



# Commodity Futures Trading Commission

## Office of Public Affairs

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## Frequently Asked Questions (FAQ) on the Reporting of Cleared Swaps

### What are the applicable reporting provisions in part 45 for cleared swap transactions?

Section 21(b)(1)(A) of the Commodity Exchange Act (“CEA”), added by section 728 of the Dodd Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”), addresses the content of swap transaction data that registered entities and reporting counterparties must report to registered swap data repositories (“SDRs”) and directs the Commission to “prescribe standards that specify the data elements for each swap that shall be collected and maintained by each registered swap data repository.” In fulfilling this statutory mandate, CEA section 21(b)(1)(B) also directs the Commission to “prescribe consistent data element standards applicable to registered entities and reporting counterparties.”

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 and over the course of the swap’s existence. Reporting done at the time of execution is referred to as “creation” data and reporting done over the course of the swap’s existence is referred to as “continuation” data. The part 45 regulations set forth varying reporting timeframes and compliance dates depending on the type of reporting, counterparty, execution or product.

Part 45 also requires the use of three unique identifiers in connection with reporting: Unique Swap Identifiers (“USI”), Legal Entity Identifiers (“LEI”), and Unique Product Identifiers (“UPI”).

### How will cleared swap transactions be reported to SDRs?

SDRs will accept data on swaps from the following sources that have an executed User Agreement with the SDR: (a) swap execution facilities (“SEFs”), (b) designated contract markets (“DCMs”), (c) derivatives clearing organizations (“DCOs”), (d) swap counterparties, or (e) 3rd party service providers (such as Markitwire) acting on behalf of any of these entities. For swaps reported to an SDR that are cleared at a particular DCO selected by the Reporting Counterparty, that DCO will send<sup>1</sup> to the SDR both daily trade data (having unique swap identifiers (“USIs”))<sup>2</sup> and position data (resulting from the netting process) for end-of-day (“EOD”) processing, including valuations or net present values (“NPVs”). Any omissions or errors on previously reported swaps will be provided by those same sources.

USIs must be attached to the initial swap transaction(s) when executed (as required under current part 45 rules). Because § 45.5 requires that each swap subject to the jurisdiction of the Commission shall be identified in all recordkeeping and all swap data reporting by use of a USI, USIs must be attached to the trades resulting from the clearing process. As provided in Part 45, the SEF or DCM on which an on-facility swap<sup>3</sup> is traded, the

<sup>1</sup> The analysis for determining the party that reports primary economic terms (“PET”) data is set forth under § 45.3 of the Commission’s Regulations.

<sup>2</sup> Consistent with § 45.3 of the Commission’s Regulations, USIs will be created by (i) SEFs/DCMs for on-facility swaps, (ii) the Reporting Counterparty for off-facility swaps where such Reporting Counterparty is a swap dealer (“SD”) or major swap participant (“MSP”), or (iii) the SDR for an off-facility swap between two Non-SDs/MSPs.

<sup>3</sup> An “off-facility” swap is defined in § 45.1 as a “swap not executed on or pursuant to the rules of a swap execution facility or designated contract market.”

Reporting Counterparty for an off-facility swap, or an Affirmation Platform<sup>4</sup> acting as a third-party service provider, assigns the USI for an original swap that will be cleared. Upon novation and clearing, the DCO should assign new USIs to the new swaps resulting from novation of the original swap to the clearing house. USIs should not be required for the aggregate net “positions” guaranteed by the DCO as these positions are subject to multi-lateral netting and will continuously change from day to day. Staff can track these USIs through data found on daily trade registers produced by the DCO, provided however, that detailed information regarding all activity taking place within the clearing house, for example, netting or compression events that took place, be contained within the trade register data.

By receiving data that is typically reported on a daily trade register, the Commission and Staff can: (i) trace USIs from day to day, (ii) see what trades make up a specific transaction (i.e. 4 trades make up 1 new trade), and (iii) see what trades make up a position (net notional) for that day only. It would be possible for the Commission and Staff in the future through computerized algorithms to trace back a USI and see when it was originally cleared, novated and/or changed into a new USI due to a partial termination or subsequent novation event.

Daily and Final settlement prices from a DCO are provided to the appropriate SDR at the instrument level (similar to futures). Non-US dollar swaps data should additionally provide a USD equivalent. All counterparties that face the DCO before and after the original swap is novated must be identified<sup>5</sup> using a CFTC Interim Compliant Identifier (“CICI”)/LEI.<sup>6</sup>

### **How would the reporting obligations of part 45 of the Commission’s Regulations apply to the reporting of a cleared swap?**

The clearing of swaps requires that the original swap between counterparties (“original swap”) be novated and extinguished, and thereby, replaced by different swaps (the “resulting swaps”) between each counterparty and the DCO.<sup>7</sup> Once novated, the original swap is accordingly terminated so that there are no additional reporting obligations with respect to the original swap beyond the date of execution and/or termination, whichever is later.

For purposes of reporting, part 45 provides, with respect to the original swap, the following reporting obligations.

- (1) If the original swap is executed on a SEF or DCM, the SEF/DCM is required to report PET data and confirmation data in a single report to a SDR.
- (2) If the original swap is executed off-facility with the Reporting Counterparty being a SD/MSP, and the swap is accepted for clearing prior to the PET data deadline<sup>8</sup>, then the DCO must report PET data and confirmation data in a single report as soon as technologically practical after clearing.<sup>9</sup>

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<sup>4</sup> An Affirmation Platform is typically used by counterparties to verify the execution (i.e. match the economic terms) of a swap immediately after execution. Examples of Affirmation Platforms include ICE Link and Markitwire. An Affirmation Platform would be assigning the USI as a 3rd party service provider to the Reporting Counterparty.

<sup>5</sup> See § 45.5(d)(1) and (2) of the Commission’s Regulations.

<sup>6</sup> See Commission CICI order available at <http://www.cftc.gov/ucm/groups/public/@newsroom/documents/file/federalregister072412c.pdf>.

<sup>7</sup> See § 39.12(b)(6) of the Commission’s Regulations.

<sup>8</sup> The PET data deadlines in connection with Reporting Counterparties that are either SDs or MSPs for those swaps subject to mandatory clearing is 30 minutes after execution during year one and 15 minutes after execution after year one. For credit, equity, FX and rate swaps not subject to mandatory clearing, the PET data deadlines are 1 hour after execution in year one and 30 minutes after year one. However, if the non-Reporting Counterparty is not a financial entity and verification is not electronic, the PET data deadlines are 24 business hours after execution during year one; 12 business hours after execution during year two and 30 minutes after execution after year two. For other commodity swaps not subject to mandatory clearing, the PET data deadlines are 4 hours after execution in year one and 2 hours after execution after year one. However, if a non-

- (3) If the original swap is an off-facility swap with the Reporting Counterparty being a non-SD/MSP, and the swap is accepted for clearing before the PET data deadline<sup>10</sup>, then the DCO must report PET data and confirmation data in a single report as soon as technologically practical after clearing.<sup>11</sup> In this case, the non-SD/MSP will have no further part 45 reporting obligations.
- (4) If the original swap is an off-facility swap with the Reporting Counterparty being a SD/MSP and if the swap is not accepted for clearing prior to the PET data deadline, the SD/MSP is required to report PET data as soon as technologically practical after execution but no later than the applicable PET data deadline.
- (5) If the original swap is an off-facility swap with the Reporting Counterparty being a non-SD/MSP and if the swap is not accepted for clearing before, or the Reporting Counterparty has not yet reported PET data prior to, the PET data deadline, the non-SD/MSP is required to report PET and confirmation data as soon as technologically practical after execution but no later than the applicable PET data and confirmation reporting deadlines. Continuation data for these swaps must be reported no later than the applicable § 45.4(c) reporting deadlines.

As indicated above, once the original swap is accepted for clearing, and thereby extinguished, and replaced by the resulting swaps between each counterparty and the DCO, the part 45 reporting obligations for the original swap are terminated.

For purposes of reporting the “resulting swaps,” part 45 provides the following reporting obligations.

- (1) DCOs must report PET data and confirmation data in a single report as soon as technologically practical after execution.
- (2) DCOs are also required to report valuation data daily. If the opposing counterparty to the resulting swap is a SD/MSP, the SD/MSP will also report valuation data daily and depending on whether continuation data is reported using the “state data” or “life cycle event data” approach, all other continuation data must be reported daily, on the day a life cycle event occurs, or on the second business day following a life cycle event. However, if the opposing counterparty to the resulting swap is a non-SD/MSP, there are no continuing part 45 reporting obligations after acceptance for clearing.

### **How does the Reporting Counterparty hierarchy set forth in § 45.8 of the Commission’s Regulations apply to cleared swaps and DCOs?**

The determination of the Reporting Counterparty under § 45.8 of the Commission's Regulations applies to all swaps, both cleared and non-cleared. However, Staff believes that for cleared swaps, DCOs would report

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Reporting Counterparty is not a financial entity and verification is not electronic, the PET data deadlines are 24 business hours after execution in year one; 12 business hours after execution in year two and 30 minutes after execution after year two.

<sup>9</sup> The Staff also notes that part 45 permits a Reporting Counterparty to report PET data to an SDR whereby the DCO would then only report confirmation data.

<sup>10</sup> The PET data deadlines in connection with Reporting Counterparties that are non-SDs/MSPs for those swaps subject to mandatory clearing are: (i) 4 hours after execution during year one; (ii) 2 hours after execution during year two; and (iii) 1 hour after execution after year two. For swaps not subject to mandatory clearing, the PET data deadlines are (i) 48 business hours after execution in year one; (ii) 36 business hours after execution during year two; and (iii) 24 business hours after execution after year two.

<sup>11</sup> See note 9 supra.

creation data (including PET data) and continuation data on the resulting swaps to the SDR. With respect to the definition of non-SD/MSP set forth in § 45.1 of the Commission's Regulations, the Staff believes that DCOs have reporting obligations irrespective of their characterization as a Reporting Counterparty.

The general hierarchy for determining the Reporting Counterparty is set forth in § 45.8 as follows:

- If only one counterparty is a SD, then the SD is the Reporting Counterparty;
- If neither counterparty is a SD, and only one counterparty is a MSP, the MSP is the Reporting Counterparty;
- If both counterparties are non-SDs/MSPs, and only one counterparty is a financial entity (as defined in CEA section 2(h)(7)(C)), the counterparty that is a financial entity is the Reporting Counterparty;
- If both counterparties are SDs or MSPs or non-SDs/MSPs that are financial entities or non-SDs/MSPs that are not financial entities, then the counterparties are required to agree which counterparty will be the Reporting Counterparty;
- If both counterparties are non-SDs/MSPs and only one counterparty is a U.S. person, that U.S. person counterparty is the Reporting Counterparty; and
- If neither counterparty is a U.S. person but the swap is executed on a SEF or DCM or otherwise executed in the U.S. or cleared by a DCO, then the counterparties are required to agree which counterparty will be the Reporting Counterparty.

As detailed above, DCOs will have reporting obligations for cleared swaps that are not dependent on whether the DCO is deemed to be a Reporting Counterparty.

### **What are the reporting obligations of a DCO for off-facility cleared swaps on October 12, 2012?**

As of Compliance Date 1 on October 12, 2012, DCOs are required to comply with the reporting provisions set forth in part 45 for credit swaps and interest rate swaps. Accordingly, in connection with a cleared credit swap or interest rate swap transaction that is executed off-facility, the creation data (including PET data) for resulting swaps accepted for clearing must be reported by the DCO to an SDR. In addition, the DCO will be required to report all continuation data for the resulting swaps. Once the Reporting Counterparty is required to report pursuant to the compliance dates set forth in part 45, the original swap would then be reported as a historical swap with the resulting swaps “linked” back to the historical reported swap. Swaps executed on a DCM on October 12, 2012 would not have similar reporting ambiguities since part 45 requires DCMs to report creation data for the original swap transaction to an SDR on October 12, 2012.

Staff believes that this reporting anomaly could occur in the case of a swap that is subject to clearing (or voluntarily cleared) where either of the original counterparties is not yet registered as SDs/MSPs or both counterparties are non-SDs/MSPs that will not be subject to reporting until April 10, 2013. Once accepted for clearing by the DCO, the resulting swaps will be created by the DCO with each counterparty and will be subject to creation data and continuation data reporting by the DCO.

**~~Which party has the authority to select the particular SDR for purposes of cleared swap reporting?~~**

~~Part 45 of the Commission's Regulations is silent regarding which party to a swap transaction has the authority to select the SDR. However, § 45.8 of the Commission's Regulations provides a selection hierarchy for determining the Reporting Counterparty for reporting swaps to an SDR. Accordingly, Staff believes that (unless otherwise agreed to by the counterparties and the DCO) the selection of the particular SDR to which the swap data is reported for the resulting swaps due to clearing is to be determined by the counterparties to the original swap.~~

**May counterparties to a swap transaction (including a cleared swap) as part of the terms of such swap designate which counterparty will report the creation and continuation data (except for valuation data) to the SDR?**

Yes. As set forth in § 45.9 of the Commission's Regulations, registered entities and counterparties required to report pursuant to part 45 may contract with 3rd parties to facilitate reporting. In this context, 3rd parties may include, but are not limited to, the other counterparty to the swap, a 3rd party service provider (such as Markitwire) as well as the DCO in the case of a cleared swap. As a result, the Reporting Counterparty may delegate the actual process of reporting data to the SDR to the other counterparty as well as to a 3rd party.

~~**May a DCM, SEF or DCO that is also registered as an SDR or legally affiliated with an SDR require counterparties to use their "captive" SDR for reporting swap transactions?**~~

~~No. As set forth in § 49.27(a) of the Commission's Regulations, SDRs are prohibited from tying or bundling the offering of mandated SDR services with other "ancillary" services. In this situation, the DCM, SEF or DCO, as a registered SDR, would be tying/bundling its SDR services with its offering of trading or clearing services. Market participants may choose to use a DCM's, SEF's or DCO's SDR for reporting swap transactions, but a DCM, SEF or DCO as part of its offering of trading or clearing services cannot require that market participants use its affiliated or "captive" SDR for reporting. Such a result would be inconsistent with the intent of Section 21 and § 49.27(a) of the Commission's Regulations relating to the reporting of transactions. Consistent with Section 21 of the CEA and § 49.27(a) of the Commission's Regulations, Staff believes that access to SDR services must be fair, open and equal. Section 49.27 was adopted to ensure, to the greatest extent possible, that SDRs' fee, pricing and other access policies are not used as a means to deny or limit access to certain market participants.~~

**In connection with cleared swaps, may DCOs in meeting their obligation to report "continuation data" under part 45 of the Commission's Regulations, report swap position data to SDRs rather than transactional data?**

Section 45.5(e) of the Commission's Regulations requires each registered entity or swap counterparty subject to the jurisdiction of the Commission to include a unique swap identifier (USI) "for a swap in all of its records and all of its swap data reporting concerning that swap, from the time it creates or receives the 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." With respect to cleared swaps, DCOs have raised concerns about their ability to comply with § 45.5(e).

Staff understands that DCOs have the ability to accept a trade for clearing with a USI assigned by the Reporting Counterparty, extinguish that trade through novation to the clearing house upon acceptance for clearing, and then assign new USIs to each side of the original trade upon novation. In addition, DCOs can also link the original USI to the new USI(s) on that trade date, and then report that data to SDRs. This transaction data, with all the relevant economic, counterparty and, if provided, customer detail, is recorded and archived.

Staff believes that § 45.5(e) permits DCOs to report swap position data to SDRs in the same manner that is currently required for futures and options reporting to the Commission. As a result, USIs will be required for

transactional data on the trade date; however, a separate USI would not be required for position data. DCOs, however, are required to provide and maintain daily trade registers of detailed information, including but not limited to, any netting or compression events that took place on trade date. In addition, Staff believes that for cleared swap reporting to SDRs, DCOs should include a link between the original swap (and any applicable USI from the original swap) to the resulting or new swap between the DCO and each original counterparty (and any applicable USIs from the new swaps). Section 45.5 requires that reporting entities must maintain records identifying each swap by USI. In that regard, Staff believes that DCOs should include a link between the original swap and resulting or new swaps.

### **~~Where must the resulting swaps created through the clearing process be reported?~~**

~~Pursuant to § 45.10 of the Commission's Regulations, all swap data for a given swap must be reported to a single SDR, which is the SDR to which the first report of required swap creation data is made. In particular, § 45.10 provides that the initial report of creation data for a swap will be made as follows: (1) for swaps executed on a SEF/DCM, the SEF/DCM reports all creation data to a single SDR, as soon as technologically practicable after execution; (2) for off-facility swaps, the Reporting Counterparty reports all PET data to a single SDR, within the deadlines provided in part 45; and (3) for off-facility swaps, if the Reporting Counterparty is excused from reporting, as provided in part 45, because the swap is accepted for clearing before the reporting deadline and before any report made by the Reporting Counterparty, the DCO reports all creation data to a single SDR, as soon as technologically practicable after execution. In each case, continuation data must be reported to the SDR to which required PET data for that swap was first reported.~~

### **What are the obligations of the counterparties to a cleared swap to provide updated information if such swap is allocated after clearing by a counterparty to its “clients”?**

Allocations are (normally) post-trade events where a party (usually an asset manager but referred to in the part 45 regulations as the “agent”) allocates a portion of an executed swap to clients who are the “actual” counterparties to the original transaction. Section 45.3(e) of the Commission’s Regulations provides that the agent must inform the Reporting Counterparty of the identities of the allocated entities within 8 business hours after execution. Staff believes that the Reporting Counterparty must then assign new USIs to each individual allocated swap, report them to the SDR, and the SDR must map all the allocated swaps back to the original executed swap between the reporting counterparty and the “agent” or asset manager. Therefore, Staff believes that swaps that are allocated after clearing are required to be updated by the original counterparties (or their agents) to provide allocation information to DCOs.

### **What are the obligations of the counterparties to a non-cleared swap executed on a SEF to report continuation data to an SDR?**

Section 45.8(h) of the Commission’s Regulations provides “[f]or 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.” Accordingly, § 45.8(h) sets forth the notification provisions requiring each counterparty to provide sufficient information to the SEF/DCM in connection with creation data without reference to reporting obligations of continuation data to SEFs/DCMs.

The Part 45 Adopting Release,<sup>12</sup> however, does indicate that the counterparties report continuation data for on-platform, uncleared swaps. In particular, the flowcharts of the Part 45 Adopting Release<sup>13</sup> clearly set forth these

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<sup>12</sup> See Final Rule: Swap Data Recordkeeping and Reporting Requirements, 77 FR 2136 (January 13, 2012)(“Part 45 Adopting Release”).

<sup>13</sup> See Part 45 Adopting Release at 77 FR 2156-2157.

obligations for Reporting Counterparties if an SD/MSP or non-SD/MSP. In each case, if a swap is executed on a SEF or DCM and not cleared, the continuation data will be reported by the Reporting Counterparty.

Therefore, in connection with non-cleared swaps executed on a SEF, when a SD/MSP is the Reporting Counterparty, continuation data must be reported by the SD/MSP counterparty, and when a non-SD/MSP counterparty is the Reporting Counterparty, continuation data must be reported by the non-SD/MSP counterparty.

As provided in § 45.9 of the Commission's Regulations, a Reporting Counterparty required to report continuation data may contract with a 3rd party service provider to facilitate such reporting, although the Reporting Counterparty remains responsible for reporting as required.