



# Federal Register

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**Wednesday,  
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## **Part III**

# **Commodity Futures Trading Commission**

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**17 CFR Part 45**

**Swap Data Recordkeeping and Reporting  
Requirements; Proposed Rule**

## COMMODITY FUTURES TRADING COMMISSION

### 17 CFR Part 45

RIN 3038-AD19

### Swap Data Recordkeeping and Reporting Requirements

**AGENCY:** Commodity Futures Trading Commission (CFTC).

**ACTION:** Proposed Rulemaking.

**SUMMARY:** The Commodity Futures Trading Commission ("Commission or CFTC") is proposing rules to implement new statutory provisions enacted by Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act. These proposed rules apply to swap data recordkeeping and reporting requirements for swap data repositories, derivatives clearing organizations, designated contract markets, swap execution facilities, swap dealers, major swap participants, and swap counterparties who are neither swap dealers nor major swap participants (including counterparties who qualify for the end user exception with respect to particular swaps).

**DATES:** Comments must be received on or before February 7, 2011.

**ADDRESSES:** You may submit comments, identified by RIN number 3038-AD19, by any of the following methods:

- *Agency Web site, via its Comments Online process:* <http://comments.cftc.gov>. Follow the instructions for submitting comments through the Web site.
- *Mail:* David A. Stawick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.
- *Hand Delivery/Courier:* Same as mail above.
- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

All comments must be submitted in English, or must be accompanied by an English translation. Contents will be posted as received to <http://www.cftc.gov>. You should submit only information that you wish to make available publicly. If you wish the Commission to consider information that may be exempt from disclosure under the Freedom of Information Act, a petition for confidential treatment of the exempt information may be submitted according to the established procedures in CFTC Regulation 145.9.<sup>1</sup>

### FOR FURTHER INFORMATION CONTACT:

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## I. Background

### A. Introduction

On July 21, 2010, President Obama signed into law the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act").<sup>2</sup> Title VII of the Dodd-Frank Act<sup>3</sup> amended the Commodity Exchange Act ("CEA" or "Act")<sup>4</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 swap dealers ("SDs") and major swap participants ("MSPs"); imposing clearing and trade execution requirements on standardized derivative products; creating rigorous recordkeeping and data reporting regimes with respect to swaps, including real time reporting; and enhancing the Commission's rulemaking and enforcement authorities with respect to, among others, all registered entities, intermediaries, and swap counterparties subject to the Commission's oversight.

### B. Swap Data Provisions of the Dodd-Frank Act

To enhance transparency, promote standardization, and reduce systemic risk, Section 728 of the Dodd-Frank Act establishes a newly-created registered entity—the swap data repository ("SDR")<sup>5</sup>—to collect and maintain data related to swap transactions as prescribed by the Commission, and to make such data electronically available to regulators.<sup>6</sup>

Section 728 directs the Commission to prescribe standards for swap data recordkeeping and reporting. Specifically, Section 728 provides that:

The Commission shall prescribe standards that specify the data elements for each swap

<sup>2</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/LawRegulation/OTCDERIVATIVES/index.htm>.

<sup>3</sup> Pursuant to Section 701 of the Dodd-Frank Act, Title VII may be cited as the "Wall Street Transparency and Accountability Act of 2010."

<sup>4</sup> 7 U.S.C. 1, *et seq.*

<sup>5</sup> See also CEA § 1a(40)(E).

<sup>6</sup> Regulations governing core principles and registration requirements for, and the duties of, SDRs are the subject of a separate notice of proposed rulemaking under Part 49 of the Commission's regulations.

<sup>1</sup> Commission regulations referred to herein are found at 17 CFR Ch. 1.

that shall be collected and maintained by each registered swap data repository.<sup>7</sup> These standards are to apply to both registered entities and counterparties involved with swaps:

In carrying out [the duty to prescribe data element standards], the Commission shall prescribe consistent data element standards applicable to registered entities and reporting counterparties.<sup>8</sup>

Section 727 of the Dodd-Frank Act requires that each swap, either cleared or uncleared, shall be reported to a registered SDR. That Section also amends Section 1(a) of the CEA to add the definition of swap data repository:

The term ‘swap data repository’ means any person that collects and maintains information or records with respect to transactions or positions in, or the terms and conditions of, swaps entered into by third parties for the purpose of providing a centralized recordkeeping facility for swaps.<sup>9</sup> Section 728 also directs the Commission to regulate data collection and maintenance by SDRs.

The Commission shall prescribe data collection and data maintenance standards for swap data repositories.<sup>10</sup> These standards are to be comparable to those for clearing organizations.

The [data] standards prescribed by the Commission under this subsection shall be comparable to the data standards imposed by the Commission on derivatives clearing organizations in connection with their clearing of swaps.<sup>11</sup>

Section 729 of the Dodd-Frank Act added to the CEA new Section 4r, which addresses reporting and recordkeeping requirements for uncleared swaps. Pursuant to this section, each swap not accepted for clearing by any designated clearing organization (“DCO”) must be reported to an SDR (or to the Commission if no repository will accept the swap).

Section 729 ensures that at least one counterparty to a swap has an obligation to report data concerning that swap. The determination of this reporting counterparty depends on the status of the counterparties involved. If only one counterparty is an SD, the SD is required to report the swap. If one counterparty is an MSP, and the other counterparty is neither an SD nor an MSP (“non-SD/MSP counterparty”), the MSP must report. Where the counterparties have the same status—two SDs, two MSPs, or two non-SD-MSP counterparties—the counterparties

must select a counterparty to report the swap.<sup>12</sup>

In addition, Section 729 provides for reporting to the Commission of swaps neither cleared nor accepted by any SDR. Under this provision, counterparties to such swaps must maintain books and records pertaining to their swaps in the manner and for the time required by the Commission, and must make these books and records available for inspection by the Commission or other specified regulators if requested to do so.<sup>13</sup> It also requires counterparties to such swaps to provide reports concerning such swaps to the Commission upon its request, in the form and manner specified by the Commission.<sup>14</sup> Such reports must be as comprehensive as the data required to be collected by SDRs.<sup>15</sup>

### C. International Developments Affecting Swap Data Reporting

An extensive amount of work has been done in the area of over-the-counter (“OTC”) derivatives reporting, both internationally and domestically. The Commission has reviewed and considered this work in preparing these proposed regulations.

*G-20 and FSB.* In November 2008, as a response to the global economic crisis, the G-20 met in Washington. In September 2009, G-20 Leaders agreed in Pittsburgh to critical elements relating to the reform of OTC oversight, including a provision that all “OTC derivatives contracts should be reported to trade repositories.”<sup>16</sup>

In October 2010, the Financial Stability Board (“FSB”) published a report setting out 21 recommendations addressing implementation of G-20 commitments concerning standardization, central clearing, organized platform trading, and reporting to trade repositories (“TRs”).<sup>17</sup> The report stated that regulatory authorities “must have full and timely access to the data needed to carry out their respective mandates.”<sup>18</sup> It also provided that:

Authorities with the legal mandate to set requirements for the reporting of transactions

to trade repositories should consider the recommendations set out in the forthcoming report of the FSB Data Gaps and Systemic Linkages Group, and consult with the Committee on the Global Financial System (CGFS), the Bank for International Settlements (BIS), the ODSG and ODRF, to identify the data that should be reported to trade repositories to enable authorities to carry out their respective tasks. \* \* \*

Further, as the data must be able to be readily aggregated on a global basis, by end-2011 CPSS and IOSCO, in consultation with authorities, and with the ODRF, should develop both for market participants reporting to trade repositories and for trade repositories reporting to the public and to regulators: (i) minimum data reporting requirements and standardised formats, and (ii) the methodology and mechanism for the aggregation of data on a global basis.<sup>19</sup>

*Standard-Setting for Repositories and Data Reporting by CPSS and IOSCO.* To fulfill the mandate from FSB noted above, the Committee on Payment and Settlement Systems (“CPSS”), and the International Organization of Securities Commissions (“IOSCO”), which is recognized as the international standard setting body for securities markets, have formed an OTC Derivatives Regulation Task Force (“Task Force”). One purpose of the Task Force is “to take a leading role in coordinating securities and futures regulators’ efforts to work together in the development of supervisory and oversight structures related to derivatives markets,” and “to coordinate other international initiatives relating to OTC derivatives regulation.”<sup>20</sup> Regarding data reporting, the Task Force will produce a data report, scheduled for release in July 2011, which:

sets out, both for market participants reporting to trade repositories and for trade repositories reporting to the public and to regulators for the purpose of macro- and micro-surveillance: (1) Minimum data reporting requirements and standardised formats; and (2) the methodology and mechanism for the aggregation of data on a global basis.<sup>21</sup>

The Commission serves as a Co-Chair of the Task Force, and will participate in drafting its data report.

In May 2010, the IOSCO Technical Committee and CPSS issued a consultative report, *Considerations for Trade Repositories in OTC Derivatives Markets* (“CPSS-IOSCO Considerations for Trade Repositories”), that identified

<sup>12</sup> See CEA § 4r(a)(3).

<sup>13</sup> CEA § 4r(c)(2) requires individuals or entities that enter into a swap transaction that is neither cleared nor accepted by an SDR to make required books and records open to inspection by any representative of the Commission; an appropriate prudential regulator; the Securities and Exchange Commission; the Financial Stability Oversight Council; and the Department of Justice.

<sup>14</sup> CEA § 4r(c).

<sup>15</sup> CEA § 4r(d).

<sup>16</sup> G-20 Leaders’ Statement, *The Pittsburgh Summit*, September 24–25, 2009.

<sup>17</sup> Financial Stability Board, *Implementing OTC Derivatives Market Reforms: Report of the OTC Derivatives Working Group*, October 20, 2010.

<sup>18</sup> *Id.* at 1–2.

<sup>19</sup> Financial Stability Board, *Implementing OTC Derivatives Market Reforms: Report of the OTC Derivatives Working Group*, October 20, 2010, at 49.

<sup>20</sup> IOSCO Technical Committee Task Force On OTC Derivatives Regulation, *Terms of Reference*, at 1–2.

<sup>21</sup> *Id.*

<sup>7</sup> CEA § 21(b)(1)(A).

<sup>8</sup> CEA § 21(b)(1)(B).

<sup>9</sup> CEA § 1a(48).

<sup>10</sup> CEA § 21(b)(2).

<sup>11</sup> CEA § 21(b)(3).

twelve factors for consideration by trade repositories and relevant authorities in developing more robust data recordkeeping and reporting arrangements for derivatives.<sup>22</sup> Regarding data reporting and recordkeeping, the report emphasizes that:

[A] trade repository should promptly record the trade information it receives from its participants. To ensure the accuracy and currency of data, a trade repository should employ timely and efficient record keeping procedures to document changes to recorded trade information resulting from subsequent post-trade events. Ideally, a trade repository should record to its central registry trade information it receives from its participants in real-time, and at a minimum, within one business day.<sup>23</sup>

**BIS.** The Bank for International Settlements ("BIS") is an international organization that fosters international monetary and financial cooperation and serves as a bank for central banks. It is the parent organization of CPSS, which is a BIS standing committee. BIS's Coordination Group, a senior group of supervisory standard setters comprised of the Chairmen and Secretaries of BIS, IOSCO, and the International Association of Insurance Supervisors, meets twice annually to allow supervisory standard setting organizations to exchange views on priorities and key issues. BIS also publishes statistics on global banking, securities, foreign exchange and derivatives markets. Its *Semiannual Over-the-Counter (OTC) Derivatives Markets Statistics Report* is designed to obtain comprehensive and internationally consistent information on the size and structure of major derivatives markets, including information on swaps and options of foreign exchange, interest rate, equity and commodity derivatives. Every three years, this semiannual survey is part of a world-wide exercise concerning activity on derivatives markets. For these reasons, BIS's expertise is relevant to data recordkeeping and reporting for derivatives.

**ODRF and ODSG.** The OTC Derivative's Regulators' Forum ("ODRF") brings together representatives from central banks, prudential supervisors, securities regulators and market regulators to discuss issues of common interest, regarding central clearing parties ("CCPs") and TRs for

OTC derivatives.<sup>24</sup> As part of its support for application and implementation of standards, the ODRF has developed an outline of trade repository functionality that is desired by its members.<sup>25</sup> The outline is designed to document trade repository attributes that will support the market transparency and data availability objectives set out in the CPSS-IOSCO *Considerations for Trade Repositories*. The outline addresses types, coverage, quality, and frequency of TR data, as well as access to TR data and desirable data elements. When discussing the frequency of data reporting to trade repositories, the outline suggests that transaction data in trade repositories should be updated at least once per day, such that all transaction records can be considered reliable as of the previous day. The OTC Derivatives Supervisors Group ("ODSG") brings together the prudential supervisors of the major OTC derivatives dealers for coordination among them concerning major industry initiatives in the OTC derivatives market. The ODSG has worked cooperatively with major industry participants concerning establishment of trade repositories for several OTC derivatives asset classes.

#### *D. Regulatory Needs for Swap Data*

The various parts of the U.S. financial sector are regulated by several agencies and institutions: the Commodity Futures Trading Commission ("CFTC"), Office of the Comptroller of the Currency ("OCC"), Federal Deposit Insurance Corporation ("FDIC"), Federal Reserve Board of Governors ("FRB"), National Credit Union Administration ("NCUA"), and Securities and Exchange Commission ("SEC").

The CFTC's mission is to protect market users and the public from fraud, manipulation, and abusive practices related to the sale of commodity and

financial futures and options, and to foster open, competitive, and financially sound futures and option markets. The OCC's primary mission is to charter, regulate, and supervise all national banks. The OCC supervises the Federal branches and agencies of foreign banks. The OCC's goal in supervising banks is to ensure that they operate in a safe and sound manner and in compliance with laws requiring fair treatment of their customers and fair access to credit and financial products. The FDIC is an independent agency created by the Congress to maintain stability and public confidence in the nation's financial system by: Insuring deposits, examining and supervising financial institutions for safety and soundness and consumer protection, and managing receiverships. The Federal Reserve's duties fall into four general areas: Conducting the nation's monetary policy by influencing the monetary and credit conditions in the economy in pursuit of maximum employment, stable prices, and moderate long-term interest rates; supervising and regulating banking institutions to ensure the safety and soundness of the nation's banking and financial system and to protect the credit rights of consumers; maintaining the stability of the financial system and containing systemic risk that may arise in financial markets; providing financial services to depository institutions, the U.S. government, and foreign official institutions, including playing a major role in operating the nation's payments system. The NCUA is the independent Federal agency that charters and supervises Federal credit unions. The mission of the SEC is to protect investors, maintain fair, orderly, and efficient markets, and facilitate capital formation.

According to their regulatory mandates, the various U.S. financial regulators need different types of financial information to fulfill their missions. Systemic risk regulators, among other things, need data that will enable them to monitor gross and net counterparty exposures, wherever possible, not only on notional volumes for each contract but also market values, exposures before collateral, and exposure values net of collateral with a full counterparty breakdown. Such data would allow for the calculation of measures that capture counterparty risk concentrations both for individual risk categories as well as the overall market. Market regulators need data that enables them to promote market competitiveness and efficiency, protect market participants against fraud, manipulation, and abusive trading

<sup>22</sup> Committee on Payment and Settlement Systems, and Technical Committee of the International Organization of Securities Commissions, *Considerations for Trade Repositories in OTC Derivatives Markets: Consultative Report*, May 2010.

<sup>23</sup> *Id.* at 11.

<sup>24</sup> As the ODRF itself states, "the Forum is not a legal entity in its own right with its own separate and independent authority, nor is it a standard setting body." Rather, the ODRF "provides mutual assistance among the [regulatory] Authorities in carrying out their respective responsibilities with respect to OTC derivatives CCPs and TRs. In doing so, the Forum acts without prejudice to each Authority's statutory duties, and to national and otherwise applicable laws." While the ODRF seeks to promote consistent standards, "This does not mean that the Forum will develop its own standards or provide guidance interpreting standards, but rather, the Forum supports the application and implementation of standards set by other bodies in the international regulatory community." *OTC Derivatives Regulators' Forum, Scope and Relationship with International Bodies*, March 23, 2010, at 1.

<sup>25</sup> ODRF, *Outline of Trade Repository Functionality Being Sought by Members of the OTC Derivatives Regulators' Forum* (version 2), August 27, 2010.

practices, enforce aggregate speculative position limits as adopted, and ensure the financial integrity of the clearing process.

International financial regulators have similarly varied data needs. As noted in FSB's *Report on Implementing OTC Derivative Market Reforms*:

The breadth and depth of information needed by authorities varies according to their respective mandates and may continue to evolve over time. Such mandates and objectives include, (i) assessing systemic risk and financial stability; (ii) conducting market surveillance and enforcement; (iii) supervising market participants; and (iv) conducting resolution activities.<sup>26</sup>

When expanding on the level of data that must be collected to satisfy these regulatory functions, the Report addresses both transaction level data and portfolio level data. Regarding transaction level data, the Report says:

Authorities must be able to retrieve transaction event (flow) data at different levels of granularity, from aggregate statistics to transaction level information. TRs must collect and maintain data at a high level of details. Transaction event data must preserve information on the original terms of the transaction that is complete as practical and possible, and includes, for example, preserving the underlying reference, trading counterparties, price, and the time and date of the original transactions.<sup>27</sup>

Regarding portfolio level data, the Report states that:

TRs should collect data to enable monitoring of gross and net counterparty exposures where possible, not only on notional volumes for each contract but also market values, exposures before collateral, and exposure value net of collateral with a full counterparty breakdown. This would allow for the calculation of measures that capture counterparty risk concentration both for individual risk categories as well as the overall market.<sup>28</sup>

#### E. Existing Trade Repositories

Currently there are global trade repositories for credit, interest rate, and equity derivatives, in various stages of maturity and development.

**Credit Swaps Repository.** The oldest and most fully developed of the three existing trade repositories is the current repository for credit swaps, the Depository Trust & Clearing Corporation's ("DTCC's") Trade Information Warehouse ("DTCC Warehouse" or "Warehouse"). It is operated by a DTCC subsidiary, The Warehouse Trust Company, LLC, which is registered as a bank and regulated as

a member of the U.S. Federal Reserve System, and as a limited purpose trust company by the New York State Banking Department. All G-14 dealers began submitting credit swap data to DTCC Warehouse in 2009, after they committed to reporting all credit swap trades to a repository.

In addition to receiving and maintaining swap data, the Warehouse is substantially focused on providing a number of other services to swap counterparties. It calculates payments on all confirmed CDS contracts and creates real-time bilateral nets for each currency.<sup>29</sup> The Warehouse supports trade processing associated with events of default, such as bankruptcy, failure to pay and restructuring that may trigger pay-outs for the buyer of the credit protection for the underlying reference entity of the credit derivative. Its automated event processing includes coupon payment recalculations, and calculation of credit event recovery and rebate amounts based on auction results, automated exit of the transactions for single-named trades exhausted by the credit event, factor adjustment and re-versioning to new identification for affected index transactions.

**Interest Rate Swaps Repository.** In January 2010, TriOptima launched the Global OTC Derivatives Interest Rate Trade Reporting Repository ("TriOptima Interest Rate Repository" or "TriOptima IRRR"), after being selected by the Rates Steering Committee of the International Swaps and Derivatives Association ("ISDA") to provide a trade repository to collect information on trades in the interest rate derivatives market. The TriOptima IRRR is regulated by the Swedish Financial Supervisory Authority. TriOptima is also a provider of post-trade services for OTC derivatives, including portfolio reconciliation and compression.

**Equity Swaps Repository.** The newest existing trade repository is DTCC's Equity Derivatives Reporting Repository ("EDRR"), launched on August 5, 2010. EDRR is designed to hold key position data, including product types, notional value, open trade positions, maturity and currency denomination for transactions, and counterparty type indicators. Equity derivatives that EDRR plans to support initially include equity swaps, dividend swaps, variance swaps, portfolio swaps, and swaptions, among other categories. DTCC's MarkitSERV subsidiary will provide operational

support, including account management, client sign-up and customer service, and other product management services. Derivatives Repository Ltd., the legal company that runs the EDRR service, is regulated by the United Kingdom Financial Services Authority ("UK FSA").

**Existing Repository Data Access.** Access to data in the existing repositories requires a Memorandum of Understanding between the primary regulator of a repository and any competent financial regulatory authority that requires the data for regulatory purposes.

#### F. Consultations With Other U.S. Financial Regulators

In developing the swap data recordkeeping and reporting rule, Commission staff has engaged in extensive consultations with U.S. domestic financial regulators. The agencies and institutions consulted include the Federal Reserve Board of Governors (including the Federal Reserve Bank of New York), Federal Deposit Insurance Corporation, Office of the Comptroller of Currency, Securities and Exchange Commission, and the Department of the Treasury. Commission staff welcomes and will continue consultations with these and other U.S. agencies and institutions while working on the final version of the rule.

#### G. Consultations With International Financial Regulators

In developing the swap data recordkeeping and reporting rule, Commission staff has had extensive consultations with numerous international financial regulators and organizations. The international organizations and institutions consulted have included the European Commission ("EC"), European Central Bank ("ECB"), Committee of European Securities Regulators ("CESR"), FSB Data Gaps and Systemic Linkages Group ("DGS LG"), UK FSA, and financial regulators from India, Brazil, and Canada, as well as IOSCO and the ODRF. Commission staff welcomes and will continue consultations with these and other international agencies, institutions and organizations while working on the final version of the rule.

#### H. Data Reporting Approaches

**Two Conceptual Approaches to Swap Data Reporting.** Conceptually, there are two distinct approaches to swap data reporting. One is commonly referred to as a life-cycle or event flow approach,

<sup>26</sup> Financial Stability Board, *Implementing OTC Derivatives Market Reforms: Report of the OTC Derivatives Working Group*, October 20, 2010, at 47.

<sup>27</sup> *Id.* at 48.

<sup>28</sup> *Id.*

<sup>29</sup> For currency swaps involving foreign exchange (sometimes called FX swaps), DTCC also provides central, automated settlement of payments for contracts processed through the Warehouse's Central Settlement Service, in partnership with CLS Bank International.

and the other is a state or snapshot approach.

The life cycle approach is focused on managing the flow of an information system's data throughout the life cycle of the flow from creation and initial storage to the time when it becomes obsolete. Sometimes called an event flow approach, the life cycle method records the details of a swap at its inception, and thereafter records individual events that affect the terms of the swap, when they occur. Systems based on the life-cycle data reporting approach typically are based on, or interrelated with, operational infrastructure for other functions, such as central credit event processing, legal recordkeeping, settlement services, *etc.*

The state or snapshot approach is based on a report of all of the primary economic terms of a swap at its inception, followed by a daily update of the current state of the swap which incorporates all the changes that have happened to the swap since the previous snapshot. This approach also maintains daily synchronization and reconciliation of the data in a repository with the data of the reporting swap counterparty. Unlike the life cycle approach, the state or snapshot approach does not require specifying and prescribing the various events that require updating of data in a repository.

While both approaches are viable methods of data collection, one can be more efficient than the other in different assets classes, due to differences between asset classes in terms of market structure and market processes. While a life-cycle approach is an efficient and effective method of data processing for credit swaps, and may also be suitable for equity swaps, a state or snapshot approach maybe more appropriate for interest rate swaps, commodity swaps, and currency swaps.

**Illustration of the Life Cycle Approach.** The DTCC Warehouse, currently the only centralized global repository for OTC credit derivatives contracts, follows the life cycle approach to data reporting. The Warehouse supports the trade processing associated with events of default, including bankruptcy, failure to pay, restructuring, and other life cycle credit events which may trigger payouts for the buyer of credit protection for the underlying reference entity that is the subject of the credit swap.

DTCC cites several benefits of using a life cycle approach for credit swaps. These benefits include greater control over payment processing, by providing an automated way for participants to start or stop automatic calculation of coupon payments for a specific trade;

minimization of time and cost by automating payment calculations and providing bilateral netting of payments for firms participating in the Warehouse; increased efficiency through streamlining of the trade adherence process for life cycle events; and reduction of risk by handling all credit events and successor events identically for each participant, in the same time frame and with the same deadlines.

DTCC itself recognizes that the life cycle approach is not the optimum approach for all asset classes, and that it often involves ancillary services not part of the core function of a repository. In responding to the *CPSS-IOSCO Considerations for Trade Repositories*, DTCC agreed with comments made by a European Commission staff working paper that highlighted the different fundamental natures of the OTC derivatives asset classes.<sup>30</sup> Due to these fundamental asset class differences, DTCC said, it should be recognized that:

Therefore, for other asset classes (such as interest rates, equity derivatives, commodities, *etc.*) the nature of the products will dictate the overall operational infrastructure. For example, life cycle credit events are only relevant to CDSs.

DTCC therefore agrees that repository services that fall broadly under (1) position recording, (2) data cleansing, [and] (3) reporting to regulators, the public and participant firms should be provided on a global basis for each OTC asset class. The stated goals of a repository—"to foster transparency, thus supporting the efficiency, stability of and orderly functioning (*i.e.* avoidance of abusive behavior) of financial markets"—are readily achieved through these services.

However, DTCC does not believe it is appropriate to extend the definition of a repository to encompass the aspects of Asset Services (including legal record keeping) and Settlement Services that the TIW (Trade Information Warehouse) provides to the CDS market. These additional services are provided in addition to the trade repository and are complementary to it, as opposed to being an integral part.<sup>31</sup>

In contrast to the DTCC Warehouse, which offers a full suite of repository and life cycle event processing services, the DTCC Equity Derivatives Reporting Repository offers only position recording and reporting services. This aligns with the industry's primary focus in developing this repository.

<sup>30</sup> European Commission Staff Working Paper Accompanying the Commission Communication "Ensuring Efficient, Safe and Sound Derivatives Markets" (SEC 2009) 905 final, 3 July 2009).

<sup>31</sup> Depository Trust & Clearing Corporation, *Response by The Depository Trust & Clearing Corporation to the CPSS-IOSCO Consultative Report*, June 22, 2010, at 8.

**Illustration of the State or Snapshot Approach.** The TriOptima Interest Rate Repository, currently the only centralized, global repository for OTC interest rate derivatives contracts, uses the state or snapshot approach to data reporting for interest rate swaps. The TriOptima IRTRR collects transaction data on interest rate derivatives from market participants and provides regulators with monthly reports summarizing outstanding trade volumes and gross notionals as well as currency breakdown and maturity profiles by product type. It holds information for all types of both cleared and non-cleared OTC derivatives interest rate transactions.

TriOptima cites a number of benefits of using the state or snapshot approach for interest rate swaps. One is that this approach allows the repository to have complete and up-to-date records at all times for all live contracts to which the counterparties are legally bound (whether or not full legal confirmation—which can take weeks—has occurred). Such swap data comprehensiveness is a key consideration for systemic risk monitoring. Another is that the state or snapshot approach avoids a need to specify and prescribe all of the events that would need to be recorded by a repository. TriOptima notes that this would be extremely difficult for interest rate swaps—in contrast to credit swaps where the list of life cycle events is clearly established—due to the wide variety of different types of interest rate swaps, including "bespoke" swaps tailored to the specific needs of non-SD/ MSP counterparties (including end users), and to ongoing interest rate swap product innovation. Provision of a daily snapshot also ensures that the swap data in the repository is reconciled and synchronized each day with the reporting counterparty's internal systems, which improves the quality of data in the repository through interfacing with the reporting counterparty's risk management systems.<sup>32</sup>

## II. Proposed New Regulations, Part 45

### A. Recordkeeping Requirements

The Commission's existing requirements for recordkeeping with respect to futures and options are found in Sections 5(b) and 5(d) of the CEA; §§ 1.31 and 1.35 of the Commission's Regulations; Appendix B to Part 38 of the Commission's Regulations, Core Principle 17, *Recordkeeping*; and Appendix A to Part 39 of the

<sup>32</sup> See TriOptima Letter to the Commodity Futures Trading Commission, October 26, 2010.

Commission's Regulations, Core Principle K, *Recordkeeping*. Collectively, these provisions establish recordkeeping requirements for all designated contract markets ("DCMs"), DCOs, futures commission merchants ("FCMs"), introducing brokers ("IBs"), and members of contract markets. Each such entity or person is generally required to keep full and complete records, together with all pertinent data and memoranda, of all activities relating to the business of the entity or person that is subject to the Commission's authority. All such records must be kept for a period of five years from the date of the record, and must be readily accessible during the first two years of the five-year period. Copies of all such records must be provided, at the expense of the person required to keep the records, upon request by any representative of the Commission or the Department of Justice.

The Commission believes that the rationale for requiring Commission registrants to keep all records relating to the business involved must also govern recordkeeping with respect to swaps by registered entities and swap counterparties. Such records are essential to carrying out the regulatory functions of not only the Commission but all other financial regulators, and for appropriate risk management by registered entities and swap counterparties themselves. The need for such records is also recognized internationally. As CPSS has noted:

[I]t should be clear that the data recorded in a TR [trade repository] cannot be a substitute for the records of transactions at original counterparties. Therefore, it is important that even where TRs have been established and used, market participants maintain their own records of the transactions that they are a counterparty to and reconcile them with their counterparties or TRs on an ongoing basis (including for their own risk management purposes).<sup>33</sup>

A swap can continue to exist for a substantial period of time prior to its final termination or expiration. During this time, which in some cases can extend for many years, the key economic terms of the swap can change. Thus, recordkeeping requirements with respect to a swap must necessarily cover the entire period of time during which the swap exists, as well as an appropriate period following final termination or expiration of the swap.

Accordingly, the Commission's proposed regulations establishing general swap recordkeeping requirements would require that all DCOs, DCMs, swap execution facilities

("SEFs"), SDs, and MSPs must keep full, complete, and systematic records, together with all pertinent data and memoranda, of all activities relating to the business of such entities or persons with respect to swaps. For all such entities and swap counterparties, these requirements would include, without limitation, records of all data required to be reported in connection with any swap.

The proposed regulations would require that all records required to be kept by DCOs, DCMs, SEFs, SDs, MSPs, and non-SD/MSP counterparties must be kept throughout the existence of the swap and for five years following final termination of the swap.<sup>34</sup> Records required to be kept by DCOs, DCMs, SEFs, SDs, and MSPs would be required to be readily accessible by the registered entity or person in question via real time electronic access throughout the life of the swap and for two years following the final termination of the swap, and retrievable within three business days through the remainder of the required retention period.

Non-SD/MSP counterparties, including counterparties who qualify as end users counterparties pursuant to Section 2(h)(7) of the CEA with respect to particular swaps, would be required to keep full, complete, and systematic records, including all pertinent data and memoranda, with respect to each swap in which they are a counterparty. Each such record would be required to be retrievable by the counterparty within three business days during the required retention period.

The proposed rules would place lesser recordkeeping requirements on non-SD/MSP counterparties than on SD or MSP counterparties or registered entities because the Commission understands that non-SD/MSP counterparties are less likely than other counterparties or registered entities to have appropriate systems in place for this purpose, and that the number of swaps in which they are counterparties is likely to be smaller than the corresponding number for SDs or MSPs. The Commission believes that this

approach also effectuates a policy choice made by Congress in Dodd-Frank to place lesser burdens on non-SD/MSP counterparties to swaps, where this can be done without damage to the fundamental systemic risk mitigation, transparency, standardization, and market integrity purposes of the legislation. The Commission requests comment concerning whether it should adopt a phase-in approach for recordkeeping requirements by non-SD/MSP counterparties.

Because of the importance of swap data held in SDRs to all of the various regulatory functions of financial regulators across the U.S. financial sector and internationally, the proposed regulations would require that all records required to be kept by SDRs must be kept by the SDR both: (a) Throughout the existence of the swap and for five years following final termination or expiration of the swap, during which time the records must be readily accessible by the SDR and available to the Commission via real time electronic access; and (b) thereafter, for a period determined by the Commission, in archival storage from which they are retrievable by the SDR within three business days. The Commission believes that SDR records must be readily accessible via real time electronic access throughout the existence of the swap and for five years following final termination or expiration of the swap in order to make effective the statutory mandate that SDRs must "provide direct electronic access to the Commission (or any designee of the Commission including another registered entity)." <sup>35</sup> Regarding the length of the additional period, commencing five years after final termination or expiration of a swap, during which an SDR must keep swap records in archival storage, the Commission notes that the ODRF has called for trade repositories to "retain historical data for an indefinite period." <sup>36</sup> The Commission seeks comment concerning whether SDRs should be required to keep swap data in archival storage in perpetuity, or whether a limited term in years should be required, and, if so, what archival storage period should be required.

The proposed regulations would also require that all records required to be kept pursuant to the regulations must be

<sup>34</sup> The Commission is aware that the European Commission's *Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on OTC derivatives, central counterparties, and trade repositories*, SEC(2010) 1058 and 1059, September 15, 2010, would require retention of records concerning swaps for ten years following final termination of a swap. The Commission is proposing to require record retention for five years following final termination of a swap because it believes that a ten-year post-termination retention period may not be necessary for regulatory purposes, and could possibly impose an undue burden and costs on registered entities and swap counterparties. The Commission requests comment concerning the appropriate length of the required post-termination retention period.

<sup>35</sup> Dodd-Frank § 728, CEA § 21(c)(4)(A).

<sup>36</sup> ODRF, *Outline of Trade Repository Functionality Being Sought by Members of the OTC Derivatives Regulators' Forum* (version 2), August 27, 2010, at 2.

<sup>33</sup> Committee on Payment and Settlement Systems, *Considerations for Trade Repositories in OTC Derivatives Markets*, May 2010, at 1.

open to inspection upon request by any representative of the Commission, the Department of Justice, or the SEC, or by any representative of a prudential regulator as authorized by the Commission. The registered entity or swap counterparty involved would be required to provide copies to the Commission, at the expense of the registered entity or swap counterparty involved, either by electronic means, in hard copy, or both, as requested by the Commission.

As referenced in the proposed regulations, in addition to the general recordkeeping requirements discussed above, specific recordkeeping requirements are being proposed in the Commission's other proposed rulemakings concerning SDRs, DCOs, DCMs, SEFs, SDs, MSPs, and non-SD/MSP counterparties.

The Commission requests comment on all aspects of the proposed recordkeeping requirements. The Commission specifically requests comment on the following aspects of the requirements:

- The necessity, for risk management and other business purposes, of the records required to be kept;
- The length of time the records are required to be kept by DCOs, DCMs, SEFs, SDs, MSPs, and non-SD/MSP counterparties; the technology with which the records can be kept, any burden created by this requirement, and the usefulness of the records in question over the time required;
- The length of time the records are required to be kept by SDRs, the technology with which the records would be kept, any burden created by this requirement, and the usefulness of the records in question over the time required;
- Whether records should be required to be kept by DCOs, DCMs, SEFs, SDs, MSPs, and non-SD/MSP counterparties for ten years following final termination of a swap rather than five years; and
- The requirement that records be accessible in real time for the periods required in the proposed regulation.
- Whether the Commission should adopt a phase-in approach to recordkeeping requirements for non-SD/MSP counterparties.

## B. Swap Data Reporting

*Swap Data Reporting from Two Stages of a Swap's Existence.* The Commission believes that it is important for fulfillment of the purposes of Dodd-Frank to ensure that complete data concerning swaps is maintained in SDRs and available to regulators.<sup>37</sup>

<sup>37</sup> It is important to note that the reporting requirements addressed in this proposed rulemaking are separate from the public reporting of swap transactions requirements found in CEA § 2(a)(13)(A) through (F), commonly called real time reporting. Real time reporting requires swap data to

Accordingly, the Commission believes that swap data reporting should include data from each of two important stages of the existence of a swap: The creation of the swap, and the continuation of the swap over its existence until its final termination or expiration.<sup>38</sup>

*Swap Creation Data Reporting: Two Sets of Data.* With regard to the creation of a swap, the proposed regulation calls for reporting of two sets of data generated in connection with creation of the swap: Primary economic terms data, and confirmation data.

*Primary Economic Terms Data.* The primary economic terms of a swap include all of the terms of the swap verified or matched by the counterparties at or shortly after the execution of the swap. Such terms can differ not only for swaps in different swap asset classes, but also for standardized versus non-standardized swaps. For swaps executed on a SEF or DCM, the primary economic terms will be those specified in the contract listed on the platform in question. For non-standardized or bespoke swaps executed bilaterally, primary economic terms are typically far less standardized. However, counterparties verify the primary or essential economic terms of their swap with each other in some fashion following execution in the case of every swap.<sup>39</sup> The industry does not

be publicly disseminated in a manner that protects anonymity. See CEA §§ 2(a)(13)(C)(iii) and 2(a)(13)(E)(i).

It is also important to note that the Commission intends to establish data recordkeeping and reporting requirements for "transitional swaps" in a separate rulemaking. "Transitional swap" means a swap executed on or after the date of enactment of the Dodd-Frank Act (*i.e.*, July 21, 2010) and before the effective date of the final rule issued pursuant to this present rulemaking. CEA Section 2(h)(5) *Reporting Transition Rules* provides that "Swaps entered into on or after [the] date of enactment [of the Dodd-Frank Act] shall be reported to a registered swap data repository or the Commission no later than the later of (i) 90 days after [the] effective date [of Section 2(h)(5)] or (ii) such other time after entering into the swap as the Commission may prescribe by rule or regulation." The Commission anticipates that the rulemaking for transitional swaps will address the records, information and data regarding transitional swaps that must be retained and the timeframe for reporting such information to the SDR or the Commission.

<sup>38</sup> The proposed regulation uses the terms "swap creation data" and "swap continuation data" to refer to these two stages in the life of a swap, instead of referring to these stages as, for example, the "execution" and "life cycle" of a swap, in order to avoid the confusion that could result from the fact that those and other commonly used terms do not have universally accepted definitions and are used in different ways by different people in the derivatives marketplace.

<sup>39</sup> For example, in the case of a swap involving an SD, the SD's front office is where the trade starts. The order is placed, and the SD will price the swap and give the quote to the counterparty. If the counterparty agrees to the details of the trade and

have a single agreed-upon term for this verification process, which is variously called affirmation, matching, or confirmation of primary economic terms. By whatever name, the proposed regulation would require that all of the terms of the swap thus verified by the counterparties be reported to an SDR.

*Minimum primary economic terms data.* In order to ensure that the array of primary economic terms reported to an SDR for a swap is sufficient in each case for regulatory purposes, the proposed regulations would require that the primary economic terms reported must include, at a minimum, all of the data elements listed by the Commission in the table of data elements for a swap of the asset class involved, found in Appendix 1 to Part 45.<sup>40</sup> The tables in Appendix 1 to Part 45 are designed to include data elements that reflect generic economic terms and conditions common to most standardized products in the asset class in question.<sup>41</sup> They reflect the focus of required reporting of primary economic terms data on the basic nature and essential economic terms of the product involved, and are provided in order to ensure to the extent possible that most such essential terms are included when required primary economic terms are reported for each swap. The proposed regulations are designed to capture the additional,

is willing to enter into the deal, the trade is executed. Typically, the trade is then captured by the SD's deal capture system, which will validate all the necessary trade economics. An acknowledgement is sent to the counterparty with the trade details, and the counterparty either agrees or disagrees with those details.

<sup>40</sup> When the final regulations are published, the Commission intends to publish such tables in a separate **Federal Register** release, which will be referenced in the final regulations. This procedure is intended to allow the Commission to update the tables from time to time, in response to swap market developments, without a need to issue new regulations. The Commission requests comment concerning this approach, including comments on its possible utility, benefits, or drawbacks; on whether the data tables should instead be published as an Appendix to the final regulations; and on whether the data tables should be published in some other fashion.

<sup>41</sup> On December 22, 2008, the FDIC published in the **Federal Register** a final rule, effective January 21, 2009, that established recordkeeping requirements for "qualified financial contracts" held by insured depository institutions in a "troubled condition." *Recordkeeping Requirements for Qualified Financial Contracts*, 12 CFR part 371, RIN 3064-AD30, December 22, 2008. Both terms are defined in the rule. Upon written notification by FDIC, such an institution is required by the rule to produce certain data required by the FDIC over a period specified by the FDIC. The Commission requests comment on whether it should incorporate the recordkeeping and data reporting requirements in this FDIC rule in its final data reporting rules, in its internal business conduct rules, or in other rules swap-related rules promulgated by the Commission, and, if so, on how such requirements should be incorporated.

unique features of particular swaps in the asset class in question through required reporting of confirmation data, which will include reporting of all terms of each swap.

In addition to the tables included in Appendix 1 to Part 45, Appendix 2 to Part 45 contains a Master Reference Generic Data Fields List, which includes data elements that the Commission believes could be relevant for standardized swaps in some or all swap asset classes. The Commission requests comment on whether any of the data fields in this Master Reference Generic Data Fields List should be included in one or more of the Tables of Required Minimum Primary Economic Terms Data for specific swap asset classes, or in the Minimum Valuation Data table, that are included in Appendix 1 to Part 45.

The minimum primary economic terms data elements listed in the tables in Appendix 1 to Part 45 include futures contract equivalent data fields. The rationale for including those fields is the statutory mandate to the Commission to promulgate regulations to limit the amount of positions, other than bona fide hedge positions, that may be held by any person with respect to commodity futures and option contracts in exempt and agricultural commodities. The Commission would require position data for not only

futures and option contracts but also for economically equivalent swaps, if the Commission's proposed rules titled "Position Reports for Physical Commodity Swaps" become final.<sup>42</sup> In order to decrease potential burdens on persons that could be subject to the requirement to file position reports under those proposed rules (should they become final), the Commission requests comment on whether certain aspects of the proposed position reports should be a part of data reporting to SDRs.

**Confirmation data.** The second set of data generated in connection with the creation of a swap and required by the proposed regulations to be reported is confirmation data. The proposed rulemaking defines "confirmation" as the full, signed, legal confirmation by the counterparties of all of the terms of a swap, and defines "confirmation data" as all of the terms of a swap matched and agreed upon by the counterparties in confirming the swap. The proposed regulations would require reporting of confirmation data, in addition to the earlier reporting of primary economic terms data, in order to help ensure the completeness and accuracy of the data maintained in an SDR with respect to a swap. Reporting of the terms of the confirmation, which has the assent of both counterparties, provides a means of fulfilling the statutory directive that an SDR "shall confirm with both

counterparties to the swap the accuracy of the data that was submitted."<sup>43</sup> The goal of ensuring the highest possible degree of swap data accuracy is shared internationally, as noted in the statement included in the FSB Report *Implementing OTC Derivatives Market Reforms* that "authorities should ensure that market participants report and TRs collect and provide data of the highest reliability practicable \* \* \*"<sup>44</sup>

**Who Reports Swap Creation Data.** Under the proposed regulations, determination of who must report required swap creation data is based on two criteria. The first criterion is whether the swap is (1) executed on a SEF or DCM and cleared on a DCO; (2) executed on a SEF or DCM but not cleared; (3) not executed on a SEF or DCM but cleared on a DCO; or (4) not executed on a SEF or DCM and not cleared. The second criterion is whether the reporting counterparty (as determined according to § 45.5) is an SD or MSP, or instead is a non-SD/MSP counterparty. Using these two criteria to determine who reports is intended to streamline and simplify the data reporting approach, by calling for reporting of each set of swap creation data by the registered entity or counterparty that has the easiest, fastest, and cheapest access to the set of data in question. The results of this approach are shown in the following table:

REPORTING OF SWAP CREATION DATA

Reporting counterparty	Executed on a platform and cleared	Executed on a platform and not cleared	Not executed on a platform and cleared	Not executed on a platform and not cleared
SD or MSP .....	SEF/DCM (primary economic terms). DCO (confirmation) .....	SEF (primary economic terms). SD/MSP (confirmation) .....	SD/MSP (primary economic terms). DCO (confirmation) .....	SD/MSP (primary economic terms). SD/MSP (confirmation).
Non-SD/MSP Counterparty	SEF/DCM (primary economic terms). DCO (confirmation) .....	SEF (primary economic terms). Non-SD/MSP (confirmation).	Non-SD/MSP (primary economic terms). DCO (confirmation) .....	Non-SD/MSP (primary economic terms). Non-SD/MSP (confirmation).

**Who Reports Primary Economic Terms Data.** For a swap executed on a SEF or DCM, the Commission anticipates that the swap contract certification process conducted by the SEF or DCM will define all or most of the primary economic terms of the swap, and that all or most of the required primary economic terms data for the swap will be created, in electronic form, on the electronic platform by virtue of execution of the swap contract offered by the SEF or

DCM. The proposed regulations therefore call for the SEF or DCM to report the required primary economic terms data for the swap to an SDR in electronic form.<sup>45</sup> In the case of a swap not executed on a SEF or DCM, primary economic terms data will be created by the counterparties' verification of the primary economic terms of the swap. The proposed regulations therefore call for the reporting counterparty (as defined in the proposed regulations) to report the required primary economic

terms data for the swap to an SDR in electronic form.

**Who Reports Confirmation Data.** For cleared swaps, confirmation data will be generated by DCOs in the course of the normal clearing process. The proposed regulations thus call for DCOs to report confirmation data for all cleared swaps to the appropriate SDR in electronic form. For non-cleared swaps, confirmation will be done by the counterparties, in many cases with the assistance of a third-party confirmation

<sup>42</sup> 75 FR 67258 (November 2, 2010).

<sup>43</sup> CEA § 21(c)(2).

<sup>44</sup> FSB, *Implementing OTC Derivatives Market Reforms: Report of the OTC Derivatives Working Group*, October 20, 2010, at 47.

<sup>45</sup> To ensure that no required primary economic terms data goes unreported in any circumstance, the

proposed regulations also contain a "catch-all" clause requiring the reporting counterparty to report any required primary economic terms data not reported by the SEF or DCM.

service provider. The proposed regulations therefore would require the reporting counterparty to report confirmation data for each uncleared swap.

*Time of Reporting for Primary Economic Terms Data.* Dodd-Frank does not specify the timeframes for reporting of swap data to SDRs for regulatory purposes (as opposed to real time reporting). However, to further the objectives of Dodd-Frank regarding systemic risk mitigation, transparency of the entire swaps market to regulators, and enhanced market surveillance and position limit monitoring, the Commission believes it is important that swap data be reported to SDRs either immediately following execution of the swap—the point of time at which the counterparties become irrevocably bound by contract under applicable law—or within a short but reasonable time following execution, rather than waiting until the time that full, signed, legal confirmation by the counterparties of all terms (not just the primary economic terms) of the swap is completed.<sup>46</sup> Requiring reporting only at or after the time when full legal confirmation is completed, rather than at the time (shortly after execution) when verification of the primary economic terms of the swap occurs, could encourage counterparties to delay full legal confirmation in order to delay the reporting of a swap. In addition, the Commission has been informed by various existing trade repositories, third party service providers, and swap counterparties (notably including non-SD/MSP counterparties) that full legal confirmation of a swap currently can take weeks or even months in an appreciable number of cases.

Allowing the first report of swap data concerning a swap to come from a DCO following clearing, or from a counterparty following full legal confirmation, would result in reporting delays that the Commission does not believe are desirable. Without reporting of primary economic terms data shortly following execution of a swap, regulators examining SDR data for regulatory purposes in many cases would not see the swap in question for hours or in some cases nearly an entire day (if initial reporting followed clearing), or even for days or weeks (if initial reporting followed full legal confirmation). This lack of complete swap data would frustrate fundamental purposes of financial reform, recognized not only by Congress in passing Dodd-Frank, but internationally. As the FSB

Report *Implementing OTC Derivatives Market Reforms* states:

[A]uthorities (i) should ensure that TRs are established to collect and maintain comprehensive OTC derivative transaction data; and (ii) must require market participants to report *all OTC transactions, both centrally cleared and non-centrally cleared* accurately and in a timely manner to TRs (or in exceptional circumstances, to relevant authorities). Where transactions are centrally cleared or otherwise terminated early, *reporting to TRs also must capture and preserve information on the original terms of the transaction.*<sup>47</sup>

It would also be undesirable to have all reporting of required swap creation data for cleared swaps done by DCOs, because such a limitation could have anti-competitive effects. Dodd-Frank explicitly permits DCOs to register as SDRs.<sup>48</sup> However, the statute does not limit SDR registration to DCOs, and it contemplates free market competition between registered SDRs on a level playing field (as the existence of its antitrust provisions makes clear).<sup>49</sup> If Commission regulations directed that all reporting of swap creation data for cleared swaps was to be done by DCOs, this could give DCOs a competitive advantage in comparison with other non-DCO SDRs, since non-DCO SDRs would not be able to offer data reporting to an SDR as part of a possible bundling of services to customers. The proposed regulations are designed to ensure fair competition in the provision of SDR services.

*Primary Economic Terms Reporting Time for Swaps Executed on a SEF or DCM.* In the case of swaps executed on a SEF or DCM, where the platform possess the necessary primary economic terms data in electronic form at the time of execution, the Commission believes that required primary execution data should be reported to an SDR by the SEF or DCM electronically, as soon as technologically practicable following execution of the swap.

*Primary Economic Terms Reporting Time for Swaps Not Executed on a SEF or DCM.* With respect to swaps not executed on a SEF or DCM, where reporting of required primary economic terms data will be done by the reporting counterparty, the Commission recognizes that the amount of time needed for reporting could vary depending on, among other things, the extent to which the swap is standardized, and whether execution of the swap and verification by the parties

of the primary economic terms of the swap occur electronically or manually.

Based on discussions with industry participants, the Commission believes that required primary economic terms data would be available relatively quickly for a swap for which execution and verification of primary economic terms occur electronically, because in many cases all of the required data would already be in an electronic format. The Commission understands that the majority of swaps, which are likely to have an SD or MSP as the reporting counterparty, are likely to fall into this category.

Conversely, the Commission is aware that, where execution and verification of primary economic terms do not occur electronically—a situation which may occur more frequently for the relatively small number of swaps between non-SD/MSP counterparties, including end users—additional time may be needed to put the required data into an electronic format.

Accordingly, the proposed regulation would require reporting counterparty to report required primary economic terms data promptly, but in no event later than:

- 15 minutes after execution of a swap for which execution and verification of primary economic terms occur electronically;
- 30 minutes after execution of a swap which is not executed electronically but for which verification of primary economic terms occurs electronically; or
- In the case of a swap for which neither execution nor verification of primary economic terms occurs electronically, within a time after execution of the swap to be determined by the Commission prior to promulgation of its final data reporting regulations.<sup>50</sup>

The Commission believes that requiring reporting of required primary economic terms data by a reporting counterparty within 15 minutes of a swap's execution would be appropriate for a swap for which execution and verification of primary economic terms occur electronically, because data for such a swap could easily be put into the necessary electronic format if it is not in such a format already.

The Commission also believes that, for a swap which is not executed electronically but for which verification of primary economic terms occurs electronically, the reporting counterparty could need additional time for reporting. The Commission believes that 30 minutes would be a sufficient

<sup>46</sup> Proposed § 45.1(c) defines “confirmation” as the full, signed, legal confirmation by the counterparties of all of the terms of a swap.

<sup>47</sup> FSB, *Implementing OTC Derivatives Market Reforms: Report of the OTC Derivatives Working Group*, October 20, 2010, at 44 (emphasis added).

<sup>48</sup> Dodd-Frank § 728, CEA § 21(a)(1)(B).

<sup>49</sup> See CEA § 21(f)(1).

<sup>50</sup> The Commission requests comment concerning the appropriate deadline for reporting of required primary economic terms data in the case of a swap for which neither execution nor verification of primary economic terms occurs electronically.

amount of time, because the required primary economic terms data for such a swap would have been put into electronic form for verification of primary economic terms, which would not require a significant amount of manual intervention.

Finally, since required primary economic terms data with respect to a swap for which neither execution nor verification of primary economic terms occurs electronically would not likely be already in electronic format, and could require a significant amount of manual intervention, the Commission believes that additional time would be needed for reporting. The Commission believes that 24 hours would be a sufficient amount of time to enable such reporting while still making data for the swap available to regulators without undue delay, based on conversations with industry representatives.

*Time of Reporting for Confirmation Data.* The proposed regulations follow similar principles for the reporting of required confirmation data. For swaps cleared on a DCO, where the DCO possesses the necessary confirmation data in electronic form at the time the swap is cleared, the Commission believes that required confirmation data should be reported to an SDR by the DCO electronically, as soon as technologically practicable following the clearing of the swap. With respect to swaps not cleared on a DCO, where reporting of required confirmation data will be done by the reporting counterparty, the Commission recognizes that the amount of time needed for reporting could vary, depending on whether the reporting counterparty is an SD or MSP or conversely is a non-SD/MSP counterparty, and depending on whether confirmation is done electronically (via the automated systems of a third-party confirmation service provider or of an SD or MSP counterparty), or is done manually with a resulting need to put the confirmation terms into an electronic format for confirmation reporting purposes.

Accordingly, the proposed regulations would require a DCO to report required confirmation data for a cleared swap electronically, as soon as technologically practicable following clearing of the swap. In the case of an uncleared swap, the proposed regulations would require the reporting counterparty to report required confirmation data electronically, making such a report promptly following confirmation, but in no event later than:

- 15 minutes after confirmation of a swap for which confirmation occurs electronically; or

- In the case of a swap for which confirmation was done manually rather than electronically, within a time to be determined by the Commission prior to promulgation of its final data reporting regulations.<sup>51</sup>

*Swap Continuation Data Reporting.* As noted earlier, the Commission believes that it is important to fulfilling the purposes of Dodd-Frank to ensure that complete data concerning swaps is maintained in SDRs and available to regulators. This requires reporting of data from the continuation of a swap over its existence from the time it is created until its final termination or expiration.

*Two Approaches to Swap Continuation Data Reporting.* Swap continuation data reporting can follow either of the two conceptual approaches to data reporting discussed above: the life cycle or event flow approach, or the state or snapshot approach. As previously noted, while both approaches are viable methods of data collection, one can be more efficient than the other in different assets classes, due to differences between asset classes in terms of market structure and market processes. With respect to swap continuation data reporting, the life cycle approach involves managing the flow of an information system's data throughout the data's life cycle from creation and initial storage to the time when it becomes obsolete, while the state or snapshot approach involves a daily update of the current state of the swap which incorporates all the changes that have happened to the swap since the previous snapshot.

*Life Cycle Approach for Credit Swap and Equity Swap Asset Classes.* The proposed regulations define the swap continuation data required to be reported for credit and equity swaps in terms of the life cycle approach, in part because the Commission understands that the life cycle approach is likely to be followed in the SEC's proposed regulations concerning swap data reporting for security-based swaps in these asset classes. The Commission believes that, to the extent possible, a unified approach to the reporting of swap data over the existence of swaps in asset classes where the SEC and the Commission share jurisdiction may serve the public interest, by avoiding imposition of differing reporting requirements for security-based and non-security-based swaps in the same asset class, and thus avoiding

imposition of an undue burden on swap market participants. The Commission is also aware of the work already done by the industry with respect to credit swap data reporting using the life cycle approach, and of the fact that the existing global trade repository for credit swaps, the DTCC Warehouse, uses the life cycle approach. The Commission believes that the life cycle approach may be appropriate for the credit swap asset class, and to an extent for the equity swap asset class, due to their market structure, market processes, and present degree of product standardization.

*State or Snapshot Approach for Interest Rate Swap, Currency Swap, and Other Commodity Swap Asset Classes.* In light of the work already done by the industry with respect to data reporting in the other swap asset classes—notably the interest rate swap asset class—using the state or snapshot approach, and in light of the fact that the existing global trade repository for interest rate swaps, the TriOptima Interest Rate Repository, uses the state or snapshot approach, the proposed regulations define the swap continuation data required to be reported for interest rate swaps, currency swaps, and other commodity swaps in terms of the state or snapshot approach. The Commission believes that this approach may be better suited to these asset classes, due to their market structure, market processes, and present degree of product standardization.

One reason for this is that the Commission understands that the interest rate swap, currency swap, and other commodity swap asset classes involve numerous and widely varying types of derivatives products and a considerable degree of innovation and change with regard to instrument types. Swaps in these asset classes are often tailored to the specific needs of non-SD/MSP counterparties including end users. Thus, it would be very difficult, if not impossible, to enumerate all of the events that would need to be reported during the continuation of such swaps. This situation contrasts, for example, with the situation prevailing in the credit swap asset class, where a greater degree of standardization exists.

Another reason why the state or snapshot approach may be better suited to the interest rate swap, currency swap, and other commodity swap asset classes is that in the life cycle or event flow approach, reporting counterparties must be able to generate messages to the SDR not only for all relevant life cycle events, but also for correction of errors and omissions in previously submitted data. Such messages must be tracked between reporting counterparties and

<sup>51</sup> The Commission requests comment concerning the appropriate deadline for reporting of required confirmation data in the case of a swap for which confirmation was done manually rather than electronically.

the SDR. This can create a need for manual intervention and produce information backlog. It also creates a need to reconcile data between the SDR and the reporting counterparty's internal systems to ensure that all events have been captured correctly in the SDR's data. These problems are exacerbated in the case of asset classes with relatively less standardization of swap terms. By contrast, the state or snapshot approach eliminates the need to specify and require reporting of all of the individual life cycle events that require updating of SDR data, since the current state of all of the primary economic terms of all existing swaps is submitted daily to the SDR. This daily snapshot ensures that SDR data is reconciled with a reporting counterparty's internal systems on a daily basis, and provides automatic daily corrections of errors and omissions in previously submitted data.

The daily snapshot also ensures that SDR data is continually refreshed by the data contained in the risk management systems of reporting counterparties, who for business reasons normally devote considerable resources to ensuring data correctness. Leveraging the data quality assurance processes of reporting counterparties in this way can provide significant benefits in terms of the accuracy of swap data resident in SDRs.

Finally, the state or snapshot approach eliminates the need for a complex array of exception management messages, and reduces the reporting burden for reporting counterparties by permitting the systems of reporting counterparties to submit one basic type of message, the daily snapshot of updated primary economic terms. The greater technological simplicity thus permitted can be a significant benefit where non-SD/MSP counterparties (including end users) are concerned.

**Four Sets of Swap Continuation Data.** For the above reasons, with regard to the continuation of a swap, the proposed regulations would call for reporting of four sets of data generated in connection with the continuation of the swap: (1) Life cycle data for credit swaps and equity swaps; (2) contract-intrinsic data for credit swaps and equity swaps; (3) daily state data for interest rate swaps, currency swaps, and other commodity swaps; and (4) valuation data for swaps in all five swap asset classes.

**Life Cycle Event Data Reporting for Credit Swaps and Equity Swaps.** For the purpose of required continuation data reporting for credit swaps and equity swaps, the proposed regulations require reporting, throughout the existence of a

swap until its final termination or expiration, of "life cycle event data", defined as all of the data elements necessary to fully report any life cycle event, or any adjustment due to a life cycle event, that results in a change to data previously reported for the swap in question. The proposed regulations define "life cycle event" to mean any event that would result in a change in the data previously reported to an SDR in connection with the swap, including, without limitation, a counterparty change resulting from an assignment or novation; a partial or full termination of the swap; a change in the cash flows originally reported; for a credit swap or equity swap that is not cleared, any change to the collateral agreement; or a corporate action affecting a security or securities on which the swap is based (e.g., a merger, dividend, stock split, or bankruptcy).

**Contract-Intrinsic Data Reporting for Credit Swaps and Equity Swaps.** For the purpose of required continuation data reporting for credit swaps and equity swaps, the proposed regulations would also require reporting, throughout the existence of a swap until its final termination or expiration, of "contract-intrinsic event data," defined as all of the data elements necessary to fully report any contract-intrinsic event with respect to the swap in question. The proposed regulations define "contract-intrinsic event" to mean a scheduled, anticipated event occurring during the existence of a swap that does not result in any change to the contractual terms of the swap, including, without limitation, the scheduled expiration of a swap, or a previously described and anticipated interest rate adjustment.

**State Data Snapshot Reporting for Interest Rate Swaps, Currency Swaps, and Other Commodity Swaps.** For the purpose of required continuation data reporting for interest rate swaps, currency swaps, and other commodity swaps, the proposed regulations would require reporting of all "state data" for the swap, reported daily throughout the existence of the swap until its final termination or expiration. The proposed regulations define "state data" to mean 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, including any changes to such terms since the last snapshot. The proposed regulations also require that, at a minimum, this data must include all of the economic terms reflected in the appropriate table of data elements for a swap of the asset class involved. These tables can be found in Appendix 1 to Part 45.

**Valuation Data Reporting for Swaps in All Swap Asset Classes.** Valuation data is defined in the proposed regulations to mean all of the data elements necessary for a person to determine the current market value of a swap, including, without limitation, daily margin, daily mark-to-market, and other measures of valuation to be determined by the Commission prior to promulgation of its final swap data reporting regulations. Swap valuation data is essential to a variety of the regulatory functions of many financial regulators, and is crucial to fulfillment of fundamental purposes of Dodd-Frank, including systemic risk reduction and increased transparency of the derivatives marketplace to regulators. The Commission and other regulators would use valuation information regarding swaps reported to SDRs for prudential oversight, to monitor potential systemic risk, and to monitor compliance with regulatory requirements for SDs and MSPs. The importance of reporting swap valuation data to SDRs is recognized internationally. The FSB Report *Implementing OTC Derivatives Market Reforms* provides that:

TRs should collect data to enable monitoring of gross and net counterparty exposures, wherever possible, not only on notional volumes for each contract but also market values, exposures before collateral, and exposure value net of collateral with a full counterparty breakdown. This would allow for the calculation of measures that capture counterparty risk concentrations both for individual risk categories as well as for the overall market.<sup>52</sup>

Accordingly, the proposed regulations would require reporting of valuation data for swaps in all five asset classes.

**Who Reports Swap Continuation Data.** Under the proposed regulations, determination of who must report required swap continuation data is based on two criteria. The first criterion is whether or not the swap is cleared on a DCO. The second criterion is whether the reporting counterparty (as provided in the proposed regulations) is an SD or MSP, or instead is a non-SD/MSP counterparty. Using these two criteria to determine who reports is intended to streamline and simplify the data reporting approach, by calling for reporting of each set of swap

<sup>52</sup> FSB, *Implementing OTC Derivatives Market Reforms: Report of the OTC Derivatives Working Group*, October 20, 2010, at 48.

continuation data by the registered entity or counterparty that has the

easiest, fastest, and cheapest access to the set of data in question. The results

of this approach are shown in the following table:

#### REPORTING OF SWAP CONTINUATION DATA

Reporting counterparty	Credit and equity asset classes		Interest rate, currency, and other commodity asset classes	
	Cleared	Not cleared	Cleared	Not cleared
SD or MSP .....	DCO (life-cycle data) .....	SD/MSP (life-cycle data) .....	SD/MSP (state snapshot data). DCO and SD/MSP (valuation data).	SD/MSP (state snapshot data). SD/MSP (valuation data).
	SD/MSP (intrinsic data) .....	SD/MSP (intrinsic data) .....		
	DCO and SD/MSP (valuation data).	SD/MSP (valuation data).		
Non-SD/MSP Counterparty ...	DCO (life-cycle data) .....	Non-SD/MSP (life-cycle data)	Non-SD/MSP (state snapshot data).	Non-SD/MSP (state snapshot data).
	Non-SD/MSP (intrinsic data)	Non-SD/MSP (intrinsic data).		
	DCO (valuation data) .....	Non-SD/MSP (valuation data).	DCO (valuation data) .....	Non-SD/MSP (valuation data).

*Who Reports Life Cycle Event Data and Contract-Intrinsic Event Data.* For a credit swap or equity swap cleared on a DCO, the Commission understands that the DCO will possess information in electronic form concerning some life cycle events required to be reported over the existence of the swap, due to its status as a central counterparty, while the swap counterparty (as defined in the proposed regulations) will possess information concerning other life cycle events. The proposed regulations therefore call for the DCO to report required life cycle event data in its possession, and for the reporting counterparty to report life cycle event data in its possession. For a credit swap or equity swap that is not cleared, the proposed regulations call for the reporting counterparty to report all required life cycle event data and all contract-intrinsic event data.

The Commission understands that contract-intrinsic event data, which involves anticipated events such as scheduled adjustments, will be available to, and known in advance by, the reporting counterparty. The proposed regulations thus require the reporting counterparty to report all required contract-intrinsic event data for all credit swaps or equity swaps.

*Who Reports a Daily Snapshot of State Data.* For an interest rate swap, currency swap, or other commodity swap cleared on a DCO, the proposed regulations require the reporting counterparty to report all required state data, on a daily basis.

*Who Reports Valuation Data.* For cleared swaps in all five swap assets classes, both the DCO and the reporting counterparty may possess different

types of valuation data.<sup>53</sup> Therefore, for each cleared swap, the proposed regulations would call for both the DCO and the reporting counterparty to report valuation data. For uncleared swaps in all five swap asset classes, the only source of valuation data will be a counterparty. Accordingly, for each uncleared swap, the proposed regulations would call for the reporting counterparty to report valuation data.

*Time of Reporting for Life Cycle and Contract-Intrinsic Event Data.* For credit swaps and equity swaps, whether cleared or uncleared, the proposed regulations would require that life cycle event data must be reported on the same day in which any life cycle event occurs, while contract-intrinsic event data must be reported on the same day in which any contract-intrinsic event occurs.

*Time of Reporting for a Daily Snapshot of State Data.* For interest rate swaps, currency swaps, and other commodity swaps, whether cleared or uncleared, the proposed regulations would require that all required state data for the swap be reported daily through the existence of the swap until its final termination or expiration.

*Time of Reporting for Valuation Data.* For each swap (regardless of asset class) cleared on a DCO, the proposed regulations would require the DCO to report all valuation data in its

<sup>53</sup> As noted earlier, the proposed regulations define "valuation data" as including "other measures of valuation as determined by the Commission" in addition to specified valuation measures. The Commission is requesting comment concerning what other measures of valuation of a swap should be required to be reported to an SDR. The Commission's eventual determination as to what other measures of valuation should be required may affect what valuation data must be reported by a DCO or by a reporting counterparty.

possession on a daily basis. Where the reporting counterparty for such a swap is an SD or MSP, the proposed regulations would require the SD or MSP to report all valuation data in its possession on a daily basis. The Commission understands that DCOs and SD or MSP reporting counterparties are likely to have the automated system capacity necessary for such daily reporting. The Commission also understands that, as of the effective date of the final swap data reporting regulations, non-SD/MSP reporting counterparties may not have a comparable level of automated system capacity. Accordingly, where the reporting counterparty for such a swap is a non-SD/MSP counterparty, the proposed regulations would call for the reporting counterparty to report all valuation data in its possession at times to be determined by the Commission prior to its adoption of final swap data reporting regulations. The Commission requests comment concerning the time intervals necessary and appropriate for reporting of valuation data by non-SD/MSP counterparties, and concerning whether the Commission should adopt a phase-in approach to valuation data reporting by non-SD/MSP counterparties.

*Swap Asset Classes and Other Swap Classifications.* For the purpose of the proposed regulations, a swap would be classified as belonging to one of five swap asset classes, including: (1) Credit swaps; (2) currency swaps (including FX swaps and their variations); (3) equity swaps; (4) interest rate swaps; and (5) other commodity swaps. The proposed regulations would define these swap asset classes as follows.

“Credit swap” means any swap that is primarily based on instruments of indebtedness, including, without limitation: Any swap primarily based on one or more broad-based indices related to instruments of indebtedness: Any swap that is an index credit swap or total return swap on one or more indices of debt instruments.

“Currency swap” means any swap which is primarily based on rates of exchange between different currencies, changes in such rates, or other aspects of such rates. This category includes foreign exchange swaps as defined in CEA Section 1a(25).<sup>54</sup>

“Equity swap” means any swap that is primarily based on equity securities, including, without limitation: any swap primarily based on one or more broad-based indices of equity securities; any total return swap on one or more equity indices.

“Interest rate swap” means any swap which is primarily based on one or more reference rates, such as swaps of payments determined by fixed and floating rates.

“Other commodity swap” means any swap not included in the credit swap, currency swap, equity swap, or interest rate swap categories, including, without limitation, any swap for which the primary underlying item is a physical commodity or the price or any other aspect of a physical commodity.

“Asset class” means the particular broad category of goods, services or commodities underlying a swap. The asset classes include interest rate, currency, credit, equity, other commodity, and such other asset classes as may be determined by the Commission.

In addition, the Commission anticipates that some swaps subject to its jurisdiction may belong to two other swap categories: mixed swaps, and multi-asset swaps. Generally, a mixed swap is in part a security-based swap subject to the jurisdiction of the SEC and in part a swap belonging to one of the swap asset classes subject to the jurisdiction of the Commission.<sup>55</sup> Multi-

asset swaps are those that do not have one easily identifiable primary underlying notional item within the Commission’s jurisdiction. The Commission requests comment concerning how such swaps should be treated with respect to swap data reporting, and concerning the category or categories under which swap data for such swaps should be reported to SDRs and maintained by SDRs.

*Requests for Comment.* The Commission requests comment on all aspects of the proposed data reporting regulation and the definitions associated with it. The Commission specifically requests comment on the following questions relating to this proposed regulation.

- Is the separation of reporting counterparties into two categories (SD or MSP, versus non-SD/MSP counterparty) appropriate, and does it further the purposes described?
- Is the second criterion for swap creation data—division of swaps into four categories depending on whether they are platform executed and cleared or not—appropriate?
- Should the Commission take the internal recordkeeping systems of SDs and MSPs into account as it does in the proposed regulation?
- Is the concept of primary economic terms data, as defined, inclusive enough to capture all of the primary economic terms of a swap upon execution?
- What are the benefits or drawbacks of required reporting of primary economic terms data? Will such reporting serve to verify the accuracy of swap execution data?
- Will the required reporting of confirmation data to an SDR, after the reporting of primary economic terms data to the SDR, help enable the SDR to satisfy the statutory requirement to confirm with both counterparties to the swap the accuracy of the data and information submitted?
- Should back-office confirmation be an acceptable means of confirming a swap?
- What is the proper way to report bunched (block) orders that are allocated to ultimate owners after execution?
- What is the appropriate time delay for reporting of primary economic terms by (1) SDs, (2) MSPs, and (3) non-SD/

of indebtedness, indices, quantitative measures, other financial or economic interest or property of any kind (other than a single security or a narrow-based security index), or the occurrence, non-occurrence, or the extent of the occurrence of an event or contingency associated with a potential financial, economic, or commercial consequence (other than an event described in subparagraph (A)(iii).” Dodd-Frank § 721(21), CEA § 1a(47)(D).

MSP counterparties? Should the time required differ according to these categories?

- What is the appropriate time delay for reporting of confirmation terms by (1) SDs, (2) MSPs, and (3) non-SD/MSP counterparties? Should the time required differ according to these categories?
- Is there sufficient industry infrastructure in place to support the life cycle data reporting approach for credit and equity swaps?
- Is it appropriate to use the life cycle approach to swap data reporting for credit swaps, or for equity swaps? Why or why not?
- Is it appropriate to use the daily snapshot of state data approach to swap data reporting for interest rate, currency and commodity swaps? Why or why not?
- Is there currently infrastructure in place to support alternative approaches for data reporting for credit, equity, interest rate, currency and commodity swaps?
- Is the definition of “multi-asset swap” appropriate? Why or why not?
- For the purposes of the data recordkeeping and reporting rule, should a multi-asset swap be reported within any of the following categories: credit swaps, equity swaps, currency swaps, commodity swaps, or interest rate swaps? What criteria should govern this determination?
- Should a separate procedure be established for reporting of multi-asset swaps?
- Should the Commission require that, for multi-asset swaps, reporting counterparties must report all required swap data in each asset class involved?
- Should a separate procedure be established for reporting of mixed swaps?
- Is the list of swap asset classes all-inclusive and appropriately defined? Why or why not?
- Should a phase-in approach be used for the time of reporting of confirmation by non-SD/MSP counterparties?
- Should a separate collateral warehouse system be established as part of an SDR to enable systemic risk and prudential regulators to monitor collateral management and gross exposure on a portfolio level for swap participants? How should this be done?
- Should a separate master agreement library system be established as part of an SDR? How should this be done?
- In what asset class should cross-currency swaps be reported? Should this be done in the interest rate swap asset class, or in the currency swap asset class?
- For multi-asset class swaps, should the swap data required to be reported

<sup>54</sup> CEA § 1a(25) provides that: “The term ‘foreign exchange swap’ means a transaction that solely involves—(A) an exchange of 2 [sic] different currencies on a specific date at a fixed rate that is agreed upon on the inception of the contract covering the exchange; and (B) a reverse exchange of the 2 [sic] currencies described in subparagraph (A) at a later date and at a fixed rate that is agreed upon on the inception of the contract covering the exchange.”

<sup>55</sup> Dodd-Frank defines “mixed swap” as follows: “The term ‘security-based swap’ includes any agreement, contract, or transaction that is as described in section 3(a)(68)(A) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(68)(A)) and is also based on the value of 1 [sic] or more interest or other rates, currencies, commodities, instruments

include all required primary economic terms data for each asset class involved in any leg or part of the swap?

- How should asset class classification be done for the purpose of data reporting? What should be the criteria to classify a swap within a certain asset class?

- Should foreign exchange swaps be included in the currency swap asset class, or should they be treated separately for data reporting purposes? A foreign exchange swap is usually defined as a financial transaction whereby two parties exchange agreed-upon amounts of two currencies as a spot transaction, simultaneously agreeing to unwind the exchange at a future date, based on a rule that reflects both interest and principal payments.

### C. Unique Identifiers

*Need for Unique Identifiers.* Over the course of the last decade, virtually all stakeholders in the financial sector have come to recognize the need for universal, accurate, and trusted methods of identifying particular financial transactions, the legal entities that are parties to financial transactions, and the product type involved in particular financial transactions. Such identifiers will be crucial tools for financial regulators tasked with measuring and monitoring systemic risk, preventing fraud and market manipulation, conducting market and trade practice surveillance, enforcing position limits, and exercising resolution authority. Without such unique identifiers, and the ability to aggregate data across multiple markets, entities, and transactions that they would provide, the enhanced monitoring of systemic risk and greater market transparency that are fundamental goals of Dodd-Frank cannot be fully achieved. Such identifiers would also have great benefits for financial transaction processing, internal recordkeeping, compliance, due diligence, and risk management by financial entities. The Commission believes, in light of recent economic events, that the need for unique identifiers that are based on open standards and are capable of international adoption is now urgent, and that their creation has become essential.

The Commission understands that this conceptual approach is supported by the SEC. Commission staff have consulted closely with SEC staff concerning the unique ID provisions of these regulations. The Commission anticipates that proposed regulations issued by SEC with respect to swap data recordkeeping and reporting will follow the same principles with respect to

unique ID that are included in the unique ID provisions of the Commission's proposed regulations. The Commission understands, from discussions with staff of the Department of the Treasury, that this conceptual approach could also be followed by the Office of Financial Research ("OFR"), created in the Department of the Treasury by the Dodd-Frank Act<sup>56</sup> in part for the purposes of standardizing the types and formats of data reported and collected by the OFR with regard to swaps, and of assisting agencies that are members of the Financial Stability Oversight Council ("FSOC") in determining the types and formats of data they will collect, as required by Dodd-Frank.<sup>57</sup>

The Commission's own need for unique identifiers for swap transactions, counterparties, and products arises from a need to aggregate and track information on swap transactions efficiently across a diverse array of market participants, trading venues, and product classes. Unlike centralized futures markets where standardized contracts are traded among participants in a fairly closed system, swaps have been and will continue to be offered in a variety of forms and market venues. There is a close relationship between the swap markets and the underlying cash and futures markets that typically provide the basis for the price references and benchmark prices. In addition, because swaps can serve as a substitute for a transaction in the underlying reference market, market participants are often free to transact in the market of their choice, meaning that an entity may hold positions, for example, in both the futures market and in swaps that reference the futures market price.

With respect to futures markets futures commission merchants, clearing members, and foreign brokers are required to file reports on the positions of large traders (as defined by the Commission), and in doing so to aggregate the positions of traders that may be held in various accounts at the firm, and to report them under a single, unique, identifying account number. Thus, at least with respect to reporting by a single reporting firm, the Commission is able to see the total position of a trader in a particular futures or option contract offered at an exchange. By contrast, swap counterparties will not necessarily conduct their trading through a single entity or trading venue that could easily

aggregate an entity's position. Instead, swaps having similar underlying product characteristics may be entered into through a variety of dealers or MSPs, on different DCMs or SEFs, or in bilateral trades. In addition, because each swap contract potentially has a unique set of terms and conditions, as opposed to the common set of terms and conditions that define an exchange-traded futures contract, defining a position or transaction in a particular contract can be complicated.

Unique identifiers would also serve the important goal of enabling the Commission to link together all of the various types of data that it collects in fulfilling its regulatory missions, including data concerning swaps, futures, and large traders. This would enhance the effectiveness of the Commission's various market monitoring tools, and improve its ability to detect and respond to market risks. The ability of unique identifiers to serve as a data linchpin will also be of great benefit to other financial regulators with respect to the different types of data they collect.

Accordingly, the Commission is proposing to require use of unique identifiers designed to ensure the Commission's ability to aggregate transaction and position data for the purpose of conducting market and financial risk surveillance, enforcing position limits, analyzing market data, enforcing Commission regulations, monitoring systemic risk, and improving market transparency. Such unique identifiers will better enable the Commission to ascertain the overall positions and activity of traders in and across markets, track activity over the life of individual transactions, and determine overall activity in particular product classes.

*Unique Swap Identifiers.* The Unique Swap Identifier ("USI") called for by the proposed rules would be created and assigned to a swap at the time it is executed, and used to identify that particular swap transaction throughout its existence. Swaps will typically have a number of events associated with them over their lifetime, often referred to as life cycle events. These can include economic revisions, counterparty changes, early partial or full terminations, normal terminations, option exercises, credit events, servicing events and cash flow settlements. Because a swap might have a life that extends over many years, it is important that the Commission be able to identify the origins of the transaction as well as events related to that swap over its lifetime. Without the ability to track transactions through the use of a unique

<sup>56</sup> See Dodd-Frank Act Title 1, Subtitle B, Sections 151 through 156.

<sup>57</sup> Dodd-Frank Act, Title 1, Sections 153(2) and 153(7).

identifier, it would be difficult for the Commission to separate new transactions from existing ones and to identify changes that have occurred to a specific swap contract. Use of USIs is also essential to collating swap creation data, swap continuation data, and error corrections reported by execution platforms, clearing houses, and counterparties concerning a single swap into a single, accurate data record that tracks the swap over its duration.

The Commission believes that workable USIs for all swaps under its jurisdiction can be created via a “first-touch” approach. For a swap executed on a trading platform, the USI would be created and assigned by the SEF or DCM involved. For a swap executed bilaterally, the USI would be created

and assigned by the SD or MSP required to report concerning the swap, or in the case of a swap between non-SD/MSP counterparties would be created by the SDR to which the swap is reported.

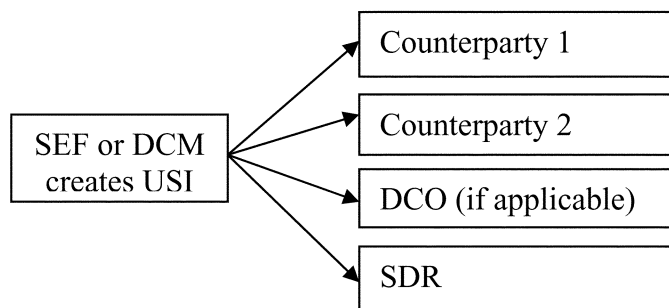
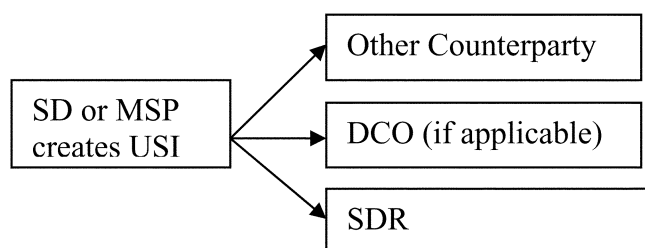
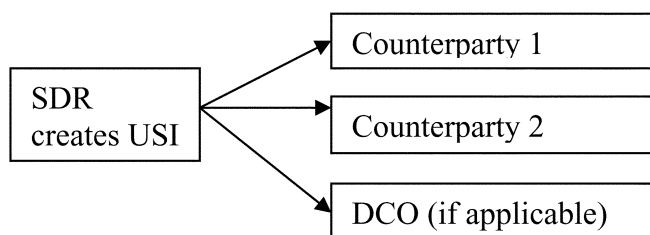
The proposed rules would ensure the uniqueness of each USI by specifying that the USI must include two components. The first component would be the unique, extensible, alphanumeric code assigned by the Commission to each registered entity required by the proposed regulations to create USIs, at the time of its registration, for the purpose of identifying that entity in the context of USI creation. The second component would be an extensible, alphanumeric code generated and assigned by the automated systems of the registered

entity that must be unique with respect to all such codes generated and assigned by the entity.

The registered entity creating the USI would be required to transmit the USI to all other registered entities and swap counterparties involved with the swap, as soon as technologically practicable after its creation and assignment. Thereafter, all registered entities and swap counterparties would be required to include the USI in all records and all swap data reporting concerning that swap, throughout the existence of the swap and for as long as any records are required to be kept concerning that swap.

**BILLING CODE 6351-01-P**

## UNIQUE SWAP IDENTIFIER (USI) FLOW CHARTS

Swap executed on a SEF or DCMSwap not executed on a SEF or DCMWhen the reporting counterparty is an SD or MSPWhen both counterparties are non-SD/MSP counterparties**BILLING CODE 6351-01-C**

The required use of USIs would not prohibit the additional use or reporting of other identifiers internally generated by the automated systems of registered entities or counterparties.

The Commission seeks comment concerning the required use of USIs; the benefits or burdens that required use of USIs would create; the practicability of the Commission's proposed method of creating USIs; other possible methods of creating USIs; and possible transmission methods for USIs among registered entities and reporting parties.

*Unique Counterparty Identifiers.* The Unique Counterparty Identifier ("UCI") called for by the proposed rules would be used for precise, reliable, and unique

identification of each counterparty to any swap subject to the Commission's jurisdiction, in all recordkeeping and data reporting concerning swaps. The Commission believes that full realization of the systemic risk mitigation and transparency purposes of Dodd-Frank cannot be fully achieved without mandatory use of UCIs. To assess systemic risk, it is essential to understand how individual financial firms are exposed to specific risks across all their activities, and the interconnectedness between firms. The way that financial firms are identified is critical to understanding those issues. With such identifiers, regulators will be able to aggregate exposures consistently and accurately across the financial

system. As noted in February 2010 by Daniel K. Tarullo, member of the Board of Governors of the Federal Reserve System, in testimony before the U.S. Senate:

Clearly, the [recent financial] crisis exposed the need for a regulatory mechanism that will provide real time analysis across multiple financial markets to identify systemic risk and stresses in market conditions before they occur. A unique entity identifier for data sharing and use in data collections between the Federal financial regulatory agencies is the critical missing component for this analysis.<sup>58</sup>

<sup>58</sup> Daniel K. Tarullo, Member, Board of Governors of the Federal Reserve System, *Equipping Financial Regulators With the Tools Necessary to Monitor*

An important purpose of the UCI required by the proposed rules would be to enable effective assessment of counterparty positions and aggregation of swap data across asset classes, markets, and related legal entities, in order to effectuate the systemic risk prevention and transparency purposes of Dodd-Frank.

Policy analysis by financial regulators employs legal entity reference data as the basic infrastructure for identifying, describing, classifying, labeling, organizing, and using other information. Such reference data allows identification of interconnections between firms.

In the business world, legal entity reference data can support communication between systems, facilitate transaction processing, and allow for accurate aggregation of positions vis-à-vis individual counterparties or classes of counterparties, something necessary for effective risk management and calculation of margin. Sales, compliance, and due diligence functions also rely on entity identifiers, and would benefit from availability of unique entity identifiers.

Today, there is no universal legal entity identification system available to serve the financial sector and regulatory community.<sup>59</sup> In the absence of such a universal system, private firms and regulators have created a variety of identifiers. This creates inefficiencies for firms, and presents obstacles to regulators and policymakers.

At private firms, because there is no industry-wide legal entity identification standard, tracking counterparties and calculating exposures across multiple data systems is complicated, expensive, and can result in costly errors. For example, maintaining internal identifier databases and reconciling entity identification with counterparties is expensive for large firms and disproportionately so for small firms. In the worst case scenario, identification problems can lead to transactions that are broken or fail to settle.

*Systemic Risk*, before the Subcommittee on Security and International Trade and Finance, Committee on Banking, Housing, and Urban Affairs, U.S. Senate, Washington, DC, February 12, 2010.

<sup>59</sup> Discussions of the concept of a universal legal entity identification system for financial firms of all types often refer to a legal entity identifier or "LEI." This is the same concept addressed by the proposed rule. The proposal refers to the identifier as a UCI, rather than an LEI, because in the context of this rule it would be used to identify the legal entities who are counterparties to a swap. The Commission recognizes that identifiers provided by a universal legal identification system through an international consensus process could appropriately be used to identify legal entities in various other contexts across the financial sector.

The lack of a universal identification standard also creates problems for financial regulators. Precise identification of financial firms is necessary to understand systemic risk, which involves entities operating across a range of industries. The problems that firms face in aggregating exposure are magnified in measuring risk across the system. In addition, futures and securities regulators must often identify parents and affiliates of futures commission merchants or broker-dealers manually and by name. Multiple and generally different identifiers for participants can make it difficult to create a consolidated order audit trail.

It is worth noting in this context that leaders in the information technology industry have stated that data standardization is a significant obstacle to using technology to further the needs of private industry and regulators. Complete automation of back-office activities and "straight through processing" remain elusive, in part because of the lack of a universal identifier for legal entities.

The vendor community has attempted to provide solutions for these private and public challenges. However, none is sufficiently robust, comprehensive, and open to serve as an industry-wide standard. Indeed, most of the solutions offered by vendors are proprietary and restricted in use and redistribution. In addition, current identifiers are not sufficiently unique or persistent. Current vendor identifiers that are unique and unrestricted with respect to use and redistribution are limited in scope; for example, limited to institutions engaged in payment activities.

All of these challenges are magnified in the international context. Many in industry and the world regulatory community have recognized the potential benefit of a universal standard for legal entity identification for years. For example, the ODRF has stated that:

A number of key data items related to registered OTC derivatives transactions span OTC derivative asset classes—for example, *entity representation*. \* \* \* In order to ensure consistency across asset classes, infrastructure platforms and services should model these items in a consistent manner, preferably through the development of open standards in industry forums.<sup>60</sup>

ODRF's *Outline of Trade Repository Functionality* states that trade repository data:

should represent the counterparties of the transaction records it maintains as precise

legal entities, enriched with further counterparty information including affiliate relationships, sector and geography. Affiliate relationship data should enable the analysis of aggregated transaction records in terms of netting, guaranty, and credit support arrangements.<sup>61</sup>

Efforts have been made to create such a standard through domestic and international processes. Heretofore, a lack of focus, funding and investment issues, and competing priorities have prevented consensus and implementation.

However, circumstances have changed. The financial crisis has focused both industry and regulators on this issue. Dodd-Frank's mandate to the Commission and the SEC to promulgate regulations for swap data reporting has created a window of opportunity for the world financial sector to come together in creation of a universal, internationally accepted standard for legal entity identification. The Commission believes that the data reporting regulations to be issued simultaneously by the Commission and the SEC pursuant to Dodd-Frank can and should provide the necessary impetus for achieving this long-sought goal.

The proposed regulations would mandate that each counterparty in any swap subject to the Commission's jurisdiction and executed after the effective date of the Commission's final swap data reporting regulations must be identified in all recordkeeping and reporting by means of a single UCI having the characteristics specified by the Commission.

It should be noted that the UCI requirement included in the proposed regulations differs markedly from the concept of identifying the ultimate beneficial owners of particular futures and options accounts, a subject addressed in a previous Commission proposed rulemaking.<sup>62</sup> Unlike identification of the ownership and control of existing accounts, use of UCIs for swap data reporting would not require modification of existing systems or alteration of existing data. The UCI requirement would only apply prospectively to new swap transactions executed following the effective date of the Commission's final swap data reporting regulations. No substantial alteration of system architecture would be required; instead, only a single data

<sup>60</sup> OTC Derivatives Regulators' Forum, *Prioritization and Communication of Regulatory Data Requests: Consolidated Report and Recommendations*, 10 November 2009, at 5 (emphasis added).

<sup>61</sup> ODRF *Outline of Trade Repository Functionality Being Sought by Members of the OTC Derivatives Regulators' Forum*, August 27, 2010 (revision 2), at 3.

<sup>62</sup> CFTC, *Account Ownership and Control Report*, 17 CFR Part 16, September 9, 2010.

field would need to be added to the information submitted with an order for a swap transaction or with a report of swap data to an SDR. Where compiling the information necessary to create the type of account ownership and control report addressed in the Commission's proposed ownership and control rule would depend on collecting data points not in the possession of any single entity, by contrast, once a legal entity that intends to be a swap counterparty has obtained an UCI—something it would only need to do once—it would possess all the information required for its subsequent use.

Information concerning a counterparty's affiliations must be available in conjunction with UCIs in order to enable regulators to aggregate data across entities and markets for the purpose of effective monitoring of systemic risk. For this purpose, regulators need to be able to identify all swap positions within the same ownership group. Accordingly, the proposed regulations would require each swap counterparty to report all of its corporate affiliations into a confidential, non-public corporate affiliations reference database, maintained and located as determined by the Commission. Data contained in the corporate affiliations reference database would be available only to the Commission, and to other financial regulators via the same data access procedures applicable to data in SDRs, for regulatory purposes. For these purposes, "corporate affiliations" would mean the identity of all legal entities that own the counterparty, that are under common ownership with the counterparty, or that are owned by the counterparty. The corporate affiliation information reported would be required to be sufficient to disclose parent-subsidary and affiliate relationships, such that each legal entity within or affiliated with the corporate hierarchy or ownership group to which the counterparty belongs would be separately identified. Each counterparty would also be required to report to the corporate affiliations reference database all changes to the information previously reported concerning the counterparty's corporate affiliations, so as to ensure that the corporate affiliation information recorded in the corporate affiliations reference database remains current and accurate at all times.

The corporate affiliations reference database would need to be accessible to both national and international financial regulators in order to make the identification system involving UCIs fully effective for regulatory purposes. To ensure the availability of

comprehensive and accurate information, it would therefore appear to be optimal that there be a single corporate affiliations reference database, maintained by a single organization in a single location. The Commission seeks comment on where and by what organization the corporate affiliations database would best be maintained: whether by an international voluntary consensus standards body (discussed below); by a self-regulatory organization; by the Commission; by the OFR; or by some other organization.

The Commission understands that, while a single identifier satisfying the requirements included in the proposed regulations is not currently published by any standard-setting body, market participants have been working diligently to solve practical issues that stand in the way of such publication.

The Commission believes, and understands that the SEC and the OFR also believe, that optimum effectiveness of UCIs for achieving the systemic risk protection and transparency goals of Dodd-Frank—goals shared by financial regulators world-wide—would come from creation of an identification system, including UCIs, on an international basis, through an international "voluntary consensus standards body" as defined in Office of Management and Budget ("OMB") Circular No. A-119 Revised. The National Technology Transfer and Advancement Act of 1995 codified OMB Circular No. A-119, and directs Federal agencies to use voluntary consensus standards in lieu of government-unique standards except where inconsistent with law or otherwise impractical.<sup>63</sup> This provision's intent is to eliminate the cost to the government of developing its own standards, decrease the burden of complying with agency regulations, provide incentives and opportunities to establish standards that serve national needs, encourage long-term growth for U.S. enterprises, promote efficiency and economic competition through harmonization of standards, and further the policy of reliance upon the private sector to supply government needs for goods and services. Further, to promote trade and implement the provisions of international treaty agreements, the provision requires Federal agencies to consider international standards in procurement and regulatory applications.

As defined in OMB Circular A-119, "voluntary consensus standards" are standards developed or adopted by voluntary consensus standards bodies,

both domestic and international. These standards include provisions requiring that owners of relevant intellectual property have agreed to make that intellectual property available on a non-discriminatory, royalty-free or reasonable royalty basis to all interested parties. "Voluntary consensus standards bodies" are domestic or international organizations that plan, develop, establish, or coordinate voluntary consensus standards using agreed-upon procedures.

For the reasons set forth above, the Commission proposes to use its rulemaking authority to require the use of UCIs in all swap data reporting subject to its jurisdiction. The Commission prefers to have its swap data reporting regulations prescribe use of a universally-available UCI that is part of an identification system created on an international basis through an international "voluntary consensus standards body," and intends to promulgate final regulations to that effect if such an identification is available sufficiently prior to the implementation date included in the Commission's final swap data reporting regulations. However, the Commission will prescribe its own method for creation of UCIs to be used in swap data reporting subject to the Commission's regulations if no such internationally-accepted identification system acceptable to the Commission is available prior to the implementation date of the final regulations.

The Commission anticipates that a system for publication of UCIs meeting the requirements of the proposed regulations may be developed through an international voluntary consensus body and be available as of the implementation date for the UCI requirement. Dodd-Frank explicitly permits the Commission to "take into consideration any evolving standard of the United States or the international community."<sup>64</sup>

Accordingly, the proposed regulations set forth principles that the Commission believes must govern the identification system used to establish UCIs for swap counterparties, among other purposes. Under these principles, the identification system must:

- Result in a unique identifier format that is capable of becoming the single international standard for unique identification of legal entities in the financial sector on a global basis.
- Be developed via an international "voluntary consensus standards body" as defined in OMB Circular No. A-119 Revised, such as the International Organization for

<sup>63</sup> Public Law 104-113, § 12(d).

<sup>64</sup> CEA § 21(f)(4)(B).

Standardization ("ISO"), and must be maintained by such a body and an associated Registration Authority. Both the standards body and Registration Authority must have a formally documented governance structure acceptable to the Commission.

- Be available to all interested parties on a non-discriminatory, royalty-free or reasonable royalty basis. While reasonable initial and annual fees would be appropriate to cover the cost of issuance, maintenance, and initial and ongoing verification of unique identifiers, fees must not be charged for redistribution, publication or other use by the counterparty identified or any other entity or person, and the identification system must be operated on a non-profit basis. Information concerning the issuance process for new identifiers and a comprehensive, current directory of the UCIs issued by the identification system (but not the entity relationship or affiliation information reported by counterparties), must be available publicly and free of charge.

- Be supported by a trusted and auditable method of verifying the identity of each legal entity receiving a UCI, both initially and at appropriate intervals thereafter. The Registration Authority must maintain reference data sufficient to verify that a user has been correctly identified as an entity. Issuance of identifiers must be speedy and unbiased.

- Maintain robust quality assurance practices and system safeguards acceptable to the Commission.

- Be sufficiently extensible to cover all existing and potential future legal entities of all types that are or may become swap counterparties, are or may become involved in any aspect of the financial issuance and transactions process, or may be subject to required due diligence by financial sector entities.

- Assign only one unique identifier to any legal entity.

- Have a unique identifier format consisting of a single data field, and contain either no embedded intelligence or as little embedded intelligence as practicable.

- Persist despite all corporate events.

In the event that an identification system satisfying these principles is not available as of the effective date of the proposed regulations, the proposed regulations provide that a UCI for each swap counterparty must be created and assigned by an SDR, using the method specified for this purpose in the proposed regulations.

The Commission seeks comment concerning the required use of UCIs; concerning the benefits that required use of UCIs would create; concerning the required reporting of affiliation information by swap counterparties and the scope of affiliation information necessary to achieve regulatory purposes; concerning the principles set forth in the proposed regulations for development of an identification system including UCIs; concerning possible means of achieving international

adoption of a suitable identification system for financial sector legal entities that involves UCIs; and concerning what international voluntary consensus standards body can best provide the needed identification standard including UCIs, and what advantages are offered by the standards body recommended by the commenter.

*Unique Product Identifiers.* The Unique Product Identifier ("UPI") called for by the proposed rules would be used for categorization of swaps with respect to the underlying products referenced in them. While the UPI would be assigned to a particular level of the taxonomy of the asset class or sub-asset class in question, its existence would enable the Commission and other regulators to aggregate transactions at various taxonomy levels based on the type of product underlying the swap. For example, a UPI might identify a swap referencing the NYMEX futures price for light, sweet crude oil as a NYMEX WTI crude oil futures price swap. The taxonomy associated with the UPI would enable regulators to identify the product underlying the swap as a commodity, an energy product, a petroleum product, a crude oil product, or ultimately the NYMEX crude oil futures price, as desired.

The ability to identify underlying products in a categorical way would serve several regulatory purposes. First, it would enhance transparency, by allowing the Commission or other regulators to aggregate and report swap activity at a variety of product type levels. Second, it would enhance position limit enforcement. The Dodd-Frank Act requires the Commission to establish position limits for agricultural and exempt commodities that would span across the futures, options and swap markets. A UPI that provides information indicating what swaps need to be aggregated with other contracts would enhance the Commission's ability to develop and oversee its position limit regulatory program. Third, it would enhance analysis of swap data. For example, classification of swaps via UPIs would facilitate examination of the activity of market participants at various levels of a product class. The Commission is required by Dodd-Frank to prepare semi-annual reports regarding swap market activity, and such classification via UPIs would be necessary for meaningful evaluation of such activity.

Effective use of UPIs for regulatory purposes would require a robust taxonomy for swaps in each swap asset class, as well as decisions concerning what classification scheme to use, and

concerning the appropriate level for UPI assignment within such taxonomies.

The Commission seeks comments concerning the most effective classification scheme for swap products, and concerning the taxonomy level within each swap asset class at which UPIs should be assigned. In considering these issues, commenters should take into consideration what levels of aggregation are desirable for reporting swap activity. The Commission also seeks comment concerning the benefits or burdens that required use of UPIs would create, and concerning the optimal implementation date for effective adoption and use of UPIs.

#### *D. Determination of Which Counterparty Must Report*

New Section 4r(3) of the CEA specifies the counterparty obligated to report a swap transaction to a swap data repository.<sup>65</sup> Specifically, Section 4r(3) provides that:

With respect to a swap in which only 1 [sic] counterparty is a swap dealer or major swap participant, the swap dealer or major swap participant shall report the swap \* \* \*. With respect to a swap in which 1 [sic] counterparty is a swap dealer and the other a major swap participant, the swap dealer shall report the swap. \* \* \*. With respect to any other swap \* \* \* the counterparties to the swap shall select a counterparty to report the swap \* \* \*.

The effect of this provision is to establish a hierarchy of counterparty types for reporting obligation purposes, in which SDs outrank MSPs, who outrank non-SD/MSP counterparties. Where both counterparties are at the same hierarchical level, the statute calls for them to select the counterparty obligated to report.

The Commission believes that, regardless of the possible merits of swap data reporting by both counterparties to a swap, this statutory provision does not permit the Commission by regulation or other regulatory action to require swap data reporting by both counterparties to a swap. New CEA Section 21 does provide, with respect to the duties of an SDR, that an SDR shall "confirm with both counterparties to the swap the accuracy of the data that was submitted."<sup>66</sup> However, the obligation to report swap data to an SDR is distinct from the duty of the SDR to confirm the accuracy of the reported data. Congress could have provided for reporting by both counterparties, but chose instead to establish which counterparty bears the obligation to report.<sup>67</sup> The proposed

<sup>65</sup> Dodd-Frank § 729.

<sup>66</sup> CEA § 21(c)(2).

<sup>67</sup> The Commission does not believe that Dodd-Frank precludes an SDR from accepting and

regulations require reporting of confirmation data for all swaps as a means of verification of the accuracy of the data submitted in connection with each swap.

While Section 4r(a) of the CEA applies explicitly to swaps not accepted for clearing by any DCO, the Commission believes, preliminarily, that for the sake of uniformity and ease of applicability, the duty to report should be borne by the same counterparty regardless of whether the swap is cleared or uncleared. The Commission also believes it is appropriate for SDs and MSPs to have the responsibility of reporting with respect to the majority of swaps, because they are more likely than other counterparties to have automated systems in place that can facilitate reporting.

The proposed regulations establish a mechanism for counterparties to follow in choosing the counterparty to report in situations where both counterparties have the same hierarchical status, in order to prevent confusion or delay concerning this choice. Where both counterparties are SDs, or both are MSPs, or both are non-SD/MSP counterparties, the proposed regulations require the counterparties to agree as one term of their swap transaction which counterparty will fulfill reporting obligations with respect to that swap.

The proposed regulations also provide that, where only one counterparty to a swap is a U.S. person, the U.S. person should be the reporting counterparty. The Commission believes this approach is necessary in order to ensure compliance with reporting requirements in such situations.

The Commission requests comment concerning the possible utility of some type of swap data reporting by both counterparties, and how such dual reporting could be achieved other than by regulations requiring such reporting (which regulations appear barred by Dodd-Frank); regarding whether reporting of confirmation data is a sufficient means of verifying with both parties the accuracy of swap data reported to an SDR, and if not, what other means should be employed; on whether selection of the reporting counterparty should be the same for cleared swaps as for non-cleared swaps, and if not on how the reporting

counterparty should be selected for cleared swaps; and on the mechanisms provided in the proposed regulation for counterparties to follow in choosing the counterparty to report in situations where both counterparties have the same hierarchical status, and on possible alternative mechanisms for this purpose.

#### *E. Third Party Facilitation of Swap Data Reporting*

While the various reporting obligations established in the proposed regulations fall explicitly on registered entities and swap counterparties, the Commission recognizes that practicality, efficiencies, and decreased cost could in some circumstances be gained by engaging third parties to facilitate the actual reporting of information. The use of such third-party facilitators, however, should not allow the counterparty with the obligation to report to avoid its responsibility to report swap data in a timely and accurate manner. Therefore, the proposed regulations explicitly recognize that registered entities and counterparties required to report under provisions in Part 45 may contract with third-party service providers to facilitate reporting, but, nonetheless, remain fully responsible for reporting as required by the regulations.

The Commission requests comment on the merits of allowing third party facilitation of swap data reporting; on appropriate types of third party facilitators and functions to be used for this purpose; and on the automated system and connectivity technology that may be required or should be used in this connection.

#### *F. Reporting to a Single SDR*

The Commission believes that important regulatory purposes of Dodd-Frank would be frustrated, and that regulators' ability to see necessary information concerning swaps could be impeded, if data concerning a given swap was spread over multiple SDRs. Accordingly, the proposed regulations would require that all swap data for a given swap must be reported to a single SDR, which shall be the SDR to which required primary economic terms data for that swap is first reported. The proposed regulations would also provide that the SDR receiving this initial report must transmit its own identity, together with the USI for the swap (created as provided in § 45.4) to each counterparty to the swap, to the SEF or DCM, if any, on which the swap was executed, and to the DCO, if any, to which the swap is submitted for clearing. Thereafter, the proposed regulations would require that all data

reported for the swap by any registered entity or any counterparty to the swap, and all corrections of errors and omissions in previously reported data, must be reported to that same SDR (or to its successor in the event that it ceases to operate).

Where the initial report of required primary economic terms data is made by the SEF or DCM on which a swap is executed, or by an SD or MSP counterparty in the case of a swap not executed on a SEF or DCM, the proposed regulations would provide that the choice of the SDR to receive the initial report shall be made in a manner to be determined by the Commission prior to adoption of its final swap data reporting regulations. Where the initial report of required primary economic terms data is made by a non-SD/MSP counterparty, the proposed regulations would provide that the non-SD/MSP counterparty making that report shall choose the SDR to which the report is made.

The Commission requests comment concerning the benefits or drawbacks of requiring that all swap data for a given swap should be reported to the same SDR; concerning how the choice of the SDR to which swap data is to be reported for a swap should be made, and concerning what registered entity or swap counterparty should make this choice.

#### *G. Data Reporting for Swaps in Asset Classes Not Accepted by Any Swap Data Repository*

Section 4r(a)(1)(B) of the CEA recognizes that in some circumstances there may be no SDR that will accept swap data for certain swap transactions. This category of swaps should be limited, since proposed regulations for SDRs set forth in the Commission's separate advance notice of proposed rulemaking regarding SDRs will require an SDR that accepts swap data for any swap in an asset class to accept data for all swaps in that asset class. However, situations could arise where a novel product does not fit into any existing asset class, or where no SDR yet accepts swap data for any swap in an existing asset class. In such situations, the CEA and the proposed regulations would require the reporting counterparty to report to the Commission all swap data required by Part 45 to be reported to an SDR where one is available. This report would be required to be made at a time and in a form and manner determined by the Commission.

The Commission requests comment on whether SDRs that accept data for any swap in a swap asset class should be required to accept data for all swaps

maintaining swap data from both counterparties to a swap. For example, an SDR or its affiliate performing the ancillary service of maintaining the single binding legal record of a swap, such as the "gold" record maintained by the Depository Trust & Clearing Corporation ("DTCC") for credit swaps, would not be barred from receiving dual reporting in that connection.

in that asset class; and on the time and the form and manner of reporting that the Commission should require with respect to data reporting for swaps that must be reported to the Commission because no SDR presently accepts swap data for swaps in the asset class involved.

#### H. Required Data Standards

Dodd-Frank directs the Commission to “prescribe data collection and data maintenance standards for swap data repositories.”<sup>68</sup> It also provides that SDRs shall maintain swap data reported to them “in such form, in such manner, and for such period as may be required by the Commission,” and directs SDRs to “provide direct electronic access to the Commission.”<sup>69</sup> These requirements are designed to effectuate the fundamental purpose for the legislation’s swap data reporting requirements: making swap data available to the Commission and other financial regulators so as to enable them to better fulfill their market oversight and other regulatory functions, increase market transparency, and mitigate systemic risk. Accordingly, the Commission believes that data standards for SDRs must enable them to provide data to the Commission in a format that enables its effective and timely use for such purposes.

The Commission has considered, and will continue to consider, whether it would be preferable to require that all swap data reporting to SDRs be done in a uniform reporting format or via a single data standard. However, the Commission is aware that such a requirement would be likely to require changes to the existing automated systems of some entities and counterparties that will be required to report swap data pursuant to these regulations, and that in some cases such changes could impose a substantial burden on such entities and counterparties. The Commission has been advised by some existing trade repositories that they are able to accept data in multiple formats or data standards from different counterparties, and to map the data they receive into a common data standard within the repository, without undue difficulty, delay, or cost. The Commission understands that automated systems and data standards evolve over time, and that it may be desirable for regulations concerning data standards to avoid locking reporting entities, reporting counterparties, and SDRs into particular data standards that could

become less appropriate in the future. Dodd-Frank explicitly permits the Commission to “take into consideration any evolving standard of the United States or the international community.”<sup>70</sup>

Finally, the Commission anticipates that the degree of flexibility offered by SDRs concerning data standards for swap data reporting could become an element of marketplace competition with respect to SDRs.

Accordingly, the proposed regulations would require an SDR to maintain all swap data reported to it in a format acceptable to the Commission, and to transmit all swap data requested by the Commission to the Commission in an electronic file in a format acceptable to the Commission. The proposed regulations would require reporting entities and counterparties to use the facilities, methods, or data standards provided or required by an SDR to which they report data, but also would allow an SDR to permit reporting via various facilities, methods, or data standards, provided that its requirements in this regard enable it to maintain swap data and transmit it to the Commission as the Commission requires. The Commission believes that this approach can provide market participants sufficient flexibility and opportunity to innovate, while also ensuring that SDRs can meet their legal mandates to transmit swap data to the Commission in a timely fashion. Finally, the proposed regulations would delegate to the Director of the Division of Market Oversight the ability to accommodate the needs of different communities of users and to provide the flexibility to adapt to changing circumstances and evolving data standards.

The Commission requests comments concerning the approach to data standards taken in the proposed regulation; and concerning the relative merits of leaving SDRs free to permit reporting via various facilities, methods, or data standards, provided that its requirements in this regard enable it to maintain swap data and transmit it to the Commission as the Commission requires; concerning whether the Commission should require use of a single data standard (*e.g.*, FpML) by all reporting entities and counterparties and by all SDRs.

#### I. Reporting of Errors and Omissions in Previously Reported Data

Accurate swap data is essential to effective fulfillment of the various regulatory functions of financial

regulators. To help ensure data accuracy, the proposed regulations would require registered entities and swap counterparties that report swap data to an SDR or to any other registered entity or swap counterparty to report any errors or omissions in the data they report, as soon as technologically practicable after discovery of any error or omission. Because daily snapshot reports of state data by reporting counterparties by their nature can correct errors or omissions in previous snapshot reports, the proposed regulations provide that for interest rate swaps, commodity swaps, and currency swaps, reporting counterparties fulfill the requirement to report errors or omissions in state data previously reported by making corrections in their next daily report of state data. Because Dodd-Frank permits the Commission to require reporting by only one swap counterparty, and because error and omission correction from non-reporting counterparties is nevertheless desirable to better ensure data accuracy, the proposed regulation (a) would require a non-reporting swap counterparty that discovers any error or omission with respect to any swap data reported to an SDR for its swaps to notify the reporting counterparty promptly of each such error or omission, and (b) would require the reporting counterparty, upon receiving such notice, to report a correction of each such error or omission to the SDR, as soon as technologically practicable after receiving notice of it from the non-reporting counterparty.

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

The Commission requests comment concerning the requirement that all entities and counterparties that report swap data to an SDR or to any other registered entity or swap counterparty must report any errors or omissions in the data they report, as soon as technologically practicable after discovery of any error or omission; concerning the mechanism provided in the proposed regulation for reporting of errors or omissions discovered by a non-reporting swap counterparty, and whether any alternative methods for this purpose would be preferable; and

<sup>68</sup> CEA § 21(b)(2).

<sup>69</sup> CEA § 21(c)(3) and (4).

<sup>70</sup> CEA § 21(f)(4)(B).

concerning the requirement for use of the same data format to report errors or omissions that was used to report the erroneous data in question.

### III. Related Matters

#### A. Regulatory Flexibility Act

The RFA<sup>71</sup> requires that agencies consider whether the rules they propose will have a significant economic impact on a substantial number of small entities and, if so, provide a regulatory flexibility analysis respecting the impact.<sup>72</sup> The rules proposed by the Commission would affect SDRs, DCOs, SEFs, DCMs, SDs, MSPs, and non-SD/MSP counterparties who are counterparties to one of more swaps and subject to the Commission's jurisdiction. The Commission has previously established certain definitions of "small entities" to be used by the Commission in evaluating the impact of its regulations on small entities in accordance with the RFA.<sup>73</sup> In its previous determinations, the Commission has concluded that DCMs and DCOs are not small entities for the purpose of the RFA.<sup>74</sup>

As SDRs, SDs, MSPs and SEFs are new entities to be regulated by the Commission pursuant to the Dodd-Frank Act, the Commission has not previously determined whether they are small entities for the purpose of the RFA. The Commission is proposing to determine that SDRs, SDs, MSPs and SEFs covered by these rules, for reasons similar to those applicable to DCMs and DCOs, are not small entities for purposes of the RFA.

Specifically, the Commission proposes that SDRs, SDs, MSPs and SEFs should not be considered small entities based on, among other things, the central role they will play in the national regulatory scheme overseeing the trading of swaps. Because they will be required to accept swaps across asset classes, SDRs will require significant operational resources. With respect to SDs, the Commission previously has determined that FCMs should not be considered to be small entities for purposes of the RFA.<sup>75</sup> Like FCMs, SDs will be subject to minimum capital and margin requirements, and are expected to comprise the largest global financial firms. Additionally, the Commission is required to exempt from designation

entities that engage in a de minimis level of swaps.<sup>76</sup> Similarly, with respect to MSPs, the Commission has also previously determined that large traders are not "small entities" for RFA purposes.<sup>77</sup> Like large traders, MSPs will maintain substantial positions, creating substantial counterparty exposure that could have serious adverse effects on the financial stability of the United States banking system or financial markets. With respect to SEFs, not only will SEFs play a vital role in the national economy, but they will be required to operate as self-regulatory organizations, subject to Commission oversight, with statutory duties to enforce the rules adopted by their own governing bodies. Most of these entities will not be small entities for RFA purposes.

The proposed regulations would require reporting by a non-SD/MSP counterparty only with respect to swaps in which neither counterparty is an SD or MSP. The considerable majority of swaps involve at least one SD or MSP. In addition, most end users and other non-SD/MSP counterparties who are regulated by the Employee Retirement Income Security Act of 1974 ("ERISA"), such as pension funds, which are among the most active participants in the swap market, are prohibited from transacting directly with other ERISA-regulated participants.<sup>78</sup> Therefore, the Commission does not believe that the reporting obligations under this rulemaking will create a significant economic impact on a substantial number of small entities.

Accordingly, the Chairman, on behalf of the Commission, hereby certifies pursuant to 5 U.S.C. 605(b) that the proposed rules will not have a significant impact on a substantial number of small entities. Nonetheless, the Commission specifically requests comment on the impact these proposed rules may have on small entities.

#### B. Paperwork Reduction Act

*Introduction.* Provisions of proposed Commission Regulations 45.2, 45.3, and 45.4 would result in new collection of information requirements within the meaning of the Paperwork Reduction Act ("PRA").<sup>79</sup> The Commission therefore is submitting this proposal to the Office of Management and Budget (OMB) for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. The title for this collection of information is "Regulations 45.2, 45.3, and 45.4—Swap

Data Recordkeeping and Reporting Requirements," OMB control number 3038—NEW). If adopted, responses to this new collection of information would be mandatory. The Commission will protect proprietary information according to the Freedom of Information Act and 17 CFR part 145, "Commission Records and Information." In addition, section 8(a)(1) of the Act strictly prohibits the Commission, unless specifically authorized by the Act, from making public "data and information that would separately disclose the business transactions or market positions of any person and trade secrets or names of customers." The Commission also is required to protect certain information contained in a government system of records according to the Privacy Act of 1974, 5 U.S.C. 552a.

*Information Provided by Reporting Entities/Persons.* Under proposed Regulation 45.2, SDRs, SEFs, DCMs, DCOs, SDs, MSPs, and non-SD/MSP counterparties—which presently would include an estimated 30,384 entities or persons<sup>80</sup>—would be required to keep records of all activities relating to swaps. Specifically, proposed Regulation 45.2 would require SDRs, SEFs, DCMs, DCOs, SDs, and MSPs to keep complete records of all activities relating to their business with respect to swaps. The proposed regulation would require non-SD/MSP counterparties to keep complete records with respect to each swap in which they are a counterparty. With respect to SDs and MSPs, the Commission has determined that proposed Regulation 45.2 will not impose any new recordkeeping or information collection requirements, or other collections of information that require approval of the Office of Management and Budget under the Paperwork Reduction Act. Requirements for maintaining and recording swap transaction data by SDs and MSPs will be addressed by related rulemakings associated with business conduct standards for SDs and MSPs as part of the Commission's overall

<sup>80</sup> Because SDRs, MSPs, SDs, DCOs, and SEFs are new entities, estimates were made by the Commission: 15 SDRs, 50 MSPs, 250 SDs, 12 DCOs, and 40 SEFs. The number of DCMs was estimated to be 17 DCMs based on the current (as of October 18, 2010) number of designated DCMs (<http://services.cftc.gov/SIRT/SIRT.aspx?Topic=TradingOrganizations&implicit=true&type=DCM&CustomColumnDisplay=TTTTTTTT>). Additionally, for purposes of the Paperwork Reduction Act, the Commission estimates that there would be 30,000 non-SD/MSP counterparties who would annually be subject to the recordkeeping requirements of proposed Regulation 45.1. Because the Commission has not regulated the swap market, it has not collected data relevant to this estimate. Therefore, the Commission requests comment on this estimate.

<sup>71</sup> 5 U.S.C. 601 *et seq.*

<sup>72</sup> 5 U.S.C. 601 *et seq.*

<sup>73</sup> 47 FR 18618 (Apr. 30, 1982).

<sup>74</sup> 47 FR 18618, 18619 (April 30, 1982) discussing contract markets; and 66 FR 45604, 45609 (August 29, 2001) discussing derivatives clearing organizations.

<sup>75</sup> 47 FR 18618 (Apr. 30, 1982).

<sup>76</sup> *Id.* at 18619.

<sup>77</sup> 47 FR at 18620.

<sup>78</sup> 29 U.S.C. 1106

<sup>79</sup> 44 U.S.C. 3501 *et seq.*

rulemaking initiative implementing the Dodd-Frank Act.<sup>81</sup> With respect to SDRs, SEFs, DCMs, DCOs (an estimated 84 entities or persons), which will have higher levels of swap recording activity<sup>82</sup> than non-SD/MSP counterparties, the Commission estimates that there may be approximately 40 annual burden hours per entity, excluding customary and usual business practices. With respect to non-SD/MSP reporting counterparties (an estimated 30,000 entities or persons), who will have lower levels of swap recording activity, the Commission estimates that there may be approximately 10 annual burden hours per entity, excluding customary and usual business practices. Therefore, there are 303,360 estimated aggregate annual burden hours.

Under proposed Regulation 45.3, SEFs, DCMs, DCOs, MSPs, SDs, and non-SD/MSP counterparties would be required to provide reports to SDRs regarding swap transactions. SEFs and DCMs are required to report certain information once at the time of swap execution. DCOs, SDs, MSPs, and non-SD/MSP counterparties are required to report certain information once, as well as other information on a daily basis. With respect to reporting by SDs, MSPs, and non-SD/MSP counterparties, only one counterparty to a swap is required to report, typically an SD or an MSP as determined by proposed Regulation 45.4. The Commission anticipates that the reporting will to a significant extent be automatically completed by electronic computer systems; the following burden hours are calculated based on the annual burden hours necessary to oversee and maintain the reporting functionality.<sup>83</sup> SEFs, DCMs, DCOs, MSPs, and SDs (an estimated 369 entities or persons) are anticipated to have high levels of reporting activity; the Commission estimates that their average annual burden may be approximately 2,080 hours.<sup>84</sup> Non-SD/

MSP counterparties who would be required to report—which presently would include an estimated 1,500 entities<sup>85</sup>—are anticipated to have lower levels of activity with respect to reporting; the Commission estimates that their annual burden may be approximately 75 hours. Therefore, there are 880,020 estimated aggregate annual burden hours.

Under proposed Regulation 45.4, SDRs, SEFs, DCMs, SDs, and MSPs would be required to report a unique swap identifier to other registered entities and swap participants. SEFs and DCMs are anticipated to have higher levels of activity than SDRs, SDs, and MSPs with respect to unique swap identifier reporting. The Commission anticipates that the reporting of the unique swap identifier will be automatically completed by electronic computer systems. The following burden hours are based on the estimated burden hours necessary to oversee and maintain the electronic functionality of unique swap ID reporting.<sup>86</sup> The Commission estimates that SEFs and DCMs (an estimated 57 entities or persons) may have approximately 22 annual burden hours per entity. The Commission estimates that SDRs, SDs, and MSPs (an estimated 315 entities or persons) may have approximately 6 annual burden hours per entity. Therefore, there are 3,144 estimated aggregated annual burden hours.

Additionally under Proposed Regulation 45.4, SDs, MSPs, and non-SD/MSP counterparties (an estimated 30,300 entities and persons), would be required to report into a confidential database their ownership and affiliations information (as well as changes to ownership and affiliations). The report would be made once at the time of the first swap reported to an SDR, and would be made anytime thereafter that the entity's legal affiliations change. The estimated number of burden hours per report is

DCOs, MSP, and SDs will dedicate the equivalent of at least one full-time employee to ensuring compliance with the reporting obligations of Regulation 45.3 (2,080 hours = 52 weeks × 5 days × 8 hours). The Commission believes that this is a reasonable assumption due to the volume of swap transactions that will be processed by these entities, the varied nature of the information required to be reported by Regulation 45.3, and the frequency (daily) with which some reports must be made. The Commission requests comment on this estimate.

<sup>85</sup> This is the estimated number of non-SD/MSP counterparties who would be required to report in a given year. Only one counterparty to a swap is required to report, typically an SD or a MSP as determined by proposed Regulation 45.4. The Commission requests comment on this estimate.

<sup>86</sup> Estimated burden hours were obtained in consultation with the Commission's information technology staff. The Commission requests comment on these estimates.

approximately two hours per entity, excluding customary and usual business practices. The number of reports required to be made per year is estimated to vary between zero and four, depending on the number of changes an entity has in its legal affiliations in that year. Thus, the estimated annual burden per entity varies between zero and eight burden hours. Therefore, there are between 0 and 242,400 estimated aggregate annual burden hours.

*Information Collection Comments.* The Commission invites the public and other Federal agencies to comment on any aspect of the reporting and recordkeeping burdens discussed above. Pursuant to 44 U.S.C. 3506(c)(2)(B), the Commission solicits comments in order to: (i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (ii) evaluate the accuracy of the Commission's estimate of the burden of the proposed collection of information; (iii) determine whether there are ways to enhance the quality, utility, and clarity of the information to be collected; and (iv) minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

Comments may be submitted directly to the Office of Information and Regulatory Affairs, by fax at (202) 395-6566 or by e-mail at [OIRAsubmissions@omb.eop.gov](mailto:OIRAsubmissions@omb.eop.gov). Please provide the Commission with a copy of submitted comments so that all comments can be summarized and addressed in the final rule preamble. Refer to the Addresses section of this notice of proposed rulemaking for comment submission instructions to the Commission. A copy of the supporting statements for the collections of information discussed above may be obtained by visiting [RegInfo.gov](http://RegInfo.gov). OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this release.

Consequently, a comment to OMB is most assured of being fully effective if received by OMB (and the Commission) within 30 days after publication of this notice of proposed rulemaking.

#### C. Cost-Benefit Analysis

*Introduction.* Section 15(a) of the Commodity Exchange Act ("CEA") requires the Commission to consider the costs and benefits of its actions before issuing a rulemaking under the Act. By its terms, section 15(a) does not require

<sup>81</sup> The Commission invites public comment on the accuracy of its estimate that no additional recordkeeping or information collection requirements related to SDs and MSP would result from the rules proposed herein.

<sup>82</sup> For purposes of this Paperwork Reduction Act analysis, the Commission estimates that "high activity" entities or persons are those who process or enter into hundreds or thousands of swaps per week that are subject to the jurisdiction of the Commission. Low activity users would be those who process or enter into substantially fewer than the high activity users. The Commission requests comment on its estimate.

<sup>83</sup> Estimated burden hours were obtained in consultation with the Commission's information technology staff. The Commission requests comment on these estimates.

<sup>84</sup> The Commission estimated 2,080 hours by assuming that a significant number of SEFs, DCMs,

the Commission to quantify the costs and benefits of the rulemaking or to determine whether the benefits of the rulemaking outweigh its costs; rather, it requires that the Commission “consider” the costs and benefits of its actions. 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 participants and the public; (2) the efficiency, competitiveness and financial integrity of markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations. The Commission may in its discretion give greater weight to any one of the five enumerated areas and could in its discretion determine that, notwithstanding its costs, a particular rule is necessary or appropriate to protect the public interest or to effectuate any of the provisions to accomplish any of the purposes of the Act.

**Summary of proposed requirements.** The proposed Commission regulations in Part 45 would provide for certain recordkeeping and data reporting requirements for SDRs, SEFs, DCMs, DCOs, SDs, MSPs, and non-SD/MSP counterparties. The proposed regulations would require SDRs, SEFs, DCMs, DCOs, SDs, and MSPs to keep records of all activities relating to their business with respect to swaps; non-SD/MSP counterparties would be required to keep records with respect to each swap in which they are a counterparty. The proposed regulations would require SEFs, DCMs, DCOs, SDs, MSPs, and non-SD/MSP counterparties to report to SDRs various types of swap data, as defined and required in the regulations. Further, in some instances the proposed regulations would require SDRs, SEFs, DCMs, SDs, and MSPs to create unique swap identifiers and transmit them to other registered entities and swap participants. Additionally, the proposed regulations would require SDs, MSPs, and non-SD/MSP counterparties to report their ownership and affiliations information (as well as changes to ownership and affiliations), in a manner to be determined by the Commission prior to its adoption of final swap data reporting regulations.

**Costs.** With respect to costs, the Commission believes that the proposed reporting and recordkeeping requirements could impose significant compliance costs on some SDRs, SEFs, DCMs, DCOs, SDs, MSPs, and non-SD/MSP counterparties. The proposed regulations could require capital expenditures for some such entities that could affect the ability of some regulated entities to compete in the

global marketplace because of reductions in available resources.

**Benefits.** Notwithstanding the potential costs that could be incurred by SDRs, SEFs, DCMs, DCOs, SDs, MSPs, and non-SD/MSP counterparties, the Commission believes that the benefits of the proposed regulations are significant and important. Through the requirement that swap information be reported to SDRs, the proposed regulations will greatly improve the efficiency and transparency of the swap market. Through the Commission’s access to swap data, market participants and the public will be better protected, as the result of increased market surveillance and monitoring.

The Commission believes that the proposed regulations are essential to the financial protection of swap market participants and the public. With their support for greater transparency and more effective oversight, the proposed regulations will help to ensure the efficiency, competitiveness, and financial integrity of swap markets. By providing regulators data necessary for effective prudential supervision, the proposed regulations will enable enhanced protection against systemic risk. The proposed regulations will also improve the important function of price discovery. For all these reasons, the proposed regulations would serve the public interest.

**Public Comment.** For the reasons set forth above, the Commission believes that the benefits of the proposed regulations outweigh their costs, and has decided to issue them. The Commission invites public comment on its cost-benefit considerations. Commenters are also invited to submit any data or other information that they may have quantifying or qualifying the costs and benefits of the Proposal with their comment letters.

#### IV. Proposed Effective Date

The Commission understands that, after the date on which the Commission promulgates its final swap data reporting regulations, the industry will need a reasonable period of time to implement the requirements of those regulations. Time may be required for entities to register as SEFs, DCMs, DCOs, or SDRs (or to update current registrations as DCMs or DCOs) pursuant to new Commission regulations concerning such entities. Time may also be needed for registered entities and potential swap counterparties to adapt or create automated systems capable of fulfilling the requirements of Commission regulations concerning swap data reporting. Accordingly, it may be

appropriate for the Commission’s final swap data reporting regulations to establish an effective date for the requirements contained in those regulations that is later than the date of their promulgation.

The Commission requests comment concerning the need for an implementation date for its final swap data reporting regulations that is later than the date of their promulgation; concerning the benefits or drawbacks of such an approach; concerning the length of time needed for registered entities and potential swap counterparties to prepare for implementation in the ways discussed above, or otherwise; and concerning the implementation date which the Commission should specify in its final regulations concerning swap data reporting.

#### V. General Solicitation of Comments

The Commission requests comments concerning all aspects of the proposed regulations, including, without limitation, all of the aspects of the proposed regulations on which comments have been requested specifically herein.

#### Proposed Rules

##### List of Subjects in 17 CFR Part 45

Swaps, data recordkeeping requirements and data reporting requirements.

For the reasons set forth in the preamble, the Commodity Futures Trading Commission proposes to add a new part 45 to read as follows:

#### PART 45—SWAP DATA RECORDKEEPING AND REPORTING REQUIREMENTS

- Sec.
- 45.1 Definitions.
- 45.2 Swap recordkeeping.
- 45.3 Swap data reporting.
- 45.4 Unique identifiers.
- 45.5 Determination of which counterparty must report.
- 45.6 Third-party facilitation of data reporting.
- 45.7 Reporting to a single SDR.
- 45.8 Data reporting for swaps in a swap asset class not accepted by any SDR.
- 45.9 Required data standards.
- 45.10 Reporting of errors and omissions in previously reported data.
- Appendix 1 to Part 45—Tables of minimum primary economic terms data and minimum valuation data
- Appendix 2 to Part 45—Master reference generic data fields list

**Authority:** 7 U.S.C. §§ 2(a)(13)(G), 4r, 6s, 7, 7a–1, 7b–3, 12a and 21(b), as amended by Title VII of the Wall Street Reform and Consumer Protection Act of 2010, Public Law 111–203, 124 Stat. 1376 (2010).

**§ 45.1 Definitions.**

As used in this part 45, the following terms shall have the definitions set forth below.

(a) "Asset class" means the particular broad category of goods, services or commodities underlying a swap. The asset classes include interest rate, currency, credit, equity, other commodity, and such other asset classes as may be determined by the Commission.

(b) "Confirmation" ("confirming") means the consummation (electronically or otherwise) of legally binding documentation (electronic or otherwise) that memorializes the agreement of the parties to all terms of a swap. A confirmation must be in writing (whether electronic or otherwise) and must legally supersede any previous agreement (electronically or otherwise).

(c) "Confirmation data" means all of the terms of a swap matched and agreed upon by the counterparties in confirming the swap.

(d) "Contract-intrinsic event" means a scheduled, anticipated event occurring during the existence of a swap that does not result in any change to the contractual terms of the swap, including, without limitation, the scheduled expiration of a swap, or a previously described and anticipated interest rate adjustment (e.g., a quarterly interest rate adjustment).

(e) "Contract-intrinsic event data" means, with respect to a credit swap or equity swap, all of the data elements necessary to fully report any contract-intrinsic event with respect to that swap.

(f) "Credit swap" means any swap that is primarily based on instruments of indebtedness, including, without limitation: Any swap primarily based on one or more broad-based indices related to instruments of indebtedness; and any swap that is an index credit swap or total return swap on one or more indices of debt instruments.

(g) "Currency swap" means any swap which is primarily based on rates of exchange between difference currencies, changes in such rates, or other aspects of such rates. This category includes foreign exchange swaps as defined in CEA Section 1a(25).

(h) "Derivatives Clearing Organization" or "DCO" has the meaning set forth in CEA Section 1a(9), and any Commission regulation implementing that Section, including, without limitation, § 39.5 of this chapter.

(i) "Designated Contract Market" or "DCM" has the meaning set forth in CEA Section 5, and any Commission regulation implementing that Section.

(j) "Equity swap" means any swap that is primarily based on equity securities, including, without limitation: Any swap primarily based on one or more broad-based indices of equity securities; and any total return swap on one or more equity indices.

(k) "Interest rate swap" means any swap which is primarily based on one or more interest rates, such as swaps of payments determined by fixed and floating interest rates.

(l) "Life cycle event" means, with respect to a credit swap or equity swap, any event that would result in a change in the data previously reported to an SDR in connection with the swap, including, without limitation, a counterparty change resulting from an assignment or novation; a partial or full termination of the swap; a change in the cash flows originally reported; for a credit swap or equity swap that is not cleared, any change to the collateral agreement; or a corporate action affecting a security or securities on which the swap is based (e.g., a merger, dividend, stock split, or bankruptcy).

(m) "Life cycle event data" means, with respect to a credit swap or equity swap, all of the data elements necessary to fully report any life cycle event, or any adjustment due to a life cycle event, that results in a change to data previously reported with respect to that swap.

(n) "Major Swap Participant" or "MSP" has the meaning set forth in CEA Section 1a(33), and any Commission regulation implementing that Section.

(o) "Non-SD/MSP counterparty" means a swap counterparty that is neither a Swap Dealer nor a Major Swap Participant.

(p) "Other commodity swap" means any swap not included in the credit swap, currency swap, equity swap, or interest rate swap categories, including, without limitation, any swap for which the primary underlying item is a physical commodity or the price or any other aspect of a physical commodity.

(q) "Primary economic terms" for a credit swap or equity swap means:

(1) The Unique Swap Identifier for the swap, pursuant to § 45.4(a);

(2) The Unique Counterparty Identifier of each counterparty to the swap, pursuant to § 45.4(b);

(3) The Unique Product Identifier assigned to the swap, pursuant to § 45.4(c);

(4) An indication of the counterparty purchasing protection and of the counterparty selling protection;

(5) Information identifying the reference entity for the swap, in a format determined by the Commission;

(6) An indication of whether or not both counterparties are SDs;

(7) An indication of whether or not both counterparties are MSPs;

(8) An indication of whether or not both counterparties are non-SD/MSP counterparties;

(9) The date and time of execution, expressed using Coordinated Universal time ("UTC");

(10) The venue where the swap was executed;

(11) The effective date;

(12) The scheduled termination date;

(13) The price;

(14) The notional amount, the currency in which the notional amount is expressed, and the equivalent notional amount in U.S. dollars;

(15) The amount and currency or currencies of any up-front payment;

(16) A description of the payment streams of each counterparty;

(17) The title of any master agreement incorporated by reference and the date of any such agreement;

(18) If the transaction involved an existing swap, an indication that the transaction did not involve an opportunity to negotiate a material term of the contract, other than the counterparty;

(19) The data elements necessary for a person to determine the market value of the transaction;

(20) Whether or not the swap will be cleared by a designated clearing organization;

(21) The name of the designated clearing organization that will clear the swap, if any;

(22) If the swap is not cleared, whether the exception in § 2(h)(7) ("End User exception") was invoked;

(23) If the swap is not cleared, all of the settlement terms, including, without limitation, whether the swap is cash-settled or physically settled, and the method for determining the settlement value; and

(24) Any other primary economic term(s) of the swap matched by the counterparties in verifying the swap.

(r) "Primary economic terms" means, for an interest rate swap, other commodity swap, or currency swap, all of the terms of a swap matched by the counterparties in verifying the swap, including at a minimum each of the terms included in the most recent **Federal Register** release by the Commission listing minimum primary economic terms for interest rate swaps, other commodity swaps, or currency swaps. The Commission's current lists of minimum primary economic terms for interest rate, commodity, and currency swaps are found in Appendix 1 to part 45.

(s) "Primary economic terms data" means all of the data elements necessary to fully report all of the primary economic terms of a swap in the swap asset class of the swap in question.

(t) "Reporting counterparty" means the counterparty required to report swap data pursuant to § 45.5.

(u) "Required swap creation data" for a credit swap or equity swap means:

- (1) All primary economic terms data for a credit swap or equity swap; and
- (2) All confirmation data for the swap.

(v) "Required swap creation data" for an interest rate swap, commodity swap, or currency swap means:

- (1) All primary economic terms data for an interest rate swap, commodity swap, or currency swap, as appropriate; and

- (2) All confirmation data for the swap.

(w) "Required swap continuation data" for a credit swap or equity swap means:

- (1) All life cycle event data for the swap;

- (2) All contract-intrinsic event data for the swap; and

- (3) All valuation data for the swap, and all changes to valuation data previously reported concerning the swap, reported at intervals to be determined by the Commission prior to its adoption of final swap data reporting regulations.

(x) "Required swap continuation data" for an interest rate swap, other commodity swap, or currency swap means:

- (1) All state data for the swap, reported daily throughout the existence of the swap until its final termination; and

- (2) A report at intervals specified by the Commission, throughout the existence of the swap until its final termination, of all valuation data and all changes to valuation data concerning the swap.

(y) "State data" means all of the data elements necessary to provide a snapshot view, on a daily basis, of all of the primary economic terms of a swap in the swap asset class of the swap in question, including any changes to such terms since the last snapshot. At a minimum, state data must include all of the economic terms listed in the most recent **Federal Register** release by the Commission concerning minimum primary state data elements for interest rate, commodity, or currency swaps. The Commission's current lists of minimum primary economic terms for interest rate, commodity, and currency swaps are found in Appendix 1 to Part 45.

(z) "Swap Data Repository" or "SDR" has the meaning set forth in CEA

Section 1a(48), and any Commission regulation implementing that Section.

(aa) "Swap Dealer" or "SD" has the meaning set forth in CEA Section 1a(49), and any Commission regulation implementing that Section.

(bb) "Swap Execution Facility" or "SEF" has the meaning set forth in CEA Section 1a(50), and any Commission regulation implementing that Section.

(cc) "Valuation data" means all of the data elements necessary for a person to determine the current market value of the swap, including, without limitation, daily margin, daily mark-to-market, and other measures of valuation as determined by the Commission.

(dd) "Verification" ("verify" or "verifying") means the matching by the counterparties to a swap of each of the primary economic terms of a swap, at or shortly after the time the swap is executed.

#### **§ 45.2 Swap recordkeeping.**

(a) All DCOs, DCMs, SEFs, SDs, and MSPs who are subject to the jurisdiction of the Commission shall keep full, complete, and systematic records, together with all pertinent data and memoranda, of all activities relating to the business of such entities or persons with respect to swaps, as prescribed by the Commission. Such records shall include, without limitation, the following:

- (1) For DCOs, all records required by part 39 of this chapter.

- (2) For SEFs, all records required by part 37 of this chapter.

- (3) For DCMs, all records required by part 38 of this chapter.

- (4) For SDs and MSPs, all records required by part 23 of this chapter.

(b) All non-SD/MSP counterparties subject to the jurisdiction of the Commission shall keep full, complete, and systematic records, together with all pertinent data and memoranda, with respect to each swap in which they are a counterparty, including all required swap creation data and all required swap continuation data that they are required to report pursuant to this part 45, and including all records demonstrating that they are entitled, with respect to any swap, to the end user exception pursuant to Section 2(h)(7).

(c) All records required to be kept by DCOs, DCMs, SEFs, SDs, MSPs, and non-SD/MSP counterparties pursuant to this Section shall be kept with respect to each swap from the date of the creation of the swap through the life of the swap and for a period of at least five years from the final termination of the swap, in a form and manner acceptable to the Commission.

(d) Records required to be kept by DCOs, DCMs, SEFs, SDs, MSPs, or non-SD/MSP counterparties pursuant to this Section shall be retrievable as follows:

(1) Each record required by this Section or any other Section of the Act to be kept by an SDR shall be readily accessible via real time electronic access by the SDR indefinitely.

(2) Each record required by this Section or any other Section of the Act to be kept by a DCO, DCM, SEF, SD, or MSP shall be readily accessible via real time electronic access by the registrant throughout the life of the swap and for two years following the final termination of the swap, and shall be retrievable by the registrant or its affiliates within three business days through the remainder of the period following final termination of the swap during which it is required to be kept.

(3) Each record required by this Section or any other Section of the Act to be kept by a non-SD/MSP counterparty shall be retrievable by that counterparty within three business days throughout the period during which it is required to be kept.

(e) All SDRs registered with the Commission shall keep full, complete, and systematic records, together with all pertinent data and memoranda, of all activities relating to the business of the SDR and all swap data reported to the SDR, as prescribed by the Commission. Such records shall include, without limitation, all records required by § 45.10 of the Commission's proposed swap data repositories regulations.

(f) All records required to be kept by an SDR pursuant to this § 45.2 must be kept by the SDR both:

(1) Throughout the existence of the swap and for five following final termination of the swap, during which time the records must be readily accessible by the SDR and available to the Commission via real time electronic access; and

(2) Thereafter, for a period to be determined by the Commission prior to promulgation of its final swap data recordkeeping and reporting regulations, in archival storage from which they are retrievable by the SDR within three business days.

(g) All records required to be kept pursuant to this Section by any registrant or its affiliates or by any non-SD/MSP counterparty shall be open to inspection upon request by any representative of the Commission, the United States Department of Justice, or the Securities and Exchange Commission, or by any representative of a prudential regulator as authorized by the Commission. Copies of all such records shall be provided, at the

expense of the entity or person required to keep the record, to any representative of the Commission upon request, either by electronic means, in hard copy, or both, as requested by the Commission.

#### **§ 45.3 Swap data Reporting.**

This Section establishes the general swap data reporting obligations of SDs, MSPs, non-SD/MSP counterparties, SEFs, DCMs, and DCOs to report swap data to an SDR. In addition to the reporting obligations set forth in this Section, SDs, MSPs, and non-SD/MSP counterparties are also subject to the reporting obligations with respect to corporate affiliations reporting set forth in § 45.4(b)(2); DCMs, SEFs, SDs, MSPs, 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; and, where applicable, SDs, MSPs, 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) *Reporting of required swap creation data.* Registered entities and swap counterparties must report required swap creation data electronically to an SDR as set forth in this Section.

(1) *Swaps for which the reporting counterparty is an SD or MSP.* For all swaps in which the reporting counterparty is an SD or MSP, required swap creation data must be reported as follows:

(i) *Swaps executed on a SEF or DCM and cleared on a DCO.* (A) The SEF or DCM on which the swap is executed must report all primary economic terms data for the swap asset class of the swap that is in its possession, as soon as technologically practicable following execution of the swap.

(B) The DCO on which the swap is cleared must report all confirmation data, as soon as technologically practicable following clearing of the swap.

(C) The reporting counterparty, as determined pursuant to § 45.5, must report any primary economic terms data for the swap asset class of the swap that is not reported by the SEF or DCM. This report must be made promptly following verification of the primary economic terms by the counterparties with each other at the time of, or immediately following, execution of the swap, but in no event later than: 15 minutes after execution of the swap if both execution and verification of primary economic terms occur electronically; 30 minutes after execution of the swap if execution does not occur electronically but verification of primary economic terms

occurs electronically; or 24 hours after execution of the swap if neither execution nor verification of primary economic terms occurs electronically.

(ii) *Swaps Executed on a SEF but Not Cleared on a DCO.* (A) The SEF on which the swap is executed must report all primary economic terms data for the swap asset class of the swap that is in its possession, as soon as technologically practicable following execution of the swap.

(B) The reporting counterparty, as determined pursuant to § 45.5, must report any primary economic terms data for the swap that is not reported by the SEF. This report must be made promptly following verification of the primary economic terms by the counterparties with each other at the time of, or immediately following, execution of the swap, but in no event later than: 15 minutes after execution of the swap if both execution and verification of primary economic terms occur electronically; 30 minutes after execution of the swap if execution does not occur electronically but verification of primary economic terms occurs electronically; or 24 hours after execution of the swap if neither execution nor verification of primary economic terms occurs electronically.

(C) The reporting counterparty must report all confirmation data for the swap. This report must be made promptly following confirmation of the swap, but in no event later than: 15 minutes after confirmation of the swap if confirmation occurs electronically, or 24 hours after confirmation of the swap if confirmation was done manually rather than electronically.

(iii) *Swaps Not Executed on a SEF or DCM but Cleared on a DCO.* (A) The reporting counterparty, as determined pursuant to § 45.5, must report all primary economic terms data for the swap asset class of the swap. This report must be made promptly following verification of the primary economic terms by the counterparties with each other at or immediately following execution of the swap, but in no event later than: 30 minutes after execution of the swap if verification of primary economic terms occurs electronically; or 24 hours after execution of a swap if verification of primary economic terms does not occur electronically.

(B) The DCO on which the swap is cleared must report all confirmation data, as soon as technologically practicable following clearing of the swap.

(iv) *Swaps Not Executed on a SEF or DCM and Not Cleared on a DCO.* The reporting counterparty, as determined pursuant to § 45.5, must report all

primary economic terms data for the swap, and must report electronically all confirmation data for the swap. The report of primary economic terms data must be made promptly following verification of the primary economic terms by the counterparties with each other at or immediately following execution of the swap, but in no event later than: 30 minutes after execution of the swap if verification of primary economic terms occurs electronically; or 24 hours after execution of a swap if verification of primary economic terms does not occur electronically. The report of confirmation data must be made promptly following confirmation of the swap, but in no event later than: 15 minutes after confirmation of the swap if confirmation occurs electronically, or 24 hours after confirmation of the swap if confirmation was done manually rather than electronically.

(2) *Swaps for which the reporting counterparty is a non-SD/MSP counterparty.* For all swaps in which the reporting counterparty is a non-SD/MSP counterparty, required swap creation data must be reported as set forth in this Section.

(i) *Swaps executed on a SEF or DCM and cleared on a DCO.* (A) The SEF or DCM on which the swap is executed must report all primary economic terms data for the swap asset class of the swap that is in its possession, as soon as technologically practicable following execution of the swap.

(B) The DCO on which the swap is cleared must report all confirmation data, as soon as technologically practicable following clearing of the swap.

(C) The reporting counterparty, as determined pursuant to § 45.5, must report any primary economic terms data for the swap asset class of the swap that is not reported by the SEF or DCM. This report must be made promptly following verification of the primary economic terms by the counterparties with each other at the time of, or immediately following, execution of the swap, but in no event later than: 15 minutes after execution of the swap if both execution and verification of primary economic terms occur electronically; 30 minutes after execution of the swap if execution does not occur electronically but verification of primary economic terms occurs electronically; or 24 hours after execution of the swap if neither execution nor verification of primary economic terms occurs electronically.

(ii) *Swaps Executed on a SEF but Not Cleared on a DCO.* (A) The SEF on which the swap is executed must report all primary economic terms data for the swap asset class of the swap that is in

its possession, as soon as technologically practicable following execution of the swap.

(B) The reporting counterparty, as determined pursuant to § 45.5, must report any primary economic terms data for the swap that is not reported by the SEF. This report must be made promptly following verification of the primary economic terms by the counterparties with each other at the time of, or immediately following, execution of the swap, but in no event later than: 15 minutes after execution of the swap if both execution and verification of primary economic terms occur electronically; 30 minutes after execution of the swap if execution does not occur electronically but verification of primary economic terms occurs electronically; or 24 hours after execution of the swap if neither execution nor verification of primary economic terms occurs electronically.

(C) The reporting counterparty must report all confirmation data for the swap. This report must be made within a time to be determined by the Commission prior to its adoption of final swap data reporting regulations.

(iii) *Swaps Not Executed on a SEF or DCM but Cleared on a DCO.* (A) The reporting counterparty, as determined pursuant to § 45.5, must report all primary economic terms data for the swap. This report must be made promptly following verification of the primary economic terms by the counterparties with each other at the time of, or immediately following, execution of the swap, but in no event later than: 30 minutes after execution of the swap if verification of primary economic terms occurs electronically; or 24 hours after execution of the swap if verification of primary economic terms does not occur electronically.

(B) The DCO on which the swap is cleared must report all confirmation data, as soon as technologically practicable following clearing of the swap.

(iv) *Swaps Not Executed on a SEF or DCM and Not Cleared on a DCO.* (A) The reporting counterparty, as determined pursuant to § 45.5, must report all primary economic terms data for the swap asset class of the swap, and must report all confirmation data. The report of primary economic terms data must be made promptly following verification of the primary economic terms by the counterparties with each other at or immediately following execution of the swap, but in no event later than: 30 minutes after execution of the swap if verification of primary economic terms occurs electronically; or 24 hours after execution of a swap if

verification of primary economic terms does not occur electronically.

(B) The reporting counterparty must report all confirmation data for the swap. This report must be made within a time to be determined by the Commission prior to its adoption of final swap data reporting regulations.

(b) *Reporting of required swap continuation data.* Registered entities and swap counterparties must report required swap continuation data to an SDR as set forth in this Section.

(1) *Credit swaps and equity swaps.* For all credit swaps and equity swaps, registered entities and counterparties must report as set forth below.

(i) *Swaps for which the reporting counterparty is an SD or MSP.* For all credit swaps and equity swaps in which the reporting counterparty is an SD or MSP, required swap continuation data must be reported as follows:

(A) *Swaps cleared on a DCO.* (1) The DCO on which the swap is cleared must report all life cycle event data, on the same day in which any life cycle event occurs; and must report all valuation data in its possession, on a daily basis.

(2) The reporting counterparty must report all valuation data in its possession, on a daily basis; and must report all contract-intrinsic event data, on the same day in which any contract-intrinsic event occurs.

(B) *Swaps Not Cleared on a DCO.* The reporting counterparty must report:

(1) All life cycle event data, on the same day in which any life cycle event occurs;

(2) All valuation data, on a daily basis; and

(3) All contract-intrinsic event data, on the same day in which any contract-intrinsic event occurs.

(ii) *Swaps for which the reporting counterparty is a non-SD/MSP*

*counterparty.* For all credit swaps in which the reporting counterparty is neither an SD nor MSP, required swap continuation data must be reported as follows:

(A) *Swaps cleared on a DCO.*

(1) The DCO on which the swap is cleared must report all life cycle event data, on the same day in which any life cycle event occurs; and must report all valuation data in its possession, on a daily basis.

(2) The reporting counterparty must report all valuation data in its possession, at times to be determined by the Commission prior to its adoption of final swap data reporting regulations; and must report all contract-intrinsic event data, on the same day in which any contract-intrinsic event occurs.

(B) *Swaps Not Cleared on a DCO.* The reporting counterparty must report all

life cycle event data, on the same day in which any life cycle event occurs; all valuation data, at intervals to be determined by the Commission prior to its adoption of final swap data reporting regulations; and all contract-intrinsic event data, on the same day in which any contract-intrinsic event occurs.

(2) *Interest rate swaps, commodity swaps, and currency swaps.* For all interest rate swaps, commodity swaps, and currency swaps, registered entities and counterparties must report as follows:

(i) *Swaps for which the reporting counterparty is an SD or MSP.* For all interest rate swaps, commodity swaps, and currency swaps in which the reporting counterparty is an SD or MSP, required swap continuation data must be reported as follows:

(A) *Swaps cleared on a DCO.* (1) The reporting counterparty must report all required state data, on a daily basis.

(2) The DCO must report all required valuation data in its possession, on a daily basis.

(3) The reporting counterparty must report all required valuation data in its possession, on a daily basis.

(B) *Swaps Not Cleared on a DCO.* The reporting counterparty must report:

(1) All required state data, on a daily basis; and

(2) All required valuation data, on a daily basis.

(ii) *Swaps for which the reporting counterparty is a non-SD/MSP counterparty.* For all interest rate swaps, commodity swaps, or currency swaps in which the reporting counterparty is a non-SD/MSP counterparty, required swap continuation data must be reported as follows:

(A) *Swaps cleared on a DCO.* (1) The reporting counterparty must report all state data, on a daily basis.

(2) The DCO must report all valuation data in its possession, on a daily basis.

(3) The reporting counterparty must report all valuation data in its possession, at intervals to be determined by the Commission prior to its adoption of final swap data reporting regulations.

(B) *Swaps Not Cleared on a DCO.* The reporting counterparty must report:

(1) All state data, on a daily basis; and

(2) All valuation data, at intervals to be determined by the Commission prior to its adoption of final swap data reporting regulations.

#### § 45.4 Unique identifiers.

Each swap subject to the jurisdiction of the Commission shall be identified in all recordkeeping and all swap data reporting concerning that swap by the use of three unique identifiers: A Unique Swap Identifier ("USI"), a

Unique Counterparty Identifier ("UCI"), and a Unique Product Identifier ("UPI").

(a) *Unique Swap Identifiers.* (1) *Creation and Transmission for Swaps Executed on a SEF or DCM.* For each swap executed on a SEF or DCM, a Unique Swap Identifier shall be created and transmitted as follows.

(i) *Creation.* The SEF or DCM shall generate and assign a Unique Swap Identifier at the time of execution of the swap, in the form specified by the Commission. The Unique Swap Identifier shall consist of a single data field that contains two components:

(A) The unique, extensible, alphanumeric code assigned to the SEF or DCM by the Commission at the time of its registration, for the purpose of identifying the SEF or DCM; and

(B) an extensible, alphanumeric code generated and assigned to that swap by the automated systems of the SEF or DCM, which shall be unique with respect to all such codes generated and assigned by that SEF or DCM.

(ii) *Transmission.* The SEF or DCM creating the Unique Swap Identifier for the swap shall transmit the identifier electronically as follows:

(A) To each counterparty to the swap, as soon as technologically practicable after execution of the swap;

(B) to the DCO, if any, to which the swap is submitted for clearing, simultaneously with the transmission of required swap creation data to the DCO for clearing purposes; and

(C) to the SDR to which the SEF or DCM reports required swap creation data for the swap, simultaneously with the transmission by the SEF or DCM to the SDR of required swap creation.

(2) *Creation and Transmission for Swaps Not Executed on a SEF or DCM.* For each swap not executed on a SEF or DCM but rather bilaterally by the counterparties, a Unique Swap Identifier shall be created and transmitted as follows.

(i) *Creation Where the Reporting Counterparty Is an SD or MSP.* If the reporting counterparty determined in accordance with § 45.5 is an SD or MSP, that counterparty shall generate and assign a Unique Swap Identifier at the time of execution of the swap, in the form specified by the Commission. The Unique Swap Identifier shall consist of a single data field that contains two components:

(A) The unique, extensible, alphanumeric code assigned to the SD or MSP by the Commission at the time of its registration as such, for the purpose of identifying the SD or MSP with respect to USI creation; and

(B) an extensible, alphanumeric code generated and assigned to that swap by

the automated systems of the SD or MSP, which shall be unique with respect to all such codes generated and assigned by that SD or MSP for USI purposes.

(ii) *Transmission Where the Reporting Counterparty Is an SD or MSP.* The SD or MSP creating the Unique Swap Identifier for the swap shall transmit the identifier electronically as follows:

(A) To the other counterparty to the swap, as soon as technologically practicable after execution of the swap;

(B) to the DCO, if any, to which the swap is submitted for clearing, simultaneously with the transmission of required swap creation data to the DCO for clearing purposes; and

(C) to the SDR to which the SD or MSP reports required swap creation data for the swap, as part of the report of that data.

(iii) *Creation Where the Reporting Counterparty Is a non-SD-MSP Counterparty.* If the reporting counterparty determined in accordance with § 45.5 is a non-SD/MSP counterparty, the SDR to which the reporting counterparty reports required swap creation data 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, in the form specified by the Commission. The Unique Swap Identifier shall consist of a single data field that contains two components:

(A) The unique, extensible, alphanumeric code assigned to the SDR by the Commission at the time of its registration as such, for the purpose of identifying the SDR with respect to USI creation; and

(B) An extensible, alphanumeric code generated and assigned to that swap by the automated systems of the SDR, which shall be unique with respect to all such codes generated and assigned by that SDR for USI purposes.

(iv) *Transmission Where the Reporting Counterparty Is a Non-SD/MSP counterparty.* The SDR creating the Unique Swap Identifier for the swap shall transmit the identifier electronically as follows:

(A) To the counterparties to the swap, as soon as technologically practicable following creation of the USI; and

(B) To the DCO, if any, to which the swap is submitted for clearing, as soon as technologically practicable following creation of the USI.

(3) *Use.* Each registered entity or swap counterparty subject to the rules 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 receives the identifier throughout the existence of the swap and for as long as any records are required by the rules of the Commission to be kept concerning the swap, regardless of any changes that may occur from time to time with respect to the state of the swap or 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 an SDR or to a regulator of such internally generated identifiers in addition to the reporting of the Unique Swap Identifier.

(b) *Unique Counterparty Identifiers.*

(1) Each counterparty to any swap subject to the jurisdiction of the Commission shall be identified in all recordkeeping with respect to swaps and in all swap data reporting by means of a single, unique counterparty identifier having the characteristics specified by the Commission.

(2) Each counterparty to any swap subject to the jurisdiction of the Commission shall report all of its corporate affiliations into a confidential, non-public corporate affiliations reference database maintained and located as determined by the Commission. Data contained in the corporate affiliations reference database shall be available only to the Commission, and to other financial regulators via the same data access procedures applicable to data in SDRs as provided in part 49, for regulatory purposes. For purposes of this rule, "corporate affiliations" means the identity of all legal entities that own the counterparty, that are under common ownership with the counterparty, or that are owned by the counterparty. This corporate affiliation information must be sufficient to disclose parent-subsidary and affiliate relationships, such that each legal entity within or affiliated with the corporate hierarchy or ownership group to which the counterparty belongs is separately identified. Each counterparty shall also report to the corporate affiliations reference database all changes to the information previously reported concerning the counterparty's corporate affiliations, so as to ensure that the corporate affiliation information recorded in the corporate affiliations reference database is current and accurate at all times.

(3) The identification system characteristics required for the Commission to approve an internationally-developed UCI as the

means by which registered entities and swap counterparties must fulfill their obligations under § 45.4(b)(1) shall be as follows:

(i) The identification system must result in a unique identifier format that is capable of becoming the single international standard for unique identification of legal entities in the financial sector on a global basis, if it is adopted world-wide.

(ii) The identification system must be developed via an international “voluntary consensus standards body” as defined in Office of Management and Budget (“OMB”) Circular No. A–119 Revised, such as the International Organization for Standardization, and must be maintained by such a body and an associated Registration Authority. The standards body and Registration Authority must have a formally documented governance structure acceptable to the Commission, and must have proven expertise in designing and implementing standards for the financial sector. The standards body and Registration Authority must coordinate with the Commission, the Securities and Exchange Commission, the Office of Financial Research, and other financial regulators.

(iii) As provided in OMB Circular No. A–119 Revised, the identification system must be available to all interested parties on a non-discriminatory, royalty-free or reasonable royalty basis.

(A) Information concerning the issuance process for new identifiers must be available publicly and free of charge.

(B) While reasonable initial registration fees and reasonable annual fees would be appropriate for issuance, maintenance, and initial and ongoing verification of a unique identifier, fees must not be charged for use of unique identifiers provided via the identification system, and the identification system must be operated on a non-profit basis.

(C) A comprehensive and reasonably current directory of the Unique Counterparty Identifiers issued by the identification system (but not the entity relationship information reported by the counterparties to the Office of Financial Research or to an SDR as provided above) must be made available free of charge over the Internet or by similarly convenient means.

(iv) The identification system must be supported by a trusted and auditable method of verifying the identity of each legal entity to whom a unique identifier is assigned, both initially and at appropriate intervals thereafter.

(A) The Registration Authority must maintain reference data sufficient to verify that a user has been correctly identified as an entity. At a minimum, the reference data (though not the identifier itself) should include the entity’s name and location.

(B) Issuance of identifiers must be speedy and unbiased. It must not materially hinder the normal course of a firm’s business. Any updates to the reference data must be done with a minimal lag.

(v) The Registration Authority must establish quality assurance practices. The necessary quality assurance processes must ensure that duplicate identifiers are not erroneously assigned, and that reference data for legal entities is accurate. For this purpose, the Registration Authority should accept request for updates or amendments from any identification system participant or financial regulator.

(vi) The Registration Authority must maintain system safeguards comparable to those required for SDRs pursuant to part 49 of this chapter.

(vii) The identification system must be sufficiently extensible to cover all existing and potential future legal entities of all types that are or may become swap counterparties or that are or may become involved in any aspect of the financial issuance and transactions process, and to cover entities of all types with respect to which financial sector entities are required by any financial regulator world-wide to perform due diligence for reporting or risk management purposes.

(viii) The identification system must assign only one unique identifier to any legal entity.

(ix) The unique identifier format must consist of a single data field, and must contain either no embedded intelligence or as little embedded intelligence as practicable.

(x) The unique identifier assigned must persist despite all corporate events. When a corporate event (*e.g.*, a merger or spin-off) results in a new entity, the new entity must receive a new identifier, while the previous identifier continues to identify the predecessor entity.

(xi) The identification system must use data standards and formats that will enable consistency of standards and formats across platforms, data repositories, and asset classes, in order to ensure data comparability and enable data aggregation and cross-sectional analysis.

(4) The Commission shall determine, at least 100 days prior to the implementation date for its final data reporting regulations, whether an

identification system that satisfies the requirements set forth in § 45.4(b)(3) is available and can provide UCIs for all registered entities and swap counterparties required by § 45.4 to use UCIs. If the Commission determines that such an identification system is available, then:

(i) The Commission shall publish in the **Federal Register** and on the Web site of the Commission, no later than 90 days prior to the implementation date for the Commission’s final swap data reporting, the name of the identification system approved by the Commission, the name and contact information of the Registration Authority through which registered entities and swap counterparties can obtain UCIs provided through the approved identification system, and information concerning the procedure and requirements for obtaining such a UCI; and

(ii) All registered entities and swap counterparties subject to these regulations shall comply with § 45.4(b)(1) by using a UCI provided by the identification system approved by the Commission for that purpose.

(5) The Commission may, in its discretion, delegate to the Director of the Division of Market Oversight (“Director”), until the Commission orders otherwise, the authority to make the determination called for by § 45.4(b)(4), to be exercised by the Director or by such other employee or employees of the Commission as may be designated from time to time by the Director. The Director may submit to the Commission for its consideration any matter which has been delegated in this paragraph. Nothing in this paragraph prohibits the Commission, at its election, from exercising the authority delegated in this paragraph.

(6) If the Commission, or the Director as provided in § 45.4(b)(5), determines pursuant to § 45.4(b)(4) that an identification system that satisfies the requirements set forth in § 45.4(b)(3) is not then available, then until such time as the Commission determines that such an identification system has become available, registered entities and swap counterparties shall comply with § 45.4(b)(1) by using a UCI created and assigned by an SDR as follows:

(i) When a swap involving one or more counterparties for which no unique counterparty identifier has yet been created and assigned is reported to an SDR, the repository shall create and assign a unique counterparty identifier for each such counterparty, in a format determined by the Commission, as soon as technologically practicable after that swap is first reported to the repository.

(ii) Each such repository-created unique identifier shall consist of a single data field that contains two components, including:

(A) The unique, extensible, alphanumeric code assigned to the SDR by the Commission at the time of its registration, for the purpose of identifying the SDR; and

(B) An extensible, alphanumeric code generated and assigned to that counterparty by the automated systems of the SDR, which shall be unique with respect to all such unique counterparty identifier codes generated and assigned by that SDR.

(iii) The SDR shall transmit each unique counterparty identifier thus created to each counterparty to the swap, to each other registered entity associated with the swap, to each registered entity or swap counterparty who has made any report of any swap data to the SDR, and to each SDR registered with the Commission, as soon as technologically practicable after creation and assignment of the identifier.

(iv) Any SDR has created and assigned such a UCI to a swap counterparty and has transmitted it as required by § 45.4(b)(6)(iii), all registered entities and swap counterparties shall use that UCI to identify that counterparty in all swap data recordkeeping and reporting, until such time as the Commission determines that an identification system complying with § 45.4(b)(3) has become available, and by regulation requires the use of a different UCI provided by that identification system.

(c) *Unique Product ID.* (1) Each swap subject to the jurisdiction of the Commission shall be identified in all recordkeeping with respect to swaps and in all swap data reporting by means of a unique product identifier, having the characteristics specified by the Commission.

(2) The unique product identifier shall identify the swap asset class to which the swap belongs and the subtype within that swap asset class to which the swap belongs, with sufficient distinctiveness and specificity to enable the Commission and other financial regulators to fulfill their regulatory responsibilities and to enable real time reporting of swaps as provided in the Act and the Commission's regulations. The level of distinctiveness and specificity which the unique product identifier will provide shall be determined separately for each swap asset class.

(3) The system of swap product classification used by unique product

identifiers shall be as determined by the Commission.

#### **§ 45.5 Determination of which counterparty must report.**

(a) If only one counterparty is an SD, the SD shall fulfill all counterparty reporting obligations.

(b) If neither party is an SD, and only one counterparty is an MSP, the MSP shall fulfill all counterparty reporting obligations.

(c) If both counterparties are SDs, or both counterparties are MSPs, or both counterparties are non-SD/MSP counterparties, the counterparties shall agree as one term of their swap transaction which counterparty shall fulfill reporting obligations with respect to that swap; and the counterparty so selected shall fulfill all counterparty reporting obligations.

(d) Notwithstanding the provisions of § 45.5(a) through (c), if only one counterparty to a swap is a U.S. person, that counterparty shall be the reporting counterparty and shall fulfill all counterparty reporting obligations.

(e) Notwithstanding the provisions of § 45.5(a) through (c), if neither counterparty to a swap is a U.S. person, but the swap is executed on a SEF or DCM or otherwise executed in the United States, or is cleared by a DCO, then:

(1) The counterparties to the swap shall select one counterparty to be the reporting counterparty, making such selection as one term of the swap; and

(2) The counterparty so selected shall be the reporting counterparty and shall fulfill all counterparty reporting obligations.

(f) If a reporting counterparty selected pursuant to § 45.5(a) through (f) ceases to be a counterparty to a swap due to an assignment or novation, and the new counterparty is a U.S. person, the new counterparty shall be the reporting counterparty and fulfill all reporting counterparty obligations following such assignment or novation. If a new counterparty to a swap due to an assignment or novation is not a U.S. person, the counterparty that is a U.S. person shall be the reporting counterparty and fulfill all reporting counterparty obligations following such assignment or novation.

#### **§ 45.6 Third-party facilitation of data reporting.**

Registered entities and counterparties required by this part 45 to report required swap creation data or required swap continuation data, while remaining fully responsible for reporting as required by this part 45, may contract with third-party service providers to facilitate reporting.

#### **§ 45.7 Reporting to a single SDR.**

(a) A SEF, DCM, SD or MSP that creates the USI for a swap as provided in § 45.5 shall report all primary economic terms data required to be reported for that swap to a single SDR. The choice of the SDR to receive this report shall be made in a manner to be determined by the Commission.

(b) Where a non-SD/MSP counterparty is the reporting counterparty pursuant to Section 45.5, that reporting counterparty shall report all primary economic terms data required to be reported for that swap to a single SDR of its choosing, which SDR shall create the USI for that swap as provided in § 45.5.

(c) When the SDR chosen as provided in § 45.8(a) and (b) receives the initial report of primary economic terms data for a swap, the SDR shall transmit its own identity, together with the USI for the swap, to each counterparty to the swap, to the SEF or DCM, if any, on which the swap was executed, and to the DCO, if any, to which the swap is submitted for clearing, as soon as technologically practicable following the SDR's receipt of the initial report of primary economic terms data for the swap.

(d) Thereafter, all data reported for the swap, and all corrections of errors and omissions in previously reported data for the swap, by any registered entity or counterparty, shall be reported to that same SDR (or to its successor in the event that it ceases to operate, as provided in part 49 of this chapter).

#### **§ 45.8 Data reporting for swaps in a swap asset class not accepted by any SDR.**

Should there be a swap asset class for which no SDR currently accepts swap data, each registered entity or counterparty required by § 45.3 to report any required swap creation data or required swap continuation data with respect to a swap in that asset class must report that same data at a time and in a form and manner determined by the Commission.

#### **§ 45.9 Required data standards.**

(a) *Data Maintained and Furnished to the Commission by SDRs.* An SDR shall maintain all swap data reported to it in a format acceptable to the Commission, and shall transmit all swap data requested by the Commission to the Commission in an electronic file in a format acceptable to the Commission.

(b) *Data Reported To SDRs.* In reporting swap data to an SDR as required by this Part 45, each reporting entity or counterparty shall use the facilities, methods, or data standards provided or required by the SDR to

which the entity or counterparty reports the data. SDRs may permit reporting entities and counterparties to use various facilities, methods, or data standards, provided that its requirements in this regard enable it to meet the requirements of § 45.9(a) with respect to maintenance and transmission of swap data.

(c) *Delegation of Authority to the Director of the Division of Market Oversight.* The Commission hereby delegates to the Director of the Division of Market Oversight (“Director”), until the Commission orders otherwise, the authority set forth in this § 45.9(c), to be exercised by the Director or by such other employee or employees of the Commission as may be designated from time to time by the Director. The Director may submit to the Commission for its consideration any matter which has been delegated in this paragraph. Nothing in this paragraph prohibits the Commission, at its election, from exercising the authority delegated in this paragraph. The authority delegated to the Director by this § 45.9(c) shall include:

(1) The authority to determine the manner, format, coding structure, and electronic data transmission standards and procedures acceptable to the Commission for the purposes of § 45.9(a).

(2) The authority to determine whether the Commission may permit or require use by reporting entities or counterparties, or by SDRs, of one or more particular data standards (such as FIX, FpML, ISO 20022, or some other standard), in order to accommodate the needs of different communities of users, or to enable SDRs to comply with § 45.9(a).

(d) The Director shall publish from time to time in the **Federal Register** and on the Web site of the Commission the format, data schema, and electronic data transmission methods and procedures acceptable to the Commission.

**§ 45.10 Reporting of errors and omissions in previously reported data.**

(a) Each registered entity and swap counterparty required by this Part 45 to report swap data to an SDR or to any other registered entity or swap counterparty shall report any errors and omissions in the data so reported. Corrections of errors or omissions shall be reported as soon as technologically practicable after discovery of any such error or omission.

(b) For interest rate swaps, commodity swaps, and currency swaps, reporting counterparties fulfill the requirement to report errors or omissions in state data previously reported by making appropriate corrections in their next

daily report of state data as required by § 45.3(b)(2).

(c) Each counterparty to a swap that is not the reporting counterparty as determined pursuant to § 45.5, and that discovers any error or omission with respect to any swap data reported to an SDR for that swap, shall promptly notify the reporting counterparty of each such error or omission. Upon receiving such notice, the reporting counterparty shall report a correction of each such error or omission to the SDR, as provided in § 45.10(a) and (b).

(d) Unless otherwise approved by the Commission, or by the Director of Market Oversight pursuant to § 45.9(c), each registered entity or swap counterparty reporting corrections to errors or omissions in data previously reported as required by this Section shall report such corrections in the same format as it reported the erroneous or omitted data. Unless otherwise approved by the Commission, or by the Director of Market Oversight pursuant to § 45.9, an SDR shall transmit corrections to errors or omission in data previously transmitted to the Commission in the same format as it transmitted the erroneous or omitted data.

**Appendix 1 to Part 45—Tables of Minimum Primary Economic Terms Data and Minimum Valuation Data**

**MINIMUM PRIMARY ECONOMIC TERMS DATA—CREDIT SWAPS AND EQUITY SWAPS**

Sample category	Comment
The Unique Swap Identifier for the swap .....	As defined in § 45.4.
The Unique Counterparty Identifier of the reporting counterparty .....	As defined in § 45.4.
The Unique Counterparty Identifier of the non-reporting party .....	As defined in § 45.4.
The Unique Product Identifier assigned to the swap .....	As defined in § 45.4.
An indication of the counterparty purchasing protection and of the counterparty selling protection.	<i>E.g.</i> option buyer and option seller; buyer and seller.
Information identifying the reference entity .....	The entity that is the subject of the protection being purchased and sold in the swap.
An indication of whether or not both counterparties are SDs.	
An indication of whether or not both counterparties are MSPs.	
An indication of whether or not either counterparty is an SD or an MSP.	
The date and time of trade, expressed using Coordinated Universal time (“UTC”).	
The venue where the swap was executed.	
The effective date.	
The expiration data.	
The price .....	<i>E.g.</i> strike, initial price, spread, <i>etc.</i>
The notional amount, the currency in which the notional amount is expressed, and the equivalent notional amount in U.S. dollars.	
The amount and currency or currencies of any up-front payment .....	
A description of the payment streams of each counterparty .....	<i>E.g.</i> coupon.
The title of any master agreement incorporated by reference and the date of any such agreement.	<i>E.g.</i> annex, credit agreement.
If the transaction involved an existing swap, an indication that the transaction did not involve an opportunity to negotiate a material term of the contract, other than the counterparty.	<i>E.g.</i> assignment.
The data elements necessary for a person to determine the market value of the transaction.	
Whether or not the swap will be cleared by a designated clearing organization.	

## MINIMUM PRIMARY ECONOMIC TERMS DATA—CREDIT SWAPS AND EQUITY SWAPS—Continued

Sample category	Comment
The name of the designated clearing organization that will clear the swap, if any. If the swap is not cleared, whether the “End User exception” was invoked. If the swap is not cleared, all of the settlement terms, including, without limitation, whether the swap is cash-settled or physically settled, and the method for determining the settlement value. Any other primary economic term(s) of the swap matched by the counterparties in verifying the swap.	

## MINIMUM PRIMARY ECONOMIC TERMS DATA—CURRENCY SWAPS

Sample data fields	Comments
The Unique Swap Identifier for the swap .....	As defined in § 45.4.
The Unique Counterparty Identifier of the reporting counterparty .....	As defined in § 45.4.
The Unique Counterparty Identifier of the non-reporting party .....	As defined in § 45.4.
The Unique Product Identifier assigned to the swap .....	As defined in § 45.4.
Contract type .....	<i>E.g.</i> swap, swaption, forwards, options, basis swap, index swap, basket swap, other.
Execution timestamp .....	Time and date of execution.
Currency 1 .....	ISO Code.
Currency 2 .....	ISO Code.
Notional amount 1 .....	For currency one.
Notional amount 2 .....	For currency two.
Settlement agent of the reporting counterparty .....	ID of the settlement agent.
Settlement agent of the non-reporting counterparty .....	ID of the settlement agent.
Settlement currency .....	If applicable.
Exchange rate 1 .....	At the moment of trade/agreement.
Exchange rate 2 .....	At the moment of trade/agreement, if applicable.
Swap delivery type .....	Cash or physical.
Expiration date .....	Expiration date of the contract.
Timestamp for submission to SDR .....	Time and date of submission to the SDR.
Futures contract equivalent .....	As defined in part 150.
Futures contract equivalent unit of measure .....	As defined in part 150.
Any other primary economic term(s) of the swap matched by the counterparties in verifying the swap.	

## MINIMUM PRIMARY ECONOMIC TERMS DATA—INTEREST RATE SWAPS

Sample data field	Comment
The Unique Swap Identifier for the swap .....	As defined in § 45.4.
The Unique Counterparty Identifier of the reporting counterparty.	As defined in § 45.4.
The Unique Counterparty Identifier of the non-reporting party.	As defined in § 45.4.
The Unique Product Identifier assigned to the swap.	As defined in § 45.4.
Contract type .....	<i>E.g.</i> swap, swaption, option, basis swap, index swap, <i>etc.</i>
Trade timestamp .....	Time and date of execution.
Swap effective date .....	Effective date of the contract.
Swap end-date .....	Expiration date of the contract.
Notional amount one .....	The current active notional in local currency.
Notional currency one .....	ISO code of the notional currency.
Notional amount two .....	The second notional amount ( <i>e.g.</i> receiver leg).
Notional currency two .....	ISO code of the notional currency.
Timestamp for submission to SDR .....	Time and date of submission to the SDR.
Payer (fixed rate) .....	Is the reporting party a fixed rate payer? Yes/No/Not applicable.
Fixed leg payment frequency .....	How often will the payments on fixed leg be made.
Direction .....	For swaps—if the principal is paying or receiving the fixed rate. For float-to-float and fixed-to-fixed swaps, it is unspecified. For non-swap instruments and swaptions, the instrument that was bought or sold.
Option type .....	<i>E.g.</i> put, call, straddle.
Fixed rate.	
Fixed rate day count fraction.	
Floating rate payment frequency.	
Floating rate reset frequency.	
Floating rate index name/rate period.	

## MINIMUM PRIMARY ECONOMIC TERMS DATA—INTEREST RATE SWAPS—Continued

Sample data field	Comment
Leg 1 .....	If two floating legs, report what is paid.
Leg 2 .....	If two floating legs, report what is received.
Futures contract equivalent .....	As defined in part 150.
Futures contract equivalent unit of measure .....	As defined in part 150.
Any other primary economic term(s) of the swap matched by the counterparties in verifying the swap.	

## MINIMUM PRIMARY ECONOMIC TERMS DATA—OTHER COMMODITY SWAPS

Sample data field	Comment
The Unique Swap Identifier for the swap .....	As defined in § 45.4.
The Unique Counterparty Identifier of the reporting counterparty .....	As defined in § 45.4.
The Unique Counterparty Identifier of the non-reporting party .....	As defined in § 45.4.
The Unique Product Identifier assigned to the swap .....	As defined in § 45.4.
Contract type .....	<i>E.g.</i> swap, swaption, option, <i>etc.</i>
Execution timestamp .....	Time and date of execution.
Quantity .....	The Unit of measure applicable for the quantity on the swap.
Total quantity .....	The amount of the commodity for the entire term of the swap.
Settlement method .....	Cash or physical.
Delivery type .....	For physical delivery.
Start date .....	Predetermined start date from which payments will be exchanged.
End-date .....	Predetermined end date from which payments will be exchanged.
Submission to SDR timestamp .....	Time and date of submission to the SDR.
Averaging method .....	The type of calendar days used to calculate price on a transaction.
Payment calendar.	
Buyer pay index .....	The published price as paid by the buyer.
Seller pay index .....	The published price as paid by the seller.
Buyer .....	Party purchasing product, <i>e.g.</i> payer of the fixed price (for swaps), or payer of the floating price (for put swaption), or payer of the fixed price (for call swaption).
Seller .....	Party offering product, <i>e.g.</i> payer of the floating price (for swaps), payer of the fixed price (for put swaption), or payer of the floating price (for call swaption).
Price .....	<i>E.g.</i> fixed price, the heat rate value, <i>etc.</i>
Price unit .....	The unit of measure applicable for the price on the transaction.
Price currency .....	<i>E.g.</i> ISO code.
Grade .....	<i>E.g.</i> the grade of oil or refined product being delivered.
Futures contract equivalent .....	As defined in part 150.
Futures contract equivalent unit of measure .....	As defined in part 150.
Any other primary economic term(s) of the swap matched by the counterparties in verifying the swap.	

## MINIMUM VALUATION DATA

Sample data fields
Independent amount.
Independent amount currency.
Independent amount payer.
Independent amount receiver.
Initial margin.
Variation margin.
Mark-to-market.

## MINIMUM VALUATION DATA—Continued

Sample data fields
Non-cash collateral.
Non-cash collateral valuation.

**Appendix 2 to Part 45—Master Reference Generic Data Fields List**

This table includes Master Reference Generic Data Fields that the Commission

believes could be relevant for standardized swaps in some or all swap asset classes. The Commission requests comment on whether any of the data fields in this Master Reference Generic Data Fields List should be included in one or more of the Tables of Required Minimum Primary Economic Terms Data for specific swap asset classes, or in the Minimum Valuation Data table, that are included in Appendix 1 to Part 45.

Data fields	Description
<b>Potential Initial Data</b>	
Client Name .....	Name of the customer (client).
Counterparty Origin .....	Indicator of whether a swap was done on behalf of a customer or house account.
Delivery Type .....	Deliverable or Non-deliverable.
Effective Date or Start Date .....	The date a swap becomes effective or starts.
Entity Reporting to SDR .....	The entity making a data report.
Execution Timestamp .....	The time and date a swap was executed on a platform.

Data fields	Description
Industrial Sector .....	Industrial sector.
Intermediary .....	The entity that brings two parties together for the swap transaction.
Master Agreement Type .....	The type of master agreement that was executed.
Maturity, Termination, or End Date .....	The day a swap expires.
Non-Financial Entity .....	Y/N. Are one or more counterparties to the swap transaction not a financial entity?
Order Entry Timestamp .....	The time and date when the order was entered.
Parent Counterparty .....	The parent company of the counterparty.
Parent Originator .....	The parent company of the originator.
Platform/Deal Source .....	Name of the platform or system on which the swap was executed.
Registration with the SEC .....	Y/N. This field indicates whether the exempted counterparties are registered with the SEC.
SDR submission date .....	The time and date the swap transaction was submitted to the SDR.
Settlement Method .....	The agreed upon way the swap will settle.
Submission of order entry timestamp .....	The time and date when the order was sent to the platform to be executed.

#### Potential Confirmation/Clearance Data

Board of Directors approval .....	Y/N. If the exempted counterparties are registered with the SEC did their Board of Directors (or alternative governance body for non-corporate end users) approve the exemption from clearing?
Call, put or cancellation date .....	Information needed to determine when a call, put, or cancellation may occur with respect to a transaction.
Cleared .....	An indicator of whether a swap has been cleared.
Clearing Entity .....	Name of the Clearing Organization where a swap was cleared.
Clearing Exemption .....	Y/N. Are one or more counterparties to the swap transaction exempted from clearing?
Clearing Timestamp .....	The time and date a swap was cleared.
Confirmed .....	An indicator of whether a swap has been confirmed by both parties.
Master Agreement Date .....	Date of the Master Agreement.
Submission Timestamp for clearing .....	The time and date when a swap was submitted to a clearing organization.

#### Potential Position Data

Exchange Rate/Price Unit .....	Spot rate or price unit used.
Futures Contract Equivalent .....	Swap amount divided by the commodity quantity per futures contract to give you the total number of futures contracts.
Futures Contract Equivalent unit of measure .....	The unit of measure that was used in the future contract equivalent computation.
Notional (U.S.\$ Equiv.) .....	U.S.\$ equivalent of the "Notional Amount or Total Quantity."
Notional Amount/Total Notional Quantity .....	Total currency amount or total quantity in the unit of measure of an underlying commodity.
Notional Currency/Price Currency .....	Notional Currency.

#### Potential Option Instrument Applicable Data

Lockout Period .....	Date of first allowable exercise.
Option Expiration Date .....	Expiration date of the option.
Option Premium .....	Fixed premium paid by the buyer to the seller.
Option Premium currency .....	The currency used to compute the premium.
Option Style .....	American, European, Bermudan, Asian.
Option Type .....	Call, Put, Straddle, Strangle, Collar, Butterfly, <i>etc.</i>
Strike Price (Cap/Floor rate) .....	The strike price of the option.
Value for Options .....	This value of the option at the end of every business day.

#### Potential Margin/Collateral Data

Collateral on Deposit .....	The amount of collateral that has been agreed upon by the parties to the swap.
Collateral Type .....	The type of collateral that has been agreed upon.
Credit Support Indicator .....	Y/N. Have the exempt counterparties given notice to the CFTC regarding the exemption and executed a CSA or other form of credit support?
Independent Amount .....	Independent amount.
Independent Amount Currency .....	Currency of the independent amount.
Independent Amount Payer .....	The counterparty that will pay the independent amount.
Independent Amount Receiver .....	The counterparty that will receive the independent amount.
Initial Margin Requirement .....	The initial margin requirement that has been required by the parties to the swap.
Linked Independent Amount .....	Linked independent amount.
Linked Independent Amount Currency .....	Currency of the linked independent amount.
Long Option Value .....	The long option value contained in the maintenance margin requirement.

Data fields	Description
Maintenance Margin Requirement .....	The maintenance margin requirement that has been required by the parties to the swap.
Non-Cash Collateral .....	Non-Cash collateral that is allowed for certain end users.
Short Option Value .....	The short option value contained in the maintenance margin requirement.
Types of Collateral on Deposit .....	List of collateral by asset type for the collateral on deposit amount.
Variation Margin .....	U.S. \$ amount that is paid daily in order to mark to market the swap transaction.

Issued in Washington, DC, on November 19, 2010, by the Commission.

**David A. Stawick,**

*Secretary of the Commission.*

#### **Statement of Chairman Gary Gensler**

##### *Swap Data Recordkeeping and Reporting Requirements*

I support the proposed rulemaking to establish swap data recordkeeping and reporting requirements for registered entities

and counterparties involved in swaps. The proposed rule is intended to ensure that complete, timely and accurate data concerning all swaps is available to the Commission and other regulators. The proposed rule requires that data be consistently maintained and reported to swap data repositories by swap dealers, major swap participants, designated contract markets, swap execution facilities, derivatives clearing organizations and futures commission merchants. As swaps exist over a period of days to sometimes years, the

proposal includes requirement for the reporting of data upon the transaction and to continue over the lifecycle of the swap. Another important component of the proposed rulemaking is that there will be required unique identifiers for swaps, counterparties and products. This will enhance operational efficiency for market participants and improve market surveillance for regulators.

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