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17 CFR Part 45

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

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 45

RIN 3038-AE12

Amendments to Swap Data Recordkeeping and Reporting Requirements for Cleared Swaps

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commodity Futures Trading Commission (“Commission” or “CFTC”) is proposing amendments to rules relating to swap data reporting in connection with cleared swaps for swap data repositories (“SDRs”), derivatives clearing organizations (“DCOs”), designated contract markets (“DCMs”), swap execution facilities (“SEFs”), swap dealers (“SDs”), major swap participants (“MSPs”), and swap counterparties who are neither SDs nor MSPs. Commodity Exchange Act (“CEA” or “Act”) provisions relating to swap data recordkeeping and reporting were added by the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”). The proposed amendments to the rules further the goals of the Dodd-Frank Act to reduce systemic risk, increase transparency and promote market integrity within the financial system.

DATES: Comments must be received on or before October 30, 2015.

ADDRESSES: You may submit comments, identified by “Amendments to Swap Data Recordkeeping and Reporting Requirements for Cleared Swaps” and RIN 3038-AE12, by any of the following methods:

- *CFTC Web site:* <http://comments.cftc.gov>. Follow the instructions for submitting comments through the Comments Online process on the Web site.
- *Mail:* Send to Christopher Kirkpatrick, 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. Please submit your comments using only one of these methods.

All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to www.cftc.gov. You should submit only information that

you wish to make available publicly. If you wish the Commission to consider information that you believe is exempt from disclosure under the Freedom of Information Act, a petition for confidential treatment of the exempt information may be submitted according to the procedures established in § 145.9 of the Commission’s regulations.¹

The Commission reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse or remove any or all of your submission from www.cftc.gov that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of the rulemaking will be retained in the public comment file and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under the Freedom of Information Act.

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¹ 17 CFR 145.9.

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I. Background

A. Introduction

On July 21, 2010, President Obama signed into law the Dodd-Frank Act.² Title VII of the Dodd-Frank Act amended the CEA³ to establish a comprehensive new regulatory framework for swaps and security-based swaps. The legislation was enacted to reduce systemic risk, increase transparency, and promote market integrity within the financial system by, among other things: providing for the registration and comprehensive regulation of SDs and MSPs; imposing clearing and trade execution requirements on standardized derivative products; creating rigorous recordkeeping and data reporting regimes with respect to swaps, including real time reporting; and enhancing the Commission’s rulemaking and enforcement authorities with respect to, among others, all registered entities, intermediaries, and swap counterparties subject to the Commission’s oversight.

B. Statutory Authority

To enhance transparency, promote standardization, and reduce systemic risk, section 727 of the Dodd-Frank Act added to the CEA section 2(a)(13)(G), which requires all swaps, whether cleared or uncleared, to be reported to SDRs, which are registered entities⁴ created by section 728 of the Dodd-Frank Act to collect and maintain data related to swap transactions as prescribed by the Commission, and to make such data available to the Commission and other regulators.⁵ Section 21(b) of the CEA, added by section 728 of the Dodd-Frank Act, directs the Commission to prescribe standards for swap data recordkeeping

² 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/DoddFrankAct/index.htm>.

³ 7 U.S.C. 1, *et seq.*

⁴ See also CEA sections 1a(40)(E) and 1a(48).

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

and reporting, which are to apply to both registered entities and counterparties involved with swaps⁶ and which are to be comparable to those for clearing organizations in connection with their clearing of swaps.⁷

C. Regulatory History—Part 45 Final Rulemaking

On December 20, 2011, the Commission adopted part 45 of the Commission's regulations ("Final Part 45 Rulemaking").⁸ Part 45 implements the requirements of section 21 of the CEA by setting forth the manner and contents of reporting to SDRs, and requires electronic reporting both when a swap is initially executed, referred to as "creation" data,⁹ and over the course of the swap's existence, referred to as "continuation" data.¹⁰ The part 45 regulations set forth varying reporting timeframes depending on the type of reporting, counterparty, execution, or product.

As part of the Commission's ongoing efforts to improve swap transaction data quality and to improve the Commission's ability to utilize the data for regulatory purposes, Commission staff has continued to evaluate reporting issues relating to the operation of part 45, and cleared swaps in particular. Commission staff's efforts included the formation of an interdivisional staff working group to identify, and make recommendations to resolve, reporting challenges associated with certain swaps transaction data recordkeeping and reporting provisions, including the provisions adopted in the Final Part 45 Rulemaking.¹¹

⁶ CEA section 21(b)(1)(A).

⁷ CEA section 21(b)(3).

⁸ See "Swap Data Recordkeeping and Reporting Requirements," 77 FR 2136, Jan. 13, 2012.

⁹ See 17 CFR 45.1 (defining "required swap creation data" as "all primary economic terms data for a swap in the swap asset class in question, and all confirmation data for the swap.") "Primary economic terms data" is defined as "all of the data elements necessary to fully report all of the primary economic terms of a swap in the swap asset class of the swap in question," while "confirmation data" is defined as "all of the terms of a swap matched and agreed upon by the counterparties in confirming the swap. For cleared swaps, confirmation data also includes the internal identifiers assigned by the automated systems of the [DCO] to the two transactions resulting from novation to the clearing house." *Id.* See also 17 CFR 45.3.

¹⁰ See 17 CFR 45.1 (defining "required swap continuation data" as "all of the data elements that must be reported during the existence of a swap to ensure that all data concerning the swap in the swap data repository remains current and accurate, and includes all changes to the primary economic terms of the swap occurring during the existence of the swap. . . .") See also 17 CFR 45.4.

¹¹ See Press Release, CFTC to Form an Interdivisional Working Group to Review Regulatory Reporting, Jan. 21, 2014, available at

Based in large part on those efforts, the Commission ultimately requested comment on a variety of swap data reporting and recordkeeping provisions to help determine how such provisions were being applied and to determine whether or what clarifications or enhancements may be appropriate.¹² One of the subjects of the request for comment was the reporting of cleared swaps, and, in particular, the manner in which the swap data reporting rules should address cleared swaps.¹³ In response to this request, the Commission received a number of comment letters addressing reporting of cleared swaps.¹⁴ References to "commenters" throughout this release refer to those who submitted such comment letters, and summaries and a discussion of the general themes raised by those commenters appear in the relevant sections throughout this release.

The swap data reporting framework adopted in the Final Part 45 Rulemaking was largely based on the mechanisms for the trading and execution of uncleared swaps. Under such a regime,

<http://www.cftc.gov/PressRoom/PressReleases/pr6837-14>.

¹² See "Review of Swap Data Recordkeeping and Reporting Requirements," Request for Comment, 79 FR 16689, Mar. 26, 2014.

¹³ *Id.* at 16694.

¹⁴ Commenters included: The American Gas Association, May 27, 2014; American Petroleum Institute, May 27, 2014; Americans for Financial Reform, May 27, 2014 ("AFR"); Australian Bankers' Association, May 27, 2014 ("ABA"); Better Markets, Inc., May 27, 2014, ("Better Markets"); B&F Capital Markets, Inc., May 27, 2014; CME Group, May 27, 2014 ("CME"); Coalition for Derivatives End-Users, May 27, 2014 ("CDEU"); Coalition of Physical Energy Companies, May 27, 2014; Commercial Energy Working Group, May 27, 2014 ("CEWG"); Commodity Markets Council, May 27, 2014 ("CMC"); The Depository Trust & Clearing Corporation, May 27, 2014 ("DTCC"); EDF Trading North America, LLC, May 27, 2014; Edison Electric Institute, May 27, 2014 ("EEI"); Financial InterGroup Holdings Ltd, May 27, 2014; Financial Services Roundtable, May 27, 2014; Fix Trading Community, May 27, 2014; The Global Foreign Exchange Division of the Global Financial Markets Association, May 27, 2014 ("GFMA"); HSBC, May 27, 2014; Interactive Data Corporation, May 27, 2014; Intercontinental Exchange, May 27, 2014 ("ICE"); International Energy Credit Association, May 27, 2014; International Swaps and Derivatives Association, Inc., May 23, 2014 ("ISDA"); Japanese Bankers Association, May 27, 2014 ("JBA"); Just Energy Group Inc., May 27, 2014; LCH.Clearnet Group Limited, May 29, 2014 ("LCH"); Managed Funds Association, May 27, 2014 ("MFA"); Markit, May 27, 2014; Natural Gas Supply Association, May 27, 2014 ("NGSA"); NFP Electric Associations (National Rural Electric Cooperative Association, American Public Power Association, and Large Public Power Council), May 27, 2014 ("NFPEA"); OTC Clearing Hong Kong Limited, May 27, 2014 ("OTC Hong Kong"); Securities Industry and Financial Markets Association Asset Management Group, May 27, 2014 ("SIFMA"); SWIFT, May 27, 2014; Swiss Re, May 27, 2014; Thomson Reuters (SEF) LLC, May 27, 2014 ("TR SEF"); and TriOptima, May 27, 2014.

swap data reporting was premised upon the existence of one continuous swap for reporting and data representation purposes. The Commission has since had additional opportunities to consult with industry and to observe how the part 45 regulations function in practice with respect to swaps that are cleared, including how the implementation of part 45 interacts with the implementation of part 39 of the Commission's regulations, which contains provisions applicable to DCOs.

In particular, § 39.12(b)(6) provides that upon acceptance of a swap by a DCO for clearing, the original swap is extinguished and replaced by equal and opposite swaps, with the DCO as the counterparty to each such swap.¹⁵ The original swap that is extinguished upon acceptance for clearing is commonly referred to as the "alpha" swap and the equal and opposite swaps that replace the original swap are commonly referred to as "beta" and "gamma" swaps. The Commission has observed that certain provisions of part 45 could better accommodate the cleared swap framework set forth in § 39.12(b)(6). The revisions and additions proposed in this release are intended to provide clarity to swap counterparties and registered entities of their part 45 reporting obligations with respect to the swaps involved in a cleared swap transaction. This proposal is also intended to improve the efficiency of data collection and maintenance associated with the reporting of the swaps involved in a cleared swap transaction.

Where possible, the Commission has endeavored to harmonize the rules proposed in this release with the approach proposed by the Securities and Exchange Commission ("SEC") in its release proposing certain new rules and rule amendments to Regulation SBSR—Reporting and Dissemination of Security-Based Swap Information ("Regulation SBSR").¹⁶ The SEC release proposed new rules and rule amendments to Regulation SBSR,

¹⁵ See 17 CFR 39.12(b)(6) (requiring a DCO that clears swaps to "have rules providing that, upon acceptance of a swap by the [DCO] for clearing: (i) The original swap is extinguished; (ii) the original swap is replaced by an equal and opposite swap between the [DCO] and each clearing member acting as principal for a house trading or acting as agent for a customer trade . . ."). The Commission reaffirmed its position regarding the composition of a cleared swap in a statement regarding Chicago Mercantile Exchange ("CME") Rule 1001. See Statement of the Commission on the Approval of CME Rule 1001 at 6, Mar. 6, 2013, available at <http://www.cftc.gov/ucm/groups/public/@newsroom/documents/file/statementofthecommission.pdf>.

¹⁶ See "Regulation SBSR—Reporting and Dissemination of Security-Based Swap Information," 80 FR 14740, Mar. 19, 2015.

which, in pertinent part, address the reporting to a registered security-based swap data repository of security-based swaps that will be submitted to clearing. The SEC received a number of comments on its release,¹⁷ and, given the similarities between the reporting framework set forth in the proposed new rules and rule amendments to Regulation SBSR and the proposed amendments to part 45 that are the subject of this release, the Commission also includes in this release the following discussion of the general themes raised in the Regulation SBSR comment letters:¹⁸

Several commenters expressed concerns that allowing the clearing agency to report data to a different security-based SDR (“SB-SDR”)¹⁹ than the SB-SDR to which an initial alpha trade was reported could result in bifurcated data, and contended that beta and gamma trades should be reported to the same SB-SDR as the alpha trade in order to facilitate data aggregation and to allow regulators easy access to all of the data for a particular swap transaction.²⁰

Some commenters expressed support for modifications which would assign the sole reporting duty for a clearing transaction²¹ to the registered clearing agency, provided that the SEC adopts its proposal to assign the clearing agency the sole reporting obligation for clearing transactions and that the SEC allows the

registered clearing agency to select the SB-SDR to which it reports.²²

Some commenters agreed with the SEC’s proposed addition of a requirement that the registered clearing agency report whether it has accepted an alpha for clearing to the alpha SB-SDR in the format required by such SB-SDR.²³ Another commenter contended that if the reporting side²⁴ to the alpha selected the SB-SDR to receive the beta and gamma trades, the clearing agency would not have to report to the alpha SB-SDR that the security-based swap has been accepted for clearing.²⁵

Some commenters acknowledged the value of the proposal to require the party required to report the alpha to provide the clearing agency with the transaction ID of the alpha and the identity of the alpha SB-SDR, noting that the Unique Transaction Identifier has already been incorporated into submission flows to clearing agencies for use in reporting in other jurisdictions.²⁶

D. Consultation With Other U.S. Financial Regulators

In developing these rules, Commission staff has engaged in extensive consultations with U.S. domestic financial regulators. The agencies and institutions consulted include the SEC, the Federal Reserve Board of Governors, the Federal Housing Finance Agency, the Federal Deposit Insurance Corporation, Office of

Comptroller of the Currency, and the Farm Credit Administration.

E. Summary of Proposed Revisions to Part 45

The Commission is proposing revisions and additions to §§ 45.1, 45.3, 45.4, 45.5, 45.8, 45.10, and appendix 1 to part 45 in order to provide clarity to counterparties to a swap and registered entities regarding their part 45 reporting obligations with respect to each of the swaps involved in a cleared swap transaction.²⁷ The Commission proposes the following amendments, each of which is discussed in greater detail in Section II of this release:

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

- Amendments to § 45.3 would: Modify and clarify DCO creation data reporting obligations for swaps that result from the clearing process; establish which entity has the obligation to choose the SDR to which creation data is reported; eliminate confirmation data reporting obligations for swaps that are intended to be submitted to a DCO for clearing at the time of execution; and make conforming changes.

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

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

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

- Amendments to § 45.10 would provide that all swap data for a given

¹⁷ The comment file is available at <http://www.sec.gov/comments/s7-03-15/s70315.shtml>.

¹⁸ The discussion of comments received by the SEC on its release proposing new rules and rule amendments to Regulation SBSR reflects the Commission’s understanding of the comment letters and do not necessarily reflect the views of the SEC. Comments received by the SEC in response to its release proposing new rules and rule amendments to Regulation SBSR are denoted as “Regulation SBSR Comment Letter” throughout this release.

¹⁹ As summarized in this release, references to SDRs in Regulation SBSR Comment Letters in some cases have been replaced with “SB-SDR” to delineate between the SEC and the Commission SDR registration regimes, respectively. Throughout this release, references to “SDR” refer to SDRs registered with the Commission.

²⁰ See Depository Trust and Clearing Corporation Regulation SBSR Comment Letter, May 4, 2015, at 4–6 (advocating for all records related to a single alpha trade to be reported to a single SB-SDR and suggesting an alternative to the SEC’s proposed rules); Better Markets, Inc. Regulation SBSR Comment Letter, May 4, 2015, at 2, 4 (stating that the SEC must ensure it is easy to commingle and use data from two different SDRs and enable beta and gamma trades to be traced back to the alpha trade, and, if not, that the SEC must require the alpha, beta, and gamma trades to all be reported to the same SDR); and Markit Regulation SBSR Comment Letter, May 4, 2015, at 3, 6.

²¹ SEC Rule 900(g) defines “clearing transaction” as “a security-based swap that has a registered clearing agency as a direct counterparty.” See Regulation SBSR—Reporting and Dissemination of Security-Based Swap Information, 80 FR 14564, Mar. 19, 2015.

²² See International Swaps and Derivatives Association, Inc. and Securities Industry and Financial Markets Association Regulation SBSR Comment Letter, May 4, 2015, at 24 (noting that clearing agencies have demonstrated their ability and preference to report data for cleared transactions in other jurisdictions globally and under the CFTC rules) and ICE Trade Vault, LLC Regulation SBSR Comment Letter, May 4, 2015, at 1, 3, 5 (stating that for cleared security-based swaps, the clearing agency is the sole party who holds the complete and accurate record of transactions and positions, and that no other party has complete information about the resulting swaps and the subsequent downstream clearing processes that affect those swaps).

²³ See International Swaps and Derivatives Association, Inc. and Securities Industry and Financial Markets Association Regulation SBSR Comment Letter at 24 (noting that such a requirement would prevent the “orphaning” of alphas that currently occurs under CFTC rules) and ICE Trade Vault, LLC Regulation SBSR Comment Letter at 5 (noting that the SDR should immediately accept and process the alpha termination and that clearing agencies are the sole reporting side that can report alpha terminations).

²⁴ The “reporting side” under SEC rules is a similar concept to the “reporting counterparty” under part 45 of the Commission’s rules.

²⁵ See Markit Regulation SBSR Comment Letter at 15.

²⁶ See International Swaps and Derivatives Association, Inc. and Securities Industry and Financial Markets Association Regulation SBSR Comment Letter at 25.

²⁷ The Commission is also proposing to amend the part 45 authority citation to replace a reference to 7 U.S.C. 24 with a reference to 7 U.S.C. 24a.

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

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

II. Proposed Regulations

Throughout Section II of this release, the Commission will outline each existing provision the Commission is proposing to amend, discuss each proposed amendment, and request comments about the proposed amendments. The Commission has also included several examples to demonstrate how cleared swap reporting workflows would function under the proposed revisions.

A. Definitions—Proposed Amendments to § 45.1

1. Existing § 45.1

The Commission is proposing to revise the definition of “derivatives clearing organization” in § 45.1 and to add definitions for the terms “original swap” and “clearing swap” to § 45.1.

2. Proposed Amendments and Additions to § 45.1

i. “Derivatives Clearing Organization”

Currently, § 45.1 defines “derivatives clearing organization,” as used in part 45, to have the meaning “set forth in CEA section 1a(9), and any Commission regulation implementing that Section, including, without limitation, § 39.5 of this chapter.” However, the CEA currently defines “derivatives clearing organization” in section 1a(15), not section 1a(9).

The Commission proposes to revise the definition of “derivatives clearing organization” in § 45.1 so that it cross-references the definition provided in § 1.3(d) of the Commission’s regulations and so that it explicitly refers to a DCO registered with the Commission under section 5b(a) of the CEA.²⁸ The proposed modification would redefine a “derivatives clearing organization” for purposes of part 45 to mean “a derivatives clearing organization, as

defined by § 1.3(d) of this chapter, that is registered with the Commission.”

ii. “Original Swap” and “Clearing Swap”

As discussed earlier in this release, a cleared-swap transaction generally comprises an original swap that is terminated upon novation, and the equal and opposite swaps that replace it, with the DCO as the counterparty for each swap that replaces the original swap.²⁹ The existing part 45 regulations do not clearly delineate the swap data reporting requirements associated with each of the swaps involved in a cleared-swap transaction. Accordingly, the Commission proposes to add definitions of “original swap” and “clearing swap” to part 45 so that the part 45 reporting rules will be more consistent with the regulations applicable to DCOs set forth in § 39.12(b)(6).

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

As noted above, while a cleared-swap transaction generally comprises an original swap that is terminated upon novation and the equal and opposite swaps that replace it, the Commission is aware of certain circumstances in which a cleared swap transaction may not involve the replacement of an original swap.³⁰ Accordingly, the proposed definition of “clearing swap” is intended to encompass: (1) Swaps to which the DCO is a counterparty and that replace an original swap (*i.e.*, swaps commonly known as betas and gammas) and (2) all other swaps to which the DCO is a counterparty (even if such swap does not replace an original swap).

As noted above, while original swaps are commonly referred to as “alpha” swaps and while the equal and opposite swaps that replace the original swap are commonly referred to as “beta” and

“gamma” swaps, the Commission will use the proposed defined terms “original swap” and “clearing swap” throughout this section of the release.

The proposed definition of original swap will provide clarity with respect to certain continuation data reporting requirements for such swaps by tying such obligations to a specific point in time in the life of a swap that is either intended to be submitted to a DCO for clearing at the time of execution, or that is not intended to be cleared at the time of execution but is later submitted to a DCO for clearing. The Commission notes that under the proposed definition, a swap that is submitted to a DCO for clearing can become an original swap by virtue of the DCO’s acceptance of such swap for clearing, irrespective of: (1) Whether such swap is executed on or pursuant to the rules of a SEF or DCM or off-facility; (2) whether or not such swap is subject to the clearing requirement; and (3) whether such swap is intended to be cleared at the time of execution or not intended to be cleared at the time of execution, but subsequently submitted to a DCO for clearing.³¹

3. Request for Comment

The Commission requests comment on all aspects of the proposed revised and proposed new definitions in § 45.1. The Commission also invites comments on the following:

(1) Is the Commission’s proposed definition of “original swap” sufficiently clear and complete? If not, please provide detail about aspects of the definition that you believe are insufficiently clear or inadequately addressed.

(2) Is the Commission’s proposed definition of “clearing swap” sufficiently clear and complete, and does it, together with the proposed definition of “original swap,” adequately account for all components of a cleared swap transaction and for all types of cleared swap transactions? If not, please provide detail about aspects of the definition that you believe are insufficiently clear or inadequately addressed.

(3) Is the Commission’s proposed revised definition of “derivatives clearing organization” sufficiently clear and complete? If not, please provide detail about aspects of the definition that you believe are insufficiently clear or inadequately addressed.

(4) Are any other new defined terms necessary regarding swap data

²⁹ See 17 CFR 39.12(b)(6).

³⁰ For example, in the preamble to the part 39 adopting release, the Commission noted that “open offer” systems are acceptable under § 39.12(b)(6), stating that “Effectively, under an open offer system there is no ‘original’ swap between executing parties that needs to be novated; the swap that is created upon execution is between the DCO and the clearing member, acting either as principal or agent.” “Derivatives Clearing Organization General Provisions and Core Principles,” 76 FR 69334, 69361, Nov. 8, 2011.

³¹ See 17 CFR 39.12(b)(6). Clearing swaps would not be executed on or pursuant to the rules of a SEF or DCM as such swaps are created by a DCO.

²⁸ 7 U.S.C. 7a–1(a).

recordkeeping and reporting requirements of part 45 with respect to cleared swaps?

(5) Are the terms as defined in § 45.1 adequately clear with respect to the existing swap data recordkeeping and reporting requirements of part 45? If not, please explain.

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

1. Existing § 45.3

Regulation 45.3 requires reporting to an SDR of two types of “creation data” generated in connection with a swap’s creation: “Primary economic terms data” and “confirmation data.”³² Regulation 45.3 governs what creation data must be reported, who must report it, and deadlines for its reporting.

Regulation 45.3 imposes swap data reporting requirements with respect to both primary economic terms data and confirmation data to different reporting counterparties and entities depending on whether the swap is executed on or pursuant to the rules of a SEF or DCM (§ 45.3(a)), subject to mandatory clearing and executed off-facility (§ 45.3(b)), or not subject to mandatory clearing and executed off-facility (§ 45.3(c) and (d)). Regulation 45.3 also addresses specific creation data reporting requirements in circumstances where a swap is accepted for clearing by a DCO,³³ including excusing the reporting counterparty from reporting creation data in certain circumstances.³⁴

2. Proposed Amendments to § 45.3

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

³² Section 45.1 defines “required swap creation data” as primary economic terms data and confirmation data. Section 45.1 defines “primary economic terms data” as “all of the data elements necessary to fully report all of the primary economic terms of a swap in the swap asset class of the swap in question” and defines “confirmation data” as “all of the terms of a swap matched and agreed upon by the counterparties in confirming the swap. For cleared swaps, confirmation data also includes the internal identifiers assigned by the automated systems of the derivatives clearing organization to the two transactions resulting from novation to the clearing house.” 17 CFR 45.1.

³³ See 17 CFR 45.3(a)(2), (b)(2), (c)(1)(ii), (c)(2)(ii), and (d)(2).

³⁴ See 17 CFR 45.3(b)(1), (c)(1)(i), (c)(2)(i), and (d)(1).

benefit from greater clarity regarding how the subsections of § 45.3 assign reporting responsibilities for each of the swaps involved in a cleared-swap transaction. Accordingly, the Commission proposes several additions and deletions so that § 45.3 will better delineate the creation data reporting requirements associated with each swap involved in a cleared swap transaction. The Commission also proposes several modifications to clarify existing requirements.

i. Proposed Revised References to Clearing Requirement Exceptions and Exemptions

Currently, §§ 45.3 and 45.8 include references to the end-user exception to the swap clearing requirement set forth in section 2(h)(7) of the CEA. Following the publication of the Final Part 45 Rulemaking, the Commission codified the end-user exception in § 50.50 and published Two exemptions to the swap clearing requirement: The inter-affiliate exemption (§ 50.52) and the financial cooperative exemption (§ 50.51). The Commission is thus proposing to revise the introductory language of § 45.3, §§ 45.3(b) through (d), and 45.8(h)(1)(vi) to reflect that exceptions to, and exemptions from the clearing requirement are now codified in part 50 of the Commission’s regulations.

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

Currently, paragraphs (a) through (d) of § 45.3 govern creation data reporting for swaps executed on or pursuant to the rules of a SEF or DCM and for off-facility swaps, but do not separately address creation data reporting for swaps created through the clearing process by a DCO (*i.e.*, clearing swaps). Accordingly, the Commission is proposing to renumber existing paragraph (e) (Allocations) of § 45.3 as paragraph (f), and to add newly proposed paragraph (e) to § 45.3, which would exclusively govern creation data reporting requirements for clearing swaps. The Commission also proposes to revise the introductory language of § 45.3 to make clear that paragraphs (a) through (d) apply to all swaps except clearing swaps, while paragraph (e) applies to clearing swaps.

The proposed revisions to § 45.3(e) would require a DCO, as reporting counterparty under proposed § 45.8(i),³⁵

³⁵ Currently, § 45.8 establishes a hierarchy under which the reporting counterparty for a particular swap is determined, depending generally on the registration status of the counterparties involved in the swap. That hierarchy does not explicitly mention DCOs. Accordingly, the Commission is proposing § 45.8(i), which would establish the DCO

to report all required swap creation data for each clearing swap, either as soon as technologically practicable after an original swap is accepted by the DCO for clearing (in the event that the clearing swap replaced an original swap), or as soon as technologically practicable after execution of a clearing swap (in the event that the clearing swap does not replace an original swap). Additionally, under the proposed revisions to § 45.3(e), required swap creation data for clearing swaps must be provided to a registered SDR electronically by the DCO and must include all primary economic terms (“PET”) data and all confirmation data for each clearing swap.

As noted above, CEA section 2(a)(13)(G) requires each swap (whether cleared or uncleared) to be reported to a registered SDR. Proposed paragraphs (a) through (e) of § 45.3 would thus cover creation data reporting requirements for all swaps: Existing § 45.3(a) applies to “each swap executed on or pursuant to the rules of a [SEF] or [DCM],” existing § 45.3(b) through (d) applies to “all off-facility swaps,” and proposed § 45.3(e) would apply to clearing swaps. The provisions of § 45.3(a) through (d) as proposed to be amended in this release would thus exclude clearing swaps. Under the proposed revisions and amendments to § 45.3, a SEF/DCM or counterparty other than the DCO will not have swap data reporting obligations with respect to clearing swaps. Additionally, proposed § 45.3(a) through (d) would govern the creation data reporting requirements for swaps, including swaps commonly known as “alpha” swaps, regardless of whether they later become original swaps by virtue of their acceptance for clearing.³⁶

In response to the Commission’s 2014 request for comment, commenters disagreed as to whether part 45 should

as the reporting counterparty for all clearing swaps. This proposed change is discussed in greater detail in Section I.E. of this release. The Commission is also proposing conforming amendments to § 45.4(b)(1) and (2) to add the phrase “as reporting counterparty” after “derivatives clearing organization” to make clear that the DCO will be the reporting counterparty for purposes of those provisions.

³⁶ Swaps created by a DCO under § 39.12(b)(6) are a type of clearing swap as defined in this release, and thus could not be executed on or pursuant to the rules of a SEF or DCM. Additionally, a DCO would not report creation data for a swap that was executed on or pursuant to the rules of a SEF or DCM, or for an off-facility swap that is submitted to the DCO for clearing, because, under § 45.3(a) through (d), the SEF/DCM or reporting counterparty would be responsible for reporting creation data for such swaps after execution. Under the proposed revisions to § 45.3, a DCO will not have creation data reporting obligations for swaps to which it is not a counterparty and that are not clearing swaps.

require intended to be cleared alpha swaps to be reported to registered SDRs. Some commenters noted that reporting of alpha swaps should continue to be required.³⁷ One commenter noted that the reporting of alpha swaps provides useful information about the execution of the alpha swap and information regarding the life cycle of a cleared swap transaction.³⁸ Other commenters noted that the requirement to report alpha swaps should not be waived as it is essential for the Commission to know the origins of a cleared swap transaction, and because the reporting of alpha swaps provides information necessary for surveillance and audit-trail purposes.³⁹

On the other hand, some commenters contended that alpha swaps should not be required to be reported to an SDR.⁴⁰ One commenter stated that there is little value in reporting alpha swaps that are intended to be cleared as such swaps are, within a short time, superseded by beta and gamma swaps.⁴¹ Another

³⁷ See TR SEF letter, AFR letter, Markit letter, and DTCC letter.

³⁸ See AFR letter at 5 (noting that “Information related to swaps clearing is particularly important and in general all life cycle information relevant to tracking a swap from initial conception through clearing should be included in swaps reporting (including the reporting of the initial ‘alpha’ swap prior to novation into clearing). Such life cycle information will be particularly useful in tracking trends in clearing use in swaps markets, including both enforcement of the clearing mandate and also the optional use of clearing.”)

³⁹ See Markit letter at 25 (“The reporting requirements in relation to the alpha swap should not be modified or waived. This is because it will often be essential for the Commission to know the exact origin of a cleared swap transaction, in particular for market surveillance purposes.”); TR SEF letter at 10 (“We do not believe that the reporting requirements for an alpha swap should be waived because this information is necessary for surveillance and audit trail purposes If only the beta and gamma swaps are reported, then the Commission would not easily see where the swap was originally executed.”); DTCC letter at 17–18 (arguing that any changes to the Commission’s reporting requirements which would not require the reporting of swap transaction data to SDRs for all swaps would be inconsistent with the CEA, and noting that “[i]n order to understand the origins of cleared swaps, regulators must have the ability to access and examine the connections between the alpha, beta, and gamma swaps. If the Commission’s oversight were limited to cleared swap data, it would not be able to develop a detailed and comprehensive understanding of a swap transaction, the trading activities of market participants, or the detection of any violations.”).

⁴⁰ See SIFMA letter, CEWG letter, MFA letter, and ISDA letter.

⁴¹ See ISDA letter at 43 (“Therefore there is little value to reporting creation data, either PET or confirmation, for alpha swaps since they are almost immediately superseded by the cleared swaps, and thus are not meaningful to an analysis of counterparty exposure. We agree that the Part 45 reporting requirement for alpha swaps that are required to be cleared or executed with the intent to clear (and subsequently cleared) should be waived.”).

commenter suggested that separately reporting alpha swaps can result in misleading data and could result in double-counting of swap transactions.⁴² One commenter asserted that part 43 reporting and other relevant rules provide the necessary information regarding the execution event.⁴³

The Commission agrees with commenters who argued that alpha swaps should be required to be reported. As these commenters stated, alpha swaps contain information regarding the origins of a cleared swap transaction that is essential for market surveillance and audit-trail purposes. It is important that this information be reported reliably based on the reporting hierarchy established and sourced from the registered entity or reporting counterparty that the Commission believes has the easiest and fastest access to the data. Consistent reporting of alpha swap USIs in creation data for beta and gamma swaps, for instance, is crucial to the Commission’s ability to trace the history of a cleared swap transaction from execution between the original counterparties to clearing novation. Similarly, determining when an alpha swap has been terminated aids the Commission’s ability to analyze cleared swap activity and to review swap activity for compliance with the clearing requirement.

Finally, commenters also espoused varying views on which counterparty or entity should have the part 45 obligation to report alpha swaps; these comments will be discussed in section II.G. of this release.

iii. Proposed Removal of Provisions

As noted above, several current provisions of § 45.3 impose certain creation data reporting requirements on a DCO in circumstances where a swap is accepted for clearing by a DCO. To ensure consistency with § 39.12(b)(6), the Commission is proposing to remove these creation data reporting provisions (current § 45.3(a)(2),⁴⁴ (b)(2), (c)(1)(ii), (c)(2)(ii), and (d)(2)), and to replace them with new proposed § 45.3(e), described above.

⁴² See SIFMA letter at 4 (noting that “. . . separately reporting alpha swaps to SDRs can result in misleading data being retained by SDRs. This is particularly concerning if alpha swaps and the subsequent beta-gamma swaps are reported to different SDRs, which could potentially result in the double-counting of swaps.”).

⁴³ See LCH letter at 10 (“Part 45 reporting is not necessary to the extent that the information required by the Commission regarding the execution event is already captured directly from the execution venue or the execution counterparties under Part 43 or other relevant rules.”).

⁴⁴ The Commission is also proposing to renumber existing § 45.3(a)(1) as § 45.3(a).

Additionally, the Commission is proposing to remove portions of § 45.3(b)(1), (c)(1)(i), (c)(2)(i), and (d)(1). Currently, where both a DCO and reporting counterparty have obligations under § 45.3 for reporting creation data for the same swap, these subsections excuse the reporting counterparty from reporting creation data if the swap is accepted for clearing before any PET data is reported by the reporting counterparty. Under the proposed rules, these excusal provisions would no longer be necessary because the proposed rules would require DCOs to report creation data only for clearing swaps, and not for swaps accepted for clearing (*i.e.*, original swaps).

iv. Proposed Removal of Certain Confirmation Data Reporting Requirements

Currently, § 45.3(a) through (d) requires the SEF/DCM (§ 45.3(a)) or the reporting counterparty (§ 45.3(b) through (d)) to report both PET and confirmation data in order to comply with their creation data reporting obligations. While one commenter suggested that confirmation data reported to an SDR should be the same for cleared and uncleared swaps,⁴⁵ other commenters contended that confirmation data need not be reported if the swap is required or intended to be cleared.⁴⁶ The Commission preliminarily believes that the confirmation data requirements for clearing swaps in proposed § 45.3(e) would provide the Commission with a sufficient representation of the confirmation data for a cleared swap transaction, because the original swap is extinguished upon acceptance for clearing and replaced by equal and opposite clearing swaps.

Accordingly, for swaps that are intended to be submitted to a DCO for

⁴⁵ See DTCC letter at 2 (stating that any differentiation between confirmation data reporting requirements for cleared and uncleared swaps would unnecessarily bifurcate reporting and potentially inhibit the Commission’s oversight objectives).

⁴⁶ See ISDA letter at 8 (stating that confirmation data should not be required for an alpha trade that is intended for clearing at the point of execution because such data is not meaningful as the alphas will be terminated and replaced with cleared swaps simultaneously or shortly after execution, at which point confirmation data will be reported by the DCO), CME letter at 2, 3, 8 (stating that for intended to be cleared swaps, including separate confirmation data elements as part of the reporting submission to the SDR is redundant and unnecessary, and that DCO rules already require the generation of a confirmation), ICE letter at 14 (stating that the Commission should require less information for cleared transaction confirmations since these confirmation terms are already defined in the relevant product specs and rulebooks of DCOs).

clearing at the time of execution, the Commission proposes to amend § 45.3(a), (b), (c)(1)(iii), (c)(2)(iii), and (d)(2) to remove the existing confirmation data reporting requirements. Under the modified rules, SEFs/DCMs and reporting counterparties would continue to be required to report PET data as part of their creation data reporting, but would be required to report confirmation data only for swaps that, at the time of execution, are not intended to be submitted to a DCO for clearing. For swaps that, at the time of execution, are intended to be submitted to a DCO for clearing, SEFs/DCMs and reporting counterparties would not be required to report confirmation data. If the swap is accepted for clearing by a DCO, the DCO would be required to report confirmation data for the clearing swaps pursuant to proposed § 45.3(e).⁴⁷

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

The Commission is proposing to renumber existing § 45.3(e), which governs creation data reporting for swaps involving allocation, as § 45.3(f).⁴⁸ The Commission is also proposing to replace the phrase “original swap transaction” in § 45.3(f)(2) and 45.8(h)(1)(vii)(D), and in the PET data tables found in Appendix 1 to part 45, with “initial swap transaction” to avoid confusion with the term “original swap,” which is proposed to be defined in § 45.1.

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

Commenters requested that the Commission provide guidance as to who has the legal right to determine choice of SDR.⁴⁹ In response, the Commission is proposing to add new § 45.3(j) in order to explicitly establish which entity has the obligation to choose the SDR to which the required swap creation data is reported. As proposed, § 45.3(j) would provide that: for swaps executed on or pursuant to the rules of a SEF or DCM (including swaps that may later become original swaps), the SEF or DCM will have the obligation to choose the SDR; for all other swaps (including for off-facility swaps and/or clearing swaps) the reporting counterparty (as determined in § 45.8)

will have the obligation to choose the SDR.⁵⁰

While some commenters recommended that the Commission affirmatively codify the right of the DCO to select the SDR,⁵¹ other commenters stated that the Commission should empower the reporting counterparty of the original trade to select the SDR for the alpha, beta, and gamma swaps, regardless of how the swap was executed and whether or not it was cleared.⁵² The Commission believes that it is appropriate to place the obligation to choose the SDR with the entity that has the obligation to make the first report of all required swap creation data. Doing so permits the entity with the obligation to report required swap creation data to select an SDR with which it may be an existing user and to which the entity has established connectivity and developed the necessary technological protocols and procedures for reporting required swap creation data. The Commission also understands that, in practice, the choice of SDR is currently made by such entities.

By virtue of the addition of § 45.3(j) and the revisions to § 45.10,⁵³ the entity with the obligation to report the initial required swap creation data would select the SDR to which all subsequent

⁵⁰ Section 45.3(j) as proposed generally reflects the language included in the preamble to the Final Part 45 Rulemaking, which provides that “the SEF or DCM would select the SDR for platform-executed swaps, and the reporting counterparty would choose the SDR for off-facility swaps.” See 77 FR 2136, 2146, Jan. 13, 2012. Under the proposed rule, the DCO would have the obligation to choose the SDR for clearing swaps.

⁵¹ See ICE letter at 4–5 (stating that “a DCO’s choice to report beta and gamma swaps to an affiliated SDR is unambiguous,” and that while the text of part 45 is silent as to whether a DCO selects the SDR for cleared swaps, the preambles to both part 45 and part 49 contemplate that a DCO can adopt rules identifying the SDR to which it will report).

⁵² See Markit letter at 4, 25 (stating that this approach: would create a level playing field between SDRs, allowing them to compete based on the quality of their services; would be simple compared to assigning reporting obligations to various parties depending on the nature and status of the swap transaction; and would increase the utility of SDR data for the Commission and for market participants) and DTCC letter at 20–21 (recommending that the Commission clarify that DCOs must report data to the SDR that receives the data for the alpha and stating that concerns that have been raised regarding duplication of records for cleared swaps results from the Commission’s decision to allow DCOs to report cleared swap data to their captive SDRs).

⁵³ Proposed revisions to § 45.10 are discussed in Section II.F below. As will be discussed in Section II.C below, by operation of § 45.10, DCOs will be obligated to report all required continuation data for original swaps to the registered SDR (as selected by the SEF, DCM, or reporting counterparty pursuant to proposed § 45.3(j)) to which required creation data for the swap was reported pursuant to § 45.3(a) through (d).

swap creation and continuation data for that swap would be reported by choosing the SDR to which such initial required swap creation data is reported. Thereafter, all required swap creation data and all required swap continuation data for a given swap would be reported to the same SDR used by the registered entity or counterparty.⁵⁴

Finally, the Commission notes that it is aware that there are certain situations wherein SEFs, DCMs and reporting counterparties for off-facility swap transactions may report the part 43 data for a swap to an SDR prior to reporting the part 45 required creation data for the same swap. In such situations, the registered entity or reporting counterparty has effectively chosen the SDR for the swap prior to submitting the part 45 data, since, pursuant to § 45.10, all swap data for a given swap is required to be reported to a single SDR.⁵⁵ For example, if a swap is executed on or pursuant to the rules of SEF A, and SEF A immediately upon execution reports the part 43 data to SDR B, prior to reporting part 45 data, SEF A has effectively chosen SDR B as the SDR for all required creation data for the swap, because § 45.10 requires that all swap data for a given swap must be reported to a single SDR.⁵⁶ Accordingly, in this example, part 45 required creation data must be reported to SDR B.

vii. Proposed Removal of Expired Compliance Date References

Currently, § 45.3(b), (c), and (d), and the introductory language to § 45.3 include references to phase-in compliance dates that have since expired. The Commission is proposing to remove the references to the expired compliance dates in § 45.3(b)(1)(i), (b)(1)(ii), (b)(2), (b)(2)(ii), (c)(1)(i)(A), (c)(1)(i)(B), (c)(2)(i)(A), (c)(2)(i)(B), (d)(1), and (d)(3), and in the introductory language to § 45.3.

3. Request for Comment

The Commission requests comment on all aspects of proposed new § 45.3(e) and (j) and the proposed amendments to § 45.3. The Commission also invites comments on the following:

(6) At the time that a swap is accepted for clearing, are there entities other than the DCO that would have complete information about the clearing swaps and that would be better suited to report required creation data for clearing swaps?

⁵⁴ 17 CFR 45.10. See also section II.F.2, *infra*.

⁵⁵ *Id.*

⁵⁶ *Id.*

⁴⁷ The Commission notes that the proposed change would only impact certain confirmation data reporting and recordkeeping requirements in § 45.3, and does not alter existing obligations to generate or exchange confirmations under other Commission regulations.

⁴⁸ The Commission also proposes to renumber § 45.3 paragraphs (f), (g), and (h) as paragraphs (g), (h), and (i), respectively.

⁴⁹ See, e.g., LCH comment letter at 11.

(7) Are there circumstances where the DCO would have complete information about the swap that becomes an original swap and would be better suited than the SEF/DCM or reporting counterparty to report creation data for such swap in a timely manner? If so, are there any reasons why the DCO should not be required to report creation data for the swap that would become the original swap?

(8) Are the requirements of proposed § 45.3(e) sufficiently clear and do such requirements adequately address the mechanics of the clearing process?

(9) Do the requirements of renumbered § 45.3(f) allow for complete, accurate, timely, and efficient reporting of allocations in light of the proposed definition of “clearing swap” and the proposed § 45.3(e) creation data reporting requirements for clearing swaps?

(10) Are the obligations set forth in amended § 45.3 sufficiently clear? If not, please explain.

(11) Are there differences between the confirmation data for swaps that are, at the time of execution, intended to be submitted to a DCO for clearing, and the confirmation data for the swaps that replace such swap upon acceptance for clearing? If so, discuss how the Commission should require the reporting of confirmation data with respect to a cleared swap transaction.

(12) Should another entity, other than the entity with the regulatory obligation to report the required swap creation data, be able to choose an SDR for reporting purposes? If so, please explain.

(13) Are the industry data standards currently used by market participants sufficient to report required swap creation data as required in the amended, revised and/or newly proposed provisions of this release? If not, what are the specific insufficiencies, and how should they be addressed?

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

1. Existing § 45.4

Regulation 45.4 governs the reporting of swap continuation data to an SDR during a swap’s existence through its final termination or expiration. This provision establishes the manner in which continuation data, including life cycle event data or state data, and valuation data,⁵⁷ must be reported

⁵⁷ “Required swap continuation data” is defined in § 45.1 and includes “life cycle event data” or “state data” (depending on which reporting method is used) and “valuation data.” Each of these data types is defined in § 45.1. “Life cycle event data”

(§ 45.4(a)), and sets forth specific continuation data reporting requirements for both cleared (§ 45.4(b)) and uncleared (§ 45.4(c)) swaps. For cleared swaps, § 45.4(b) currently requires that life cycle event data or state data be reported by the DCO, and that valuation data be reported by both the DCO and by the reporting counterparty (if the reporting counterparty is an SD or MSP).

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

2. Proposed Amendments to § 45.4

As noted earlier in this release, the Commission has had an opportunity to observe how the part 45 regulations function in practice with respect to swaps that are cleared. The Commission understands that § 45.4 could benefit from greater clarity regarding continuation data reporting responsibilities for each of the swaps involved in a cleared swap transaction. Accordingly, the Commission proposes several revisions and additions so that § 45.4 will better delineate the continuation data reporting requirements associated with each swap involved in a cleared swap transaction. In particular, the Commission proposes conforming changes to existing § 45.4(a), revisions to existing § 45.4(b) and to existing § 45.4(c) (proposed to be renumbered as § 45.4(d)), and the addition of new § 45.4(c). Each proposed change is discussed in detail below.

i. Proposed Conforming Changes to § 45.4(a)

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

means “all of the data elements necessary to fully report any life cycle event.” “State data” means “all of the data elements necessary to provide a snapshot view, on a daily basis of all of the primary economic terms of a swap . . .” “Valuation data” means “all of the data elements necessary to fully describe the daily mark of the transaction, pursuant to CEA section 4s(h)(3)(B)(iii), and to § 23.431 of this chapter if applicable.” 17 CFR 45.1.

ii. Proposed Revisions to § 45.4(b)

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

The Commission is not proposing modifications to the DCO life-cycle event data or state data reporting requirements in § 45.4(b)(1) or to the valuation data reporting requirements in § 45.4(b)(2)(i). However, the Commission is proposing to remove existing § 45.4(b)(2)(ii), which requires a reporting counterparty that is an SD or MSP to report valuation data for cleared swaps daily, in addition to the valuation data that is required to be reported by the DCO pursuant to § 45.4(b)(2)(i). Under the proposed revisions to § 45.4(b)(2), a reporting counterparty that is an SD or an MSP will not be required to report valuation data for clearing swaps; instead, the DCO would be the only swap counterparty required to report required continuation data, including valuation data, for clearing swaps.

While one commenter contended that valuation data from SD/MSP swap counterparties is valuable information and that the Commission should require such information from SD/MSP counterparties for all swaps, cleared or uncleared,⁵⁸ numerous commenters stated that only the DCO should have the responsibility to report valuation data for cleared swaps, and that the Commission should eliminate the requirement for an SD or MSP to report valuation data for cleared swaps.⁵⁹

The valuation data reporting requirements applicable to DCOs pursuant to existing § 45.4(b)(2)(i) should present sufficient information for the Commission to understand clearing swap valuations. Additionally, the proposed removal of § 45.4(b)(2)(ii) would codify a series of no-action letters issued by Commission staff providing no-action relief to SDs and MSPs from the continuation data reporting

⁵⁸ See Markit letter at 10–11 (arguing that the Commission might receive valuable information from valuations reported by counterparties).

⁵⁹ See ABA letter at 2, CME letter at 9–10, Financial Services Roundtable letter at 2, ICE letter at 2, 10, 15, ISDA letter at 13–14, JBA letter at 2–3, MFA letter at 2, 4, NGS letter at 4–5.

obligations of that subsection for daily valuation data.⁶⁰

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

Currently, § 45.4(c) governs continuation data reporting for uncleared swaps. The Commission is proposing to renumber § 45.4(c) as § 45.4(d) (discussed below), and is proposing the addition of a new § 45.4(c), which would set forth the continuation data reporting requirements for original swaps.

Specifically, proposed § 45.4(c) would require a DCO to report all required continuation data for original swaps, including original swap terminations, to the SDR to which the swap that became such original swap was reported pursuant to § 45.3(a) through (d).⁶¹ As proposed, § 45.4(c) would also reference the existing requirement that all continuation data must be reported in the manner provided in § 45.13(b), and that the SDR, in order to comply with § 49.10, must also “accept and record” such data, including original swap terminations.⁶² The proposed addition

⁶⁰ See CFTC Division of Market Oversight, No-Action Letter No. 12–55, Dec. 17, 2012; No-Action Letter No. 13–34, Jun. 26, 2013; and No-Action Letter No. 14–90, Jun. 30, 2014. Staff no-action relief from the requirements of § 45.4(b)(2)(ii) has been in effect since the initial compliance date for part 45 reporting.

⁶¹ As discussed earlier in this release, under the proposed revisions to § 45.3(a) through (d), a SEF/DCM or reporting counterparty would be required to report creation data for all swaps except clearing swaps (including for swaps that later become original swaps by virtue of their acceptance for clearing by a DCO). See Section I.B.2., *supra*. See also § 45.10 (a) through (c) (providing that all required swap continuation data reported for a swap must be reported to the same SDR to which required swap creation data was first reported pursuant to § 45.3). The Commission notes that pursuant to existing regulation § 45.13, each reporting entity and/or counterparty is required to “use the facilities, methods, or data standards provided or required by the [SDR] to which the entity or counterparty reports the data.” 17 CFR 45.13.

⁶² Rule § 49.10(a) provides that an SDR “shall accept and promptly record all swap data in its selected asset class and other regulatory information that is required to be reported pursuant to part 45 and part 43 of this chapter by [DCMs], [DCOs], [SEFs], [SDs], [MSPs] and/or non-swap dealer/non-major swap participant counterparties.” Rule § 49.10(a)(1) further provides that for “purposes of accepting all swap data as required by part 45 and part 43, the registered [SDR] shall adopt policies and procedures, including technological protocols, which provide for electronic connectivity between the [SDR] and [DCMs], [DCOs], [SEFs], [SDs], [MSPs] and/or certain other non-swap dealer/non-major swap participant counterparties who report such data. The technological protocols established by a [SDR] shall provide for the receipt of swap creation data, swap continuation data, real-time public reporting data, and all other data and information required to be reported to such [SDR]. The [SDR] shall ensure that its mechanisms for swap data acceptance are reliable and secure.” 17

of a reference to § 49.10 is consistent with a commenter’s request for clarification regarding the obligation of the SDR to accept and process the termination message from the DCO.⁶³

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

The continuation data reporting requirements of proposed § 45.4(c) would apply to a swap that has been submitted to a DCO for clearing and that becomes an original swap by virtue of the DCO’s acceptance of such swap for clearing. The DCO’s continuation data reporting obligations for a swap to which it is not a counterparty (*i.e.*, for swaps other than clearing swaps) will only be triggered if a swap is accepted for clearing (and thus becomes an original swap). If a swap is submitted to a DCO for clearing and is not accepted for clearing, the DCO will not have continuation data reporting obligations for the swap, because the swap is not an original swap or a clearing swap.

While some commenters recommended that the original counterparty, and not the DCO, should report termination of the alpha to the SDR,⁶⁴ another commenter suggested that the DCO should report termination of the alpha to the SDR.⁶⁵ The

CFR 49.10. The Commission also proposes conforming changes to the introductory language of § 45.3 and § 45.4 to make clear that all required swap creation and continuation data must be reported to the relevant SDR in the manner provided in § 45.13, and pursuant to § 49.10, which sets forth rules governing the acceptance and recording of such data.

⁶³ See ICE letter at 4 (noting that failure to accept the termination message can produce inaccurate swap data due to double reporting and that the rejection of the termination message could distort notional amounts and market risks, and stating that amending the reporting rules to place the reporting obligation on the DCO for intended to be cleared swaps simplifies the reporting flows and places the responsibility on the party best-suited to accurately report cleared swap data).

⁶⁴ See OTC Hong Kong letter at 2–3 (stating that requiring the original counterparty to report termination of the alpha would be more cost-effective because the original reporting counterparty is already required to report creation data and life cycle event data of such alpha to an SDR, and thus would already have in place a technical and operational interface with the SDR of its choice. The commenter also stated that imposing an additional requirement on a DCO to report termination of the alpha does not appear to increase or improve the quantity and quality of information already available to the Commission, and that the burden on DCOs of the additional reporting requirement appears to outweigh the benefits to the Commission) and LCH letter at 8 (stating that reporting entities should already report terminations under the obligation to report continuation data).

⁶⁵ See DTCC letter at 7 (stating that when an alpha swap is novated, the Commission should require a

continuation data reporting methods for original swaps proposed in § 45.4(c)(1) are consistent with those for “cleared” swaps currently found in § 45.4(b)(1), which also places responsibility on the DCO to report life cycle event data or state data to the SDR. As proposed, § 45.4(c)(1) would place the responsibility on the DCO to report the required continuation data for original swaps because the DCO, by virtue of its decision to accept a swap for clearing and extinguish the swap upon acceptance,⁶⁶ controls when termination, a key life-cycle event for an original swap, occurs. Therefore, it is the Commission’s view that the DCO is in the best position to report required continuation data for original swaps, as it has the easiest and quickest access to the information regarding the termination of such swaps.

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

Several commenters asserted that the most cost-effective method for establishing a link between the original swaps and the swaps that replace the original swap upon acceptance for clearing is to include the USI of the original swap as a prior USI for the beta and gamma swaps.⁶⁷ The Commission is of the view that reporting of the USI of the original swap as continuation data is an efficient mechanism for linking clearing swaps to the original swap that they replace and should be used for this purpose. As proposed, § 45.4(c)(2) would thus require DCOs to include the following additional enumerated data elements when reporting continuation data for original swaps pursuant to proposed § 45.4(c)(1): (i) The legal entity identifier (“LEI”) of the SDR to which each clearing swap for a particular original swap was reported by the DCO pursuant to new § 45.3(e); (ii) the USI of the original swap that was replaced by the clearing swaps;⁶⁸ and (iii) the USI

DCO to submit information about the beta and gamma swaps in addition to the termination notice for the alpha swap).

⁶⁶ See 17 CFR 39.12(b)(6). Through its rules, the DCO determines whether or not a swap that is submitted for clearing becomes an original swap.

⁶⁷ See CME letter at 10 (“The most effective and efficient method for achieving linkage for all such events that have a one-to-one relationship (*i.e.*, assignment or exercise) or a one-to-many relationship (*i.e.*, clearing, novation, allocation) is by the inclusion of a prior USI(s).”); DTCC letter appendix at 3 (stating that a new swap can generally be linked to an existing swap through the use of a “prior USI” data field); ISDA letter at 11 (“Related swaps sent to different SDRs can also be linked via use of the USI. . . .”); Markit letter at 8 (arguing that the most effective method to establish a link between new and existing swaps is to store the USI of the original swap as a prior USI).

⁶⁸ See existing § 45.5(a)(2)(iii), (b)(2)(iii), and (c)(2)(ii) (requiring the entity that created the USI

for the clearing swaps that replace the original swap.

These proposed data fields would enable the DCO to fulfill its continuation data reporting obligations, enable the SDR to maintain the accuracy and completeness of swap transaction data, and enable the Commission to track the life of a cleared swap transaction. In particular, including the LEI of the SDR where required swap creation data for each clearing swap was reported will permit the Commission and other regulators to ascertain the SDR where the clearing swaps associated with a particular original swap reside. This will enable the Commission and other regulators to review and more effectively associate data available at multiple SDRs in circumstances where the reporting entity or counterparty selects one SDR for the original swap and the DCO selects a different SDR for the clearing swaps under § 45.3.

Inclusion of the original swap's USI is necessary to enable the SDR where the swap that became the original swap's creation data was reported to associate continuation data reported by the DCO with the initial creation data reported by a SEF/DCM or reporting counterparty pursuant to § 45.3(a) through (d).⁶⁹ Similarly, in the case of clearing swaps that replace an original swap, inclusion of the USIs of the clearing swaps will permit the Commission and other regulators to identify the specific clearing swaps that replaced an original swap, presenting a full history of the cleared swap transaction.

Together, the proposed revisions to § 45.4(b) and the addition of § 45.4(c) would require the reporting of continuation data for original swaps and clearing swaps. Accordingly, the Commission expects that records of original swaps that have been terminated would include the USIs for the clearing swaps that replaced the original swap and the LEI of the clearing swap SDR, such that review of an original swap would permit the identification of, and note the SDR

to transmit the USI of a swap "to the [DCO], if any, to which the swap is submitted for clearing, as part of the required swap creation data transmitted to the derivatives clearing organization for clearing purposes"). Proposed revisions to § 45.5 are described in Section IID of this release.

⁶⁹ For instance, inclusion of the USI of the original swap in DCO continuation data reporting will permit the SDR receiving such continuation data to associate data regarding a life cycle event such as termination with the existing data maintained for the swap. This will help ensure that data in the SDR remains current and accurate and will enable the Commission and other regulators to ascertain whether a swap remains in existence or has been extinguished upon acceptance for clearing by a DCO.

where, the clearing swaps reside. These provisions will reflect the regulations applicable to DCOs outlined in part 39 of the Commission's regulations and will clearly delineate the continuation data reporting obligations associated with each swap involved in a cleared swap transaction.⁷⁰

v. Proposed Revisions to § 45.4(d)

As mentioned above, the Commission is proposing to renumber § 45.4(c) (Continuation data reporting for uncleared swaps) as § 45.4(d). The Commission is also proposing to amend § 45.4(d), which applies to "all swaps that are not cleared by a derivatives clearing organization," to add the phrase "including swaps executed on or pursuant to the rules of a swap execution facility or designated contract market." This proposed change would clarify the existing requirement that reporting counterparties report all required swap continuation data for an uncleared swap, irrespective of whether the swap was executed off-facility (in which case the reporting counterparty must report required swap creation data), or whether the swap was executed on or pursuant to the rules of a SEF or DCM (in which case the SEF or DCM must report the required swap creation data).⁷¹

Finally, the Commission proposes to modify the introductory language to § 45.4 and § 45.4(d)(1)(ii)(A) to remove outdated references to compliance dates that have already expired.

3. Request for Comment

The Commission requests comment on all aspects of proposed new § 45.4(c) and the proposed amendments to § 45.4. The Commission also invites comments on the following:

(14) Would market participants other than DCOs be better placed to more efficiently incur the duty to report continuation data for original swaps? If so, how would placing continuation data reporting requirements on such other market participants further the goal of ensuring that swap data for original swaps remains "current and accurate"?

(15) Should the Commission consider any alternative approaches to reporting requirements for original swap

⁷⁰ See 17 CFR 39.12(b)(6). Part 45 currently requires all swap data and information reported to and maintained by an SDR regarding a given swap to be "current and accurate" and to include "all changes" to a swap. 17 CFR 45.4(a).

⁷¹ See 17 CFR 45.3(b) through (d) (creation data reporting requirements for off-facility swaps) and 17 CFR 45.3(a) (creation data reporting requirements for swaps executed on or pursuant to the rules of a SEF or DCM). See also section B.2.ii supra.

terminations? If so, please describe such an approach.

(16) Please describe whether there might be any life-cycle events for an original swap other than termination. Does § 45.4(c) adequately address any such life-cycle events?

(17) Would the valuation data that DCOs must currently report to SDRs pursuant to § 45.4(b)(2)(i) present sufficient information for the Commission to understand clearing swap valuations? Explain why this is or is not the case.

(18) What value, if any, would the Commission gain by receiving clearing swap valuation data from SD/MSP reporting counterparties?

(19) Do the continuation data reporting requirements and existing definition of life-cycle event found in § 45.1 adequately address the possible range of events that could occur during the life of a clearing swap?

(20) Should the Commission require original swap terminations to be reported as soon as technologically practicable after termination of an original swap?

(21) Should both the life cycle event method and state data method for continuation data reporting be permitted for clearing swaps? Please provide information about the advantages and disadvantages of each method with respect to clearing swaps.

(22) Do the proposed revisions to § 45.4 provide sufficient clarity concerning the reporting of continuation data for all life cycle events required to be reported, including any modifications to the clearing swaps? If not, what areas require further clarity?

(23) For a swap executed on or pursuant to the rules of a SEF or DCM, as well as for off-facility swaps, would the DCO to which the swap is submitted for clearing have the information necessary, at the time of submission for clearing, to report the required continuation data, including a notice of termination of the swap, to the SDR to which the SEF or DCM reported the swap?

(24) Are current industry data standards sufficient for DCOs to report required swap continuation data to the appropriate SDRs in a manner that would be consistent with proposed § 45.4? If not, what are the specific insufficiencies and how should they be addressed?

(25) Are the obligations that would be assigned in the proposed amendments to § 45.4 sufficiently clear? If not, please explain.

D. Unique Swap Identifiers—Proposed Amendments to Section 45.5

1. Existing § 45.5

Regulation 45.5 currently requires that each swap subject to the Commission's jurisdiction be identified in all recordkeeping and all swap data reporting by the use of a USI. The rule establishes different requirements for the creation and transmission of USIs depending on whether the swap is executed on a SEF or DCM (§ 45.5(a)), executed off-facility with an SD or MSP reporting counterparty (§ 45.5(b)), or executed off-facility with a non-SD/MSP reporting counterparty (§ 45.5(c)). Existing § 45.5 provides that for swaps executed on a SEF or DCM, the SEF or DCM creates the USI, and for swaps not executed on a SEF or DCM, the USI is created by an SD or MSP reporting counterparty, or by the SDR if the reporting counterparty is not an SD or MSP.⁷²

With the exception of swaps with a non-SD/MSP reporting counterparty, the existing rule generally requires USI creation and transmission to be carried out by the entity or counterparty required to report all required swap creation data for the swap. Section 45.5 thus does not currently distinguish between original and clearing swaps, does not provide USI creation and transmission requirements specifically for DCOs, and consequently does not provide for the issuance to DCOs of a USI “namespace,” which is one of two component parts of a USI.⁷³

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

2. Proposed Amendments to § 45.5

The Commission is proposing to renumber existing § 45.5(d) as § 45.5(e) and to create a new § 45.5(d) which would set forth requirements regarding the creation and transmission of USIs for clearing swaps.⁷⁴

As proposed, § 45.5(d)(1) would require a DCO to generate and assign a USI for each clearing swap upon, or as soon as technologically practicable after, acceptance of an original swap by the DCO for clearing (or execution of a clearing swap that does not replace an original swap), and prior to reporting the required swap creation data for each clearing swap. Proposed § 45.5(d)(1) would also require that the USI for each clearing swap consist of two data components: A unique alphanumeric code assigned to the DCO by the Commission for the purpose of identifying the DCO with respect to USI creation; and an alphanumeric code generated and assigned to that clearing swap by the automated systems of the DCO. These proposed USI creation requirements and components for DCOs and clearing swaps are consistent with those currently required by part 45 for other registered entities such as SEFs, DCMs, and SDRs.⁷⁵

As proposed, § 45.5(d)(2) would require a DCO to transmit the USI for a clearing swap electronically to the SDR to which the DCO reports required swap creation data for the clearing swap, as part of that report; and to the DCO's counterparty with respect to that clearing swap, as soon as technologically practicable after either acceptance of the original swap by the DCO for clearing or execution of a clearing swap that does not replace an original swap. The proposed § 45.5(d) provisions governing creation and assignment of USIs by the DCO with respect to clearing swaps are consistent with the Commission's “first-touch” approach to USI creation for SEFs, DCMs, SDs, MSPs, and SDRs.⁷⁶

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

3. Request for Comment

The Commission requests comment on all aspects of proposed § 45.5(d). The Commission also invites comments on the following:

(26) Should an entity other than the DCO be required to create and transmit USIs for clearing swaps?

(27) Do the proposed requirements of § 45.5(d)(2) ensure that all relevant entities will receive the USI for a particular clearing swap?

(28) Should the proposed USI creation and transmission requirements for DCOs differ from those of other registered entities such as SEFs, DCMs and SDRs? If so, please explain how and why the requirements should differ.

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

1. Existing § 45.8

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

2. Proposed Amendments to § 45.8

Existing § 45.8 could be improved to better reflect the mechanics for cleared swap transactions. While existing § 45.3 currently imposes certain creation data reporting requirements on the DCO in connection with a swap that is accepted for clearing, the hierarchy currently set forth in § 45.8 does not expressly include a separate designation for the DCO as a reporting counterparty.

As discussed earlier in this release, a cleared swap transaction generally involves an original swap that is terminated upon novation, and the equal and opposite swaps that replace it, with the DCO as the counterparty for each swap that replaces the original swap.⁷⁷ Accordingly, the Commission is proposing to add paragraph (i) to § 45.8 in order to explicitly provide that the DCO will be the reporting counterparty for clearing swaps. This proposed change is consistent with part 39, which requires that the DCO must be a counterparty to each swap that replaces an original swap and must have rules governing acceptance and replacement of an original swap.⁷⁸ The DCO is also the entity that should have the easiest

⁷² See § 45.5(a) through (c).

⁷³ See, e.g., § 45.5(a)(1)(i), (b)(1)(i) and (c)(1)(i) (the data component of a USI commonly referred to as a namespace is the unique alphanumeric code assigned to the registered entity responsible for generating the USI for the purpose of identifying such registered entity with respect to USI creation).

⁷⁴ The Commission also proposes conforming amendments to renumber existing § 45.5(e) as § 45.5(f).

⁷⁵ See, e.g., 17 CFR 45.5(a), 45.5(c).

⁷⁶ See 77 FR 2136, 2158 (Jan. 13, 2012). The Commission's approach with respect to SEFs, DCMs, SDs, MSPs, and SDRs was designed to foster efficiency by taking advantage of the technological sophistication and capabilities of such entities, while ensuring that a swap is identified by a USI from its inception.

⁷⁷ See 17 CFR 39.12(b)(6).

⁷⁸ *Id.* (providing that a DCO that clears swaps must have rules providing that upon acceptance of a swap by the DCO for clearing, the “original swap is replaced by an equal and opposite swap between the [DCO] and each clearing member . . .”).

and quickest access to full information with respect to PET data and confirmation data for clearing swaps, placing the DCO in the best position to report all required swap creation data for the clearing swaps.

The Commission is also proposing to amend the introductory language of § 45.8 to make clear that the reporting counterparty for all swaps except clearing swaps will be made as provided in paragraphs (a) through (h) of § 45.8, while the reporting counterparty for clearing swaps will be made as provided in paragraph (i) of § 45.8.

The Commission also proposes to remove the language “if available” from § 45.8(h)(1)(i) to ensure consistency with proposed changes to appendix 1 to part 45 and because this language was only relevant prior to availability of the LEI system.

Finally, the Commission proposes to further amend § 45.8 to remove part of paragraphs (d)(1) and (f)(1) and to remove part of paragraph (h)(2) and all of paragraphs (h)(2)(i) and (ii). Section 45.8(h) currently provides that if the SEF/DCM is unable to determine which counterparty to a swap is the reporting counterparty, it must notify each counterparty that it cannot identify which counterparty is the reporting counterparty, and must also transmit to each counterparty the LEI of the other counterparty. The removal of these paragraphs would ensure that swaps that are executed anonymously on a SEF or DCM, and then cleared in accordance with the Commission’s straight-through processing requirements, remain anonymous.⁷⁹ Section 45.8(d)(1) and (f)(1) contemplate a process whereby the counterparties agree which counterparty shall be the reporting counterparty no later than the end of the first business day following the date of execution of the swap. The removal of these paragraphs will provide for a more streamlined process with respect to the determination of the reporting counterparty for swaps where paragraphs (d)(1) or (f)(1) apply. SEFs and DCMs have adopted rules governing determination of the reporting counterparty for all swaps executed on or pursuant to the rules of a SEF or DCM, which eliminates the need for these portions of § 45.8(d)(1), (f)(1), and (h)(2). The Commission is also

⁷⁹ The Commission notes that § 49.17(f)(2) prohibits SDRs from disclosing the identity or LEI of a counterparty for swaps that are executed anonymously on a SEF or DCM, and then cleared in accordance with the Commission’s straight-through processing requirements, when counterparties to a particular swap are allowed access to data related to the swap. See “Swap Data Repositories—Access to SDR Data by Market Participants,” 79 FR 16672, Mar. 26, 2014.

proposing conforming changes to explanatory notes in the PET data tables in appendix 1 to part 45 that reference the situation described in § 45.8(h)(2).

3. Request for Comment

The Commission requests comment on all aspects of proposed § 45.8(i). The Commission also invites comments on the following:

(29) Are the proposed additions of §§ 45.8(i) and 45.3(j), along with existing § 45.8, sufficiently clear with respect to the determination of the reporting counterparty and the choice of SDR? Please explain any scenarios for which the determination of the reporting counterparty or choice of SDR would not be sufficiently clear.

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

1. Existing § 45.10

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

2. Proposed Amendments to § 45.10

In order to further clarify that “all swap data for a given swap” encompasses all swap data required to be reported pursuant to parts 43 and 45 of the Commission’s regulations, the Commission is proposing to add language to this effect to paragraphs (a) through (c) and to the introductory language of § 45.10. This proposed additional language would clarify the existing requirement that registered entities and reporting counterparties must provide all swap data required under parts 43 and 45 to a single SDR for a given swap.⁸⁰

⁸⁰ The Commission is also proposing to repeat the language “Off-facility swaps with a swap dealer or major swap participant reporting counterparty” from the title of § 45.10(b) in the body of that regulation to make clear that the requirement pertains to off-facility swaps with an SD or MSP.

The Commission is also proposing to remove § 45.10(b)(2) and (c)(2).⁸¹ These two paragraphs are no longer applicable because they reference provisions in § 45.3(b)(1), (c)(1)(i), and (c)(2)(i) that, as discussed earlier in this release, the Commission is proposing to remove.⁸²

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

As proposed, § 45.10(d)(2) would require a DCO to report all required swap creation data and all required swap continuation data for a particular clearing swap to the same SDR that received the initial swap creation data for the clearing swap required by § 45.10(d)(1).

In the event there are clearing swaps that replace a particular original swap, and in the event there are equal and opposite clearing swaps that are created upon execution of the same transaction and that do not replace an original swap, § 45.10(d)(3) would require the DCO to report all required swap creation and continuation data for each such clearing swap to a single SDR.⁸³ Accordingly, all required creation data and all required continuation data for all clearing swaps that can be traced back to the same original swap (and for all equal and opposite clearing swaps that are created upon execution of the same transaction but that do not replace

⁸¹ The Commission also proposes conforming amendments to § 45.10 to renumber paragraph (b)(3) as (b)(2), paragraph (c)(3) as (c)(2), and paragraph (c)(4) as (c)(3). The Commission also proposes to remove a reference to § 45.10(c)(2) from existing § 45.10(c)(4) because the Commission is proposing to remove § 45.10(c)(2).

⁸² See Section II.B.2.ii, *supra*.

⁸³ The Commission notes that proposed § 45.10(d)(3) would require any equal and opposite clearing swaps, including those resulting from the operation of § 39.12(b)(6) of the Commission’s regulations, to be reported to a single SDR, regardless of whether such clearing swaps replaced an original swap.

an original swap) will be reported to a single SDR.

The Commission notes that by operation of proposed new § 45.8(i) and (j) and proposed § 45.3(e), there may be scenarios in which the SEF/DCM or reporting counterparty reports required swap creation data for the swap that became the original swap to one SDR, and the DCO reports required swap creation data for the clearing swaps that replace the original swap to a different SDR. While some commenters stated that the Commission should require resulting swaps to be reported to the same SDR as original swaps,⁸⁴ the Commission is proposing to require that all swap data for the clearing swaps that can be traced back to the same original swap be reported to the same SDR, but is not requiring that the clearing swaps be reported to the same SDR as the original swap.

As noted above, proposed § 45.3(j) would place the obligation to choose the SDR to which required swap creation data is reported on the registered entity or counterparty that is required to make the first report of required swap creation data pursuant to § 45.3. Placing the obligation to choose the SDR on the registered entity or counterparty that is required to report the swap, rather than on another entity, should result in more efficient data reporting and promote market competition, while avoiding injecting a third party into the decision as to how a registered entity or counterparty fulfills its regulatory obligation to report initial required swap creation data. The registered entity or counterparty that is required to report may select an SDR to which its technological systems are most suited and/or to which it already has an established relationship, with existing technological protocols and procedures, providing for the efficient and accurate reporting of swap data. The Commission notes that under proposed § 45.3(j), a registered entity or counterparty would not be precluded from choosing an SDR based on consideration of market preference or other factors; however, the obligation to choose the SDR will rest solely with the registered entity or counterparty enumerated therein. As discussed above, the Commission is proposing a number of requirements⁸⁵

⁸⁴ See DTCC letter at 2–3, appendix at 4, 21 (arguing that the Commission should adopt a “single SDR” rule to ensure that all of the data for a swap is available in one SDR.); ISDA letter at 44 (contending that original and resulting swaps should be reported to the same SDR when a swap was executed without the intention or requirement to clear, but is subsequently cleared).

⁸⁵ See Section H, *infra*, discussing proposed additional PET data fields including: Clearing swap

which should allow for the efficient and accurate linking of data where the original swap and clearing swaps are not reported to the same SDR.

The Commission has included the following example to illustrate the application of proposed § 45.10:

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

Under the proposal, § 45.4(c) would require the DCO to report the termination of Swap 1 to SDR A,⁸⁶ reflecting that Swap 1, now an original swap, has been terminated through clearing novation.⁸⁷ The DCO would also report all required swap creation data for clearing Swap 2 to a single SDR of its choice (say, for example, SDR B) pursuant to proposed §§ 45.3(e) and (j)(2), and 45.10(d).⁸⁸ Similarly, the DCO would be required to report all required swap creation data for clearing Swap 3 to a single SDR, in this case SDR B. Pursuant to proposed § 45.10(d)(3), the DCO would be required to report all required swap creation data for clearing Swap 2 and clearing Swap 3 to the same SDR (SDR B) because Swap 2 and Swap 3 replaced Swap 1. Thereafter, proposed § 45.10(d)(2) would require the DCO to report all required swap creation data and continuation data to the SDR where the first report of required swap creation data for both clearing Swap 2 and clearing Swap 3 was made (SDR B).

The requirements for DCOs demonstrated in the above example and contained in proposed § 45.10(d)(1) and (2) are consistent with the existing requirements for SEFs, DCMs, and other

USIs, Clearing swap SDR, Original swap USI, and Original swap SDR. See also section C.2.iv. *supra*, discussing information required for continuation data for original swaps, including: (i) the LEI of the SDR to which each clearing swap for a particular original swap was reported by the DCO pursuant to new § 45.3(e); (ii) the USI of the original swap that was replaced by the clearing swaps; and (iii) the USI for the clearing swaps that replace the original swap.

⁸⁶ Pursuant to proposed § 45.10(a)(2), (b)(2), and (c)(3), continuation data for original swaps must be reported to the SDR where the first report of required swap creation data was made for the swap.

⁸⁷ Pursuant to existing § 45.13(b), the DCO “shall use the facilities, methods, or data standards provided or required by” SDR A. 17 CFR 45.13(b).

⁸⁸ The Commission notes that pursuant to proposed § 45.10(a) through (d), the DCO in this example could select an SDR other than SDR A.

reporting counterparties under current § 45.10. By requiring that all swap data for each clearing swap be reported to a single SDR, proposed § 45.10(d)(1) and (2) further the Commission’s stated purpose in creating § 45.10, and part 45 generally, of reducing fragmentation of data for a given swap across multiple SDRs.⁸⁹

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

3. Request for Comment

The Commission requests comment on all aspects of proposed new § 45.10(d) and amended § 45.10(a) through (c). The Commission also invites comments on the following:

(30) Are the obligations assigned in the newly proposed and amended provisions of § 45.10 sufficiently clear? If not, please explain how you believe they should be clarified.

G. Examples of Cleared Swap Reporting Workflows Under the Proposed Revisions

The following examples demonstrate the manner in which the proposed rules would operate in hypothetical scenarios involving: (1) an off-facility swap not subject to the clearing requirement with an SD/MSP reporting counterparty; and (2) a swap executed on or pursuant to the rules of a SEF or DCM. All references to part 45 appearing in the following examples refer to the rules as proposed in this release. These

⁸⁹ See, e.g., 77 FR 2136, 2139, Jan. 13, 2012, (“To avoid fragmentation of data for a given swap across multiple SDRs, the [Notice of Proposed Rulemaking] [for part 45] would require that all data for a particular swap must be reported to the same SDR.”); at 2143 (“First, in order to prevent fragmentation of data for a single swap across multiple SDRs, which would seriously impair the ability of the Commission and other regulators to view or aggregate all of the data concerning the swap, the proposed rule provided that, once an initial data report concerning a swap is made to an SDR, all data reported for that swap thereafter must be reported to the same SDR.”); and at 2168 (“The Commission believes the important regulatory purposes of the Dodd-Frank Act would be frustrated, and that regulators’ ability to see necessary information concerning swaps could be impeded, if data concerning a given swap was spread over multiple SDRs.”).

examples are provided only for illustrative purposes to demonstrate the applicability of certain rules proposed in this release in hypothetical scenarios. The examples are not intended to dictate any aspect of compliance, reporting or other related processes and are not intended to cover all possible reporting circumstances.

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

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

The DCO accepts the swap for clearing, extinguishing it and replacing it with clearing swaps; the swap that was submitted for clearing is now an original swap. The DCO generates and assigns a USI to each clearing swap pursuant to proposed § 45.5(d) and, pursuant to the proposed amendments to § 45.3(e), reports all required swap creation data for the clearing swaps, including the original swap USI,⁹⁰ to SDR B, which the DCO in this example selected pursuant to proposed § 45.3(j)(2).

Pursuant to the proposed amendments to § 45.4(c), the DCO would report continuation data for the original swap, including the original swap termination notice, to SDR A using either the life cycle or state data methods, and using the facilities, methods, or data standards provided or required by SDR A.⁹¹ In addition to all other necessary continuation data, original swap continuation data reported by the DCO, including the original swap termination notice, would also include: the LEI of SDR B (the SDR to which creation data for each clearing swap that replaced the particular original swap was reported);⁹² the USI

of the original swap as transmitted to the DCO by the SD at the time the swap was submitted for clearing; and the USI for each clearing swap.

The DCO would have no further continuation data reporting obligations with respect to the original swap thereafter. However, the Commission notes that pursuant to § 45.14, registered entities and counterparties required to report swap data to an SDR must report any errors and omissions in the data reported.⁹³ Additionally, non-reporting counterparties are required to notify the reporting counterparty of such errors or omissions.⁹⁴ Finally, pursuant to § 49.10(a), SDR A would be required to accept and record any original swap continuation data, including the original swap termination.

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

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

The DCO accepts the swap for clearing, extinguishing it and replacing it with clearing swaps; the swap that was submitted for clearing is now an original swap. Under the proposed

that this information will be useful for regulators with respect to their review of data pertaining to cleared swap transactions, and to SDRs with respect to their processing of swap data received, even when the original and clearing swaps reside in the same SDR.

⁹³ While the DCO would have no additional continuation data reporting requirement with respect to the original swap after reporting the termination upon acceptance for clearing, the DCO remains obligated under § 45.14 to correct errors and omissions in the data reported by the DCO, including the termination notice. For example, if a swap is submitted to, and accepted by, a DCO for clearing, the DCO would report the termination notice of the original swap to the SDR to which the creation data for the original swap was reported. After submission of the termination notice to the SDR, if the DCO should become aware of an error or omission in the termination notice, the DCO is required, pursuant to § 45.14, to correct any errors and omissions in the data so reported as soon as is technologically practicable after discovery of such errors or omissions. Likewise, all reporting entities and swap counterparties also remain obligated under § 45.14 to correct errors and omissions in all data reported by or on behalf of each entity and swap counterparty to an SDR.

⁹⁴ Pursuant to § 45.14(b), if a counterparty to a swap that is not the reporting counterparty as determined by § 45.8 discovers any error or omission with respect to the continuation data, including termination notice of the original swap, such non-reporting counterparty is required to notify the DCO of each such error or omission.

amendments to §§ 45.5(d) and 45.3(e), the DCO would generate and assign a USI to each clearing swap and report all required swap creation data, including the original swap USI, for the clearing swaps to registered SDR A, which, in this example, the DCO selected pursuant to proposed § 45.3(j)(2).⁹⁵

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

The DCO would have no further continuation data reporting obligations with respect to the original swap thereafter. However, the Commission notes that pursuant to § 45.14, registered entities and counterparties required to report swap data to an SDR must report any errors and omissions in the data reported. Additionally, non-reporting counterparties are also required to notify the reporting counterparty of such errors or omissions.⁹⁶ Finally, pursuant to § 49.10(a), SDR A would be required to accept and record the original swap termination.

3. General Comments Received by the Commission Regarding the Approach Proposed in This Release

As demonstrated by the examples above, the Commission is proposing an approach to the reporting of cleared swaps that would require reporting counterparties or SEFs/DCMs to report creation and continuation data for swaps commonly known as alphas, and that would require DCOs to report alpha swap terminations and swaps commonly known as beta and gamma swaps.

A number of commenters suggested that part 45 should place swap data reporting obligations solely on DCOs, including with respect to swaps that are intended to be cleared at the time of execution and accepted for clearing by a DCO (alpha swaps) and swaps resulting from clearing (beta and gamma

⁹⁰ Proposed modifications to appendix 1 would require that PET data include the original swap USI. See Proposed additions to appendix 1 to part 45, "Additional Data categories and fields for clearing swaps."

⁹¹ See 15 CFR 45.13(b).

⁹² The Commission notes that the proposed § 45.4(c)(2)(i) requirement that the DCO include the LEI of the SDR to which all required swap creation data for each clearing swap was reported by the DCO applies whether or not swap data for the original and clearing swaps is reported to the same SDR or to different SDRs. The Commission expects

⁹⁵ Pursuant to 45.3(j)(2), the DCO could have selected SDR B.

⁹⁶ See notes 93–94, *supra*.

swaps).⁹⁷ However, one commenter noted that it would not be appropriate to require a DCO to report information related to the execution of an alpha swap.⁹⁸

The Commission understands that reporting counterparties and registered entities have invested substantial time and resources to report swaps to registered SDRs (whether or not such swaps are intended to be cleared at the time of execution) and that DCOs have invested substantial resources to report beta and gamma swaps that result from acceptance of a swap for clearing. Adopting the framework suggested by commenters above could result in a disruption of industry work flows and could require significant retooling of operational and technological solutions in place designed to report swap data, all at an additional cost to market participants.

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

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

⁹⁷ See CMC letter at 1, 3, 6 (noting that "cleared swaps reporting should be handled exclusively by DCOs."); NFPEA letter at 12 (noting that "If and when a swap is cleared and thereafter, all information about the swap should be reported to the SDR solely by the DCO"); EEI letter at 3, 14 ("The Commission should put all obligations for reporting cleared swaps on DCOs."); ICE letter at 3, 17 (stating that the DCO should be the sole reporting party for intended to be cleared swaps.); CEWG letter at 16 ("The Working Group recommends that the Part 45 regulations be amended to make clear that the DCO has the reporting obligations (creation and continuation data) for the original alpha swap and resulting positions . . ."); CME letter at 20 (contending that the act of submitting an intended to be cleared swap to a DCO should completely discharge the reporting obligations of each reporting counterparty, SEF or DCM, and that this position would be consistent with Congressional intent and would help ensure the Commission gets access to the best possible information for regulatory purposes without imposing unnecessary costs on the Commission or market participants).

⁹⁸ See LCH letter at 10 ("It would not be appropriate to oblige the DCO to enhance part 45 reporting in order to source information regarding the original execution that should be provided directly by the execution venue or execution counterparties.").

economic terms are reported for each swap.

The Commission is proposing the following revisions to Exhibits A through D of appendix 1, each of which is discussed in greater detail below: (1) modifications to existing PET data fields; (2) the addition of three new PET data fields applicable to all reporting entities for all swaps; and (3) the addition of a number of new data fields that must be reported by DCOs for clearing swaps.⁹⁹

i. Proposed Modifications to Existing PET Data Fields

The Commission proposes clarifying and conforming changes and minor corrective modifications to the following existing PET data fields:

- The Unique Swap Identifier for the swap—The Commission is proposing to remove the explanatory note in the Comment section to this data field in Exhibits A–D. The explanatory note is no longer necessary because under proposed § 45.5(d), the DCO would create the USI for each clearing swap.
- PET data fields that utilize a legal entity identifier¹⁰⁰—The Commission is proposing conforming changes to the Comment sections to data fields in Exhibits A–D that utilize the LEI to reflect that the CFTC has designated an LEI system¹⁰¹ and to reflect that a substitute identifier may be reported for natural person swap counterparties.
- If no CFTC-approved Legal Entity Identifier for the non-reporting counterparty is yet available, the internal identifier for the non-reporting counterparty used by the swap data repository—The Commission is also proposing to remove this data field in

⁹⁹ The Commission also proposes to revise each of the data categories and fields that reference the clearing requirement exception in CEA section 2(h)(7) to reflect that exceptions to, and exemptions from, the clearing requirement, including the clearing requirement exception in CEA section 2(h)(7), are set forth under part 50 of the Commission's regulations.

¹⁰⁰ These include the following fields in Exhibits A through D: The Legal Entity Identifier of the reporting counterparty; If the swap will be allocated, or is a post-allocation swap, the Legal Entity Identifier of the agent; The Legal Entity Identifier of the non-reporting party; Clearing venue; The identity of the counterparty electing an exception or exemption to the clearing requirement under part 50 of this chapter (formerly The identity of the counterparty electing the clearing requirement exception in CEA section 2(h)(7)); Exhibit A: An indication of the counterparty purchasing protection; An indication of the counterparty selling protection; Information identifying the reference entity; Exhibit D: Buyer, Seller.

¹⁰¹ The explanatory notes discussing a situation where no CFTC designated LEI is yet available are no longer applicable. See generally "Order Extending the Designation of the Provider of Legal Entity Identifiers To Be Used in Recordkeeping and Swap Data Reporting Pursuant to the Commission's Regulations," 80 FR 44078, Jul. 24, 2015.

each of the Exhibits. As noted above, the CFTC has designated an LEI, and these PET data fields are no longer applicable.

- For a mixed swap reported to two non-dually-registered swap data repositories, the identity of the other swap data repository (if any) to which the swap is or will be reported—The Commission is proposing to add an explanatory note to the Comment section for this data field in Exhibits A–D providing that the field value is the LEI of the other SDR to which the swap is or will be reported.

- Block trade indicator—The Commission is proposing to modify the Comment section to this data field in Exhibits A–D to reflect that the CFTC has issued a final rulemaking regarding Procedures To Establish Appropriate Minimum Block Sizes for Large Notional Off-Facility Swaps and Block Trades.¹⁰²

- Execution venue—The Commission is proposing to modify the explanatory note in the Comment section to this data field in Exhibits A–D to reflect that the CFTC has designated an LEI system and to require the reporting of only the LEI of the SEF or DCM for swaps executed on or pursuant to the rules of a SEF or DCM.

- Clearing indicator—The Commission is proposing modifications to the explanatory note in the Comment section to this data field in Exhibits A through D to provide for the reporting of a Yes/No indication of whether the swap will be submitted for clearing to a DCO.

- Clearing venue—The Commission is proposing modifications to the Comment section of this data field in Exhibits A–D to provide for the reporting of only the LEI of the derivatives clearing organization.

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

The Commission proposes to add to Exhibits A–D the following new PET fields which would be applicable to all reporting entities for all swaps:

- Asset class—This data field would provide the specific asset class for the swap. Field values: credit, equity, FX, rates and other commodity.
- An indication of whether the reporting counterparty is a derivatives clearing organization with respect to the swap.
- Clearing exception or exemption type—This field would provide the type

¹⁰² See generally "Procedures To Establish Appropriate Minimum Block Sizes for Large Notional Off-Facility Swaps and Block Trades," 78 FR 32866, May 31, 2013.

of clearing exception or exemption being claimed. Field values: End user, Inter-affiliate or Cooperative.

The asset class data field will assist the Commission in identifying the asset class for swaps reported to registered SDRs pursuant to part 45. The indication of whether the reporting counterparty is a DCO with respect to the swap data field is consistent with proposed § 45.8(i), which designates the DCO as the reporting counterparty for clearing swaps, and the existing PET data fields that require certain information related to the registration status of the counterparties to be included in PET data reporting. The clearing exception or exemption types data field will provide information with respect to the specific exception or exemption from the clearing requirement that is being elected for the swap.¹⁰³

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

The Commission also proposes to modify Exhibits A–D in order to add new PET fields specifically to be reported by DCOs for clearing swaps. The proposed fields, which would be placed under the heading “Additional Data Categories and Fields for Clearing Swaps” in each table included as Exhibits A–D, would more accurately capture the additional, unique features of clearing swaps that are not relevant to uncleared swaps. The newly proposed data fields that must be reported by DCOs for clearing swaps include the following:

- Clearing swap USIs—This data field would provide the USI for each clearing swap that replaces the original swap, other than the USI for which the PET data is currently being reported.
- Original swap USI—This data field would provide the USI for the original swap that was replaced by clearing swaps.¹⁰⁴
- Original swap SDR—This data field would provide the LEI of the SDR to which the original swap was reported.¹⁰⁵

¹⁰³ As noted above, in addition to the end-user exception to the swap clearing requirement set forth in section 2(h)(7) of the CEA and codified in part 50 of the Commission’s regulations, the Commission has published two exemptions to the swap clearing requirement: the inter-affiliate exemption (§ 50.52) and the financial cooperative exemption (§ 50.51).

¹⁰⁴ See also § 45.10(a)(1), (b)(1)(iii), (b)(2)(ii), (c)(1)(iii), (c)(2)(ii), and (c)(3) (requiring entities with reporting obligations to transmit to the DCO for swaps submitted for clearing “the identity of the swap data repository to which required swap creation data is reported” and the USI for the swap).

¹⁰⁵ *Id.*

- Clearing member LEI—This data field would provide the LEI of the clearing member.

- Clearing member client account—This data field would provide the account number for the client, if applicable, of the clearing member.

- Origin (house or customer)—This data field would provide information regarding whether the clearing member acted as principal for a house trade or agent for a customer trade.

- Clearing Receipt Timestamp—This data field would provide the date and time at which the DCO received the original swap that was submitted for clearing.

- Clearing Acceptance Timestamp—This data field would provide the date and time at which the DCO accepted the original swap that was submitted for clearing.

Some commenters argued that the Commission should not require additional data fields for reporting and should reduce the number of fields currently required.¹⁰⁶ The Commission is of the view that the proposed modifications to existing PET data fields will add clarity to the current reporting requirements and, in regards to the additional fields, will require the reporting of information that is essential to the efficient operation of reporting of the swaps involved in a cleared swap transaction.

3. Request for Comment

The Commission requests comment on all aspects of the proposed revisions to the PET data tables found in appendix 1 to part 45 and the proposed “Additional Data Categories and Fields for Clearing Swaps.” The Commission also invites comments on the following:

(31) Are there additional data categories and fields for clearing swaps which are necessary to understand a clearing swap and/or the mechanics of the clearing process? If so, please describe such additional data categories and fields.

(32) Will reporting any of the new or revised data categories and fields result

¹⁰⁶ See CMC letter at 3 (recommending that the Commission reduce the number and complexity of data fields required to improve data reporting); CME letter at 17–19 (providing recommendations on modification for specific data fields and arguing against requiring certain additional reporting); DTCC letter at 3, appendix at 15 (suggesting that the Commission consider whether requiring fewer data elements would better enable the Commission and other regulators to fulfill their regulatory obligations); International Energy Credit Association letter at 5–6 (arguing that existing swap data reporting requirements do not need to be expanded and that data reporting would be improved by reducing the current reporting burden); Swiss Re letter at 5 (describing reporting difficulties for specific data fields).

in any operational or technological challenges? If so, please explain.

(33) Are there other entities, in addition to those currently required to be identified in swap data reporting, that may play some part in the execution or reporting of a cleared swap transaction? If so, what are they? Should their identifying information be reported to a registered SDR as an element of PET data?

(34) Are the newly proposed and revised PET data fields included in appendix 1, including the PET data therein, sufficiently clear? If not, please explain.

III. Request for 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. The Commission also invites comments on the following:

(35) Please identify any challenges that might result from any differences between the Commission’s and the SEC’s respective proposals for treatment of cleared swap transactions.

(36) Are there differences between the Commission’s and the SEC’s respective proposals for the reporting of cleared swap transactions that should be harmonized? If so, please explain.

(37) Based upon the proposed modifications to the swap data reporting provisions of part 45, do commenters believe that associated modifications are necessary to the recordkeeping provisions of § 45.2?

(38) In practice, would DCOs employ agents for reporting clearing swaps to an SDR? Please explain any ways you believe the proposed regulations should be modified to facilitate a DCO’s ability to employ agents to report clearing swaps.

(39) Please describe the nature of any changes necessary, *i.e.*, operational, technological, administrative, etc., for SEFs, DCMs and reporting counterparties to comply with the rules proposed in the release, and the length of time needed to implement each type of change.

(40) Do the proposed amendments and additions to part 45 adequately address the reporting of swap transaction data for both the principal and agency clearing models? If not, please explain.

(41) Do commenters believe that additional revisions are necessary to part 45 to accurately and timely report any other type of swap transaction data for clearing transactions? If so, please explain.

IV. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (“RFA”) requires federal agencies, in promulgating rules, to consider the impact of those rules on small entities.¹⁰⁷ The rules proposed herein will have a direct effect on SDRs, DCOs, SEFs, DCMs, SDs, MSPs, and non-SD/MSP counterparties who are counterparties to one or more swaps and subject to the Commission’s jurisdiction. The Commission has previously established certain definitions of “small entities” to be used by the Commission in evaluating the impact of its rules on small entities in accordance with the RFA.¹⁰⁸ The Commission has previously determined that DCMs¹⁰⁹ and DCOs¹¹⁰ are not small entities for the purpose of the RFA. The Commission has also previously proposed that SDRs, SEFs, SDs, and MSPs should not be considered to be small entities.¹¹¹

The Final Part 45 Rulemaking and preceding proposal discussed how certain non-SD/MSP counterparties could be considered small entities in certain limited situations, but concluded that part 45 does not have a significant impact on a substantial number of small entities.¹¹² The modifications to part 45 proposed herein do not modify that conclusion, or the reasoning behind it, and therefore the Commission does not believe that these proposed rules will have a significant economic impact on a substantial number of small entities.

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

B. Paperwork Reduction Act

The purposes of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.* (“PRA”) are, among other things, to minimize the paperwork burden to the private sector, to ensure that any collection of information by a government agency is put to the greatest possible uses, and to minimize

duplicative information collections across the government.¹¹³ The PRA applies to all information, “regardless of form or format,” whenever the government is “obtaining, causing to be obtained, [or] soliciting” information, and includes required “disclosure to third parties or the public, of facts or opinions,” when the information collection calls for “answers to identical questions posed to, or identical reporting or recordkeeping requirements imposed on, ten or more persons.”¹¹⁴ The PRA requirements have been determined to include not only mandatory but also voluntary information collections, and include both written and oral communications.¹¹⁵ Under the PRA, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number from the Office of Management and Budget (“OMB”). The OMB control number of this information collection is 3038–0089.

The Commission is not seeking to amend information collection 3038–0089 because the Commission believes that the rule modifications proposed herein will not impose any new information collection requirements that require approval from OMB under the PRA. The proposed amendments may necessitate changes to market participants’ and registered entities’ reporting systems, but burdens for the maintenance and utilization of reporting functionality are already included in the approved information collection.¹¹⁶ Any necessary changes to reporting functionality will not increase the existing annual burden calculated for a market participant or registered entity to “oversee, maintain, and utilize the reporting functionality.”¹¹⁷ Changes to the data reported pursuant to the proposed amendments, whether in the form of additional data fields or the shifting of reporting responsibilities, also do not impose any new collection of information because, as noted in the original publication of part 45, reporting pursuant to this part is largely automatic and electronic, which limits the burden of reporting to the hours and cost required in maintaining and utilizing an entity’s reporting functionality.¹¹⁸

Additionally, though the proposed rules clarify the responsibilities of certain entities under part 45 where the responsibilities were not explicitly assigned in the original rule, the relevant entities were included in the PRA calculation for the original rule, meaning that explicitly assigning the responsibilities now does not create a burden that is not already included in information collection 3038–0089. Further, the proposed changes, especially in the context of swap data reporting, could also affect burdens that are included in the burdens calculated for part 43 of the Commission’s regulations and, as described in the original publication of part 45, any cost or burden created by the proposed changes should not be considered additional to the burdens already calculated for part 43, as applicable.¹¹⁹ To the extent that this rulemaking contains provisions that would qualify as collections of information for which the Commission has already sought and obtained a control number from OMB, the burden hours associated with those provisions are not replicated here, as the Commission is obligated to account for PRA burden once and the PRA encourages multiple applications of a single collection.¹²⁰ Therefore, these proposed amendments to part 45 do not, by themselves, impose any new information collection requirements other than those that already exist in parts 43 and 45 of the Commission’s regulations.

The Commission specifically invites public comment on the accuracy of its estimate that no additional information collection requirements or changes to existing collection requirements would result from this proposal.

Information Collection Comments

The Commission invites the public and other Federal agencies to comment on any aspect of the proposed information collection requirements discussed above. The Commission will consider public comments on this proposed collection of information in:

(1) Evaluating whether the proposed collection of information is necessary for the proper performance of the

based on the annual burden hours necessary to oversee, maintain, and utilize the reporting functionality.”).

¹¹⁹ See *id.* (“The Commission notes, however, that these burdens should not be considered additional to the costs of compliance with part 43, because the basic data reporting technology, processes, and personnel hours and expertise needed to fulfill the requirements of part 43 encompass both the data stream necessary for real-time public reporting and the creation data stream necessary for regulatory reporting.”).

¹²⁰ See 44 U.S.C. 3501(2) and (3).

¹⁰⁷ See 5 U.S.C. 601 *et seq.*

¹⁰⁸ 47 FR 18618, 18618–21, Apr. 30, 1982.

¹⁰⁹ *Id.*

¹¹⁰ 66 FR 45604, 45609, Aug. 29, 2001.

¹¹¹ 75 FR 76574, 76595, Dec. 8, 2010 (The Notice of Proposed Rulemaking for 17 CFR part 45 describes why SDRs, SEFs, SDs, and MSPs should not be considered small entities).

¹¹² 77 FR 2136, 2170–71, Jan. 13, 2012 (The Final Part 45 Rulemaking discussion for non-SD/MSP counterparties); 75 FR at 76595, Dec. 8, 2010, (The part 45 Notice of Proposed Rulemaking discussion for non-SD/MSP counterparties).

¹¹³ See 44 U.S.C. 3501.

¹¹⁴ See 44 U.S.C. 3502.

¹¹⁵ See 5 CFR 1320.3(c)(1).

¹¹⁶ See 77 FR 2136, 2171–2176, Jan. 13, 2012.

¹¹⁷ See 77 FR at 2174, Jan. 13, 2012.

¹¹⁸ See 77 FR at 2174 (“The Commission anticipates that the reporting required by §§ 45.3 and 45.4 will to a significant extent be automatically completed by electronic computer systems; the following burden hours are calculated

functions of the Commission, including whether the information will have a practical use;

(2) Evaluating the accuracy of the estimated burden of the proposed collection of information, including the degree to which the methodology and the assumptions that the Commission employed were valid;

(3) Enhancing the quality, utility, and clarity of the information proposed to be collected; and

(4) Minimizing the burden of the proposed information collection requirements on derivatives clearing organizations, designated contract markets, and swap execution facilities, including through the use of appropriate automated, electronic, mechanical, or other technological information collection techniques, *e.g.*, permitting electronic submission of responses.

Copies of the submission from the Commission to OMB are available from the CFTC Clearance Officer, 1155 21st Street NW., Washington, DC 20581, (202) 418-5160 or from <http://RegInfo.gov>. Organizations and individuals desiring to submit comments on the proposed information collection requirements should send those comments to:

- The Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, Attn: Desk Officer of the Commodity Futures Trading Commission;

- (202) 395-6566 (fax); or
- OIRASubmissions@omb.eop.gov (email).

Please provide the Commission with a copy of submitted comments so that all comments can be summarized and addressed in the final rulemaking, and please refer to the **ADDRESSES** section of this rulemaking for instructions on submitting comments to the Commission. OMB is required to make a decision concerning the proposed information collection requirements between 30 and 60 days after publication of this release in the **Federal Register**. Therefore, a comment to OMB is best assured of receiving full consideration if OMB receives it within 30 calendar days of publication of this release. Nothing in the foregoing affects the deadline enumerated above for public comment to the Commission on the proposed rules.

C. Cost-Benefit Considerations

1. Introduction

Section 15(a) of the CEA requires the Commission to consider the costs and benefits of its actions before

promulgating a regulation under the CEA or issuing certain orders.¹²¹ 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) efficiency, competitiveness, and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations. The Commission considers the costs and benefits resulting from its discretionary determinations with respect to the section 15(a) factors.

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

2. Background

The swap data reporting framework adopted in the Final Part 45 Rulemaking¹²² was largely based on the mechanisms for the trading and execution of uncleared swaps. The plain language of the existing part 45 rules presumes the existence of a single, continuous swap both prior to and after acceptance of a swap for clearing by a DCO. Under that framework, registered entities and counterparties would each report data with respect to a single swap when such swap is initially executed, referred to as “creation data,” and over the course of the swap’s existence, referred to as “continuation data.”¹²³

The Commission has since had additional opportunities to consult with industry and with other regulators, including the Securities and Exchange Commission (“SEC”),¹²⁴ and to observe

¹²¹ 7 U.S.C. 19(a).

¹²² See “Swap Data Recordkeeping and Reporting Requirements,” 77 FR 2136, Jan. 13, 2012.

¹²³ Section 45.1 defines “required swap creation data” as primary economic terms data and confirmation data. Section 45.1 defines “primary economic terms data” as “all of the data elements necessary to fully report all of the primary economic terms of a swap in the swap asset class of the swap in question” and defines “confirmation data” as “all of the terms of a swap matched and agreed upon by the counterparties in confirming the swap. For cleared swaps, confirmation data also includes the internal identifiers assigned by the automated systems of the derivatives clearing organization to the two transactions resulting from novation to the clearing house.” 17 CFR 45.1.

¹²⁴ The SEC proposed certain new rules and rule amendments to Regulation SBSR governing reporting in the context of security-based swaps.

how the part 45 regulations function in practice with respect to swaps that are cleared, including how the implementation of part 45 interacts with the implementation of part 39 of the Commission’s regulations, which contains provisions applicable to DCOs.

In particular, § 39.12(b)(6) provides that upon acceptance of a swap by a DCO for clearing, the original swap is extinguished and replaced by equal and opposite swaps, with the DCO as the counterparty to each such swap.¹²⁵ The original swap that is extinguished upon acceptance for clearing is commonly referred to as the “alpha” swap and the equal and opposite swaps that replace the original swap are commonly referred to as “beta” and “gamma” swaps. The Commission is of the view that the existing part 45 regulations could be amended to better accommodate the multi-swap framework of § 39.12(b)(6) by explicitly addressing beta and gamma swaps as distinct swaps for purposes of part 45 reporting.¹²⁶

The existing part 45 regulations do not explicitly reflect industry practice, which the Commission understands is to generally report part 45 data for cleared swap transactions in conformance with the framework described in § 39.12(b)(6), where separate swaps (alphas, betas, and gammas) are represented individually in reported swap data. The Commission understands that under existing market practice: SEFs, DCMs and reporting counterparties generally report required swap creation data for alpha swaps to the SDR of their choice; DCOs that

See “Regulation SBSR—Reporting and Dissemination of Security-Based Swap Information,” 80 FR 14740, Mar. 19, 2015.

¹²⁵ See 17 CFR 39.12(b)(6) (requiring a DCO that clears swaps to “have rules providing that, upon acceptance of a swap by the [DCO] for clearing: (i) the original swap is extinguished; (ii) the original swap is replaced by an equal and opposite swap between the [DCO] and each clearing member acting as principal for a house trading or acting as agent for a customer trade . . .”). Subsequent to adoption of the Final Part 45 Rulemaking, the Commission affirmed that the multi-swap framework (comprising separate and unique original and resulting swaps) should apply for part 45 reporting purposes. See Statement of the Commission on the Approval of Chicago Mercantile Exchange Rule 1001 at 6, Mar. 6, 2013, available at <http://www.cftc.gov/ucm/groups/public/@newsroom/documents/file/statementofthecommission.pdf>.

¹²⁶ The Commission also notes that a single swap reporting framework for cleared swaps, as opposed to a multi-swap framework like the one contemplated by § 39.12(b)(6), would likely not be consistent with the approach proposed by the SEC in its release proposing certain new rules and rule amendments to Regulation SBSR. See “Regulation SBSR—Reporting and Dissemination of Security-Based Swap Information,” 80 FR 14740, Mar. 19, 2015. The Commission discusses the benefits associated with harmonizing its approach with that of other regulators later in this release.

accept alpha swaps for clearing generally report required swap creation data for the beta and gamma swaps that result from clearing novation of the alpha swap to the SDR of their choice (which may be different than the SDR to which the alpha swap was reported); such DCOs do not in all cases include the USI of the alpha swap in creation data reported for the beta and gamma swaps; and that DCOs may inconsistently report, and SDRs may inconsistently accept and process, alpha swap terminations.¹²⁷

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

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

¹²⁷ While the above reflects the Commission's general understanding of industry practice with respect to the reporting of component parts of a cleared swap transaction, the Commission does not possess complete information regarding certain details and nuances of the reporting practices of different registered entities and reporting counterparties. For instance, in some cases, the Commission generally does not possess sufficient information to ascertain the period of time between the DCO's acceptance of an alpha swap for clearing and the DCO's report of creation data for beta and gamma swaps. Questions eliciting specific details or nuances of industry practice that are likely to have cost/benefit implications are posed in the relevant sections discussing the costs and benefits of each proposed amendment or addition below.

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

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

The Commission believes that the baseline for this consideration of costs and benefits is generally the existing part 45 regulations, which were adopted in 2011.¹²⁸ However, as described above, in certain circumstances,

¹²⁸ See "Swap Data Recordkeeping and Reporting Requirements," 77 FR 2136, Jan. 13, 2012.

industry practice has been informed by certain provisions of part 39 and by subsequent industry developments, and thus does not necessarily reflect the plain language of the existing part 45 regulations. In those circumstances, the baseline for this consideration of costs and benefits will be industry practice.

The following consideration of costs and benefits is organized according to the rules and rule amendments proposed in this release. For each rule, the Commission summarizes the proposed amendments¹²⁹ and identifies and discusses the costs and benefits attributable to them, including costs and benefits raised by commenters in response to the Commission's 2014 request for comment regarding swap data recordkeeping and reporting requirements.¹³⁰ The Commission then considers the costs and benefits of certain alternatives to the rules proposed in this release, as well as the costs and benefits of all of the proposed rules jointly in light of the five public interest considerations set out in section 15(a) of the CEA.

The Commission notes that this consideration of costs and benefits is based on the understanding that the swaps market functions internationally, with many transactions involving U.S. firms taking place across international boundaries, with some Commission registrants being organized outside of the United States, with leading industry members typically conducting operations both within and outside the United States, and with industry members commonly following substantially similar business practices wherever located. Where the Commission does not specifically refer to matters of location, the below discussion of costs and benefits refers to the effects of the proposed rules on all swaps activity subject to the proposed and amended regulations, whether by virtue of the activity's physical location in the United States or by virtue of the activity's connection with or effect on U.S. commerce under CEA section 2(i).¹³¹ The Commission also notes that

¹²⁹ As described in detail throughout Section II of this release, the Commission is also proposing a number of non-substantive, conforming rule amendments in this release, such as renumbering certain provisions and modifying the wording of existing provisions to ensure consistency with the wording in newly proposed definitions. Non-substantive amendments of this nature will not be discussed in the cost-benefit portion of this release.

¹³⁰ See "Review of Swap Data Recordkeeping and Reporting Requirements," Request for Comment, 79 FR 16689, Mar. 26, 2014.

¹³¹ 7 U.S.C. 2(i). Section 2(i)(1) makes the swaps provisions of the Dodd-Frank Act, and Commission regulations promulgated under those provisions, applicable to activities outside the United States that "have a direct and significant connection

the existing part 45 regulations generally contemplate situations where a swap may be required to be reported pursuant to U.S. law and the law of another jurisdiction.¹³²

3. Definitions—Proposed Amendments to § 45.1

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

These proposed terms would be used throughout part 45 to help clarify reporting obligations for each swap involved in a cleared swap transaction. The Commission will use the defined terms “original swaps” and “clearing swaps” throughout this consideration of costs and benefits when discussing the future applicability of the rules proposed in this release to the particular components of a cleared swap transaction. Given that these terms are a product of this release and are not yet part of industry nomenclature, the Commission will also use the terms “alpha, beta, and gamma” throughout this consideration of costs and benefits when discussing existing industry practice and when helpful for purposes of clarification.¹³³

activities in, or effect on, commerce of the United States;” while section 2(i)(2) makes them applicable to activities outside the United States that contravene Commission rules promulgated to prevent evasion of Dodd-Frank. Application of section 2(i)(1) to the existing part 45 regulations with respect to SDs/MSPs and non-SD/non-MSP counterparties is discussed in the Commission’s non-binding Interpretive Guidance and Policy Statement Regarding Compliance With Certain Swap Regulations, 78 FR 45292 (July 26, 2013).

¹³² See 17 CFR 45.1 (defining “International swap” to mean “a swap required by U.S. law and the law of another jurisdiction to be reported both to a swap data repository and to a different trade repository registered with the other jurisdiction.”); see also 17 CFR 45.3(h) (prescribing requirements with respect to international swaps).

¹³³ The Commission determined to utilize the proposed to be defined terms “original swap” and “clearing swaps” in this release rather than the industry terms “alpha, beta, and gamma” because while a cleared-swap transaction generally

i. Costs

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

ii. Benefits

As discussed earlier in this release, the plain language of the existing part 45 regulations presumes the existence of one continuous swap and does not explicitly acknowledge distinct reporting requirements for the individual components (*i.e.*, alphas, betas, and gammas) of a cleared swap transaction. However, industry practice is generally to report part 45 data for cleared swap transactions in conformance with the multi-swap framework described in § 39.12(b)(6) (*i.e.*, to report alphas, betas, and gammas separately). The definitions of original and clearing swaps, along with the other revisions to part 45 proposed in this release, would help align the part 45 regulations with part 39 and with certain industry practices and would explicitly delineate the swap data reporting obligations associated with each of the swaps involved in a cleared swap transaction.¹³⁴

4. Creation Data Reporting by Derivatives Clearing Organizations—Proposed Amendments to § 45.3

Currently, § 45.3 requires reporting to an SDR of two types of “creation data” generated in connection with a swap’s creation: “primary economic terms data” and “confirmation data.”¹³⁵

comprises an original swap that is terminated upon novation and the equal and opposite swaps that replace it, the Commission is aware of certain circumstances in which a cleared swap transaction may not involve the replacement of an original swap (*e.g.*, an open offer swap, as discussed earlier in this release). See note 30, *supra*.

¹³⁴ The Commission acknowledges that the alternative approaches to the reporting of cleared swap transactions separately discussed in the Consideration of Alternatives section later in this release could also provide these benefits for registered entities and swap counterparties. However, for the reasons explained in that section, the Commission is of the view that the proposed approach is more consistent with industry practice than the alternatives.

¹³⁵ Section 45.1 defines “required swap creation data” as primary economic terms data and confirmation data. Section 45.1 defines “primary economic terms data” as “all of the data elements necessary to fully report all of the primary economic terms of a swap in the swap asset class of the swap in question” and defines “confirmation data” as “all of the terms of a swap matched and agreed upon by the counterparties in confirming the

Regulation 45.3 governs what creation data must be reported, who must report it, and deadlines for its reporting.

Proposed § 45.3(e) would govern creation data reporting requirements for swaps that fall under the proposed definition of clearing swaps. Proposed § 45.3(e) would require a DCO, as reporting counterparty under proposed § 45.8(i),¹³⁶ to report all required swap creation data for each clearing swap as soon as technologically practicable after acceptance of an original swap by a DCO for clearing (in the event that the clearing swap replaces an original swap) or as soon as technologically practicable after execution of the clearing swap (in the event that the clearing swap does not replace an original swap).¹³⁷

Additionally, the proposed rule would require DCOs to electronically report to a registered SDR required swap creation data for clearing swaps. Swaps other than clearing swaps, including swaps that later become original swaps by virtue of their acceptance for clearing by a DCO, would continue to be reported as currently required under existing § 45.3(a) through (d). The Commission is thus proposing an approach to creation data reporting that would require reporting counterparties or SEFs/DCMs to report creation data for swaps commonly known as alpha swaps, and that would require DCOs to report creation data for swaps commonly known as beta and gamma swaps, and for any other swaps to which the DCO is a counterparty.

With respect to confirmation data reporting, for swaps that are intended to be cleared at the time of execution, the Commission proposes to amend § 45.3(a), (b), (c)(1)(iii), (c)(2)(iii), and

swap. For cleared swaps, confirmation data also includes the internal identifiers assigned by the automated systems of the derivatives clearing organization to the two transactions resulting from novation to the clearing house.” 17 CFR 45.1.

¹³⁶ As discussed in greater detail below, proposed § 45.8(i) would designate the DCO as the reporting counterparty for clearing swaps.

¹³⁷ As noted earlier in this release, the proposed definition of “clearing swap” is intended to encompass: (1) swaps that replace an original swap and to which the DCO is a counterparty (*i.e.* swaps commonly known as betas and gammas) and (2) all other swaps to which the DCO is a counterparty (even if such swap does not replace an original swap). The Commission understands that there may be instances in which a clearing swap does not replace an original swap. For example, in the preamble to the part 39 adopting release, the Commission noted that “open offer” systems are acceptable under § 39.12(b)(6), stating that “Effectively, under an open offer system there is no ‘original’ swap between executing parties that needs to be novated; the swap that is created upon execution is between the DCO and the clearing member, acting either as principal or agent.” “Derivatives Clearing Organization General Provisions and Core Principles,” 76 FR 69334, 69361, Nov. 8, 2011.

(d)(2) to remove certain existing confirmation data reporting requirements. Under the modified rules, SEFs/DCMs and reporting counterparties would continue to be required to report primary economic terms (“PET”) data as part of their creation data reporting, but would not be required to report confirmation data for swaps that are intended to be submitted to a DCO for clearing at the time of execution. Instead, the DCO would be required to report confirmation data for clearing swaps pursuant to proposed § 45.3(e).

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

i. Costs

The Commission understands that under current industry practice, DCOs commonly report to SDRs creation data for swaps that would fall under the definition of clearing swaps. Accordingly, to the extent that DCOs currently report in conformance with proposed § 45.3(e), the Commission does not expect the proposed rule to result in any additional costs. The Commission requests comment on specific details of market practice of DCOs and whether § 45.3(e) would carry any associated costs and/or impose additional obligations that go beyond existing industry practice of DCOs.

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

magnitude of the costs relating to compliance with reporting obligations in multiple jurisdictions. However, the Commission expects that industry technological innovations may effectively allow for satisfaction of swap data reporting requirements across more than one jurisdiction by means of a single data submission, and that a streamlined reporting process or other technology and operational enhancements could mitigate the cost of satisfying reporting requirements for swaps that may be required to be reported to a foreign trade repository under a home country regulatory regime as well as to a registered SDR pursuant to proposed amendments to part 45.¹³⁸ Additionally, the Commission anticipates that adopting an approach to the reporting of cleared swaps in the United States that is, to the extent possible, consistent with the approaches adopted in other jurisdictions may also minimize compliance costs for entities operating in multiple jurisdictions.¹³⁹ The Commission also notes that any costs arising from reporting swap data with respect to more than one jurisdiction could already have been realized, to the extent that DCOs located outside the United States are already reporting swap data to a registered SDR in addition to reporting swap data to trade repository pursuant to a home country regulatory regime.

The Commission requests comment regarding any unique costs and benefits of proposed § 45.3(e), and the proposed amendments and additions to part 45 generally, in regard to extraterritorial application, including:

- Are there any benefits or costs that the Commission identified in this release that do not apply, or apply to a different extent, to the extraterritorial application of the proposed additions and amendments to part 45?
- Are there any costs or benefits that are unique to the extraterritorial application of the proposed additions and amendments to part 45? If so, please specify how.
- If significant differences exist in the costs and benefits of the extraterritorial and domestic application of the proposed additions and amendments to part 45, what are the implications of those differences for the substantive

¹³⁸ As noted above, the part 45 regulations contemplate situations where a swap may be required to be reported pursuant to U.S. law and the law of another jurisdiction.

¹³⁹ The Commission’s understanding is that the approach proposed in this release for the reporting of cleared swaps (e.g., requiring separate reporting of alphas, betas, and gammas) is largely consistent with the multi-swap approach adopted by a number of jurisdictions, including, for example, the European Union, Singapore, and Australia.

requirements of the proposed additions and amendments to part 45?

- To what extent would trade reporting requirements in non-U.S. jurisdictions require a DCO to report swap data for clearing swaps to a foreign trade repository in addition to a registered SDR? Please describe any unique costs resulting from such scenarios.

- Are there any consistencies and/or inconsistencies between the proposed amendments to part 45 and any foreign trade reporting regulations that would apply to registered DCOs that would impose costs or provide benefits? If so, please describe any such consistencies and/or inconsistencies and associated cost and/or benefit implications.

The Commission requests that comments focus on information and analysis specifically relevant to the questions posed above as opposed to addressing the cross-border scope of the part 45 regulations. The Commission further requests that commenters supply the Commission with relevant data to support their comments.

With respect to confirmation data reporting, one commenter contended that requiring the reporting of confirmation data, in addition to PET data, is unnecessarily burdensome if the Commission collects the proper PET data.¹⁴⁰ The Commission anticipates that the proposed removal of certain confirmation data reporting requirements will result in decreased costs for swap counterparties and/or registered entities that are currently gathering and conveying electronically the information necessary to report confirmation data for swaps that are intended to be submitted to a DCO for clearing at the time of execution.¹⁴¹

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

The Commission preliminarily believes that allowing DCOs to choose

¹⁴⁰ See CEWG letter at 4–5 (stating that reporting confirmation data in addition to PET data is highly redundant because confirmation data simply includes all of the PET data matched and agreed to by the counterparties).

¹⁴¹ See ISDA letter at 6–8 (noting that “Confirmation data should not be required for an alpha trade that is intended for clearing at point of execution, whether due to the clearing mandate or bilateral agreement. Confirmation data for alpha swaps is not meaningful since they will be terminated and replaced with cleared swaps simultaneously or shortly after execution for which confirmation data will be reported by the DCO.”).

the SDRs to which they report creation and continuation data is cost-minimizing for DCOs because it allows them to select the SDR which is most cost effective. Therefore, as discussed in greater detail below, the Commission anticipates that DCOs that have affiliated SDRs will continue their current practice of reporting clearing swaps to their affiliated SDRs.

ii. Benefits

Proposed § 45.3(e) would explicitly articulate DCO part 45 reporting obligations with respect to clearing swaps (e.g., betas and gammas).¹⁴² As explained above, existing § 45.3 does not explicitly acknowledge distinct reporting requirements for swaps commonly known as alphas, betas, and gammas. The proposed amendments will explicitly delineate creation data reporting obligations for each component of a cleared swap transaction, which would improve the Commission's ability to analyze data associated with such transactions.

Requiring DCOs to report required swap creation data for clearing swaps to SDRs in the manner proposed in this release is expected to result in uniform protocols and consistent reporting of the individual components of a cleared swap transaction. DCOs already have the processes, procedures, and connectivity in place for reporting swap data to some registered SDRs, and given that DCOs utilize automated systems to communicate with SDRs, the Commission expects the data submitted by DCOs to SDRs to be standardized and readily available. The Commission submits that the proposed reporting framework for cleared swaps will result in more consistent reporting of all components of a cleared swap transaction, including linkages between the related swaps, thereby increasing the efficiency of the SDR data collection function and enhancing the Commission's ability to utilize the data for regulatory purposes, including for systemic risk mitigation, market monitoring, and market abuse prevention.

With respect to the proposed removal of certain confirmation data reporting requirements for swaps that are intended to be submitted to a DCO for clearing at the time of execution, the

Commission is of the view that the proposed confirmation data reporting requirements for clearing swaps should provide necessary confirmation data with respect to cleared swap transactions. Given that the proposed rules would require the DCO to report confirmation data for clearing swaps, requiring an additional set of confirmation data reporting for the now-terminated original swap, in addition to PET data, would be unnecessary and provide little benefit.

Finally, with respect to choice of SDR, under proposed § 45.3(j), the party with the obligation to choose the SDR has the discretion to select the SDR of its choice. This could be an SDR with which the party already has a working relationship, an SDR which is, in the registered entity or reporting counterparty's estimation, most cost-effective, or an SDR that provides the best overall service and product. This flexibility to select SDRs may minimize reporting errors and foster competition between SDRs, as swap data for a particular reporting counterparty would be maintained in fewer SDRs, and may reduce costs, as reporting counterparties and registered entities (other than DCOs) should not have to establish connection to more than one SDR unless they prefer to do so. The Commission's understanding is that § 45.3(j) is consistent with industry practice,¹⁴³ and thus that the benefits described above are already being realized.

5. Continuation Data Reporting by Derivatives Clearing Organizations—Proposed Amendments to § 45.4

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

Notably, proposed § 45.4(c) would require a DCO to report all required

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

i. Costs

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

With respect to termination notices, one commenter stated that DCOs should not be required to report termination of a cleared alpha because doing so would result in increased operational costs associated with establishing linkages to all registered SDRs.¹⁴⁴ While DCOs are currently required to report continuation data, including terminations, to SDRs under existing § 45.4,¹⁴⁵ the Commission's understanding is that DCOs do not consistently report original swap terminations. DCOs that do not currently have connectivity to the SDR where the SEF/DCM or original counterparties first reported the swap would incur costs associated with establishing such connectivity. DCOs will also realize costs associated with the termination notice and submissions correcting previously erroneously reported or omitted data. However, DCO reporting of alpha swap terminations has not been uniform or consistent and

¹⁴² The Commission acknowledges that the alternatives separately discussed in the Consideration of Alternatives section later in this release could also provide these benefits for registered entities and swap counterparties. However, for the reasons explained in that section, the Commission is of the view that the proposed approach is more consistent with industry practice than the alternatives.

¹⁴³ The Commission notes that industry practice with respect to choice of SDR has likely been influenced in part by a variety of factors, including, among others, the Commission's statement regarding CME Rule 1001. See Statement of the Commission on the Approval of CME Rule 1001 at 6, Mar. 6, 2013. The Commission notes that other DCOs have adopted similar rules. See, e.g., ICE Clear Credit Rule 211.

¹⁴⁴ See OTC Hong Kong letter at 2–3 (contending that setup, application development, and testing to interface with each SDR is likely to require at least 150 man-days, and that a more cost-effective framework would be to require the original counterparty to report termination of the alpha once it receives confirmation that the alpha has been accepted for clearing, and that the original counterparty would already have in place technical and operational interfaces with the SDR of its choice. The commenter also contended that the burden on DCOs of additional reporting outweighs the benefits to the CFTC).

may vary by DCO and SDR, and the Commission is generally aware that in some instances, DCOs currently report alpha swap terminations to the original SDR that received the original submission of the intended to be cleared swap. The proposed rules thus will not introduce any new costs for those DCOs which have already implemented systems to report alpha swap terminations to SDRs.

The Commission requests more detailed information regarding the nature and amount of the costs identified above, as well information about the nature and amount of any other costs likely to result from proposed § 45.4(c), including a description of market practice as it relates to those costs. The Commission also requests information regarding whether DCOs are currently reporting alpha swap terminations and the scope of such reporting relative to all swaps accepted for clearing by such DCOs. The Commission notes that it does not possess the information required to quantify such costs since DCOs and SDRs are not required to provide the relevant information regarding cost structures to the Commission, but requests that commenters provide quantitative estimates, as well as data and other information to support those estimates.

With respect to the proposed additional data fields, as discussed above, proposed § 45.4(c)(2) would add three data fields (the LEI of the SDR to which creation data for the clearing swaps was reported, the USI of the original swap, and USIs of the clearing swaps) to the life cycle event data or to state data reported by DCOs as continuation data for original swaps.¹⁴⁶ All three of these data fields are either already in use or can be created by the SDR and reported by the DCO. While requiring the reporting of additional fields may impose costs, DCOs should already possess the information needed for these fields, and the Commission preliminarily believes that the extra costs to DCOs associated with proposed § 45.4(c)(2) would be minimal. The Commission does not possess the information required to quantify such costs since DCOs and SDRs are not required to provide to the Commission the relevant information regarding the

¹⁴⁶ “Required swap continuation data” is defined in § 45.1 and includes “life cycle event data” or “state data” (depending on which reporting method is used) and “valuation data.” Each of these data types is defined in § 45.1. “Life cycle event data” means “all of the data elements necessary to fully report any life cycle event.” “State data” means “all of the data elements necessary to provide a snapshot view, on a daily basis of all of the primary economic terms of a swap . . .” 17 CFR 45.1.

costs associated with creating and using these fields, but requests that commenters provide quantitative estimates, as well as data and other information to support those estimates.

ii. Benefits

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

Proposed § 45.4(c) would ensure that part 45 explicitly addresses DCO part 45 continuation data reporting obligations with respect to original swaps (*i.e.*, alphas).¹⁴⁷ Existing § 45.4(b), which addresses “continuation data reporting for cleared swaps,” requires DCOs to report continuation data for “all swaps cleared by a [DCO],” but does not explicitly address the multi-swap framework provided in § 39.12(b)(6).¹⁴⁸ Therefore, uncertainty persists as to whether, under existing § 45.4(b) the DCO must report continuation data for the alpha, beta and gamma swaps. The inconsistent interpretation of this reporting requirement leads to substantial differences in reporting of cleared swaps and presents challenges for regulatory oversight. The Commission understands that the continuation data reporting

¹⁴⁷ The Commission acknowledges that the alternatives separately discussed in the Consideration of Alternatives section later in this release could also provide these benefits for registered entities and swap counterparties. However, for the reasons explained in that section, the Commission is of the view that the proposed approach is superior to the alternatives.

¹⁴⁸ As discussed earlier in this release, § 39.12(b)(6) provides that upon acceptance of a swap by a DCO for clearing, the original swap is extinguished and replaced by equal and opposite swaps, with the DCO as the counterparty to each such swap. See 17 CFR 39.12(b)(6).

requirements could benefit from greater clarity regarding the obligations to report continuation data for original swaps that have been terminated and the clearing swaps that replace a terminated original swap.

With respect to the valuation data reporting requirements of current § 45.4(b)(2)(ii), while one commenter contended that it would be valuable for the Commission to receive counterparty valuations for all swaps, whether cleared or uncleared,¹⁴⁹ several commenters contended that the DCO is the best and ultimate source of the valuation reporting for cleared swaps. The benefit to the Commission of receiving cleared swap valuation data from SDs/MSPs would not justify the significant expense and difficulty incurred by SDs/MSPs to report this data to the SDR.¹⁵⁰

The Commission preliminarily believes that the § 45.4(b)(2) proposal to remove the requirement that SDs and MSPs report daily valuation data for cleared swaps could result in cost savings to the extent that any SDs and MSPs are not currently relying on no-action relief.¹⁵¹ In addition, because there are fewer DCOs than non-DCO reporting counterparties, placing the responsibility to report valuation data solely on the DCO will result in a more consistent and standardized valuation reporting scheme, as there would be a dramatic decrease in the number of potential valuation data submitters to SDRs. This would benefit SDRs, regulators, and the public because it would facilitate data aggregation and improve the Commission’s ability to analyze SDR data and to satisfy its risk and market oversight responsibilities, including measurement of the notional

¹⁴⁹ See Markit letter at 11.

¹⁵⁰ See ABA letter at 2, ISDA letter at 13–14 (noting that the cost savings for SDs/MSPs who would otherwise have to build to additional SDRs solely for the purpose of reporting valuation data greatly outweighs any perceived benefit of receiving such data), JBA letter at 2, MFA letter at 4 (contending that the valuation data provided by the DCO will generally be more accurate and robust than that from a given reporting counterparty, as the DCOs have procedures in place for valuing open swap positions that source and validate pricing information from a variety of sources), and NGSA letter at 4–5 (noting that imposing valuation data reporting on DCOs alone also alleviates unnecessary burdens on SDRs, who would receive fewer messages on a daily basis).

¹⁵¹ See CFTC Division of Market Oversight, No-Action Letter No. 12–55, Dec. 17, 2012; No-Action Letter No. 13–34, Jun. 26, 2013; No-Action Letter No. 14–90, Jun. 30, 2014; and No-Action Letter No. 15–38, June 15, 2015. Staff no-action relief from the requirements of § 45.4(b)(2)(ii) has been in effect since the initial compliance date for part 45 reporting.

amount of outstanding swaps in the market.

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

6. Unique Swap Identifier Creation by Derivatives Clearing Organizations—§ 45.5(d)

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

Proposed new rule § 45.5(d) would require a DCO to generate and assign a USI for a clearing swap upon, or as soon as technologically practicable after, acceptance of an original swap by the DCO for clearing (in the event the clearing swap replaces an original swap) or execution of a clearing swap (in the event that the clearing swap does not replace an original swap), and prior to reporting the required swap creation data for the swap. Proposed § 45.5(d) contains provisions governing creation and assignment of USIs by the DCO that are consistent with analogous provisions governing creation and assignment of USIs by SEFs, DCMs, SDs, MSPs, and SDRs.

i. Costs

The Commission believes that proposed § 45.5(d) is largely consistent with industry practice and will not result in any additional costs for DCOs. Any DCOs that would not be in complete conformance with the proposed rule might have to enhance their existing technological protocols in order to create USIs in house, but these marginal costs would likely be lower than the costs associated with obtaining a USI with a separate USI-creating entity. While the Commission believes that creating USIs in-house, rather than with a different USI creating entity, might be less costly for DCOs, the Commission currently lacks data on that comparison and requests that commenters submit comments and/or data to estimate the quantifiable costs associated with USI creation.

ii. Benefits

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

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

Current § 45.8 establishes a hierarchy under which the reporting counterparty for a particular swap depends on the nature of the counterparties involved in the transaction. DCOs are not included

in the existing § 45.8 hierarchy. The Commission is proposing to amend § 45.8 in order to identify DCOs in the hierarchy as the reporting counterparty for clearing swaps.

i. Costs

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

ii. Benefits

As noted above, clearing swaps are not explicitly acknowledged in existing § 45.3, and DCOs are not identified as reporting counterparties in the reporting counterparty hierarchy of § 45.8. The Commission expects that modifications to the § 45.8 reporting counterparty hierarchy will eliminate ambiguity regarding which registered entity or swap counterparty is required to report required creation data for clearing swaps, explicitly delineating the nature and extent of DCO reporting obligations, and affording market participants and SDRs a more precise and accurate understanding of reporting obligations under part 45.¹⁵²

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

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

¹⁵² The Commission acknowledges that the alternatives separately discussed in the Consideration of Alternatives section later in this release could also provide these benefits for registered entities and swap counterparties. However, for the reasons explained in that section, the Commission is of the view that the proposed approach is more consistent with industry practice than the alternatives.

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

i. Costs

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

ii. Benefits

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

9. Primary Economic Terms Data—Amendments to the Primary Economic Terms Data Tables for Clearing Swaps

The Commission's current lists of minimum (required) primary economic terms for swaps in each swap asset class are found in tables in Exhibits A through D of appendix 1 to part 45. The Commission proposes to add several new data elements under the heading "Additional Data Categories and Fields for Clearing Swaps" to Exhibits A through D in order to more accurately capture the additional, unique features of clearing swaps that are not relevant to uncleared swaps. The newly proposed data fields include: The USI for the clearing swap; the USI for the original swap; the SDR to which the original swap was reported; clearing member LEI, clearing member client account origin, house or customer account; clearing receipt timestamp; and clearing acceptance timestamp.

The Commission also proposes to add several new required data elements which would be applicable to all swaps, and to make conforming changes to

some existing data elements. The newly proposed fields include: Asset class, an indication of whether the reporting counterparty is a DCO with respect to the swap, and clearing exception or exemption types.

i. Costs

A number of commenters noted that making any changes and additions to required data fields could present substantial costs and operational burdens.¹⁵³ However, these comments, which did not come from DCOs, related to creation data reporting fulfilled by a swap counterparty and not by a registered entity. The newly proposed data fields for clearing swaps would be reported exclusively by DCOs. The Commission preliminarily believes that DCOs are better situated than swap counterparties to report the additional fields for clearing swaps without the substantial costs and operational burdens cited by commenters because DCOs already possess certain information, or other registered entities and swap counterparties are required to transmit the information to DCOs, regarding those fields. For example, the data necessary to report the proposed "original swap SDR" field is currently required to be transmitted to the DCO under existing § 45.5, and the Commission understands that data required by the proposed "clearing receipt timestamp" and "clearing acceptance timestamp" fields may already be generated and present in DCO systems—such DCOs would just have to transfer those timestamps to the reporting system for each clearing swap. Similarly, the Commission understands that house or customer account designations are already collected and maintained in relation to certain part 39 reporting obligations. Hence, there would be no additional cost in collecting the information necessary to report the "origin (house or customer)" field, and marginal costs would stem from conveying the information in part 45 swap data reports. The Commission notes that it does not currently have complete information regarding the extent to which DCOs may already possess the information required by the proposed additional fields. Accordingly, for each of the proposed new data fields for clearing swaps, the Commission requests comment regarding the extent to which DCOs currently possess the required information, and the costs

associated with obtaining and/or reporting such information.

The Commission expects that the addition of the three data fields applicable to all reporting entities for all swaps will result in some increase in costs. The Commission does not currently possess the data needed to quantify such costs since reporting entities and SDRs are not required to provide to the Commission the relevant information regarding the costs associated with creating and using these fields, but requests that commenters provide quantitative estimates, as well as data and other information to support such estimates. The information necessary to report these data elements is likely to be readily available in connection with the execution of swaps, with some marginal costs stemming from the requirement to include the information in PET data reported to an SDR (to the extent that such information is not already reported). The Commission understands that in some cases, market practice is to report some of the information required by the proposed three new data fields applicable to all reporting entities for all swaps.

ii. Benefits

The Commission preliminarily believes that the proposed additions to the list of minimum primary economic terms would result in a variety of benefits. Fields such as USI for the original swap or the SDR to which the original swap was reported may facilitate the monitoring of each original swap by SDRs and regulators and may prevent potential double-counting of swap transactions or notional amounts, thus improving the accuracy of SDR data. Other proposed fields such as clearing member LEI or clearing member client account information would facilitate the Commission's assessment of risk management of market participants, promoting the protection of the financial integrity of the markets and the protection of market participants and the public. The asset class data field would assist the Commission in determining the asset class for swaps reported to SDRs, enhancing the Commission's ability to identify swaps activity in each asset class as well as the capability to use the data for regulatory purposes. The indication of whether the reporting counterparty is a DCO with respect to the swap data field would identify when a DCO is a reporting counterparty for clearing swaps, increasing the ability to interpret and utilize data for these swaps. The clearing exception or exemption types data field would

¹⁵³ See, e.g., CDEU letter at 1–2, CMC letter at 5, EDF Trading North American at 6, and International Energy Credit Association at 5.

enable the Commission to ascertain the specific exception or exemption from the clearing requirement that was elected and would assist in the evaluation of compliance with the clearing requirement, as well as assessing market activity in the uncleared swap markets.

10. Consideration of Alternatives

The Commission considered the costs and benefits of certain alternatives raised by commenters in response to the Commission's 2014 request for comment, including whether part 45 should require intended to be cleared swaps (original swaps) to be reported to registered SDRs. Some commenters noted that reporting of alpha swaps is beneficial and should continue to be required,¹⁵⁴ while other commenters contended that alpha swaps should not be required to be reported to an SDR and questioned the benefits of requiring the reporting of alpha swaps.¹⁵⁵

¹⁵⁴ See TR SEF letter at 10 (stating that the information associated with the reporting of alpha swaps is necessary for surveillance and audit trail purposes, that it would be helpful for the Commission to see all three swaps when analyzing data, and that if only the beta and gamma are reported, the Commission would not easily see where the swap was originally executed), AFR letter at 5 (stating that in general, all life cycle information relevant to track a swap from initial conception to clearing should be included in reporting, including the reporting of the initial alpha swap prior to novation into clearing, because such information will be useful in tracking trends in clearing use, including enforcement of the clearing mandate and optional use of clearing), Markit letter at 25 (stating that reporting requirements in relation to the alpha swap should not be modified or waived because it will often be essential for the Commission to know the exact origin of a cleared swap transaction, particularly for market surveillance purposes), and DTCC letter at 17–18 (stating that: Any changes to the Commission's reporting requirements that would not require the reporting of swap transaction data to SDRs of all swaps, including alpha swaps, would be inconsistent with CEA section 2(a)(13)(G); that a material, price forming event occurs upon execution of an alpha swap; that regulators should continue to require the reporting of alpha swap data in order to maintain a complete audit trail of all transaction-level activity related to a swap trade; and that in order to understand the origin of cleared swaps, regulators must have the ability to access and examine the connections between the alpha, beta, and gamma swaps).

¹⁵⁵ See SIFMA letter at 4 (stating that separately reporting alpha swaps to SDRs can result in misleading data being retained by SDRs, and that this is particularly concerning if alphas and subsequent betas and gammas are reported to different SDRs, which could result in double counting of swaps), CEWG letter at 15 (contending that counterparties enter into an alpha with the expectation that it will be cleared almost immediately thereafter, and that requiring the reporting of alpha, beta, and gamma swaps might result in parties reporting related swaps to different SDRs), CME letter at 2–3 (contending that there is no value in having execution venues report intended-to-be-cleared swaps that will exist only for a few seconds, and that amending the rules such that the DCO is the only party with reporting

Some commenters stated that the Commission should require resulting swaps to be reported to the same SDR as original swaps, so that the entire history of a swap would reside at the same SDR.¹⁵⁶ A number of commenters suggested that part 45 should place swap data reporting obligations solely on DCOs, including with respect to swaps that are intended to be cleared at the time of execution and accepted for clearing by a DCO (swaps commonly known as "alpha" swaps) and swaps resulting from clearing (swaps commonly known as "beta" and "gamma" swaps).¹⁵⁷ However, one commenter noted that it would not be appropriate to require a DCO to report information related to the execution of an alpha swap.¹⁵⁸

responsibilities for intended-to-be-cleared swaps would lower operational risk, cost, and burden, and would ensure the Commission gets data directly from the source), MFA letter, and ISDA letter.

¹⁵⁶ See DTCC letter at 2–3, appendix at 4, 21 (arguing that the Commission should adopt a "single SDR" rule to ensure that all of the data for a swap is available in one SDR); ISDA letter at 44 (contending that original and resulting swaps should be reported to the same SDR when a swap was executed without the intention or requirement to clear, but is subsequently cleared).

¹⁵⁷ See CMC letter at 1, 3, 6 (noting that "cleared swaps reporting should be handled exclusively by DCOs."); NFPEA letter at 12 (noting that "If and when a swap is cleared and thereafter, all information about the swap should be reported to the SDR solely by the DCO"); EEI letter at 3, 14 (stating that the Commission should put all obligations for reporting cleared swaps on DCOs and that the DCO is the only entity with access to all relevant information to trace a cleared swap for its entire existence and is the only entity that can provide the Commission with position information for individual market participants); ICE letter at 3, 17 (stating that the DCO should be the sole reporting party for intended to be cleared swaps, that reporting prior to acceptance of a swap for clearing introduces another point of failure in the reporting chain, and that there is little if any benefit of requiring a party other than the DCO to report, as the intended to be cleared swap exists only for a few seconds); CEWG letter at 16 ("The Working Group recommends that the Part 45 regulations be amended to make clear that the DCO has the reporting obligations (creation and continuation data) for the original alpha swap and resulting positions . . ."); CME letter at 20 (contending that the act of submitting an intended to be cleared swap to a DCO should completely discharge the reporting obligations of each reporting counterparty, SEF or DCM, and that this position would be consistent with Congressional intent and would help ensure the Commission gets access to the best possible information for regulatory purposes without imposing unnecessary costs on the Commission or market participants); DTCC letter at 21 (noting that placing the cleared swap reporting burden exclusively on DCOs would eliminate the possibility of duplicate reporting for cleared swaps, which would eliminate the need to require reporting counterparties and SDRs to adopt costly and elaborate mechanisms); and NFP Electric Associations letter at 4.

¹⁵⁸ See LCH letter at 10 ("It would not be appropriate to oblige the DCO to enhance Part 45 reporting in order to source information regarding the original execution that should be provided directly by the execution venue or execution counterparties.").

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

The first two alternatives each require swaps that are intended to be cleared and the resulting clearing swaps to be reported to the same SDR. If such swaps were reported to the same SDR, there would be no need for certain requirements in proposed § 45.4(c) that extra fields, such as clearing swap SDR, be included in the report to the SDR for the clearing swap to link the clearing swap to an original swap on a different SDR. Similarly, the need for certain clearing swap PET data fields, such as the identity of the original SDR, intended to be used for linking purposes, might not be necessary. This would reduce costs relative to the proposed rule. Moreover, DCOs would incur reduced costs since they would only have to report data regarding cleared swap transactions to a single SDR. Further, market participants and the Commission could access all information about a single set of related original and clearing swaps at a single SDR, also reducing costs relative to the proposed rule.

However, because the proposed rule more closely reflects current industry practice relative to the alternative, there would be some potentially significant one-time costs, including the costs of changes to existing systems, associated with changing practices to conform to the alternatives. Additionally, a substantial portion of aggregation costs for regulators, and, likely, market participants, arises from the current landscape, which includes multiple SDRs. The proposed requirements to link original and clearing swaps at multiple SDRs is a relatively minor burden compared with the larger, already-incurred costs from having multiple SDRs. Additionally, costs associated with monitoring and aggregation would likely be mitigated by the continuation data fields of proposed

§ 45.4(c)(2), which would enable regulators to more effectively connect original swaps at one SDR with clearing swaps at another SDR.

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

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

also reduce costs relative to the proposed rule. However, the benefits of separate reports for original and clearing swaps would be foregone and there may be a less complete record of the history of each cleared swap. It may be possible to reclaim these benefits through requiring additional fields in each cleared swap report (although this would also increase costs). Moreover, because the proposed rule more closely reflects current industry practice relative to these alternatives, there would be some potentially significant one-time costs, including the costs of changes to existing systems, associated with changing practices to conform to the alternatives. The effects of who chooses the SDR are similar to the effects described for the first two alternatives.

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

The Commission also preliminarily believes that clarifying distinct reporting requirements in part 45 for alphas (swaps that become original swaps) and betas and gammas (clearing swaps that replace original swaps) presents a full history of each cleared swap transaction and permits the Commission and other regulators to identify and analyze each component part of such transactions. The Commission also continues to hold the view that placing the part 45 reporting obligation on the counterparty or registered entity closest to the source of, and with the easiest and fastest access to, complete and accurate data regarding a swap fosters accuracy and completeness in swap data reporting. In light of these benefits, the Commission proposes to maintain the current industry practice of separately reporting

both alpha swaps (*i.e.*, swaps that would become original swaps under the proposed rules) and beta and gamma swaps (*i.e.*, clearing swaps as defined under the proposed rules).

Additionally, the multi-swap reporting approach proposed in this release is largely consistent with the approach proposed by the SEC in its release proposing certain new rules and rule amendments to Regulation SBSR,¹⁵⁹ and is also largely consistent with the approach adopted by several foreign regulators.¹⁶⁰ Given that the swaps market is global in nature, the Commission anticipates that adopting an approach to the reporting of cleared swaps in the United States that is consistent with the approaches adopted in other jurisdictions may minimize compliance costs for entities operating in multiple jurisdictions.

The Commission requests comment on whether the ongoing cost savings of adopting an alternative rule would justify the one-time costs of changing industry practice to conform to the alternative rule.

11. Request for Comment

The Commission requests comment on all aspects of the proposed rules. Beyond specific questions interspersed throughout its discussion, the Commission generally requests comment on all aspects of its consideration of costs and benefits, including: identification and assessment of any costs and benefits not discussed therein; the potential costs and benefits of the alternatives that the Commission discussed in this release; data and any other information to assist or otherwise inform the Commission's ability to quantify or qualitatively describe the benefits and costs of the proposed rules; and substantiating data, statistics, and any other information to support positions posited by commenters with respect to the Commission's consideration of costs and benefits. Commenters also may suggest other alternatives to the proposed approach where the commenters believe that the alternatives would be appropriate under the CEA and provide a superior cost-benefit profile.

12. Section 15(a) Factors

Section 15(a) of the CEA requires the Commission to consider the effects of its

¹⁵⁹ See "Regulation SBSR—Reporting and Dissemination of Security-Based Swap Information," 80 FR 14740, Mar. 19, 2015.

¹⁶⁰ The Commission's understanding is that a number of jurisdictions, including the European Union, Singapore, and Australia, for example, also account for a multi-swap approach to the reporting of cleared swaps.

actions in light of the following five factors:

(1) *Protection of market participants and the public.* In the Final Part 45 Rulemaking,¹⁶¹ the Commission stated that the data reporting requirements of part 45 provided for protection of market participants and the public by providing regulatory agencies with a wealth of previously unavailable data in a unified format, greatly enhancing the ability of market and systemic risk regulators to perform their oversight and enforcement functions.¹⁶² The Commission preliminarily believes that the proposed amendments would enhance these protections by explicitly providing how and by whom each of the swaps involved in a cleared swap transaction should be reported. In particular, by requiring DCOs to electronically report the creation data and continuation data for clearing swaps, the Commission believes that data on all clearing swaps associated with a specific original swap will be aggregated at the same SDR, provided by a single entity and readily available for accurate and complete analysis. This would also allow the Commission and other regulators to access all data pertaining to related clearing swaps from a single SDR. These enhancements should allow for efficiencies in oversight and enforcement functions, resulting in improved protection of market participants and the public.

(2) *The efficiency, competitiveness and financial integrity of the markets.* In the Final Part 45 Rulemaking, the Commission stated that the swap data reporting requirements of part 45 would enhance the financial integrity of swap markets.¹⁶³ The Commission also stated that part 45's streamlined reporting regime, including the counterparty hierarchy used to select the reporting counterparty, could be considered efficient in that it assigns greater reporting responsibility to more sophisticated entities more likely to be able to realize economies of scale and scope in reporting costs.¹⁶⁴ The Commission preliminarily believes that the proposed amendments may further enhance this efficiency by requiring DCOs to report where they are the party best equipped to do so.¹⁶⁵ In addition, by explicitly delineating reporting

responsibilities associated with each component of a cleared swap transaction, the proposed rules should result in improved reliability and consistency of the swaps data reported, further enhancing the financial integrity of the swap markets.

The rule obligating the reporting counterparty or SEF/DCM to choose the SDR for the original intended to be cleared swap may promote competition among SDRs. However, the Commission also acknowledges that by allowing DCOs to choose the SDR to which they report, competition for SDR services would be impacted as a result of some DCOs reporting to their affiliated SDR, that is, an SDR that shares the same parent company as the DCO. Any such impact on competition would be a consequence of business decisions designed to realize costs savings associated with the affiliations between DCOs and SDRs. It is reasonable to expect that DCOs would continue to report to affiliated SDRs under the proposed rules, but nothing in the proposed rules would require them to do so. The Commission notes that section 21 of the CEA permits a DCO to register as an SDR.

Additionally, the Commission notes that a significant portion of swap activity is reported to non-affiliated SDRs. Sample data from a recent representative week suggests that more than 40 percent of reported swaps are being reported to non-affiliated SDRs. A sizeable portion of the market could thus avoid the competitive impacts described above. The Commission requests comment on the extent to which a DCO's choice of an affiliated SDR may impact competition, including how market share among affiliated and non-affiliated SDRs may increase or lessen such an impact on competition.

(3) *Price Discovery.* In the Final Part 45 Rulemaking, the Commission stated that the swap data reporting requirements of part 45 did not have a material effect on the price discovery process.¹⁶⁶ The Commission preliminarily believes that the proposed amendments also would not have a material effect on price discovery. The Commission requests comment on whether the proposed amendments would have any effect on price discovery.

(4) *Risk Management.* In the Final Part 45 Rulemaking, the Commission stated that the data reporting requirements of part 45 did not have a material effect on sound risk management practices.¹⁶⁷ The Commission preliminarily believes

that the proposed amendments also would not have a material effect on sound risk management practices. The Commission requests comment on whether the proposed amendments would have any effect on sound risk management practices.

(5) *Other Public Interest Considerations.* In the Final Part 45 Rulemaking, the Commission stated that the data reporting requirements would allow regulators to readily acquire and analyze market data, thus streamlining the surveillance process.¹⁶⁸ The Commission preliminarily believes that the proposed amendments would enhance this consideration by providing certainty about how and by whom each of the swaps involved in a cleared swap transaction should be reported.

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

D. Antitrust Considerations

Section 15(b) of the CEA requires the Commission to take into consideration the public interest to be protected by the antitrust laws and endeavor to take the least anticompetitive means of achieving the objectives of the CEA, in issuing any order or adopting any Commission rule or regulation.

The Commission does not anticipate that the proposed amendments to part 45 will result in anti-competitive behavior. However, because the proposed amendments affect the existing reporting regime and swap transaction workflows, the Commission encourages comments from the public on any aspect of the proposal that may have the potential to be inconsistent with the anti-trust laws or be anti-competitive in nature. For example, the Commission is generally concerned with market concentration, the vertical integration of registered entities (DCMs, SEFs, DCOs, and SDRs), and the use of market power rather than competitive forces to determine the success or failure of particular SDRs. Accordingly, the Commission requests comment regarding whether the proposal in total, or its individual parts, could be deemed anti-competitive.

¹⁶¹ 77 FR 2136, Jan. 13, 2012.

¹⁶² *Id.* at 2188.

¹⁶³ *Id.* at 2189.

¹⁶⁴ *Id.*

¹⁶⁵ As noted earlier in this release, the Commission's understanding is that the DCO is the entity that should have the easiest and quickest access to full information with respect to PET data and confirmation data for clearing swaps, as well with respect to terminations of original swaps.

¹⁶⁶ 77 FR 2136, 2189, Jan. 13, 2012.

¹⁶⁷ *Id.* at 2189.

¹⁶⁸ *Id.*

List of Subjects in 17 CFR Part 45

Data recordkeeping requirements and data reporting requirements, Swaps.

For the reasons stated in the preamble, the Commodity Futures Trading Commission proposes to amend 17 CFR part 45 as set forth below:

PART 45—SWAP DATA RECORDKEEPING AND REPORTING REQUIREMENTS

■ 1. The authority citation for part 45 is revised to read as follows:

Authority: 7 U.S.C. 6r, 7, 7a–1, 7b–3, 12a, and 24a, as amended by Title VII of the Wall Street Reform and Consumer Protection Act of 2010, Pub. L. 111–203, 124 Stat. 1376 (2010), unless otherwise noted.

■ 2. Amend § 45.1 as follows:

- a. Add a definition for “clearing swap” in alphabetical order;
- b. Revise the definition of “derivatives clearing organization”; and
- c. Add a definition for “original swap” in alphabetical order.

The additions and revisions read as follows:

§ 45.1 Definitions.

* * * * *

Clearing swap means a swap created pursuant to the rules of a derivatives clearing organization that has a derivatives clearing organization as a counterparty, including any swap that replaces an original swap that was extinguished upon acceptance of such original swap by the derivatives clearing organization for clearing.

* * * * *

Derivatives clearing organization means a derivatives clearing organization, as defined by § 1.3(d) of this chapter, that is registered with the Commission.

* * * * *

Original swap means a swap that has been accepted for clearing by a derivatives clearing organization.

* * * * *

■ 3. Revise § 45.3 to read as follows:

§ 45.3 Swap data reporting: creation data.

Registered entities and swap counterparties must report required swap creation data electronically to a swap data repository as set forth in this section and in the manner provided in § 45.13(b). The rules governing acceptance and recording of such data by a swap data repository are set forth in § 49.10 of this chapter. The reporting obligations of swap counterparties with respect to swaps executed prior to the applicable compliance date and in existence on or after July 21, 2010, the date of enactment of the Dodd-Frank

Act, are set forth in part 46 of this chapter. This section and § 45.4 establish the general swap data reporting obligations of swap dealers, major swap participants, non-SD/MSP counterparties, swap execution facilities, designated contract markets, and derivatives clearing organizations to report swap data to a swap data repository. In addition to the reporting obligations set forth in this section and § 45.4, registered entities and swap counterparties are subject to other reporting obligations set forth in this chapter, including, without limitation, the following: Swap dealers, major swap participants, and non-SD/MSP counterparties are also subject to the reporting obligations with respect to corporate affiliations reporting set forth in § 45.6; swap execution facilities, designated contract markets, swap dealers, major swap participants, and non-SD/MSP counterparties are subject to the reporting obligations with respect to real time reporting of swap data set forth in part 43 of this chapter; counterparties to a swap for which an exception to, or an exemption from, the clearing requirement has been elected under part 50 of this chapter are subject to the reporting obligations set forth in part 50 of this chapter; and, where applicable, swap dealers, major swap participants, and non-SD/MSP counterparties are subject to the reporting obligations with respect to large traders set forth in parts 17 and 18 of this chapter. Paragraphs (a) through (d) of this section apply to all swaps except clearing swaps, while paragraph (e) applies only to clearing swaps.

(a) *Swaps executed on or pursuant to the rules of a swap execution facility or designated contract market.* For each swap executed on or pursuant to the rules of a swap execution facility or designated contract market, the swap execution facility or designated contract market must report all primary economic terms data for the swap, as defined in § 45.1, as soon as technologically practicable after execution of the swap. If the swap is not intended to be submitted to a derivatives clearing organization for clearing at the time of execution, the swap execution facility or designated contract market must report all confirmation data for the swap, as defined in § 45.1, as soon as technologically practicable after execution of the swap.

(b) *Off-facility swaps subject to the clearing requirement.* For all off-facility swaps subject to the clearing requirement under part 50 of this chapter, except for those off-facility swaps for which an exception or

exemption from the clearing requirement has been elected under part 50 of this chapter, and those off-facility swaps covered by CEA section 2(a)(13)(C)(iv), required swap creation data must be reported as provided in paragraph (b) of this section.

(1) The reporting counterparty, as determined pursuant to § 45.8, must report all primary economic terms data for the swap, within the applicable reporting deadline set forth in paragraph (b)(1)(i) or (ii) of this section.

(i) If the reporting counterparty is a swap dealer or a major swap participant, the reporting counterparty must report all primary economic terms data for the swap as soon as technologically practicable after execution, but no later than 15 minutes after execution.

(ii) If the reporting counterparty is a non-SD/MSP counterparty, the reporting counterparty must report all primary economic terms data for the swap as soon as technologically practicable after execution, but no later than one business hour after execution.

(2) [Reserved]

(c) *Off-facility swaps not subject to the clearing requirement, with a swap dealer or major swap participant reporting counterparty.* For all off-facility swaps not subject to the clearing requirement under part 50 of this chapter, all off-facility swaps for which an exception to, or an exemption from, the clearing requirement has been elected under part 50 of this chapter, and all off-facility swaps covered by CEA section 2(a)(13)(C)(iv), for which a swap dealer or major swap participant is the reporting counterparty, required swap creation data must be reported as provided in paragraph (c) of this section.

(1) *Credit, equity, foreign exchange, and interest rate swaps.* For each such credit swap, equity swap, foreign exchange instrument, or interest rate swap:

(i) The reporting counterparty, as determined pursuant to § 45.8, must report all primary economic terms data for the swap, within the applicable reporting deadline set forth in paragraph (c)(1)(i)(A) or (B) of this section.

(A) If the non-reporting counterparty is a swap dealer, a major swap participant, or a non-SD/MSP counterparty that is a financial entity as defined in CEA section 2(h)(7)(C), or if the non-reporting counterparty is a non-SD/MSP counterparty that is not a financial entity as defined in CEA section 2(h)(7)(C) and verification of primary economic terms occurs electronically, then the reporting counterparty must report all primary economic terms data for the swap as

soon as technologically practicable after execution, but no later than 30 minutes after execution.

(B) If the non-reporting counterparty is a non-SD/MSP counterparty *that is not a financial entity as defined in CEA section 2(h)(7)(C)*, and if verification of primary economic terms does not occur electronically, then the reporting counterparty must report all primary economic terms data for the swap as soon as technologically practicable after execution, but no later than 30 minutes after execution.

(ii) If the swap is not intended to be submitted to a derivatives clearing organization for clearing at the time of execution, the reporting counterparty must report all confirmation data for the swap, as defined in § 45.1, as soon as technologically practicable after confirmation, but no later than: 30 minutes after confirmation if confirmation occurs electronically; or 24 business hours after confirmation if confirmation does not occur electronically.

(2) *Other commodity swaps.* For each such other commodity swap:

(i) The reporting counterparty, as determined pursuant to § 45.8, must report all primary economic terms data for the swap, within the applicable reporting deadline set forth in paragraph (c)(2)(i)(A) or (B) of this section.

(A) If the non-reporting counterparty is a swap dealer, a major swap participant, or a non-SD/MSP counterparty that is a financial entity as defined in CEA section 2(h)(7)(C), or if the non-reporting counterparty is a non-SD/MSP counterparty that is not a financial entity as defined in CEA section 2(h)(7)(C) and verification of primary economic terms occurs electronically, then the reporting counterparty must report all primary economic terms data for the swap as soon as technologically practicable after execution, but no later than two hours after execution.

(B) If the non-reporting counterparty is a non-SD/MSP counterparty that is not a financial entity as defined in CEA section 2(h)(7)(C), and if verification of primary economic terms does not occur electronically, then the reporting counterparty must report all primary economic terms data for the swap as soon as technologically practicable after execution, but no later than two hours after execution.

(ii) If the swap is not intended to be submitted to a derivatives clearing organization for clearing at the time of execution, the reporting counterparty must report all confirmation data for the swap, as defined in § 45.1, as soon as technologically practicable after

confirmation, but no later than: 30 minutes after confirmation if confirmation occurs electronically; or 24 business hours after confirmation if confirmation does not occur electronically.

(d) *Off-facility swaps not subject to the clearing requirement, with a non-SD/MSP reporting counterparty.* For all off-facility swaps not subject to the clearing requirement under part 50 of this chapter, all off-facility swaps for which an exception to, or an exemption from, the clearing requirement has been elected under part 50 of this chapter, and all off-facility swaps covered by CEA section 2(a)(13)(C)(iv), in all asset classes, for which a non-SD/MSP counterparty is the reporting counterparty, required swap creation data must be reported as provided in paragraph (d) of this section.

(1) The reporting counterparty, as determined pursuant to § 45.8, must report all primary economic terms data for the swap, as soon as technologically practicable after execution, but no later than 24 business hours after execution.

(2) If the swap is not intended to be submitted to a derivatives clearing organization for clearing at the time of execution, the reporting counterparty must report all confirmation data for the swap, as defined in § 45.1, as soon as technologically practicable after confirmation, but no later than 24 business hours after confirmation.

(e) *Clearing swaps.* As soon as technologically practicable after acceptance of an original swap by a derivatives clearing organization for clearing, or as soon as technologically practicable after execution of a clearing swap that does not replace an original swap, the derivatives clearing organization, as reporting counterparty, must report all required swap creation data for the clearing swap. Required swap creation data for clearing swaps must include all confirmation data and all primary economic terms data, as those terms are defined in § 45.1 and as included in appendix 1 to this part.

(f) *Allocations.* For swaps involving allocation, required swap creation data shall be reported to a single swap data repository as follows.

(1) *Initial swap between reporting counterparty and agent.* The initial swap transaction between the reporting counterparty and the agent shall be reported as required by § 45.3(a) through (d). A unique swap identifier for the initial swap transaction must be created as provided in § 45.5.

(2) *Post-allocation swaps—(i) Duties of the agent.* In accordance with this section, the agent shall inform the reporting counterparty of the identities

of the reporting counterparty's actual counterparties resulting from allocation, as soon as technologically practicable after execution, but not later than eight business hours after execution.

(ii) *Duties of the reporting counterparty.* The reporting counterparty must report all required swap creation data for each swap resulting from allocation to the same swap data repository to which the initial swap transaction is reported as soon as technologically practicable after it is informed by the agent of the identities of its actual counterparties. The reporting counterparty must create a unique swap identifier for each such swap as required in § 45.5.

(iii) *Duties of the swap data repository.* The swap data repository to which the initial swap transaction and the post-allocation swaps are reported must map together the unique swap identifiers of the initial swap transaction and of each of the post-allocation swaps.

(g) *Multi-asset swaps.* For each multi-asset swap, required swap creation data and required swap continuation data shall be reported to a single swap data repository that accepts swaps in the asset class treated as the primary asset class involved in the swap by the swap execution facility, designated contract market, or reporting counterparty making the first report of required swap creation data pursuant to this section. The registered entity or reporting counterparty making the first report of required swap creation data pursuant to this section shall report all primary economic terms for each asset class involved in the swap.

(h) *Mixed swaps.* (1) For each mixed swap, required swap creation data and required swap continuation data shall be reported to a swap data repository registered with the Commission and to a security-based swap data repository registered with the Securities and Exchange Commission. This requirement may be satisfied by reporting the mixed swap to a swap data repository or security-based swap data repository registered with both Commissions.

(2) The registered entity or reporting counterparty making the first report of required swap creation data pursuant to this section shall ensure that the same unique swap identifier is recorded for the swap in both the swap data repository and the security-based swap data repository.

(i) *International swaps.* For each international swap, the reporting counterparty shall report as soon as practicable to the swap data repository the identity of the non-U.S. trade

repository not registered with the Commission to which the swap is also reported and the swap identifier used by the non-U.S. trade repository to identify the swap. If necessary, the reporting counterparty shall obtain this information from the non-reporting counterparty.

(j) *Choice of SDR.* The entity with the obligation to choose the swap data repository to which all required swap creation data for the swap is reported shall be the entity that is required to make the first report of all data pursuant to this section, as follows:

(1) For swaps executed on or pursuant to the rules of a swap execution facility or designated contract market, the swap execution facility or designated contract market shall choose the swap data repository;

(2) For all other swaps, the reporting counterparty, as determined in section 45.8, shall choose the swap data repository.

■ 4. Revise § 45.4 to read as follows:

§ 45.4 Swap data reporting: continuation data.

Registered entities and swap counterparties must report required swap continuation data electronically to a swap data repository as set forth in this section and in the manner provided in § 45.13(b). The rules governing acceptance and recording of such data by a swap data repository are set forth in § 49.10 of this chapter. The reporting obligations of registered entities and swap counterparties with respect to swaps executed prior to the applicable compliance date and in existence on or after July 21, 2010, the date of enactment of the Dodd-Frank Act, are set forth in part 46 of this chapter. This section and § 45.3 establish the general swap data reporting obligations of swap dealers, major swap participants, non-SD/MSP counterparties, swap execution facilities, designated contract markets, and derivatives clearing organizations to report swap data to a swap data repository. In addition to the reporting obligations set forth in this section and § 45.3, registered entities and swap counterparties are subject to other reporting obligations set forth in this chapter, including, without limitation, the following: Swap dealers, major swap participants, and non-SD/MSP counterparties are also subject to the reporting obligations with respect to corporate affiliations reporting set forth in § 45.6; swap execution facilities, designated contract markets, swap dealers, major swap participants, and non-SD/MSP counterparties are subject to the reporting obligations with respect to real time reporting of swap data set

forth in part 43 of this chapter; and, where applicable, swap dealers, major swap participants, and non-SD/MSP counterparties are subject to the reporting obligations with respect to large traders set forth in parts 17 and 18 of this chapter.

(a) *Continuation data reporting method generally.* For each swap, regardless of asset class, reporting counterparties and derivatives clearing organizations required to report swap continuation data must do so in a manner sufficient to ensure that all data in the swap data repository concerning the swap remains current and accurate, and includes all changes to the primary economic terms of the swap occurring during the existence of the swap. Reporting entities and counterparties fulfill this obligation by reporting either life cycle event data or state data for the swap within the applicable deadlines set forth in this section. Reporting counterparties and derivatives clearing organizations required to report swap continuation data for a swap may fulfill their obligation to report either life cycle event data or state data by reporting:

(1) Life cycle event data to a swap data repository that accepts only life cycle event data reporting;

(2) State data to a swap data repository that accepts only state data reporting; or

(3) Either life cycle event data or state data to a swap data repository that accepts both life cycle event data and state data reporting.

(b) *Continuation data reporting for clearing swaps.* For all clearing swaps, required continuation data must be reported as provided in this section.

(1) *Life cycle event data or state data reporting.* The derivatives clearing organization, as reporting counterparty, must report to the swap data repository either:

(i) All life cycle event data for the swap, reported on the same day that any life cycle event occurs with respect to the swap; or

(ii) All state data for the swap, reported daily.

(2) *Valuation data reporting.* Valuation data for the swap must be reported by the derivatives clearing organization, as reporting counterparty, daily.

(c) *Continuation data reporting for original swaps.* For all original swaps, required continuation data, including terminations, must be reported to the swap data repository to which the swap that was accepted for clearing was reported pursuant to § 45.3(a) through (d) in the manner provided in § 45.13(b) and in this section, and must be accepted and recorded by such swap

data repository as provided in § 49.10 of this chapter.

(1) *Life cycle event data or state data reporting.* The derivatives clearing organization that accepted the swap for clearing must report to the swap data repository either:

(i) All life cycle event data for the swap, reported on the same day that any life cycle event occurs with respect to the swap; or

(ii) All state data for the swap, reported daily.

(2) In addition to all other necessary continuation data fields, life cycle event data and state data must include all of the following:

(i) The legal entity identifier of the swap data repository to which all required swap creation data for each clearing swap was reported by the derivatives clearing organization pursuant to § 45.3(e);

(ii) The unique swap identifier of the original swap that was replaced by the clearing swaps; and

(iii) The unique swap identifier of each clearing swap that replaces a particular original swap.

(d) *Continuation data reporting for uncleared swaps.* For all swaps that are not cleared by a derivatives clearing organization, including swaps executed on or pursuant to the rules of a swap execution facility or designated contract market, the reporting counterparty must report all required swap continuation data as provided in this section.

(1) *Life cycle event data or state data reporting.* The reporting counterparty for the swap must report to the swap data repository either all life cycle event data for the swap or all state data for the swap, within the applicable deadline set forth in paragraphs (d)(1)(i) or (ii) of this section.

(i) If the reporting counterparty is a swap dealer or major swap participant:

(A) Life cycle event data must be reported on the same day that any life cycle event occurs, with the sole exception that life cycle event data relating to a corporate event of the non-reporting counterparty must be reported no later than the second business day after the day on which such event occurs.

(B) State data must be reported daily.

(ii) If the reporting counterparty is a non-SD/MSP counterparty:

(A) Life cycle event data must be reported no later than the end of the first business day following the date of any life cycle event; with the sole exception that life cycle event data relating to a corporate event of the non-reporting counterparty must be reported no later than the end of the second business day following such event.

(B) State data must be reported daily.

(2) *Valuation data reporting.*

Valuation data for the swap must be reported by the reporting counterparty for the swap as follows:

(i) If the reporting counterparty is a swap dealer or major swap participant, the reporting counterparty must report all valuation data for the swap, daily.

(ii) If the reporting counterparty is a non-SD/MSP counterparty, the reporting counterparty must report the current daily mark of the transaction as of the last day of each fiscal quarter. This report must be transmitted to the swap data repository within 30 calendar days of the end of each fiscal quarter. If a daily mark of the transaction is not available for the swap, the reporting counterparty satisfies this requirement by reporting the current valuation of the swap recorded on its books in accordance with applicable accounting standards.

■ 5. Revise § 45.5 to read as follows:

§ 45.5 Unique swap identifiers.

Each swap subject to the jurisdiction of the Commission shall be identified in all recordkeeping and all swap data reporting pursuant to this part by the use of a unique swap identifier, which shall be created, transmitted, and used for each swap as provided in paragraphs (a) through (f) of this section.

(a) *Swaps executed on or pursuant to the rules of a swap execution facility or designated contract market.* For each swap executed on or pursuant to the rules of a swap execution facility or designated contract market, the swap execution facility or designated contract market shall create and transmit a unique swap identifier as provided in paragraphs (a)(1) and (2) of this section.

(1) *Creation.* The swap execution facility or designated contract market shall generate and assign a unique swap identifier at, or as soon as technologically practicable following, the time of execution of the swap, and prior to the reporting of required swap creation data. The unique swap identifier shall consist of a single data field that contains two components:

(i) The unique alphanumeric code assigned to the swap execution facility or designated contract market by the Commission for the purpose of identifying the swap execution facility or designated contract market with respect to unique swap identifier creation; and

(ii) An alphanumeric code generated and assigned to that swap by the automated systems of the swap execution facility or designated contract market, which shall be unique with respect to all such codes generated and

assigned by that swap execution facility or designated contract market.

(2) *Transmission.* The swap execution facility or designated contract market shall transmit the unique swap identifier electronically as follows:

(i) To the swap data repository to which the swap execution facility or designated contract market reports required swap creation data for the swap, as part of that report;

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

(iii) To the derivatives clearing organization, if any, to which the swap is submitted for clearing, as part of the required swap creation data transmitted to the derivatives clearing organization for clearing purposes.

(b) *Off-facility swaps with a swap dealer or major swap participant reporting counterparty.* For each off-facility swap where the reporting counterparty is a swap dealer or major swap participant, the reporting counterparty shall create and transmit a unique swap identifier as provided in paragraphs (b)(1) and (2) of this section.

(1) *Creation.* The reporting counterparty shall generate and assign a unique swap identifier as soon as technologically practicable after execution of the swap and prior to both the reporting of required swap creation data and the transmission of data to a derivatives clearing organization if the swap is to be cleared. The unique swap identifier shall consist of a single data field that contains two components:

(i) The unique alphanumeric code assigned to the swap dealer or major swap participant by the Commission at the time of its registration as such, for the purpose of identifying the swap dealer or major swap participant with respect to unique swap identifier creation; and

(ii) An alphanumeric code generated and assigned to that swap by the automated systems of the swap dealer or major swap participant, which shall be unique with respect to all such codes generated and assigned by that swap dealer or major swap participant.

(2) *Transmission.* The reporting counterparty shall transmit the unique swap identifier electronically as follows:

(i) To the swap data repository to which the reporting counterparty reports required swap creation data for the swap, as part of that report;

(ii) To the non-reporting counterparty to the swap, as soon as technologically practicable after execution of the swap; and

(iii) To the derivatives clearing organization, if any, to which the swap is submitted for clearing, as part of the

required swap creation data transmitted to the derivatives clearing organization for clearing purposes.

(c) *Off-facility swaps with a non-SD/MSP reporting counterparty.* For each off-facility swap for which the reporting counterparty is a non-SD/MSP counterparty, the swap data repository to which primary economic terms data is reported shall create and transmit a unique swap identifier as provided in paragraphs (c)(1) and (2) of this section.

(1) *Creation.* The swap data repository shall generate and assign a unique swap identifier as soon as technologically practicable following receipt of the first report of required swap creation data concerning the swap. The unique swap identifier shall consist of a single data field that contains two components:

(i) The unique alphanumeric code assigned to the swap data repository by the Commission at the time of its registration as such, for the purpose of identifying the swap data repository with respect to unique swap identifier creation; and

(ii) An alphanumeric code generated and assigned to that swap by the automated systems of the swap data repository, which shall be unique with respect to all such codes generated and assigned by that swap data repository.

(2) *Transmission.* The swap data repository shall transmit the unique swap identifier electronically as follows:

(i) To the counterparties to the swap, as soon as technologically practicable following creation of the unique swap identifier; and

(ii) To the derivatives clearing organization, if any, to which the swap is submitted for clearing, as soon as technologically practicable following creation of the unique swap identifier.

(d) *Clearing swaps.* For each clearing swap, the derivatives clearing organization that is a counterparty to such swap shall create and transmit a unique swap identifier as provided in paragraphs (d)(1) and (2) of this section.

(1) *Creation.* The derivatives clearing organization shall generate and assign a unique swap identifier upon, or as soon as technologically practicable after, acceptance of an original swap by the derivatives clearing organization for clearing or execution of a clearing swap that does not replace an original swap, and prior to the reporting of required swap creation data for the clearing swap. The unique swap identifier shall consist of a single data field that contains two components:

(i) The unique alphanumeric code assigned to the derivatives clearing organization by the Commission for the purpose of identifying the derivatives

clearing organization with respect to unique swap identifier creation; and

(ii) An alphanumeric code generated and assigned to that clearing swap by the automated systems of the derivatives clearing organization, which shall be unique with respect to all such codes generated and assigned by that derivatives clearing organization.

(2) *Transmission.* The derivatives clearing organization shall transmit the unique swap identifier electronically as follows:

(i) To the swap data repository to which the derivatives clearing organization reports required swap creation data for the clearing swap, as part of that report; and

(ii) To its counterparty to the clearing swap, as soon as technologically practicable after acceptance of a swap by the derivatives clearing organization for clearing or execution of a clearing swap that does not replace an original swap.

(e) *Allocations.* For swaps involving allocation, unique swap identifiers shall be created and transmitted as follows.

(1) *Initial swap between reporting counterparty and agent.* The unique swap identifier for the initial swap transaction between the reporting counterparty and the agent shall be created as required by paragraphs (a) through (c) of this section, and shall be transmitted as follows:

(i) If the unique swap identifier is created by a swap execution facility or designated contract market, the swap execution facility or designated contract market must include the unique swap identifier in its swap creation data report to the swap data repository, and must transmit the unique identifier to the reporting counterparty and to the agent.

(ii) If the unique swap identifier is created by the reporting counterparty, the reporting counterparty must include the unique swap identifier in its swap creation data report to the swap data repository, and must transmit the unique identifier to the agent.

(2) *Post-allocation swaps.* The reporting counterparty must create a unique swap identifier for each of the individual swaps resulting from allocation, as soon as technologically practicable after it is informed by the agent of the identities of its actual counterparties, and must transmit each such unique swap identifier to:

(i) The non-reporting counterparty for the swap in question.

(ii) The agent.

(iii) The derivatives clearing organization, if any, to which the swap is submitted for clearing, as part of the required swap creation data transmitted

to the derivatives clearing organization for clearing purposes.

(f) *Use.* Each registered entity or swap counterparty subject to the jurisdiction of the Commission shall include the unique swap identifier for a swap in all of its records and all of its swap data reporting concerning that swap, from the time it creates or receives the unique swap identifier as provided in this section, throughout the existence of the swap and for as long as any records are required by the CEA or Commission regulations to be kept by that registered entity or counterparty concerning the swap, regardless of any life cycle events or any changes to state data concerning the swap, including, without limitation, any changes with respect to the counterparties to or the ownership of the swap. This requirement shall not prohibit the use by a registered entity or swap counterparty in its own records of any additional identifier or identifiers internally generated by the automated systems of the registered entity or swap counterparty, or the reporting to a swap data repository, the Commission, or another regulator of such internally generated identifiers in addition to the reporting of the unique swap identifier.

■ 6. Revise § 45.8 to read as follows:

§ 45.8 Determination of which counterparty must report.

The determination of which counterparty is the reporting counterparty for all swaps, except clearing swaps, shall be made as provided in paragraphs (a) through (h) of this section. The determination of which counterparty is the reporting counterparty for all clearing swaps shall be made as provided in paragraph (i) of this section.

(a) If only one counterparty is a swap dealer, the swap dealer shall be the reporting counterparty.

(b) If neither counterparty is a swap dealer, and only one counterparty is a major swap participant, the major swap participant shall be the reporting counterparty.

(c) If both counterparties are non-SD/MSP counterparties, and only one counterparty is a financial entity as defined in CEA section 2(h)(7)(C), the counterparty that is a financial entity shall be the reporting counterparty.

(d) If both counterparties are swap dealers, or both counterparties are major swap participants, or both counterparties are non-SD/MSP counterparties that are financial entities as defined in CEA section 2(h)(7)(C), or both counterparties are non-SD/MSP counterparties and neither counterparty is a financial entity as defined in CEA section 2(h)(7)(C):

(1) For a swap executed on or pursuant to the rules of a swap execution facility or designated contract market, the counterparties shall agree which counterparty shall be the reporting counterparty.

(2) For an off-facility swap, the counterparties shall agree as one term of their swap which counterparty shall be the reporting counterparty.

(e) Notwithstanding the provisions of paragraphs (a) through (d) of this section, if both counterparties to a swap are non-SD/MSP counterparties and only one counterparty is a U.S. person, that counterparty shall be the reporting counterparty.

(f) Notwithstanding the provisions of paragraphs (a) through (e) of this section, if neither counterparty to a swap is a U.S. person, but the swap is executed on or pursuant to the rules of a swap execution facility or designated contract market or otherwise executed in the United States, or is cleared by a derivatives clearing organization:

(1) For such a swap executed on or pursuant to the rules of a swap execution facility or designated contract market, the counterparties shall agree which counterparty shall be the reporting counterparty.

(2) For an off-facility swap, the counterparties shall agree as one term of their swap which counterparty shall be the reporting counterparty.

(g) If a reporting counterparty selected pursuant to paragraphs (a) through (f) of this section ceases to be a counterparty to a swap due to an assignment or novation, the reporting counterparty for reporting of required swap continuation data following the assignment or novation shall be selected from the two current counterparties as provided in paragraphs (g)(1) through (4) of this section.

(1) If only one counterparty is a swap dealer, the swap dealer shall be the reporting counterparty and shall fulfill all counterparty reporting obligations.

(2) If neither counterparty is a swap dealer, and only one counterparty is a major swap participant, the major swap participant shall be the reporting counterparty and shall fulfill all counterparty reporting obligations.

(3) If both counterparties are non-SD/MSP counterparties, and only one counterparty is a U.S. person, that counterparty shall be the reporting counterparty and shall fulfill all counterparty reporting obligations.

(4) In all other cases, the counterparty that replaced the previous reporting counterparty by reason of the assignment or novation shall be the reporting counterparty, unless otherwise agreed by the counterparties.

(h) For all swaps executed on or pursuant to the rules of a swap execution facility or designated contract market, the rules of the swap execution facility or designated contract market must require each swap counterparty to provide sufficient information to the swap execution facility or designated contract market to report all swap creation data as provided in this part.

(1) To achieve this, the rules of the swap execution facility or designated contract market must require each market participant placing an order with respect to any swap traded on the swap execution facility or designated contract market to include in the order, without limitation:

(i) The legal entity identifier of the market participant placing the order.

(ii) A yes/no indication of whether the market participant is a swap dealer with respect to the product with respect to which the order is placed.

(iii) A yes/no indication of whether the market participant is a major swap participant with respect to the product with respect to which the order is placed.

(iv) A yes/no indication of whether the market participant is a financial entity as defined in CEA section 2(h)(7)(C).

(v) A yes/no indication of whether the market participant is a U.S. person.

(vi) If applicable, an indication that the market participant will elect an exception to, or an exemption from, the clearing requirement under part 50 of this chapter for any swap resulting from the order.

(vii) If the swap will be allocated:

(A) An indication that the swap will be allocated.

(B) The legal entity identifier of the agent.

(C) An indication of whether the swap is a post-allocation swap.

(D) If the swap is a post-allocation swap, the unique swap identifier of the initial swap transaction between the reporting counterparty and the agent.

(2) To achieve this, the swap execution facility or designated contract market must use the information obtained pursuant to paragraph (h)(1) of this section to identify the counterparty that is the reporting counterparty pursuant to the CEA and this section.

(i) *Clearing swaps.* Notwithstanding the provisions of paragraphs (a) through (h) of this section, if the swap is a clearing swap, the derivatives clearing organization that is a counterparty to such swap shall be the reporting counterparty and shall fulfill all

reporting counterparty obligations for such swap.

■ 7. Revise § 45.10 to read as follows:

§ 45.10 Reporting to a single swap data repository.

All swap data for a given swap, which shall include all swap data required to be reported pursuant to parts 43 and 45 of this chapter, must be reported to a single swap data repository, which shall be the swap data repository to which the first report of required swap creation data is made pursuant to this part.

(a) *Swaps executed on or pursuant to the rules of a swap execution facility or designated contract market.* To ensure that all swap data, including all swap data required to be reported pursuant to parts 43 and 45 of this chapter, for a swap executed on or pursuant to the rules of a swap execution facility or designated contract market is reported to a single swap data repository:

(1) The swap execution facility or designated contract market that reports required swap creation data as required by § 45.3 shall report all such data to a single swap data repository. As soon as technologically practicable after execution, the swap execution facility or designated contract market shall transmit to both counterparties to the swap, and to the derivatives clearing organization, if any, that will clear the swap, both:

(i) The identity of the swap data repository to which required swap creation data is reported by the swap execution facility or designated contract market; and

(ii) The unique swap identifier for the swap, created pursuant to § 45.5.

(2) Thereafter, all required swap creation data and all required swap continuation data reported for the swap reported by any registered entity or counterparty shall be reported to that same swap data repository (or to its successor in the event that it ceases to operate, as provided in part 49 of this chapter).

(b) *Off-facility swaps with a swap dealer or major swap participant reporting counterparty.* To ensure that all swap data, including all swap data required to be reported pursuant to parts 43 and 45 of this chapter, for off-facility swaps with a swap dealer or major swap participant reporting counterparty is reported to a single swap data repository:

(1) If the reporting counterparty reports primary economic terms data to a swap data repository as required by § 45.3:

(i) The reporting counterparty shall report primary economic terms data to a single swap data repository.

(ii) As soon as technologically practicable after execution, but no later than as required pursuant to § 45.3, the reporting counterparty shall transmit to the other counterparty to the swap both the identity of the swap data repository to which primary economic terms data is reported by the reporting counterparty, and the unique swap identifier for the swap created pursuant to § 45.5.

(iii) If the swap will be cleared, the reporting counterparty shall transmit to the derivatives clearing organization at the time the swap is submitted for clearing both the identity of the swap data repository to which primary economic terms data is reported by the reporting counterparty, and the unique swap identifier for the swap created pursuant to § 45.5.

(2) Thereafter, all required swap creation data and all required swap continuation data reported for the swap, by any registered entity or counterparty, shall be reported to the swap data repository to which swap data has been reported pursuant to paragraph (b)(1) or (2) of this section (or to its successor in the event that it ceases to operate, as provided in part 49 of this chapter).

(c) *Off-facility swaps with a non-SD/MSP reporting counterparty.* To ensure that all swap data, including all swap data required to be reported pursuant to parts 43 and 45 of this chapter, for such swaps is reported to a single swap data repository:

(1) If the reporting counterparty reports primary economic terms data to a swap data repository as required by § 45.3:

(i) The reporting counterparty shall report primary economic terms data to a single swap data repository.

(ii) As soon as technologically practicable after execution, but no later than as required pursuant to § 45.3, the reporting counterparty shall transmit to the other counterparty to the swap the identity of the swap data repository to which primary economic terms data was reported by the reporting counterparty.

(iii) If the swap will be cleared, the reporting counterparty shall transmit to the derivatives clearing organization at the time the swap is submitted for clearing the identity of the swap data repository to which primary economic terms data was reported by the reporting counterparty.

(2) The swap data repository to which the swap is reported as provided in paragraph (c) of this section shall transmit the unique swap identifier created pursuant to § 45.5 to both counterparties and to the derivatives clearing organization, if any, as soon as

technologically practicable after creation of the unique swap identifier.

(3) Thereafter, all required swap creation data and all required swap continuation data reported for the swap, by any registered entity or counterparty, shall be reported to the swap data repository to which swap data has been reported pursuant to paragraph (c)(1) of this section (or to its successor in the event that it ceases to operate, as provided in part 49 of this chapter).

(d) *Clearing swaps.* To ensure that all swap data for a given clearing swap, and for clearing swaps that replace a particular original swap or that are created upon execution of the same transaction and that do not replace an original swap, is reported to a single swap data repository:

(1) The derivatives clearing organization that is a counterparty to

such clearing swap shall report all required swap creation data for that clearing swap to a single swap data repository. As soon as technologically practicable after acceptance of an original swap by a derivatives clearing organization for clearing or execution of a clearing swap that does not replace an original swap, the derivatives clearing organization shall transmit to the counterparty to each clearing swap the legal entity identifier of the swap data repository to which the derivatives clearing organization reported the required swap creation data for that clearing swap.

(2) Thereafter, all required swap creation data and all required swap continuation data reported for that clearing swap shall be reported by the derivatives clearing organization to the swap data repository to which swap

data has been reported pursuant to paragraph (d)(1) of this section (or to its successor in the event that it ceases to operate, as provided in part 49 of this chapter).

(3) For clearing swaps that replace a particular original swap, and for equal and opposite clearing swaps that are created upon execution of the same transaction and that do not replace an original swap, the derivatives clearing organization shall report all required swap creation data and all required swap continuation data for such clearing swaps to a single swap data repository.

■ 8. Revise appendix 1 to part 45 to read as follows:

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

EXHIBIT A—MINIMUM PRIMARY ECONOMIC TERMS DATA—CREDIT SWAPS AND EQUITY SWAPS

[Enter N/A for fields that are not applicable]

Data categories and fields for all swaps	Comment
Asset Class	Field values: credit, equity, FX, rates, other commodity.
The Unique Swap Identifier for the swap	As provided in § 45.5.
The Legal Entity Identifier of the reporting counterparty	As provided in § 45.6, or substitute identifier for a natural person.
An indication of whether the reporting counterparty is a swap dealer with respect to the swap.	Yes/No.
An indication of whether the reporting counterparty is a major swap participant with respect to the swap.	Yes/No.
If the reporting counterparty is not a swap dealer or a major swap participant with respect to the swap, an indication of whether the reporting counterparty is a financial entity as defined in CEA section 2(h)(7)(C).	Yes/No.
An indication of whether the reporting counterparty is a derivatives clearing organization with respect to the swap.	Yes/No.
An indication of whether the reporting counterparty is a U.S. person	Yes/No.
An indication that the swap will be allocated	Yes/No.
If the swap will be allocated, or is a post-allocation swap, the Legal Entity Identifier of the agent.	As provided in § 45.6, or substitute identifier for a natural person.
An indication that the swap is a post-allocation swap	Yes/No.
If the swap is a post-allocation swap, the unique swap identifier of the initial swap transaction between the reporting counterparty and the agent.	As provided in § 45.5.
The Legal Entity Identifier of the non-reporting party	As provided in § 45.6, or substitute identifier for a natural person.
An indication of whether the non-reporting counterparty is a swap dealer with respect to the swap.	Yes/No.
An indication of whether the non-reporting counterparty is a major swap participant with respect to the swap.	Yes/No.
If the non-reporting counterparty is not a swap dealer or a major swap participant with respect to the swap, an indication of whether the non-reporting counterparty is a financial entity as defined in CEA section 2(h)(7)(C).	Yes/No.
An indication of whether the non-reporting counterparty is a U.S. person.	Yes/No.
The Unique Product Identifier assigned to the swap	As provided in § 45.7.
If no Unique Product Identifier is available for the swap because the swap is not sufficiently standardized, the taxonomic description of the swap pursuant to the CFTC-approved product classification system.	
If no CFTC-approved UPI and product classification system is yet available, the internal product identifier or product description used by the swap data repository.	
An indication that the swap is a multi-asset swap	Field values: Yes, Not applicable.
For a multi-asset class swap, an indication of the primary asset class ..	Generally, the asset class traded by the desk trading the swap for the reporting counterparty. Field values: credit, equity, FX, interest rate, other commodity.
For a multi-asset class swap, an indication of the secondary asset class(es).	Field values: credit, equity, FX, interest rate, other commodity.

EXHIBIT A—MINIMUM PRIMARY ECONOMIC TERMS DATA—CREDIT SWAPS AND EQUITY SWAPS—Continued

[Enter N/A for fields that are not applicable]

Data categories and fields for all swaps	Comment
An indication that the swap is a mixed swap	Field values: Yes, Not applicable.
For a mixed swap reported to two non-dually- registered swap data repositories, the identity of the other swap data repository (if any) to which the swap is or will be reported.	Field value: LEI of the other SDR to which the swap is or will be reported.
An indication of the counterparty purchasing protection	Field values: LEI, or substitute identifier for a natural person.
An indication of the counterparty selling protection	Field values: LEI, or substitute identifier for a natural person.
Information identifying the reference entity	The entity that is the subject of the protection being purchased and sold in the swap. Field values: LEI, or substitute identifier for a natural person.
Contract type	E.g., swap, swaption, forward, option, basis swap, index swap, basket swap.
Block trade indicator	Indication (Yes/No) of whether the swap qualifies as a block trade or large notional swap.
Execution timestamp	The date and time of the trade, expressed using Coordinated Universal Time ("UTC").
Execution venue	The swap execution facility or designated contract market on or pursuant to the rules of which the swap was executed. Field values: LEI of the swap execution facility or designated contract market, or "off-facility" if not so executed.
Start date	The date on which the swap starts or goes into effect.
Maturity, termination or end date	The date on which the swap expires.
The price	E.g., strike price, initial price, spread.
The notional amount, and the currency in which the notional amount is expressed.	
The amount and currency (or currencies) of any up-front payment	
Payment frequency of the reporting counterparty	A description of the payment stream of the reporting counterparty, e.g., coupon.
Payment frequency of the non-reporting counterparty	A description of the payment stream of the non-reporting counterparty, e.g., coupon.
Timestamp for submission to swap data repository	Time and date of submission to the swap data repository, expressed using UTC, as recorded by an automated system where available, or as recorded manually where an automated system is not available.
Clearing indicator	Yes/No indication of whether the swap will be submitted for clearing to a derivatives clearing organization.
Clearing venue	LEI of the derivatives clearing organization.
If the swap will not be cleared, an indication of whether an exception to, or an exemption from, the clearing requirement has been elected with respect to the swap under part 50 of this chapter.	Yes/No.
The identity of the counterparty electing an exception or exemption to the clearing requirement under part 50 of this chapter.	Field values: LEI, or substitute identifier for natural person.
Clearing exception or exemption type	The type of clearing exception or exemption being claimed. Field values: End user, Inter-affiliate or Cooperative.
Indication of collateralization	Is the swap collateralized, and if so to what extent? Field values: Uncollateralized, partially collateralized, one-way collateralized, fully collateralized.
Any other term(s) of the swap matched or affirmed by the counterparties in verifying the swap.	Use as many fields as required to report each such term.

EXHIBIT A—MINIMUM PRIMARY ECONOMIC TERMS DATA—CREDIT SWAPS AND EQUITY SWAPS

[Enter N/A for fields that are not applicable]

Additional data categories and fields for clearing swaps	Comment
Clearing swap USIs	The USIs of each clearing swap that replaces the original swap that was submitted for clearing to the DCO, other than the USI for which the PET data is currently being reported (as "USI" field above).
Original swap USI	The USI of the original swap submitted for clearing to the DCO that is replaced by clearing swaps.
Original swap SDR	LEI of SDR to which the original swap was reported.
Clearing member LEI	LEI of Clearing member.
Clearing member client account	Clearing member client account number.
Origin (house or customer)	An indication whether the clearing member acted as principal for a house trade or agent for a customer trade.
Clearing receipt timestamp	The date and time at which the DCO received the original swap for clearing, expressed using UTC.
Clearing acceptance timestamp	The date and time at which the DCO accepted the original swap for clearing, expressed using UTC.

EXHIBIT B—MINIMUM PRIMARY ECONOMIC TERMS DATA—FOREIGN EXCHANGE TRANSACTIONS (OTHER THAN CROSS-CURRENCY SWAPS)

[Enter N/A for fields that are not applicable]

Data fields for all swaps	Comments
Asset Class	Field values: credit, equity, FX, rates, other commodity.
The Unique Swap Identifier for the swap	As provided in §45.5.
The Legal Entity Identifier of the reporting counterparty	As provided in §45.6, or substitute identifier for a natural person.
An indication of whether the reporting counterparty is a swap dealer with respect to the swap.	Yes/No.
An indication of whether the reporting counterparty is a major swap participant with respect to the swap.	Yes/No.
If the reporting counterparty is not a swap dealer or a major swap participant with respect to the swap, an indication of whether the reporting counterparty is a financial entity as defined in CEA section 2(h)(7)(C).	Yes/No.
An indication of whether the reporting counterparty is a derivatives clearing organization with respect to the swap.	Yes/No.
An indication of whether the reporting counterparty is a U.S. person	Yes/No.
An indication that the swap will be allocated	Yes/No.
If the swap will be allocated, or is a post-allocation swap, the Legal Entity Identifier of the agent.	As provided in §45.6, or substitute identifier for a natural person.
An indication that the swap is a post-allocation swap	Yes/No.
If the swap is a post-allocation swap, the unique swap identifier of the initial swap transaction between the reporting counterparty and the agent.	As provided in §45.5.
The Legal Entity Identifier of the non-reporting party	As provided in §45.6, or substitute identifier for a natural person.
An indication of whether the non-reporting counterparty is a swap dealer with respect to the swap.	Yes/No.
An indication of whether the non-reporting counterparty is a major swap participant with respect to the swap.	Yes/No.
If the non-reporting counterparty is not a swap dealer or a major swap participant with respect to the swap, an indication of whether the non-reporting counterparty is a financial entity as defined in CEA section 2(h)(7)(C).	Yes/No.
An indication of whether the non-reporting counterparty is a U.S. person.	Yes/No.
The Unique Product Identifier assigned to the swap	As provided in §45.7.
If no Unique Product Identifier is available for the swap because the swap is not sufficiently standardized, the taxonomic description of the swap pursuant to the CFTC-approved product classification system.	
If no CFTC-approved UPI and product classification system is yet available, the internal product identifier or product description used by the swap data repository.	
An indication that the swap is a multi-asset swap	Field values: Yes, Not applicable.
For a multi-asset class swap, an indication of the primary asset class ..	Generally, the asset class traded by the desk trading the swap for the reporting counterparty. Field values: credit, equity, FX, interest rate, other commodity.
For a multi-asset class swap, an indication of the secondary asset class(es).	Field values: credit, equity, FX, interest rate, other commodity.
An indication that the swap is a mixed swap	Field values: Yes, Not applicable.
For a mixed swap reported to two non-dually- registered swap data repositories, the identity of the other swap data repository (if any) to which the swap is or will be reported.	Field value: LEI of the other SDR to which the swap is or will be reported.
Contract type	E.g., forward, non-deliverable forward (NDF), non-deliverable option (NDO), vanilla option, simple exotic option, complex exotic option.
Block trade indicator	Indication (Yes/No) of whether the swap qualifies as a block trade or large notional swap.
Execution timestamp	The date and time of the trade, expressed using Coordinated Universal Time ("UTC").
Execution venue	The swap execution facility or designated contract market on or pursuant to the rules of which the swap was executed. Field values: LEI of the swap execution facility or designated contract market, or "off-facility" if not so executed.
Currency 1	ISO code.
Currency 2	ISO code.
Notional amount 1	For currency 1.
Notional amount 2	For currency 2.
Exchange rate	Contractual rate of exchange of the currencies.
Delivery type	Physical (deliverable) or cash (non-deliverable).
Settlement or expiration date	Settlement date, or for an option the contract expiration date.

EXHIBIT B—MINIMUM PRIMARY ECONOMIC TERMS DATA—FOREIGN EXCHANGE TRANSACTIONS (OTHER THAN CROSS-CURRENCY SWAPS)—Continued

[Enter N/A for fields that are not applicable]

Data fields for all swaps	Comments
Timestamp for submission to swap data repository	Time and date of submission to the swap data repository, expressed using Coordinated Universal Time (“UTC”), as recorded by an automated system where available, or as recorded manually where an automated system is not available.
Clearing indicator	Yes/No indication of whether the swap will be submitted for clearing to a derivatives clearing organization.
Clearing venue	LEI of the derivatives clearing organization.
If the swap will not be cleared, an exception to, or an exemption from, the clearing requirement has been elected with respect to the swap under part 50 of this chapter.	Yes/No.
The identity of the counterparty electing an exception or exemption to the clearing requirement under part 50 of this chapter.	Field values: LEI, or substitute identifier, for a natural person.
Clearing exception or exemption type	The type of clearing exception or exemption being claimed. Field values: End user, Inter-affiliate or Cooperative.
Indication of collateralization	Is the trade collateralized, and if so to what extent? Field values: Uncollateralized, partially collateralized, one-way collateralized, fully collateralized.
Any other term(s) of the trade matched or affirmed by the counterparties in verifying the trade.	E.g., for options, premium, premium currency, premium payment date; for non-deliverable trades, settlement currency, valuation (fixing) date; indication of the economic obligations of the counterparties. Use as many fields as required to report each such term.

EXHIBIT B—MINIMUM PRIMARY ECONOMIC TERMS DATA—FOREIGN EXCHANGE TRANSACTIONS (OTHER THAN CROSS-CURRENCY SWAPS)

[Enter N/A for fields that are not applicable]

Additional data categories and fields for clearing swaps	Comment
Clearing swap USIs	The USIs of each clearing swap that replaces the original swap that was submitted for clearing to the DCO, other than the USI for which the PET data is currently being reported (as “USI” field above).
Original swap USI	The USI of the original swap submitted for clearing to the DCO that is replaced by clearing swaps.
Original swap SDR	LEI of SDR to which the original swap was reported.
Clearing member LEI	LEI of Clearing member.
Clearing member client account	Clearing member client account number.
Origin (house or customer)	An indication whether the clearing member acted as principal for a house trade or agent for a customer trade.
Clearing receipt timestamp	The date and time at which the DCO received the original swap for clearing, expressed using UTC.
Clearing acceptance timestamp	The date and time at which the DCO accepted the original swap for clearing, expressed using UTC.

EXHIBIT C—MINIMUM PRIMARY ECONOMIC TERMS DATA—INTEREST RATE SWAPS (INCLUDING CROSS-CURRENCY SWAPS)

[Enter N/A for fields that are not applicable]

Data fields for all swaps	Comment
Asset Class	Field values: credit, equity, FX, rates, other commodity.
The Unique Swap Identifier for the swap	As provided in § 45.5.
The Legal Entity Identifier of the reporting counterparty	As provided in § 45.6, or substitute identifier for a natural person.
An indication of whether the reporting counterparty is a swap dealer with respect to the swap.	Yes/No.
An indication of whether the reporting counterparty is a major swap participant with respect to the swap.	Yes/No.
If the reporting counterparty is not a swap dealer or a major swap participant with respect to the swap, an indication of whether the reporting counterparty is a financial entity as defined in CEA section 2(h)(7)(C).	Yes/No.
An indication of whether the reporting counterparty is a derivatives clearing organization with respect to the swap.	Yes/No.
An indication of whether the reporting counterparty is a U.S. person	Yes/No.
An indication that the swap will be allocated	Yes/No.

EXHIBIT C—MINIMUM PRIMARY ECONOMIC TERMS DATA—INTEREST RATE SWAPS (INCLUDING CROSS-CURRENCY SWAPS)—Continued

[Enter N/A for fields that are not applicable]

Data fields for all swaps	Comment
If the swap will be allocated, or is a post-allocation swap, the Legal Entity Identifier of the agent.	As provided in § 45.6, or substitute identifier for a natural person.
An indication that the swap is a post-allocation swap	Yes/No.
If the swap is a post-allocation swap, the unique swap identifier of the initial swap transaction between the reporting counterparty and the agent.	As provided in § 45.5.
The Legal Entity Identifier of the non-reporting counterparty	As provided in § 45.6, or substitute identifier for a natural person.
An indication of whether the non-reporting counterparty is a swap dealer with respect to the swap.	Yes/No.
An indication of whether the non-reporting counterparty is a major swap participant with respect to the swap.	Yes/No.
If the non-reporting counterparty is not a swap dealer or a major swap participant with respect to the swap, an indication of whether the non-reporting counterparty is a financial entity as defined in CEA section 2(h)(7)(C).	Yes/No.
An indication of whether the non-reporting counterparty is a U.S. person.	Yes/No.
The Unique Product Identifier assigned to the swap	As provided in § 45.7.
If no Unique Product Identifier is available for the swap because the swap is not sufficiently standardized, the taxonomic description of the swap pursuant to the CFTC-approved product classification system.	
If no CFTC-approved UPI and product classification system is yet available, the internal product identifier or product description used by the swap data repository.	
An indication that the swap is a multi-asset swap	Field values: Yes, Not applicable.
For a multi-asset class swap, an indication of the primary asset class ..	Generally, the asset class traded by the desk trading the swap for the reporting counterparty. Field values: credit, equity, FX, interest rate, other commodity.
For a multi-asset class swap, an indication of the secondary asset class(es).	Field values: credit, equity, FX, interest rate, other commodity.
An indication that the swap is a mixed swap	Field values: Yes, Not applicable.
For a mixed swap reported to two non-dually- registered swap data repositories, the identity of the other swap data repository (if any) to which the swap is or will be reported.	Field value: LEI of the other SDR to which the swap is or will be reported.
Contract type	E.g., swap, swaption, option, basis swap, index swap.
Block trade indicator	Indication (Yes/No) of whether the swap qualifies as a block trade or large notional swap.
Execution timestamp	The date and time of the trade, expressed using Coordinated Universal Time ("UTC").
Execution venue	The swap execution facility or designated contract market on or pursuant to the rules of which the swap was executed. Field values: LEI of the swap execution facility or designated contract market, or "off-facility" if not so executed.
Start date	The date on which the swap starts or goes into effect.
Maturity, termination or end date	The date on which the swap expires or ends.
Day count convention.	
Notional amount (leg 1)	The current active notional amount.
Notional currency (leg 1)	ISO code.
Notional amount (leg 2)	The current active notional amount.
Notional currency (leg 2)	ISO code.
Payer (fixed rate)	Is the reporting party a fixed rate payer? Yes/No/Not applicable.
Payer (floating rate leg 1)	If two floating legs, the payer for leg 1.
Payer (floating rate leg 2)	If two floating legs, the payer for leg 2.
Direction	For swaps: whether the principal is paying or receiving the fixed rate. For float-to-float and fixed-to-fixed swaps: indicate N/A. For non-swap instruments and swaptions: indicate the instrument that was bought or sold.
Option type	E.g., put, call, straddle.
Fixed rate.	
Fixed rate day count fraction	E.g., actual 360.
Floating rate payment frequency.	
Floating rate reset frequency.	
Floating rate index name/rate period	E.g., USD-Libor-BBA.
Timestamp for submission to swap data repository	Time and date of submission to the swap data repository, expressed using UTC, as recorded by an automated system where available, or as recorded manually where an automated system is not available.
Clearing indicator	Yes/No indication of whether the swap will be submitted for clearing to a derivatives clearing organization.
Clearing venue	LEI of the derivatives clearing organization.

EXHIBIT C—MINIMUM PRIMARY ECONOMIC TERMS DATA—INTEREST RATE SWAPS (INCLUDING CROSS-CURRENCY SWAPS)—Continued

[Enter N/A for fields that are not applicable]

Data fields for all swaps	Comment
If the swap will not be cleared, an indication of whether an exception to, or an exemption from, the clearing requirement has been elected with respect to the swap under part 50 of this chapter.	Yes/No.
The identity of the counterparty electing an exception or exemption to the clearing requirement under part 50 of this chapter.	Field values: LEI, or substitute identifier, for a natural person.
Clearing exception or exemption type	The type of clearing exception or exemption being claimed. Field values: End user, Inter-affiliate or Cooperative.
Indication of collateralization	Is the swap collateralized, and if so to what extent? Field values: Uncollateralized, partially collateralized, one-way collateralized, fully collateralized.
Any other term(s) of the swap matched or affirmed by the counterparties in verifying the swap.	E.g., early termination option clause. Use as many fields as required to report each such term.

EXHIBIT C—MINIMUM PRIMARY ECONOMIC TERMS DATA—INTEREST RATE SWAPS (INCLUDING CROSS-CURRENCY SWAPS)

[Enter N/A for fields that are not applicable]

Additional data categories and fields for clearing swaps	Comment
Clearing swap USIs	The USIs of each clearing swap that replaces the original swap that was submitted for clearing to the DCO, other than the USI for which the PET data is currently being reported (as "USI" field above).
Original swap USI	The USI of the original swap submitted for clearing to the DCO that is replaced by clearing swaps.
Original swap SDR	LEI of SDR to which the original swap was reported.
Clearing member LEI	LEI of Clearing member.
Clearing member client acct	Clearing member client account number.
Origin (house or customer)	An indication whether the clearing member acted as principal for a house trade or agent for a customer trade.
Clearing receipt timestamp	The date and time at which the DCO received the original swap for clearing, expressed using UTC.
Clearing acceptance timestamp	The date and time at which the DCO accepted the original swap for clearing, expressed using UTC.

EXHIBIT D—MINIMUM PRIMARY ECONOMIC TERMS DATA—OTHER COMMODITY SWAPS

[Enter N/A for fields that are not applicable]

Data field for all swaps	Comment
Asset Class	Field values: credit, equity, FX, rates, other commodity.
The Unique Swap Identifier for the swap	As provided in § 45.5.
The Legal Entity Identifier of the reporting counterparty	As provided in § 45.6, or substitute identifier for a natural person.
An indication of whether the reporting counterparty is a swap dealer with respect to the swap.	Yes/No.
An indication of whether the reporting counterparty is a major swap participant with respect to the swap.	Yes/No.
If the reporting counterparty is not a swap dealer or a major swap participant with respect to the swap, an indication of whether the reporting counterparty is a financial entity as defined in CEA section 2(h)(7)(C).	Yes/No.
An indication of whether the reporting counterparty is a derivatives clearing organization with respect to the swap.	Yes/No.
An indication of whether the reporting counterparty is a U.S. person	Yes/No.
An indication that the swap will be allocated	Yes/No.
If the swap will be allocated, or is a post-allocation swap, the Legal Entity Identifier of the agent.	As provided in § 45.6, or substitute identifier for a natural person.
An indication that the swap is a post-allocation swap	Yes/No.
If the swap is a post-allocation swap, the unique swap identifier of the initial swap transaction between the reporting counterparty and the agent.	As provided in § 45.5.
The Legal Entity Identifier of the non-reporting party	As provided in § 45.6, or substitute identifier for a natural person.
An indication of whether the non-reporting counterparty is a swap dealer with respect to the swap.	Yes/No.
An indication of whether the non-reporting counterparty is a major swap participant with respect to the swap.	Yes/No.

EXHIBIT D—MINIMUM PRIMARY ECONOMIC TERMS DATA—OTHER COMMODITY SWAPS—Continued

[Enter N/A for fields that are not applicable]

Data field for all swaps	Comment
If the non-reporting counterparty is not a swap dealer or a major swap participant with respect to the swap, an indication of whether the non-reporting counterparty is a financial entity as defined in CEA section 2(h)(7)(C).	Yes/No.
An indication of whether the non-reporting counterparty is a U.S. person.	Yes/No.
The Unique Product Identifier assigned to the swap	As provided in § 45.7.
If no Unique Product Identifier is available for the swap because the swap is not sufficiently standardized, the taxonomic description of the swap pursuant to the CFTC-approved product classification system.	
If no CFTC-approved UPI and product classification system is yet available, the internal product identifier or product description used by the swap data repository.	
An indication that the swap is a multi-asset swap	Field values: Yes, Not applicable.
For a multi-asset class swap, an indication of the primary asset class ..	Generally, the asset class traded by the desk trading the swap for the reporting counterparty. Field values: credit, equity, FX, interest rate, other commodity.
For a multi-asset class swap, an indication of the secondary asset class(es).	Field values: credit, equity, FX, interest rate, other commodity.
An indication that the swap is a mixed swap	Field values: Yes, Not applicable.
For a mixed swap reported to two non-dually- registered swap data repositories, the identity of the other swap data repository (if any) to which the swap is or will be reported.	Field value: LEI of the other SDR to which the swap is or will be reported.
Contract type	E.g., swap, swaption, option, basis swap, index swap.
Block trade indicator	Indication (Yes/No) of whether the swap qualifies as a “block trade” or “large notional off-facility swap” as defined in part 43 of the CFTC’s regulations.
Execution timestamp	The date and time of the trade, expressed using Coordinated Universal Time (“UTC”), as recorded by an automated system where available, or as recorded manually where an automated system is not available.
Execution venue	The swap execution facility or designated contract market on or pursuant to the rules of which the swap was executed. Field values: LEI of the swap execution facility or designated contract market, or “off-facility” if not so executed.
Timestamp for submission to swap data repository	Time and date of submission to the swap data repository, expressed using UTC, as recorded by an automated system where available, or as recorded manually where an automated system is not available.
Start date	The date on which the swap commences or goes into effect (e.g., in physical oil, the pricing start date).
Maturity, termination, or end date	The date on which the swap expires or ends (e.g., in physical oil, the pricing end date).
Buyer	The counterparty purchasing the product: (E.g., the payer of the fixed price (for a swap), or the payer of the floating price on the underlying swap (for a put swaption), or the payer of the fixed price on the underlying swap (for a call swaption). Field values: LEI, if available, or substitute identifier, for a natural person.
Seller	The counterparty offering the product: (E.g., the payer of the floating price (for a swap), the payer of the fixed price on the underlying swap (for a put swaption), or the payer of the floating price on the underlying swap (for a call swaption). Field values: LEI, or substitute identifier, for a natural person.
Quantity unit	The unit of measure applicable for the quantity on the swap. E.g., barrels, bushels, gallons, pounds, tons.
Quantity	The amount of the commodity (the number of quantity units) quoted on the swap.
Quantity frequency	The rate at which the quantity is quoted on the swap. E.g., hourly, daily, weekly, monthly.
Total quantity	The quantity of the commodity for the entire term of the swap.
Settlement method	Physical delivery or cash.
Price	The price of the swap. For options, the strike price.
Price unit	The unit of measure applicable for the price of the swap.
Price currency	ISO code.
Buyer pay index	The published price as paid by the buyer (if applicable). For swaptions, applies to the underlying swap.
Buyer pay averaging method	The averaging method used to calculate the index of the buyer pay index. For swaptions, applies to the underlying swap.
Seller pay index	The published price as paid by the seller (if applicable). For swaptions, applies to the underlying swap.

EXHIBIT D—MINIMUM PRIMARY ECONOMIC TERMS DATA—OTHER COMMODITY SWAPS—Continued

[Enter N/A for fields that are not applicable]

Data field for all swaps	Comment
Seller pay averaging method	The averaging method used to calculate the index of the seller pay index. For swaptions, applies to the underlying swap.
Grade	If applicable, the grade of the commodity to be delivered, e.g., the grade of oil or refined product.
Option type	Descriptor for the type of option transaction. E.g., put, call, straddle.
Option style	E.g., American, European, European Daily, European Monthly, Asian.
Option premium	The total amount paid by the option buyer.
Hours from through	For electric power, the hours of the day for which the swap is effective.
Hours from through time zone	For electric power, the time zone prevailing for the hours during which electricity is transmitted.
Days of week	For electric power, the profile applicable for the delivery of power.
Load type	For electric power, the load profile for the delivery of power.
Clearing indicator	Yes/No indication of whether the swap will be submitted for clearing to a derivatives clearing organization.
Clearing venue	LEI of the derivatives clearing organization.
If the swap will not be cleared, an indication of whether an exception to, or an exemption from, the clearing requirement has been elected with respect to the swap under part 50 of this chapter.	Yes/No.
The identity of the counterparty electing an exception or exemption to the clearing requirement under part 50 of this chapter.	Field values: LEI, or substitute identifier, for a natural person.
Clearing exception or exemption type	The type of clearing exception or exemption being claimed. Field values: End user, Inter-affiliate or Cooperative.
Indication of collateralization	Is the swap collateralized, and if so to what extent? Field values: Uncollateralized, partially collateralized, one-way collateralized, fully collateralized.
Any other term(s) of the swap matched or affirmed by the counterparties in verifying the swap.	Use as many fields as required to report each such term.

EXHIBIT D—MINIMUM PRIMARY ECONOMIC TERMS DATA—OTHER COMMODITY SWAPS

[Enter N/A for fields that are not applicable]

Additional data categories and fields for clearing swaps	Comment
Clearing swap USIs	The USIs of each clearing swap that replaces the original swap that was submitted for clearing to the DCO, other than the USI for which the PET data is currently being reported (as "USI" field above).
Original swap USI	The USI of the original swap submitted for clearing to the DCO that is replaced by clearing swaps.
Original swap SDR	LEI of SDR to which the original swap was reported.
Clearing member LEI	LEI of Clearing member.
Clearing member client acct	Clearing member client account number.
Origin (house or customer)	An indication whether the clearing member acted as principal for a house trade or agent for a customer trade.
Clearing receipt timestamp	The date and time at which the DCO received the original swap for clearing, expressed using UTC.
Clearing acceptance timestamp	The date and time at which the DCO accepted the original swap for clearing, expressed using UTC.

Issued in Washington, DC, on August 20, 2015, by the Commission.

Christopher J. Kirkpatrick,
Secretary of the Commission.

Note: The following appendices will not appear in the Code of Federal Regulations.

Appendices to Amendments to Swap Data Recordkeeping and Reporting Requirements for Cleared Swaps—Commission Voting Summary, Chairman’s Statement, and Commissioners’ Statements

Appendix 1—Commission Voting Summary

On this matter, Chairman Massad and Commissioners Bowen and Giancarlo voted in the affirmative. No Commissioner voted in

the negative. Commissioner Wetjen did not participate in this matter.

Appendix 2—Statement of Chairman Timothy G. Massad

One of the most important requirements of the Dodd-Frank Wall Street Reform and Consumer Protection Act is the reporting of data on the swaps market. In 2008 during the global financial crisis, regulators had little information about this market or the exposures of major institutions, but difficult policy choices still had to be made. Today, that has changed. Today, all swap transactions, whether cleared or uncleared, must be reported to swap data repositories (SDRs). The availability of accurate data is allowing the CFTC to move forward with the

important work of monitoring the market and understanding its potential risks.

While we have made great progress in this area, there is still more we need to do to make sure that we obtain useful and timely data as efficiently as possible. Today’s proposal is one big step toward that end. If adopted, it will improve data quality and reduce compliance costs, by clarifying and simplifying some requirements and eliminating unnecessary reporting obligations.

This proposal would ensure there is a simple, consistent process surrounding the reporting workflows for cleared swaps. For example, the proposal would clarify the reporting obligations of the clearinghouse where the swap is cleared. It would help ensure that there are not multiple records of

a swap that can lead to erroneous double counting, and that accurate valuations of swaps are provided on an ongoing basis. It would eliminate unnecessary reporting requirements for swap dealers and major swap participants. And it will improve the Commission's ability to trace swaps from execution through clearing.

This proposal reflects a careful consideration of the feedback received from the CFTC's request for comment on this regulation in 2014. It combines the best elements of those suggested by various stakeholders concerning the reporting of cleared swaps.

I believe the proposal will help simplify compliance obligations for market participants while improving the accuracy, quality and usefulness of the data that is reported. This is an important part of the ongoing process of simplifying, fine-tuning and harmonizing our rules, and we will continue to look for ways to improve our recordkeeping, reporting, and data quality rules and practices.

I look forward to reviewing comments to this proposal, and I encourage all market participants to provide feedback on this proposal.

Appendix 3—Statement of Commissioner Sharon Y. Bowen

I strongly support this proposed rulemaking because reporting is one of the key pillars of the financial reform mandated by the Dodd-Frank Wall Street Reform and Consumer Protection Act. The Dodd-Frank Act was intended to stabilize our financial system after the 2008 crisis by reducing systemic risk, increasing transparency, and promoting market integrity within the financial system. Having accurate, comprehensive data is essential to meeting all of these goals. Without useful data about our markets, the Commission is unable to fully assess systemic risk and monitor market integrity. Accurate data does not only support financial reform, accurate data is itself a critical part of financial reform.

This proposed rulemaking represents a major step toward making our data more accurate. With this rulemaking, we intend to provide clarity to swap counterparties, exchanges, clearing organizations, and swap data repositories about the part 45 reporting obligations with respect to cleared swaps. This rulemaking is also intended to improve the efficiency of data collection and maintenance associated with the reporting of cleared swaps.

I have a keen interest in systemic risk and market structure issues. I believe regulators have an obligation to do everything in our power to gird our financial system to prevent a future financial crisis. Nearly seven years after the 2008 financial crisis, our economy has improved but the effects of the crisis linger. Many are still battling long-term unemployment, underemployment, and hobbled careers.

The Commission cannot get a perfect picture of what is happening in our markets without accurate data. So while data collection may not seem like the most exciting topic, in fact it is crucial. If the devil is in the details in life, in financial regulation, the devil is in the data.

But while I welcome this step, I realize that much more needs to be done. Our current part 45 rules outline the broad categories of data that the Commission needs, but market participants need much greater clarity on, among other things, what data needs to be submitted, how it needs to be submitted, and how data discrepancies need to be remediated. And our swap data repositories similarly need clarity on how to collect the data that the Commission needs to meet its mandate. While I am heartened by the international efforts to meet these aims, time is not on our side. The markets are active and real-time, and we need to get the best picture of what is happening in those markets as soon as possible.

Our amazing staff has been able to use the data that we are currently receiving to engage in excellent market surveillance. Yet, our staff would be able to do even more if this

data was improved; that is why I wholeheartedly support this proposal. I also hope that the Commission makes further efforts to improve our data and reporting regimes in the near future.

Appendix 4—Statement of Commissioner J. Christopher Giancarlo

I support the issuance of the proposed rules to amend the cleared swaps data reporting provisions. I have been a consistent supporter of the swap data reporting reforms in the Dodd-Frank Act to provide regulators with increased transparency into the swaps market. Getting the reporting rules right is critical to provide regulators with the information they need to better understand and oversee these highly dynamic markets.

Today's proposal demonstrates that the Commission can revisit Dodd-Frank rulesets and make needed adjustments based on its implementation experience over the past few years. I urge the Commission to take this same approach with other rulesets, including several of its swaps trading rules, to optimize the CFTC's swaps regulatory framework in light of the challenges of liquidity formation and market fragmentation that have grown since initial implementation.

Although today's proposal only addresses a small subset of the issues raised in the 2014 request for comment on the Review of Swap Data Recordkeeping and Reporting Requirements,¹ it is an important first step. I hope that the Commission tackles the other swap data reporting issues raised in the 2014 request for comment in the near future.

I commend CFTC staff, especially the Division of Market Oversight staff, for their efforts on this proposal. I look forward to reviewing well-considered, responsive and informative comments from the public.

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¹ Review of Swap Data Recordkeeping and Reporting Requirements, 79 FR 16689 (Mar. 26, 2014).