ownership interest in an SDR) would be able to dictate where another reporting entity reports a swap. As a result, swaps reporting should not become concentrated in a single SDR associated with either DCOs or SDRs. On the contrary, even assuming that all SDRs choose to report all original and uncleared swaps to DTCC while ICE and CME report all clearing swaps to their affiliated SDRs, swaps reporting will be diffused across at least three SDRs. At the same time, the adopted amendments allow reporting entities to take advantage of costs savings and efficiencies by selecting an SDR with which the reporting entity has an existing relationship.

In the context of this rulemaking, the Commission believes that the concerns of DTCC and Market are misdirected. The criticism of both commenters pivots on the fundamental view that “the proposed rule unnecessarily permits DCOs to bundle services” and that anticompetitive consequences flow from such bundling.<sup>357</sup> The instant amendment, however, merely specifies who, in a particular circumstance, will select the SDR to which a particular swap will be reported; the amendment neither permits nor prohibits DCO/SDR bundling—it does not speak to the issue at all. To the extent that a particular DCO reports all of its swaps to a particular SDR (pursuant to a DCO rule or otherwise), it must do so consistent with its core principle obligations, including Core Principle N.<sup>358</sup> This amendment does not alter or otherwise impact that obligation. DCO registration is contingent upon ongoing compliance with Core Principle N.<sup>359</sup> Thus the question of whether a particular DCO may be restraining trade or imposing an anticompetitive burden through the manner in which it exercises its § 45.3(j) SDR-choice (including under a theory of anticompetitive tying) is properly addressed as a matter of DCO compliance with Core Principle N.<sup>360</sup>

<sup>357</sup> DTCC Oct. 30, 2015 Letter, at p. 7; *see also*, Markit Oct. 30, 2015 Letter, at 4 (“proposed policy would provide regulatory approval for anticompetitive tying of clearing and regulatory reporting services”).

<sup>358</sup> CEA section 5b(c)(2)(N), 7 U.S.C. 7a–1(c)(2)(N). DCO Core Principle N provides that unless necessary or appropriate to achieve the purposes of this Act, a derivatives clearing organization shall not—(i) adopt any rule or take any action that results in any unreasonable restraint of trade; or (ii) impose any material anticompetitive burden.

<sup>359</sup> *See* CEA section 5b(c)(2)(A)(i), 7 U.S.C. 7a–1(c)(2)(A)(i); 17 CFR 39.10(a).

<sup>360</sup> Currently, CME Rule 1001 provides that the CME Group DCO will report all swaps resulting from its clearing to the CME Group SDR. After consideration pursuant to section 5c(c)(5) of the CEA and Commission regulation 40.5, the

#### IV. Compliance Dates

Because some revisions and additions to part 45 create new reporting obligations or clarify existing reporting obligations, while some remove obligations presently covered by no-action or other relief, the Commission is adopting this release on a bifurcated basis. The deletion of former § 45.4(b)(2)(ii), requiring that SD/MSP counterparties to clearing swaps report valuation data on those swaps, shall be effective upon publication in the **Federal Register**.

Compliance with all other revisions and additions to part 45 adopted in this release shall be required one hundred and eighty (180) days after this release is published in the **Federal Register**. The Commission has noted comments on the need for market participants, SDRs, DCOs, and other affected parties to update systems to comply with the proposed changes to part 45.<sup>361</sup> Therefore, the Commission is adopting the revisions and additions to part 45 with compliance dates for new obligations that will provide sufficient time to update and test reporting systems.

#### List of Subjects in 17 CFR Part 45

Data recordkeeping requirements and data reporting requirements, Swaps.

Commission granted CME’s request for approval of Rule 1001 on March 6, 2013. *See* Statement of the Commission (“Statement”), available at <http://www.cftc.gov/ido/groups/public/@newsroom/documents/file/statementofthecommission.pdf>. In granting the request for approval, the Commission determined, among other things, that under the then-current facts and circumstances Rule 1001 was not inconsistent with DCO Core Principle N. As the Statement expressly stated, however, the Commission’s determination was based on the “present facts and circumstances,” and that “CME has a continuing obligation to implement its Rule 1001 in a manner consistent with the Commission’s regulations and the DCO Core Principles, including Core Principle N, based on the relevant facts and circumstances as they may change over time.” Statement at 12. The Commission expects that DCOs will continue to monitor industry circumstances and amend their rules and conduct as necessary to remain in statutory and regulatory compliance as industry conditions evolve. More specifically in the context of compliance with Core Principle N, the Commission expects such ongoing monitoring to include attention to the competitive impact of DCO rules and conduct in appropriately defined relevant antitrust product and geographic markets, and assessment of whether particular DCO rules or conduct transgress antitrust laws, including Sherman Act sections 1 and 2, 15 U.S.C. 1 and 2.

<sup>361</sup> *See* JBA Oct. 30, 2015 Letter, at 2 (requesting delayed implementation); DTCC Oct. 30, 2015 Letter, at 9 (requesting that all changes to PET fields be required prospectively only, and not for existing swaps; requesting implementation time of 6 months); ISDA Oct. 30, 2015 Letter, at 12 (requesting delayed implementation, but deferring to SDRs and DCOs on timeline for such implementation); LCH Oct. 30, 2015 Letter, at 2 (recommending at least 12 months for DCOs and SDRs to coordinate on solution for reporting).

For the reasons stated in the preamble, the Commodity Futures Trading Commission amends 17 CFR part 45 as set forth below:

#### PART 45—SWAP DATA RECORDKEEPING AND REPORTING REQUIREMENTS

■ 1. The authority citation for part 45 is revised to read as follows:

**Authority:** 7 U.S.C. 6r, 7, 7a–1, 7b–3, 12a, and 24a, as amended by Title VII of the Wall Street Reform and Consumer Protection Act of 2010, Pub. L. 111–203, 124 Stat. 1376 (2010), unless otherwise noted.

■ 2. Amend § 45.1 as follows:

- a. Add a definition for “clearing swap” in alphabetical order;
- b. Revise the definition of “derivatives clearing organization”; and
- c. Add a definition for “original swap” in alphabetical order.

The additions and revisions read as follows:

#### § 45.1 Definitions.

\* \* \* \* \*

*Clearing swap* means a swap created pursuant to the rules of a derivatives clearing organization that has a derivatives clearing organization as a counterparty, including any swap that replaces an original swap that was extinguished upon acceptance of such original swap by the derivatives clearing organization for clearing.

\* \* \* \* \*

*Derivatives clearing organization* means a derivatives clearing organization, as defined by § 1.3(d) of this chapter, that is registered with the Commission.

\* \* \* \* \*

*Original swap* means a swap that has been accepted for clearing by a derivatives clearing organization.

\* \* \* \* \*

■ 3. Revise § 45.3 to read as follows:

#### § 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 and in the manner provided in § 45.13(b). The rules governing acceptance and recording of such data by a swap data repository are set forth in § 49.10 of this chapter. 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 in § 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 an exception to, or an exemption from, the clearing requirement has been elected under part 50 of this chapter are subject to the reporting obligations set forth in part 50 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. Paragraphs (a) through (d) of this section apply to all swaps except clearing swaps, while paragraph (e) applies only to clearing swaps.

(a) *Swaps executed on or pursuant to the rules of a swap execution facility or designated contract market.* For each swap executed on or pursuant to the rules of a swap execution facility or designated contract market, the swap execution facility or designated contract market must report all primary economic terms data for the swap, as defined in § 45.1, as soon as technologically practicable after execution of the swap. If the swap is not intended to be submitted to a derivatives clearing organization for clearing at the time of execution, the swap execution facility or designated contract market must report all confirmation data for the swap, as defined in § 45.1, as soon as technologically practicable after execution of the swap.

(b) *Off-facility swaps subject to the clearing requirement.* For all off-facility swaps subject to the clearing requirement under part 50 of this chapter, except for those off-facility swaps for which an exception to, or exemption from, the clearing requirement has been elected under part 50 of this chapter, and those off-facility

swaps covered by CEA section 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 (ii) of this section.

(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 15 minutes after execution.

(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 one business hour after execution.

(2) [Reserved]

(c) *Off-facility swaps not subject to the clearing requirement, with a swap dealer or major swap participant reporting counterparty.* For all off-facility swaps not subject to the clearing requirement under part 50 of this chapter, all off-facility swaps for which an exception to, or an exemption from, the clearing requirement has been elected under part 50 of this chapter, and all off-facility swaps covered by CEA section 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 (B) of this section.

(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 section 2(h)(7)(C), or if the non-reporting counterparty is a non-SD/MSP counterparty that is not a financial entity as defined in CEA section 2(h)(7)(C) 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 30 minutes after execution.

(B) If the non-reporting counterparty is a non-SD/MSP counterparty that is not a financial entity as defined in CEA section 2(h)(7)(C), 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 30 minutes after execution.

(ii) If the swap is not intended to be submitted to a derivatives clearing organization for clearing at the time of execution, 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.

(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 (B) of this section.

(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 section 2(h)(7)(C), or if the non-reporting counterparty is a non-SD/MSP counterparty that is not a financial entity as defined in CEA section 2(h)(7)(C) 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 two hours after execution.

(B) If the non-reporting counterparty is a non-SD/MSP counterparty that is not a financial entity as defined in CEA section 2(h)(7)(C), 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 two hours after execution.

(ii) If the swap is not intended to be submitted to a derivatives clearing organization for clearing at the time of execution, 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.

(d) *Off-facility swaps not subject to the clearing requirement, with a non-SD/MSP reporting counterparty.* For all off-facility swaps not subject to the clearing requirement under part 50 of this chapter, all off-facility swaps for which an exception to, or an exemption from, the clearing requirement has been elected under part 50 of this chapter, and all off-facility swaps covered by CEA section 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 paragraph (d) of this section.

(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 24 business hours after execution.

(2) If the swap is not intended to be submitted to a derivatives clearing organization for clearing at the time of execution, 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 24 business hours after confirmation.

(e) *Clearing swaps.* As soon as technologically practicable after acceptance of an original swap by a derivatives clearing organization for clearing, or as soon as technologically practicable after execution of a clearing swap that does not replace an original swap, the derivatives clearing organization, as reporting counterparty, must report all required swap creation data for the clearing swap. Required swap creation data for clearing swaps must include all confirmation data and all primary economic terms data, as those terms are defined in § 45.1 and as included in appendix 1 to this part.

(f) *Allocations.* For swaps involving allocation, required swap creation data shall be reported to a single swap data repository as follows.

(1) *Initial swap between reporting counterparty and agent.* The initial swap transaction between the reporting counterparty and the agent shall be reported as required by § 45.3(a) through (d). A unique swap identifier for the initial swap transaction must be created as provided in § 45.5.

(2) *Post-allocation swaps—(i) Duties of the agent.* In accordance with this section, the agent shall inform the reporting counterparty of the identities of the reporting counterparty's actual counterparties resulting from allocation, as soon as technologically practicable

after execution, but not later than eight business hours after execution.

(ii) *Duties of the reporting counterparty.* The reporting counterparty 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.

(iii) *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 initial swap transaction and of each of the post-allocation swaps.

(g) *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.

(h) *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.

(i) *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.

(j) *Choice of SDR.* The entity with the obligation to choose the swap data repository to which all required swap creation data for the swap is reported shall be the entity that is required to make the first report of all data pursuant to this section, as follows:

(1) For swaps executed on or pursuant to the rules of a swap execution facility or designated contract market, the swap execution facility or designated contract market shall choose the swap data repository;

(2) For all other swaps, the reporting counterparty, as determined in § 45.8, shall choose the swap data repository.

#### § 45.4 [Amended]

■ 4. Effective June 27, 2016, remove § 45.4 (b)(2)(ii).

■ 5. Effective July 27, 2016, revise § 45.4 to read as follows:

#### § 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 and in the manner provided in § 45.13(b). The rules governing acceptance and recording of such data by a swap data repository are set forth in § 49.10 of this chapter. 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 in § 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 generally.* 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 clearing swaps.* For all clearing swaps, required continuation data must be reported as provided in this section.

(1) *Life cycle event data or state data reporting.* The derivatives clearing organization, as reporting counterparty, 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 by the derivatives clearing organization, as reporting counterparty, daily.

(c) *Continuation data reporting for original swaps.* For all original swaps, required continuation data, including terminations, must be reported to the swap data repository to which the swap that was accepted for clearing was reported pursuant to § 45.3(a) through (d) in the manner provided in § 45.13(b) and in this section, and must be

accepted and recorded by such swap data repository as provided in § 49.10 of this chapter.

(1) *Life cycle event data or state data reporting.* The derivatives clearing organization that accepted the swap for clearing 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) In addition to all other necessary continuation data fields, life cycle event data and state data must include all of the following:

- (i) The legal entity identifier of the swap data repository to which all required swap creation data for each clearing swap was reported by the derivatives clearing organization pursuant to § 45.3(e);
- (ii) The unique swap identifier of the original swap that was replaced by the clearing swaps; and
- (iii) The unique swap identifier of each clearing swap that replaces a particular original swap.

(d) *Continuation data reporting for uncleared swaps.* For all swaps that are not cleared by a derivatives clearing organization, including swaps executed on or pursuant to the rules of a swap execution facility or designated contract market, 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 (d)(1)(i) or (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 first business day following the date of any life cycle event; 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 second business day following such event.

(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.

■ 6. Revise § 45.5 to read as follows:

**§ 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 (f) of this section.

(a) *Swaps executed on or pursuant to the rules of a swap execution facility or designated contract market.* For each swap executed on or pursuant to the rules of a swap execution facility or designated contract market, the swap execution facility or designated contract market shall create and transmit a unique swap identifier as provided in paragraphs (a)(1) and (2) 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 (b)(1) and (2) 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 shall create and transmit a unique swap identifier as provided in paragraphs (c)(1) and (2) 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) *Clearing swaps.* For each clearing swap, the derivatives clearing organization that is a counterparty to such swap shall create and transmit a unique swap identifier as provided in paragraphs (d)(1) and (2) of this section.

(1) *Creation.* The derivatives clearing organization shall generate and assign a unique swap identifier upon, or as soon as technologically practicable after, acceptance of an original swap by the derivatives clearing organization for clearing or execution of a clearing swap that does not replace an original swap, and prior to the reporting of required swap creation data for the clearing swap. The unique swap identifier shall consist of a single data field that contains two components:

(i) The unique alphanumeric code assigned to the derivatives clearing

organization by the Commission for the purpose of identifying the derivatives clearing organization with respect to unique swap identifier creation; and

(ii) An alphanumeric code generated and assigned to that clearing swap by the automated systems of the derivatives clearing organization, which shall be unique with respect to all such codes generated and assigned by that derivatives clearing organization.

(2) *Transmission.* The derivatives clearing organization shall transmit the unique swap identifier electronically as follows:

(i) To the swap data repository to which the derivatives clearing organization reports required swap creation data for the clearing swap, as part of that report; and

(ii) To its counterparty to the clearing swap, as soon as technologically practicable after acceptance of a swap by the derivatives clearing organization for clearing or execution of a clearing swap that does not replace an original swap.

(e) *Allocations.* For swaps involving allocation, unique swap identifiers shall be created and transmitted as follows.

(1) *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 paragraphs (a) through (c) of this section, and shall be transmitted as follows:

(i) 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.

(ii) 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.

(2) *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:

(i) The non-reporting counterparty for the swap in question.

(ii) The agent.

(iii) 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.

(f) *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.

■ 7. Revise § 45.8 to read as follows:

**§ 45.8 Determination of which counterparty must report.**

The determination of which counterparty is the reporting counterparty for all swaps, except clearing swaps, shall be made as provided in paragraphs (a) through (h) of this section. The determination of which counterparty is the reporting counterparty for all clearing swaps shall be made as provided in paragraph (i) of 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 section 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 section 2(h)(7)(C), or both counterparties are non-SD/MSP counterparties and neither counterparty

is a financial entity as defined in CEA section 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.

(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 or pursuant to the rules of 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.

(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 (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.

(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 section 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 an exception to, or an exemption from, the clearing requirement under part 50 of this chapter 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 initial swap 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.

(i) *Clearing swaps.* Notwithstanding the provisions of paragraphs (a) through (h) of this section, if the swap is a clearing swap, the derivatives clearing organization that is a counterparty to such swap shall be the reporting

counterparty and shall fulfill all reporting counterparty obligations for such swap.

■ 8. Revise § 45.10 to read as follows:

**§ 45.10 Reporting to a single swap data repository.**

All swap data for a given swap, which shall include all swap data required to be reported pursuant to parts 43 and 45 of this chapter, 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 or pursuant to the rules of a swap execution facility or designated contract market.* To ensure that all swap data, including all swap data required to be reported pursuant to parts 43 and 45 of this chapter, 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, including all swap data required to be reported pursuant to parts 43 and 45 of this chapter, for off-facility swaps with a swap dealer or major swap participant reporting counterparty 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) 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 (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, including all swap data required to be reported pursuant to parts 43 and 45 of this chapter, 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) 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.

(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 (c)(1) of this section (or to its successor in the event that it ceases to operate, as provided in part 49 of this chapter).

(d) *Clearing swaps.* To ensure that all swap data for a given clearing swap, and for clearing swaps that replace a particular original swap or that are created upon execution of the same transaction and that do not replace an original swap, is reported to a single swap data repository:

(1) The derivatives clearing organization that is a counterparty to such clearing swap shall report all required swap creation data for that clearing swap to a single swap data repository. As soon as technologically practicable after acceptance of an original swap by a derivatives clearing organization for clearing or execution of a clearing swap that does not replace an original swap, the derivatives clearing organization shall transmit to the counterparty to each clearing swap the legal entity identifier of the swap data repository to which the derivatives clearing organization reported the required swap creation data for that clearing swap.

(2) Thereafter, all required swap creation data and all required swap continuation data reported for that clearing swap shall be reported by the derivatives clearing organization to the swap data repository to which swap data has been reported pursuant to paragraph (d)(1) of this section (or to its successor in the event that it ceases to operate, as provided in part 49 of this chapter).

(3) For clearing swaps that replace a particular original swap, and for equal and opposite clearing swaps that are created upon execution of the same transaction and that do not replace an original swap, the derivatives clearing organization shall report all required swap creation data and all required swap continuation data for such clearing swaps to a single swap data repository.

■ 9. Revise Appendix 1 to part 45 to read as follows:

**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 for all swaps	Comment
Asset Class .....	Field values: Credit, equity, FX, interest rates, other commodities.
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, or substitute identifier for a natural person.
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 section 2(h)(7)(C).	Yes/No.
An indication of whether the reporting counterparty is a derivatives clearing organization with respect to the swap.	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, or substitute identifier for a natural person.
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 initial swap 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, or substitute identifier for a natural person.
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 section 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, interest rates, other commodities.
For a multi-asset class swap, an indication of the secondary asset class(es).	Field values: Credit, equity, FX, interest rates, other commodities.
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.	Field value: LEI of the other SDR to which the swap is or will be reported.
An indication of the counterparty purchasing protection .....	Field values: LEI, or substitute identifier for a natural person.
An indication of the counterparty selling protection .....	Field values: LEI, or substitute identifier for a natural person.
Information identifying the reference entity .....	The entity that is the subject of the protection being purchased and sold in the swap. Field values: LEI, or substitute identifier for a natural person.
Contract type .....	<i>E.g.</i> , 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.
Execution timestamp .....	The date and time of the trade, expressed using Coordinated Universal Time ("UTC").
Execution venue .....	The swap execution facility or designated contract market on or pursuant to the rules of which the swap was executed. Field values: LEI 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 .....	<i>E.g.</i> , 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	

EXHIBIT A—MINIMUM PRIMARY ECONOMIC TERMS DATA—CREDIT SWAPS AND EQUITY SWAPS—Continued

[Enter N/A for fields that are not applicable]

Data categories and fields for all swaps	Comment
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 UTC, 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 submitted for clearing to a derivatives clearing organization.
Clearing venue .....	LEI of the derivatives clearing organization.
If the swap will not be cleared, an indication of whether an exception to, or an exemption from, the clearing requirement has been elected with respect to the swap under part 50 of this chapter.	Yes/No.
The identity of the counterparty electing an exception or exemption to the clearing requirement under part 50 of this chapter.	Field values: LEI, or substitute identifier for natural person.
Clearing exception or exemption type .....	The type of clearing exception or exemption being claimed. Field values: End user, Inter-affiliate or Cooperative.
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.

EXHIBIT A—MINIMUM PRIMARY ECONOMIC TERMS DATA—CREDIT SWAPS AND EQUITY SWAPS

[Enter N/A for fields that are not applicable]

Additional data categories and fields for clearing swaps	Comment
Clearing swap USIs .....	The USIs of each clearing swap that replaces the original swap that was submitted for clearing to the DCO, other than the USI for which the PET data is currently being reported (as “USI” field above).
Original swap USI .....	The USI of the original swap submitted for clearing to the DCO that is replaced by clearing swaps.
Original swap SDR .....	LEI of SDR to which the original swap was reported.
Clearing member LEI .....	LEI of Clearing member.
Clearing member client account .....	Clearing member client account number.
Origin (house or customer) .....	An indication whether the clearing member acted as principal for a house trade or agent for a customer trade.
Clearing receipt timestamp .....	The date and time at which the DCO received the original swap for clearing, expressed using UTC.
Clearing acceptance timestamp .....	The date and time at which the DCO accepted the original swap for clearing, expressed using UTC.

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 for all swaps	Comment
Asset Class .....	Field values: Credit, equity, FX, interest rates, other commodities.
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, or substitute identifier for a natural person.
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 section 2(h)(7)(C).	Yes/No.
An indication of whether the reporting counterparty is a derivatives clearing organization with respect to the swap.	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, or substitute identifier for a natural person.
An indication that the swap is a post-allocation swap .....	Yes/No.

## EXHIBIT B—MINIMUM PRIMARY ECONOMIC TERMS DATA—FOREIGN EXCHANGE TRANSACTIONS (OTHER THAN CROSS-CURRENCY SWAPS)—Continued

[Enter N/A for fields that are not applicable]

Data fields for all swaps	Comment
If the swap is a post-allocation swap, the unique swap identifier of the initial swap 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, or substitute identifier for a natural person.
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 section 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, interest rates, other commodities.
For a multi-asset class swap, an indication of the secondary asset class(es).	Field values: Credit, equity, FX, interest rates, other commodities.
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.	Field value: LEI of the other SDR 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.
Execution timestamp .....	The date and time of the trade, expressed using Coordinated Universal Time ("UTC").
Execution venue .....	The swap execution facility or designated contract market on or pursuant to the rules of which the swap was executed. Field values: LEI 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 ("UTC"), 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 submitted for clearing to a derivatives clearing organization.
Clearing venue .....	LEI of the derivatives clearing organization.
If the swap will not be cleared, an exception to, or an exemption from, the clearing requirement has been elected with respect to the swap under part 50 of this chapter.	Yes/No.
The identity of the counterparty electing an exception or exemption to the clearing requirement under part 50 of this chapter.	Field values: LEI, or substitute identifier, for a natural person.
Clearing exception or exemption type .....	The type of clearing exception or exemption being claimed. Field values: End user, Inter-affiliate or Cooperative.
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.

EXHIBIT B—MINIMUM PRIMARY ECONOMIC TERMS DATA—FOREIGN EXCHANGE TRANSACTIONS (OTHER THAN CROSS-CURRENCY SWAPS)

[Enter N/A for fields that are not applicable]

Additional data categories and fields for clearing swaps	Comment
Clearing swap USIs .....	The USIs of each clearing swap that replaces the original swap that was submitted for clearing to the DCO, other than the USI for which the PET data is currently being reported (as "USI" field above).
Original swap USI .....	The USI of the original swap submitted for clearing to the DCO that is replaced by clearing swaps.
Original swap SDR .....	LEI of SDR to which the original swap was reported.
Clearing member LEI .....	LEI of Clearing member.
Clearing member client account .....	Clearing member client account number.
Origin (house or customer) .....	An indication whether the clearing member acted as principal for a house trade or agent for a customer trade.
Clearing receipt timestamp .....	The date and time at which the DCO received the original swap for clearing, expressed using UTC.
Clearing acceptance timestamp .....	The date and time at which the DCO accepted the original swap for clearing, expressed using UTC.

EXHIBIT C—MINIMUM PRIMARY ECONOMIC TERMS DATA—INTEREST RATE SWAPS (INCLUDING CROSS-CURRENCY SWAPS)

[Enter N/A for fields that are not applicable]

Data fields for all swaps	Comment
Asset Class .....	Field values: Credit, equity, FX, interest rates, other commodities.
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, or substitute identifier for a natural person.
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 section 2(h)(7)(C).	Yes/No.
An indication of whether the reporting counterparty is a derivatives clearing organization with respect to the swap.	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, or substitute identifier for a natural person.
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 initial swap 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, or substitute identifier for a natural person.
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 section 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, interest rates, other commodities.
For a multi-asset class swap, an indication of the secondary asset class(es).	Field values: Credit, equity, FX, interest rates, other commodities.
An indication that the swap is a mixed swap .....	Field values: Yes, Not applicable.

## EXHIBIT C—MINIMUM PRIMARY ECONOMIC TERMS DATA—INTEREST RATE SWAPS (INCLUDING CROSS-CURRENCY SWAPS)—Continued

[Enter N/A for fields that are not applicable]

Data fields for all swaps	Comment
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.	Field value: LEI of the other SDR to which the swap is or will be reported.
Contract type .....	<i>E.g.</i> , 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.
Execution timestamp .....	The date and time of the trade, expressed using Coordinated Universal Time ("UTC").
Execution venue .....	The swap execution facility or designated contract market on or pursuant to the rules of which the swap was executed. Field values: LEI 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 .....	<i>E.g.</i> , put, call, straddle.
Fixed rate.	
Fixed rate day count fraction .....	<i>E.g.</i> , actual 360.
Floating rate payment frequency.	
Floating rate reset frequency.	
Floating rate index name/rate period .....	<i>E.g.</i> , USD-Libor-BBA.
Timestamp for submission to swap data repository .....	Time and date of submission to the swap data repository, expressed using UTC, 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 submitted for clearing to a derivatives clearing organization.
Clearing venue .....	LEI of the derivatives clearing organization.
If the swap will not be cleared, an indication of whether an exception to, or an exemption from, the clearing requirement has been elected with respect to the swap under part 50 of this chapter.	Yes/No.
The identity of the counterparty electing an exception or exemption to the clearing requirement under part 50 of this chapter.	Field values: LEI, or substitute identifier, for a natural person.
Clearing exception or exemption type .....	The type of clearing exception or exemption being claimed. Field values: End user, Inter-affiliate or Cooperative.
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.	<i>E.g.</i> , early termination option clause. Use as many fields as required to report each such term.

## EXHIBIT C—MINIMUM PRIMARY ECONOMIC TERMS DATA—INTEREST RATE SWAPS (INCLUDING CROSS-CURRENCY SWAPS)

[Enter N/A for fields that are not applicable]

Additional data categories and fields for clearing swaps	Comment
Clearing swap USIs .....	The USIs of each clearing swap that replaces the original swap that was submitted for clearing to the DCO, other than the USI for which the PET data is currently being reported (as "USI" field above).
Original swap USI .....	The USI of the original swap submitted for clearing to the DCO that is replaced by clearing swaps.
Original swap SDR .....	LEI of SDR to which the original swap was reported.
Clearing member LEI .....	LEI of Clearing member.
Clearing member client account .....	Clearing member client account number.
Origin (house or customer) .....	An indication whether the clearing member acted as principal for a house trade or agent for a customer trade.
Clearing receipt timestamp .....	The date and time at which the DCO received the original swap for clearing, expressed using UTC.

EXHIBIT C—MINIMUM PRIMARY ECONOMIC TERMS DATA—INTEREST RATE SWAPS (INCLUDING CROSS-CURRENCY SWAPS)—Continued

[Enter N/A for fields that are not applicable]

Additional data categories and fields for clearing swaps	Comment
Clearing acceptance timestamp .....	The date and time at which the DCO accepted the original swap for clearing, expressed using UTC.

EXHIBIT D—MINIMUM PRIMARY ECONOMIC TERMS DATA—OTHER COMMODITY SWAPS

[Enter N/A for fields that are not applicable]

Data field for all swaps	Comment
Asset Class .....	Field values: Credit, equity, FX, interest rates, other commodities.
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, or substitute identifier for a natural person.
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 section 2(h)(7)(C).	Yes/No.
An indication of whether the reporting counterparty is a derivatives clearing organization with respect to the swap.	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, or substitute identifier for a natural person.
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 initial swap 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, or substitute identifier for a natural person.
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 section 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, interest rates, other commodities.
For a multi-asset class swap, an indication of the secondary asset class(es).	Field values: Credit, equity, FX, interest rates, other commodities.
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.	Field value: LEI of the other SDR to which the swap is or will be reported.
Contract type .....	<i>E.g.</i> , 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.
Execution timestamp .....	The date and time of the trade, expressed using Coordinated Universal Time (“UTC”), as recorded by an automated system where available, or as recorded manually where an automated system is not available.

## EXHIBIT D—MINIMUM PRIMARY ECONOMIC TERMS DATA—OTHER COMMODITY SWAPS—Continued

[Enter N/A for fields that are not applicable]

Data field for all swaps	Comment
Execution venue .....	The swap execution facility or designated contract market on or pursuant to the rules of which the swap was executed. Field values: LEI 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 UTC, 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, for a natural person.
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, or substitute identifier, for a natural person.
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 submitted for clearing to a derivatives clearing organization.
Clearing venue .....	LEI of the derivatives clearing organization.
If the swap will not be cleared, an indication of whether an exception to, or an exemption from, the clearing requirement has been elected with respect to the swap under part 50 of this chapter.	Yes/No.
The identity of the counterparty electing an exception or exemption to the clearing requirement under part 50 of this chapter.	Field values: LEI, or substitute identifier, for a natural person.
Clearing exception or exemption type .....	The type of clearing exception or exemption being claimed. Field values: End user, Inter-affiliate or Cooperative.
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.

EXHIBIT D—MINIMUM PRIMARY ECONOMIC TERMS DATA—OTHER COMMODITY SWAPS

[Enter N/A for fields that are not applicable]

Additional data categories and fields for clearing swaps	Comment
Clearing swap USIs .....	The USIs of each clearing swap that replaces the original swap that was submitted for clearing to the DCO, other than the USI for which the PET data is currently being reported (as “USI” field above).
Original swap USI .....	The USI of the original swap submitted for clearing to the DCO that is replaced by clearing swaps.
Original swap SDR .....	LEI of SDR to which the original swap was reported.
Clearing member LEI .....	LEI of Clearing member.
Clearing member client account .....	Clearing member client account number.
Origin (house or customer) .....	An indication whether the clearing member acted as principal for a house trade or agent for a customer trade.
Clearing receipt timestamp .....	The date and time at which the DCO received the original swap for clearing, expressed using UTC.
Clearing acceptance timestamp .....	The date and time at which the DCO accepted the original swap for clearing, expressed using UTC.

Issued in Washington, DC, on June 14, 2016, by the Commission.

**Christopher J. Kirkpatrick,**  
*Secretary of the Commission.*

**Note:** The following appendices will not appear in the Code of Federal Regulations.

**Appendices to Amendments to Swap Data Recordkeeping and Reporting Requirements for Cleared Swaps—Commission Voting Summary and Chairman’s Statement**

**Appendix 1—Commission Voting Summary**

On this matter, Chairman Massad and Commissioners Bowen and Giancarlo voted in the affirmative. No Commissioner voted in the negative.

**Appendix 2—Statement of Chairman Timothy G. Massad**

Regular reporting of data on swaps is a key component of the swaps reforms that were agreed to by the G–20 leaders and codified in the Dodd-Frank Wall Street Reform and

Consumer Protection Act. Since taking office, a priority of mine has been to improve data quality and to simplify reporting obligations for market participants. I know that my fellow Commissioners Bowen and Giancarlo share this goal. That is why I am very pleased that today, the Commission has acted unanimously to improve the process for reporting data on cleared swaps.

This final rule will significantly enhance data quality and reduce reporting costs in a number of ways. It streamlines the reporting process to ensure there are not duplicate records of a swap, which can lead to double counting that can distort the data. It makes sure that accurate valuations of swaps are provided on an ongoing basis. And it eliminates some needless reporting requirements for swap dealers and major swap participants. This rule provides clarity and certainty in a number of areas, and will improve our ability to trace a swap through all phases of its lifecycle. Ultimately, it will provide us with a better picture of the swaps market, and enhance our ability to identify the buildup of risk that may pose a threat to the financial system.

Today’s final rule reflects the largely positive feedback we received on our

proposal, which was released in August, 2015. We very much appreciate the input that market participants have given us.

This effort is just one piece of our work to ensure accuracy and completeness in data reporting, to harmonize data standards, and to improve data quality, while avoiding excessive burdens and duplication. For example, our other efforts will include the development of technical specifications for the reporting of 120 priority data elements, which will lead to greater consistency and standardization in reporting. We are also leading international efforts on data harmonization, including the development of tools that will allow regulators to identify swaps and swap activity by product type and transaction type throughout the life of a swap.

I thank CFTC staff for their hard work on this rule, as well as the market participants who took the time to provide us feedback. And I also thank my fellow Commissioners Bowen and Giancarlo for their careful consideration and unanimous support for this measure.

[FR Doc. 2016–14414 Filed 6–24–16; 8:45 am]

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