May 22, 2020

Submitted Electronically

Mr. Christopher J. Kirkpatrick
Secretary of the Commission
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, N.W.
Washington, DC 20581

RE: Comments on Amendments to the Swap Data Recordkeeping and Reporting Requirements (RIN 3038–AE31), Amendments to the Real-Time Public Reporting Requirements (RIN number 3038–AE60), Certain Swap Data Repository and Data Reporting Requirements (RIN number 3038–AE32) [1]

Dear Mr. Kirkpatrick,

The International Swaps and Derivatives Association, Inc. ("**ISDA**")[2] and the Securities Industry and Financial Markets Association (**"SIFMA"**)[3] (collectively, **"the Associations"** or **"we"**) appreciate the opportunity to provide comments to the U.S. Commodity Futures Trading Commission ("**CFTC**" or "**Commission**") in response to the proposed amendments to the CFTC's swap data reporting rules referenced above ("**Proposals**").

The Associations support the Commission's efforts to harmonize with global CPMI-IOSCO reporting data elements, streamline reporting, extend regulatory reporting deadlines, and provide specificity about the swap data required to be reported. We believe that once finalized, the proposed changes will improve the quality, accuracy, and completeness of the data reported to the Commission.

Our members are strongly committed to maintaining the safety and efficiency of the U.S. swaps markets and hope that the Commission will consider our suggestions, as they reflect the extensive

[1] 85 Fed. Reg. 21578 (Apr. 17, 2020) (hereinafter Part 45 Proposal); 85 Fed. Reg. 21516 (Apr. 17, 2020) (hereinafter Part 43 Proposal); 84 Fed. Reg. 21044 (May 13, 2019) (hereinafter Part 49 Proposal).

[2] Since 1985, ISDA has worked to make the global derivatives markets safer and more efficient. Today, ISDA has more than 900 member institutions from 73 countries. These members comprise a broad range of derivatives market participants, including corporations, investment managers, government and supranational entities, insurance companies, energy and commodities firms, and international and regional banks. In addition to market participants, members also include key components of the derivatives market infrastructure, such as exchanges, intermediaries, clearing houses and repositories, as well as law firms, accounting firms and other service providers. Information about ISDA and its activities is available on the Association's website: www.isda.org. Follow us on Twitter @ISDA.

[3] SIFMA is the leading trade association for broker-dealers, investment banks and asset managers operating in the U.S. and global capital markets. On behalf of our industry's nearly 1 million employees, we advocate on legislation, regulation and business policy, affecting retail and institutional investors, equity and fixed income markets and related products and services. We serve as an industry coordinating body to promote fair and orderly markets, informed regulatory compliance, and efficient market operations and resiliency. We also provide a forum for industry policy and professional development. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA). For more information, visit http://www.sifma.org.

knowledge and experience of the trading and operational professionals within our membership who are subject to the Commission's swap data reporting regulations as well as those of multiple other reporting jurisdictions globally.

In order to respond in the most effective manner, we identify in the Executive Summary the areas where the Proposals could be further improved and then answer certain questions included in the Proposals. Due to the technical nature of the Proposals, we believe it is easier to provide concrete answers to specific questions, thus avoiding unnecessary ambiguity in describing specific industry terms and practices.

Executive Summary

The Commission initiated a comprehensive review of the swap data reporting regulations in 2017 through its *Roadmap to Achieve High Quality Swaps Data*[4] (**"Roadmap"**), which culminated in these Proposals. The Associations believe that the three Proposals represent a significant step in the right direction towards achieving the Roadmap objectives, while still ensuring that the Commission receives accurate, complete, and high quality transaction data. However, we would like to take the opportunity to highlight several key areas below, which we hope the Commission will consider for the final rules. The Associations commend the CFTC for its engagement with the industry and welcome the opportunity to continue a dialogue on any of the points raised in our comments.

1. ***Reporting of Correction of Errors and Omissions:*** The proposed process for corrections of errors and omissions[5] uses a "one size fits all" approach to swap data or swap transaction and pricing data that does not properly account for different errors and omission scenarios and levels of materiality. Proposals that may be impracticable and could potentially result in an excessive use of resources, time and cost for industry participants should be substantiated by more complete analyses that demonstrate the need to impose such requirements on market participants, similar to the view recently expressed by Commissioner Stump.[6] We support a more principles-based approach to remediating errors and omissions.

2. ***2020 Unique Transaction Identifier ("UTI") Compliance Date:*** The proposed implementation date of December 31, 2020 for § 45.5 will not allow adequate time for market participants to build and tests systems. Institutions are normally not able to get budget approvals and allocate resources prior to the adoption of a final rule. If the final reporting rules were published in October 2020, for example, market participants would have only approximately 8 weeks to secure budgets, deploy resources, complete builds, and successfully test systems. Likewise, we believe there are efficiencies to implementing § 45.5 together with the rest of the proposed provisions and, therefore, support a single, unified compliance date for all of Parts 43, 45, 46 and 49.

3. ***Legal Entity Identifier ("LEI") Reporting Party Obligations:*** We are advocates of the Global LEI System and support a requirement that any eligible counterparty who is a counterparty to a swap should obtain and maintain an LEI. However, the LEI registrant should have the regulatory obligation to obtain and maintain its own LEI. This approach is consistent with the Financial

[4] Roadmap to Achieve High Quality Swaps Data (July 20, 2017).
[5] *See* proposed § 45.14 and § 43.3.
[6] Statement of Concurrence of Commissioner Dawn D. Stump, Certain Swap Data Repository and Data Reporting Requirements (May 13, 2019).

Stability Board (**"FSB"**) recommendation of self-registration presented to the G20 at the Los Cabos Summit. The reporting party should not be under any obligation to obtain an LEI for its swap counterparty, become a registration agent for the non-reporting counterparty, or obtain an LEI through third party registration for its counterparty.

4. ***Aligning to the Global Harmonization Recommendations to the Maximum Extent Possible:*** The Associations appreciate the active role the Commission has taken on the Committee on Payments and Market Infrastructures (**"CPMI"**) and the Board of the International Organization of Securities Commissions (**"IOSCO"**) working group for the harmonization of key OTC derivatives data elements (**"CPMI-IOSCO"** or "**Harmonisation Group"**), as well as the FSB working group on UTI and UPI governance (**"GUUG"**) to develop globally reportable data elements and a framework for the UTI, Unique Product Identifier ("**UPI**") and Critical OTC Derivatives Data Elements ("**CDE**").

   If each reporting jurisdiction were to consistently follow the global recommendations resulting from the Harmonisation Group, then market infrastructures, reporting counterparties, trade repositories, and other parties across jurisdictions will be able to complete their builds once, and use it to comply with the requirements of multiple jurisdictions. Otherwise, implementing even slightly differing requirements for each regime will become extremely challenging for market participants, since each jurisdictional variant will need to be considered and built. With respect to the implementation of the global UTI, for instance, while we understand that there may be cases where a particular jurisdiction may not precisely follow the global CPMI-IOSCO UTI waterfall due to unique circumstances of the particular jurisdiction, we nevertheless believe it is vital for each jurisdiction to align to the global UTI waterfall to the maximum extent possible. Absent such harmonization, the fragmented approach that exists today will continue, undermining the progress that has been made at the global CPMI-IOSCO and GUUG level.

5. ***Margin and Collateral:*** The Associations recognize the Commission's rationale for requiring margin and collateral information, which will provide better transparency to the margins available in the market to address periods of volatility and counterparty credit risk. However, we caution that the Commission will be inherently limited in its ability to assess the sufficiency of such margin amounts because most portfolio margin calculations are comprised of swaps, security-based swaps (SBS) and other products that may be subject to uncleared margin regulations in other jurisdictions (e.g., equity options). We also appreciate that the Commission has limited its scope of margin and collateral fields, and, in the majority of cases, aligned with the CDE. Nonetheless, we request that the Commission reconsiders the value of the CFTC-specific margin data elements, allows for reporting of the margin and collateral fields at the portfolio level, and allows for the use of up to two collateral portfolio codes, in each case, to better ensure the availability of useful data.

6. ***Block Trades:*** We have serious concerns related to the proposed block size methodologies that we believe, if not remedied in the final rule, will have a significant adverse effect on the overall liquidity of the swaps market. The Associations have submitted a separate comment letter on the proposed block thresholds to address such concerns.

Table of Select Topics[7]

[7] Topics are noted with page number(s) and/or section.
[8] Page(s) ("**p**" or "**pgs**").

A. Proposed Amendments to Swap Data Recordkeeping and Reporting Requirements ("Part 45"or "P45")

I. Proposed Amendments to Part 45[9]

§45.1 Definitions

Request for Comment: The Commission requests comment on all aspects of the proposed changes to § 45.1.

The proposed *Business day* definition means each twenty-four hour day, on all days except Saturdays, Sundays, and Federal holidays.

We would like clarification that "Federal holidays" includes legal holidays in the reporting party's principal place of business so that a reporting counterparty located outside the U.S. can take into account legal holidays that are not U.S. Federal holidays.

Q1. Does the Commission's proposed definition of "execution date" present problems for SEFs, DCMs, SDRs, or reporting counterparties? Should the Commission instead adopt a definition that aligns with other regulations, including, for instance, the definition of "day of execution" in § 23.501(a)(5)(i)?

We support the addition of "execution date" in § 45.1(a). The proposed definition is more practicable than the "day of execution" as defined under § 23.501 because the latter would require a more complex build for industry participants. For example, the Part 23 "day of execution" would likely require a reporting counterparty ("**RCP**" or "**reporting party**") to perform a comparison against its counterparty to determine the party with the calendar day that ends latest, on a swap by swap basis.

§45.3 Swap Data Reporting: Creation Data

Q2. Is the Commission's proposed T+1 deadline for reporting required swap creation data appropriately harmonized with the deadlines set by other regulators and jurisdictions?

We believe that the CFTC's proposed T+1 deadline for creation data reporting provides an appropriately similar timeframe for regulatory reporting as compared to other regulatory regimes, as illustrated in Table 1. Further, the use of a specific cut-off time such as the 11:59pm eastern time proposed by the Commission will be less complex and costly to build for industry participants, as opposed to a reporting deadline which is on a "execution plus number of hours" basis which may have multiple possibilities. We note that even if the creation data time frame is

[9] Question numbers are cross-referenced with the Notice of Proposed Rulemakings.

extended to T+1, reporting counterparties may choose to continue to report as soon as technologically practicable ("**ASATP**"), given that a subset of data is required under P43, which remains reportable ASATP.

Table 1: Cross-jurisdictional Regulatory Reporting Timeframes -Post-CFTC and EMIR rewrites (subject to change)

	CFTC rewrite	EMIR refit	SEC	JFSA	ASIC	HKMA/SFC	MAS
ASATP requirements:	No	No	No	No	No	No	No
Hard deadline to report:	11.59pm ET on next business day[10]	T+1	24hrs[11]	T+2	T+1	T+2	T+2

Q3. Does the Commission's proposed T+1 deadline create any problems for SEFs, DCMs, SDRs, or reporting counterparties by referencing eastern time? Should the Commission instead adopt a definition that aligns with other regulations, including, for instance, the definition of "day of execution" in § 23.501(a)(5)(i)?

See response to Question 1 under § 45.1.

Q4. Do any of the Commission's proposed changes to the timing deadlines for reporting required swap creation data in § 45.3 raise issues with the sequencing of messages for SDRs that could compromise data quality? For instance, could a T+1 deadline for reporting original swaps and clearing swaps create problems for SDRs in processing swap terminations? Could the 8-hour delay for the allocation agent notifying the reporting counterparty of the actual counterparty's identity create timing message sequencing issues for allocation reporting?

We believe that the move to T+1 for P45 will facilitate an improvement in the quality of the data submitted to the Swap Data Repositories ("**SDR**"). However, we highlight issues that will persist notwithstanding the extended timeline and provide suggestions for how to resolve, as follows:

Allocations/Post-Allocation Swaps:
Under proposed § 45.3, the agent is responsible for informing the reporting counterparty of the identities of the reporting counterparty's actual counterparties resulting from allocation, ASATP after execution, but not later than eight business hours after execution. The reporting counterparty is then obligated to create a UTI and report the creation data for each post-allocation swap.

[10] For SD/MSP/DCO Reporting parties: "not later than 1159pm ET on the next business day following execution date." For Non-SD/MSP/DCOs Reporting parties: "not later than 11:59 p.m. eastern time on the second business day following the execution date."
[11] Regulation SBSR: Reporting of primary and secondary trade information shall be 24 hours after time of execution (or acceptance for clearing). If this falls on a Saturday, Sunday, or U.S. federal holiday, reporting would instead be required by same time on the next business day.

Because the reporting counterparty is dependent on the agent for the identities of their actual counterparties post-allocation, it would be impracticable to start the clock on the reporting counterparty's obligation[12] to report post-allocation swaps prior to receiving those identities from the agent. While we appreciate the eight hour window, we request that the Commission clarify, in the rules, that the timing obligation for reporting of post-allocation swaps does not begin before the reporting counterparty receives the allocation identity information from the allocation agent. In other words, the T+1 clock should not start until the relevant reporting counterparty know the identity of its counterparty (i.e., for reporting of creation data, the reporting counterparty would have until 11:59pm ET the next business after receiving the post-allocation swap identities to report).

To address these concerns, we ask that the Commission make the following specific changes to the proposed rule text in § 45.3, which also includes conforming changes related to proposed § 45.10(d):

> *(2)(ii) Duties of the reporting counterparty. The reporting counterparty shall report required swap creation data, as required by paragraph (b) of this section, for each swap resulting from allocation to the same swap data repository to which the initial swap transaction is reported* not later than 11:59 p.m. eastern time on the next business day following the day, as determined according to eastern time, that the reporting counterparty receives the identities of the reporting counterparty's actual counterparties from the agent. If the initial swap transaction has been successfully transferred to a new SDR as provided under §45.10(d), then the swap creation data for each swap resulting from allocation shall be reported to the new SDR. *The reporting counterparty shall create a unique transaction identifier for each such swap as required in § 45.5.*

In addition, refer to our response to the definition of "Publicly reportable swap transaction" within § 43.2 for related comments.

§ 45.4 Continuation Data

Request for Comment: The Commission requests comment on all aspects of the proposed changes to § 45.4

With regards to the Commission's proposal that a UTI persist through "changes with respect to the counterparty," the Commission should be clearer that "changes with respect to the counterparty" related to corporate events such as a name change are not considered novations or assignments, as current market practice is to create a new USI for a swap created through the novation process.

[12] Part 45 Proposal at 21630, 45.3(c)(2)(ii) Duties of the reporting counterparty.

Q5. Are the Commission's proposed T+1 and T+2 deadlines for reporting required swap continuation data appropriately harmonized with the deadlines set by other regulators and jurisdictions to benefit market participants? Do the Commission's proposed T+1 and T+2 deadlines for reporting required swap continuation data create any operational issues for reporting counterparties that the Commission has not considered?

We are supportive of the proposed T+1 and T+2 deadlines for reporting required swap continuation data. We note that a reporting counterparty's business day for calculating swap valuation may not always coincide with a business day for required reporting (e.g., certain markets are closed on Good Friday, even though it is not a federal holiday). In each instance of a continuation reporting requirement, the swap valuation from the last valuation business day will be reported.

Please also see our comments under § 45.1 for "Business Day."

Q6. Is the requirement to report margin and collateral data without distinction for whether a swap is cleared or uncleared redundant with existing part 39 reporting requirements for cleared swaps? Are there efficiencies for reporting counterparties to submit both cleared and uncleared margin and collateral data together to SDRs?

We believe that the Part 45 requirements to report margin and collateral for cleared swaps are duplicative of the Part 39 requirements under which Derivatives Clearing Organizations ("**DCO**") are already reporting initial margin (IM), variation margin (VM) and daily cash flows to the Commission. This duplication would only increase costs for market participants without any benefit to regulatory oversight. We recommend that the reporting of margin and collateral data elements for cleared swaps by DCOs be optional under Part 45.

Q7. Does the Commission's proposal to no longer require non-SD/MSP/DCO reporting counterparties to report valuation data raise any concerns about the Commission's ability to monitor systemic risk in the U.S. swaps market?

The Associations strongly support the Commission's proposal to no longer require non-SD/MSP/DCO reporting counterparties to report valuation data. A very small percentage of non-cleared swaps are reported by non-SDs/MSPs since these parties primarily trade their non-cleared derivatives with SDs that, per the rules, would be required to report the relevant swaps.[13] Additionally, Commission analysis of SDR data shows that around 98% of reported swaps involved at least one SD.[14] We do not believe that the remaining 2% of swaps that non-SDs/MSPs report represent systemic risk nor pose significant risks to the financial system. According to a study by the CFTC's Office of the Chief Economist,[15] the average aggregate notional amount (AANA) of swaps for non-SDs ranges from $19 billion for corporates to $83 billion for insurance companies. In contrast, SDs which became subject to regulatory margin

[13] We note that there are current no legal entities provisionally registered with the Commission as MSPs.
[14] *See* 83 Fed. Reg. at 56674.
[15] *Initial Margin Phase 5,* October 24, 2018, as published by the CFTC's Office of the Chief Economist.

requirements on or prior to September 1, 2018, have an AANA of $13 trillion, while other SDs have an AANA of $202 billion.

§45.5 UTIs

Request for Comment: The Commission requests comment on all aspects of the proposed changes to § 45.5.

The Associations have been strong advocates of the global regulatory work to harmonize identifiers, including the UTI. Assigning one, consistent transaction identifier which is unique to each transaction is a valuable goal which requires global consideration. Accordingly, applying a globally consistent flow of the logic to determine who will generate that UTI ("**global UTI waterfall**") is a key factor in achieving one, consistent identifier for each swap so that regulators have the ability to analyze market activity more accurately. The global timing for adoption of the UTI will also impact its efficacy.

UTI generation logic

While we understand that there may be cases where a particular jurisdiction may not follow precisely the global UTI waterfall due to unique circumstances of that jurisdiction,[16] we nevertheless believe it is vital for each jurisdiction to align to a global UTI waterfall to the maximum extent possible. Therefore, below we raise potential areas under proposed § 45.5 where the outcome as to which party generates the UTI may differ from the global UTI waterfall, and request that the CFTC close these gaps in the final rule:

i. SDR generation of UTIs

The proposed rule deviates from the global UTI waterfall by assigning SDRs the obligation to generate UTIs for non-SD/MSP/DCOs higher in the hierarchy than the CPMI-IOSCO Harmonisation Group global UTI waterfall. As non-SDs reporting parties have the capacity to conduct trade reporting and have an obligation to transmit the UTI to their counterparty, we question whether there is sufficient demand for UTI generation by the SDR to substantiate this deviation from the global UTI waterfall.

*ii. Exempt DCOs; DCOs with No-Action Relief, Exempt Swap Execution Facilities ("**SEFs**")/Designated Contract Markets ("**DCMs**")*

Individual exemptive orders, such as the one for Korea Exchange, can assign the exempt entity with certain Part 45 reporting obligations,[17] however, since Part 45 does not specify that these entities have such reporting obligations, a lack of clarity about who has the reporting obligation can result. In addition, this causes challenges when building the logic for who generates the UTI, because the responsibilities of such entities is not transparent.

To resolve this gap, entities with individual exemptive orders that assign reporting obligations should be specified in the Part 45 and Part 43 rules as having the same reporting and UTI

[16] Part 45 Proposal at 21593, footnotes 137 and 138.
[17] *See* CFTC *Order of Exemption from Registration* Korea Exchange Inc., (26 October 2015).

generation responsibilities as their non-exempt equivalents, otherwise, the lack of clarity will cause compliance issues for the reporting parties who are complying with the rules as written.

iii. UTI Transmission to non-RCP Counterparties

We support the Commission's proposal to remove current § 45.10(b)(1)(ii), regarding reporting counterparty USI transmission, due to the overlap with the requirements in § 45.5(b)(2) and (c)(2).[18] The removal of this language would eliminate potential ambiguities between current CFTC regulations § 45.5 and § 45.10, and would be consistent with the current market practice of transmitting the USI to the non-reporting counterparty through various mechanisms. These mechanisms generally align with the method of confirmation (e.g. electronic or paper). Accordingly, we respectfully request that the Commission replace the ASATP requirement for UTI transmission with a no later than T+1 deadline to correspond with the proposed timeline for reporting creation data to the SDR.

iv. Cross-Jurisdictional Swaps

§ 45.5(h) proposes that "…[i]f a swap is also reportable to 1 or more other jurisdictions with a reporting deadline earlier than the CFTC's…the same unique transaction identifier generated according to the rules of the jurisdiction with the earliest regulatory reporting deadline shall be transmitted…" However, a party will not know whether its counterparty has an obligation(s) in other jurisdictions and to which jurisdictions (in order to determine which is soonest) as this information is not currently collected and is very difficult to monitor. We recognize this as an issue at the global level as well with the CPMI-IOSCO UTI waterfall, and take the opportunity to highlight the resulting issues below:

- Even if market participants tried to implement the logic to understand a counterparty's jurisdictional reporting obligations, it is not feasible to ensure that parties to a swap will come to the same conclusions about each other's jurisdictions in order to determine whether a trade is cross-jurisdictional, and therefore outcomes about who generates the UTI could differ. In addition, each counterparty's jurisdictional hierarchy will need to be readjusted each time new reporting jurisdictions go-live.

- "Nexus" obligations applicable to several jurisdictions complicates § 45.5(h) further, since a transaction may be subject to a jurisdictional reporting requirement depending on the location of personnel, such as the trader or sales personnel, involved in the execution of the trade. The approach to nexus reporting obligations can vary by jurisdiction. It would be challenging for counterparties to communicate nexus obligations on a swap by swap basis. Even if parties attempted to build the nexus obligations of its counterparties into its jurisdictional hierarchy, it would not be possible to ensure it is built with any degree of accuracy, resulting in differing outcomes as to who generates the UTI. Therefore, we ask that for purposes of § 45.5, the UTI generating party be determined separate from any nexus obligations.

[18] Part 45 at 21601, "…the Commission is proposing to remove the requirement in current § 45.10(b)(1)(ii) for the reporting counterparty to transmit the USI to the non-reporting counterparty to the swap. This requirement is already located in § 45.5(b)(2) and (c)(2), depending on the type of counterparty."

Importantly, if each reporting jurisdiction consistently follows a global UTI waterfall, then market infrastructures, reporting parties, trade repositories, and other parties across jurisdictions are able to complete the build once to follow the consistent approach, and use it to comply with the requirements of multiple jurisdictions. Otherwise, implementing UTI generation logic will become extremely challenging for market participants, since each of these jurisdictional variants will be need to be considered and additional industry-consistent hierarchy agreed for the use-cases, which could result in transactions with either no UTI or two different UTIs. Fragmented and inconsistent compliance approaches could negatively impact the ability of global regulators to aggregate or analyze data using new UTIs.

§ 45.5 Compliance Date

Separately, we also have serious concerns regarding the proposed implementation date of December 31, 2020 for § 45.5 (which is earlier than the anticipated compliance date for the rest of the reporting rules). We do not believe that this would allow adequate time for market participants to build out and tests their systems in order to conform with the final changes to § 45.5.

If the final reporting rules were published in the Federal Register in October 2020, for instance, market participants would have to complete builds, including to front-office systems, and test such systems within 8 weeks, whilst taking into account year-end code freezes. The Commission asserts that market participants would be able to make necessary code changes to comply earlier than December 31, 2020.[19] However, some institutions are not able to get budget approvals and allocate resources prior to adoption of a final rule, and many vendors or platforms that had not been not planning to make such changes in 2020 and have been caught unaware by the Commission's proposal earlier this year will likely not be able to achieve the 2020 timing.

The Coronavirus (COVID-19) pandemic has exacerbated these resource and budgeting constraints. Resources have been shifted to focus on business continuity related activities and addressing issues related to recent market volatility. Industry resources are working at full capacity, and time and funds are thinly stretched across the board at market infrastructures, reporting counterparties, trade repositories, and other parties globally.

For these reasons, an implementation date of December 31, 2020 for § 45.5 would be impracticable. However, we understand the Commission may be eager to move forward with reporting rules go-live. Therefore, at a minimum, the Commission should align the § 45.5 UTI compliance date with the rest of its swap data reporting regulations, and align to the maximum extent possible to a globally consistent generation logic wherever the factors are applicable for the Commission.

Global Implementation Timelines

In furtherance of the case for a delay to the compliance date for § 45.5, we note that there are global implications to a jurisdiction-specific timeline for adoption of the UTI. The P45 preamble states that the "earlier compliance date will not pose any substantial difficulties due to the limited

[19] Part 45 Proposal at 21614, footnote 260, "The Commission recognizes commenters' concerns about end-of-year code freezes. The Commission encourages market participants to make the necessary code changes to comply with § 45.5 earlier than the end-of-year deadline."

nature of the proposed changes..." However, this is not entirely accurate because UTI implementation is viewed by the industry in a holistic way, and not only for one jurisdiction. Current estimates indicate that implementation timing for the UTI is expected to vary by regulatory regime, as shown in Table 2 below:

Table 2: Current multijurisdictional estimates for implementation timing of the UTI

	CFTC rewrite	EMIR refit	SEC	JFSA	ASIC	HKMA/SFC	MAS
Anticipated Compliance Date for new UTI generation logic:	31Dec2020[20]	4Q2022	Align w/CFTC for interim period[21]	Not specified yet	1Apr2022	Not specified yet	Not specified yet
Will regime adopt CPMI IOSCO UTI generation logic?	Not strictly[22]	Not strictly[23]	Align w/CFTC for interim period	Not specified yet	Not specified yet	Not specified yet	Not specified yet

Not only will the industry be forced to build multiple sets of logic due to the variations discussed earlier, but market infrastructures, reporting parties, trade repositories, and other impacted parties will have to go back to adjust their reporting infrastructure flows to layer in the differing generation logic whenever there is a new jurisdictional UTI compliance date. Parties will each need time to rebuild, test and implement each approach and carefully coordinate a transition to avoid gaps or duplication in UTI generation. This 'build, wait, adjust build, wait, readjust, build, wait, etc.' approach will need to be repeated over and over until the last reporting regime's UTI compliance date, because the particular waterfall each jurisdiction adopts may not be known to industry participants at the time of the earliest UTI compliance date .

As mentioned previously, institutions are not able to definitively allocate resources and funds to build prior to certainty of their obligations in each reporting jurisdiction. Requiring a global UTI timeframe which is inconsistent with other jurisdictions will be inefficient and extremely challenging, and will create a substantial implementation burden for market participants around the globe. Although it may not be possible to have a single, global compliance date for UTI, the CFTC could reduce the impact of such disparate implementation if it delayed its transition to the UTI to be closer to EMIR's or ASIC's dates, for example.

[20] Part 45 Proposal at 21614 ""The Commission..expects that the compliance date…other than the rules on UTIs in § 45.5 would be one year from the date the final rulemakings…" "The Commission expects that the compliance date for the rules on UTIs in § 45.5 would be December 31, 2020…"

[21] *See* 85 Fed. Reg. at 6346 "...the Commission takes the following position with respect to the SBS reporting rules for four years following Regulation SBSR's Compliance Date 1 in each SBS asset class.…" https://www.govinfo.gov/content/pkg/FR-2020-02-04/pdf/2019-27760.pdf.

[22] Part 45 Proposal at 21593 "Because the UTI Technical Guidance (TG) was produced with the need to accommodate the different trading patterns and reporting rules in jurisdictions around the world, certain factors…" "included in the UTI TG generation flowchart are not applicable for the CFTC and therefore the Commission is unable to adopt the UTI Technical Guidance without modification."

[23] At this time we believe modification and exceptions are limited to cases where a CPMI-IOSCO Technical Guidance UTI generation waterfall step does not apply to EMIR.

Summary

In the joint ISDA/GFXD response to the *FSB Consultation for the Governance Arrangements for the UTI*,[24] we opined that implementation timing which is harmonized across relevant regimes is a key factor in the successful adoption of the CPMI-IOSCO Harmonisation Group UTI Technical Guidance. We still believe that a harmonized UTI implementation date across jurisdictions is less burdensome, less costly and will lead to higher-quality UTI data for regulators, for the reasons explained above. Because we understand the Commission is eager to move forward with reporting rules go-live, as an alternative, the Commission should at least delay the § 45.5 UTI compliance date to align with the rest of its swap data reporting regulations, and align to the maximum extent possible to a global UTI waterfall, to facilitate improvement over the fragmented approach which exists globally today.

§ 45.6 LEIs

Q8. Should the Commission expand requiring LEIs to be renewed annually beyond SDs, MSPs, SEFs, DCMs, DCOs, and SDRs? Please explain why or why not, including specification of any material costs or benefits.

Q9. Are there other ways to ensure that an LEI is obtained and reported for a counterparty without an LEI, but is eligible for an LEI, other than each DCO and each financial entity reporting counterparty potentially being required to obtain an LEI on behalf of the counterparty through third-party registration?

Legal Entity Identifiers

The Associations support and encourage global uptake of the LEI. We support the proposed requirements that any party who is eligible for an LEI and who is a counterparty to a swap, as well as SEFs, DCMs, and SDRs, must have an LEI for reporting purposes, and that each swap dealer ("**SD**"), major swap participant ("**MSP**"), SEF, DCM, DCO and SDR must obtain,[25] maintain, and renew its own LEI.[26] While we are supportive of these requirements, we believe that certain obligations should also be placed on the swap counterparty (i.e., "**Counterparty 2**"), as described further below, to reduce certain compliance challenges and further facilitate uptake of LEIs.[27]

Swap Counterparty LEI

§ 45.6 proposes, among other things, that Counterparty 2 (i.e., the non-reporting party) must have an LEI; however it also states that if Counterparty 2 is eligible for an LEI, but does not have an LEI and does not (want to) obtain an LEI for itself, then the DCO or financial entity reporting counterparty who executes a swap with Counterparty 2 would be obligated to "cause" an LEI to be assigned.[28] This would include, if necessary, assignment through third-party registration, and

[24] https://www.isda.org/a/qZiDE/fsb-uti-governance-response-5-may-2017-public.pdf.
[25] Part 45 Proposal at § 45.6(d)(1)
[26] Part 45 Proposal at § 45.6(d)(2).
[27] While SEF executed trades are not specifically addressed in proposed Part §45.6, we suggest adding a clarification that SEFs are under an obligation to require that any entity allowed to execute a trade on SEF that needs to be reported by the SEF under CFTC Part 45, must obtain an LEI prior to reporting by the SEF.
[28] Part 45 Proposal at § 45.6(d)(3) "Each derivatives clearing organization and each financial entity reporting counterparty executing a swap with a counterparty that is eligible to receive a legal entity identifier, but has not been assigned a legal entity

mandates that such assignment shall occur prior to reporting any required swap creation data for the relevant swap with such counterparty.
While we agree that all eligible counterparties should obtain an LEI, we believe that the rules should clarify that the LEI registrant (i.e., Counterparty 2) would have the regulatory obligation to obtain and maintain its own LEI. This approach would be consistent with the FSB recommendation to the G20 at Los Cabos ("**Recommendation 18**")[29] of self-registration. Absent such clarification, Counterparty 2 will not understand such obligation. Ensuring that the rule acknowledges that the non-reporting counterparty also has an obligation with respect to obtaining and maintaining an LEI will incentivize such counterparties so that the DCO/financial entity reporting counterparty will be better able to work with Counterparty 2 to help them obtain their LEIs, if the reporting counterparty chooses to do so.

Accordingly, we recommend that proposed § 45.6 be amended to specify that the non-reporting counterparty has the obligation to obtain and maintain its own LEI.

Notwithstanding clarifications of this nature, we still anticipate that some counterparties may be resistant to obtaining an LEI. As currently drafted, the use of the wording "to cause" in § 45.6 seems to have the effect of transferring the obligation for obtaining an LEI for Counterparty 2 to the DCO/financial entity reporting counterparty. If this is the Commission's intent, we have serious concerns about the reporting counterparty's ability to comply with such a requirement since a DCO/financial entity reporting counterparty cannot obtain an LEI on behalf of Counterparty 2 without getting their permission,[30] and as noted, we anticipate that some counterparties would be resistant to obtaining an LEI.

Accordingly, the rule should further clarify that the reporting party is *not* obligated to "cause a legal entity identifier to be assigned to the counterparty, including, if necessary, through third-party registration."

Reference data
Further, as drafted, we are concerned that there may be situations where inaccuracies in the non-reporting counterparty's LEI reference data may be viewed as a non-compliance breach on behalf of the reporting counterparty (that may have obtained the LEI on behalf for Counterparty 2). It is unlikely that a Counterparty 2 who did not obtain an LEI on its own would pick up responsibilities for its LEI and record mid-stream/when it had not self-registered initially. If this is the case, then it would follow that the obligation to submit to the LOU any changes and corrections to Counterparty 2's reference data would also fall on the reporting counterparty. Again, FSB Recommendation 18 is clear that "The ultimate responsibility for the accuracy of the data should reside with the LEI receivers. From the practical stand-point the registered entity should have the best information about itself on a timely basis."

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identifier, shall, prior to reporting any required swap creation data for such swap, cause a legal entity identifier to be assigned to the counterparty, including if necessary, through third-party registration."
[29] Financial Stability Board, A Global Legal Entity Identifier for Financial Markets (June 12, 2012) http://www.leiroc.org/publications/gls/roc_20120608.pdf.
[30] Financial Stability Board, Progress Note on the Global LEI Initiative (October 24, 2012), http://www.financialstabilityboard.org/publications/r_121024.pdf. "The permission/agreement of the LEI registrant to perform an LEI registration on its behalf by a third party is considered to satisfy the requirements of self-registration granted the registrant has provided explicit permission for such a registration to be performed."

Accordingly, proposed § 45.6 should be amended to clarify that the obligation to maintain the LEI reference data rests with the legal entity to whom the LEI is issued.

Third-party registration
For the reasons described above, proposed § 45.6 should be amended to clarify that the DCO or financial entity reporting party may act as an agent for third party registration to obtain LEIs on a counterparty's behalf only if it chooses to do so. However, the reporting party is not obligated to obtain or maintain the swap counterparty's LEI, obtain an LEI through third party registration for a counterparty (or investment manager acting on a counterparty's behalf – see below), or become a registration agent for the non-reporting counterparty.

Investment Managers
In addition, we consider Counterparty 2 to include an investment manager executing a transaction for and on the behalf of a swap counterparty[31] or counterparties (e.g. funds). The rule should clarify that an investment manager executing a transaction on behalf of a swap counterparty is required to obtain and maintain its own LEI. Further, the investment manager should be required to obtain its own LEI sufficiently in advance of executing pre-allocation swaps, so that the reporting party is able to report the investment manager LEI within the reporting party's Part 45 timing obligations.

§ 45.8 Determination of which counterparty shall report

The Associations would support an alignment of the reporting counterparty determination for Part 43 and Part 45. In the Appendices, we have proposed potential language for the reporting counterparty determination logic in Part 45 which can also be used in Part 43 (entitled "Reporting Counterparty Determination – aligning Part 43 and Part 45"). The suggested changes address redundancies or challenges that exist with the current reporting counterparty determination logic under Part 45. For example, for trades between two swap dealers executed on SEF, the designation of the reporting counterparty for purposes of swap continuation data reporting obligations should be left with the parties to the trade and not be decided by SEFs which have no involvement in post-execution swap continuation data reporting obligations. Having different SEFs potentially providing different reporting counterparty determinations in their respective rulebooks also creates unnecessary burdens on reporting counterparties and their reporting engines. Another example exists for novations, where the reporting counterparty designation for the novated trades should follow the same reporting counterparty determination as for any other new trade. Lastly, we have suggested the deletion of language that seems to address cross-border matters which do not seem to fully align with guidance or no-action relief otherwise provided by the Commission on these topics.

Additionally, market participants have been using the industry best practice ISDA reporting tie-breaker logic[32] for situations where two parties to a swap transaction are on the same hierarchical level to determine in an objective manner who should be the reporting counterparty. We note that there has been widespread adoption of the industry best practice tie-breaker logic and requests

[31] We note this is distinct from an investment manager who obtains LEIs (as agent) for its individual funds.
[32] https://www.isda.org/a/Up7TE/2018-March-12_corrected_Asset-Class-tiebreaker-logic_public.pdf.

that the CFTC confirm that so long as both counterparties incorporate a widely accepted industry practice into their internal policies and procedures, they will have met the requirements of § 45.8.

§ 45.10 Reporting to a Single SDR

Q10. Would the Commission's proposal to permit reporting counterparties to change SDRs raise any operational issues for reporting counterparties, SDRs, or non-reporting counterparties?

Q11. Should the Commission adopt additional requirements to ensure that a reporting counterparty's choice to change SDRs does not result in the loss of any data or information?

Notifications

§ 45.10(d)(1) proposes that the reporting counterparty notifies its counterparty of a change in the SDR to which the reporting counterparty reported swap transaction and pricing data and swap data for a swap. To facilitate this notification, we suggest that the obligation can be satisfied via an email notification, reporting counterparty portal, or the reporting counterparty's public-facing website.

Deregistration of an SDR

Where a reporting counterparty elects to port from an SDR due to the deregistration of the SDR, the deregistering SDR should be required to bear the reporting counterparty's costs of porting.

Conforming changes due to the ability to change SDRs

As drafted, § 45.3(2)(ii) requires that the creation data for each swap resulting from allocation be reported to the same swap data repository to which the *initial* swap transaction is reported. Conforming changes may be needed in § 45.3(2)(ii) or elsewhere in the swap data reporting rules due to the ability to port from the initial SDR to another under § 45.10(d).[33] We ask that the final rule consider other conforming updates needed throughout the rules due to the ability of reporting parties to transfer from one SDR to another, which may occur during the life of a swap.

§ 45.12 Voluntary Supplemental Reporting

Request for Comment: The Commission requests comment on all aspects of the proposed changes to § 45.12.

We agree with the considerations put forth in the preamble and support the elimination of § 45.12 for Voluntary Supplemental Reporting.

§ 45.13 Required Data Standards

In the joint ISDA/SIFMA response[34] to the Roadmap, the Associations had recommended that the Commission should clarify what a reporting counterparty is obligated to report when a data field may not apply and/or data may not be available at the time of reporting. We believe that the Commission could clarify this further in the final Technical Specifications by:

[33] §45.10(d) Change of swap data repository for swap transaction and pricing data and swap data reporting.
[34] Joint ISDA and SIFMA Response to Roadmap to Achieve High Quality Swaps Data (August 21, 2017).

- Specifying where reporting counterparties can report multiple values for the same data element and where parties cannot; and
- Specifying allowable values in the same way as other jurisdictions to avoid causing institutions to have to build multiple sets of logic depending on regime. (For example, the decimal mark is not counted as a numerical character under EMIR, which appears to be in line with the final CPMI-IOSCO Harmonisation Group CDE Technical Guidance,[35] but the decimal mark is counted as a numerical character under the CFTC amendments.) Where the CFTC is an outlier for an allowable value, we propose that the CFTC align with the CPMI-IOSCO Harmonisation Group guidance and/or EMIR.

Q13. Even with technical standards published by the Commission, there is a risk of inconsistent data across SDRs if the Commission allows the SDRs to specify the facilities, methods or data standards for reporting. In order to ensure data quality, should the Commission mandate a certain standard for reporting to the SDRs? If so, what standard would you propose and what would be the benefits? If not, why not?

If the Commission mandates certain messaging formats (e.g. XML, FpML, CSV, etc.) to be used from the SDR to the Commission ("**outbound**"), we note that this should not result in a mandate that the same message format type be required from the reporting counterparty to the SDRs ("**inbound**") for reported data. Currently, not all reporting parties are built in a uniform way with respect to messaging formats and technological applications.

ISDA Common Domain Model™ ("**ISDA CDM**" or "**CDM**")

Regarding Questions 13 and 14, we recognize that regulatory authorities and industry participants can benefit from assessing new technology and utilizing technological solutions to help ease the burden of implementation, drive consistency of reporting, and reduce costs.

The CDM, as an open-source mechanism to build centralized implementation for reporting requirements, has the capacity to perform a wide range of functions which are advantageous for regulatory reporting. We outline several, in the following paragraphs, which demonstrate how the CDM can facilitate implementation and consistency of reporting.

The CDM,[36] as a standardized method of electronic data transmission which can be used both inbound and outbound, can eliminate the need for any "translations" performed by the SDR, accommodate multiple messaging formats, and would be able to be programmed to incorporate different global standards, such as ISO and the CPMI IOSCO CDE, UTI, or UPI Technical Guidance in a way that is seamless to the user.

In addition, the ISDA CDM[37] has the potential to:

- consistently project and map to all ISO standards, including the ISO 20022 message scheme and data dictionary from market participants' internal systems

[35] § 1.3 Formats, CPMI-IOSCO Harmonisation of critical OTC derivatives data elements (CDE)- Technical Guidance, (April 2018).
[36] These comments address Q13 of the Part 45 Proposal.
[37] These comments address Q14 of the Part 45 Proposal.

- enable multiple messaging formats, including XML, FpML, and CSV, to be employed seamlessly, regardless of user
- deploy the global harmonization data elements, definitions and flows once for common use
- apply best practices that have been developed by multiple trade associations and used across the industry.

Further, the CDM has the ability to establish consistent interpretation of each reporting rule and data point, and provides a vehicle to implement such consistent interpretation. The implementation can be presented as open-source machine readable and executable code available to every market participant, or can be referenced in the building of institutional reporting solutions.

ISDA appreciates the Commission's efforts thus far to learn about the CDM. We would welcome continued dialogue to discuss each point above in greater detail with the Commission and to further describe how the CDM could facilitate more efficient reporting for market participants and could improve the integrity of the data reported to the Commission.

Q14. The CPMI-IOSCO Governance Arrangements for critical OTC derivatives data elements (other than UTI and UPI) ("CDE Governance Arrangements"), assigned ISO to execute the maintenance functions for the CDE data elements included in the CDE Technical Guidance. Some of the reasons include that almost half of the CDE data elements are already tied to an ISO standard and because ISO has significant experience maintaining data standards, specifically in financial services. CPMI and IOSCO, in the CDE Governance Arrangements, also decided that the CDE data elements should be included in the ISO 20022 data dictionary and supported the development of an ISO 20022-compliant message for CDE data elements. Given these factors, should the Commission consider mandating ISO 20022 message scheme for reporting to SDRs? Please comment on the advantages and disadvantages of mandating ISO 20022 for swap transaction reporting.

We believe that mandating the use of ISO 20022 for regulatory reporting from market participants to trade repositories at this time will result in significant costs for market participants, without demonstrable benefits to regulatory oversight.

<u>The ISO 20022 toolkit</u>
ISO 20022 is a toolkit which can be used for each build, but builds must start from scratch for each use. An analogy would be that the effort, labor and costs of building company websites cannot be reduced just because the companies are using the same development tools and understand CSS, Java, and HTML. There is little reusability of previous builds, since builds are purpose-specific. ISO 20022 is essentially a toolkit.

Moreover, there is questionable value and higher costs in taking a satisfactorily functional website built in CSS, Java, and HTML, and recreating the same website just for the purpose of coding it in Python. If the Commission mandates ISO 20022, this is representative of what would be required – institutions using FpML, for example, would be required to rebuild in ISO 20022.

ISO 20022 does not provide as comprehensive a model of derivative products as FpML. ISO 20022 is a useful general purpose data dictionary, but this does not immediately translate into a universal single language message set across all domains. Single data elements may have multiple definitions based on the user build, so ISO 20022 does not inherently provide native interoperability or a naturally extensible base.

In summary, implementing ISO 20022 for a particular purpose (e.g. reporting to a particular regime), does not provide a firm with a ready-made "drop-in" solution for the firm to use ISO 20022 for other purposes.

Interoperability

It should also be noted that just because two builds are created in ISO 20022, it does not necessarily follow that the two will be interoperable. Only if each was built with the express purpose of interoperating could they do so easily. This is a consideration when thinking about the differing levels of technological capabilities and sophistication of the users within scope for CFTC reporting.

Cost and challenges considerations:

Below, we have listed the potential costs of mandating ISO 20022 for the Commission's consideration:

Costs

- There will be significant development effort for each market participant to recode and rebuild regulatory reporting to use ISO 20022. Market participants have spent billions of dollars developing existing reporting mechanisms, and any change is likely to result in a significant additional expenditure, likely at an equal or greater cost, comparable in scale to the original effort.
- There will also be significant implementation effort for SDRs to handle reporting data in a new format.
- Because this would be a "build new" scenario, any lessons learned, errors corrected, or patches performed to get to the current high level of efficiency would likely occur again, setting back quality and accuracy by years.
- There is significant risk of inconsistent reporting between market participants, as each firm needs to decide how to map complex derivative products to the flat ISO 20022 format, which is likely to results in costs to the industry, to SDRs, and to the Commission in resolving these issues.

In addition, a single format for reporting on a wide variety of trade types only provides consistency if the rules for mapping from the wide variety of complex derivatives products are clearly defined. In other words, it is not sufficient to define the reporting format - it is much more important to define the mapping rules to the format for different products. This is a function that SDRs have already undertaken with FpML-based regulatory reporting and FpML already has a single consistent way of reporting each trade type.

One of the existing challenges with ISO 20022 is that different trade repositories have inconsistent ways of mapping to the format; this is an indication that ISO 20022 XML does not

have a sufficiently clear and rigorous definition of how to map from a complex product feature to the simpler, flat reporting format. Increasing the number of data sources using ISO 20022 is likely to exacerbate rather than reduce this problem.

Delegating this responsibility (of mapping from derivatives products to flat reporting) to market participants risks that each market participant will develop a different interpretation of how to map from complex derivatives product definitions to simple, flat ISO 20022 fields.

While consolidating all reporting into a single format appears to be a cure, in practice it is unlikely to solve the issues that are more important to regulators. Thus overall, it is unclear that using ISO 20022 will generate any improvement in reporting consistency compared to the status quo; instead it is likely to result in a reduction in reporting consistency, at least in the short term, until issues and inconsistencies between reporting party implementations are identified and resolved.

Because of these reasons, we do not believe that it is appropriate to mandate the ISO 20022 message scheme reporting to SDRs.

ISDA Common Domain Model (ISDA CDM)
Please refer to the Q13 response above for relevant points regarding the ISDA CDM.

§ 45.15 Delegation of Authority

Request for Comment: The Commission requests comment on all aspects of the proposed changes to § 45.15.

Please see comments entitled "Technical Specifications and Appendices – Process for notice and comment for changes" within the response to Appendix 1 in Part 45.

II. Proposed Amendments to Part 46

Broadly speaking, the Associations believe that new swap dealers should benefit from more limited Part 46 reporting obligations.

§46.11 Reporting of Errors and Omissions in Previously Reported Data

Request for Comment: The Commission requests comment on all aspects of the proposed changes to § 46.11.

Please refer to our comments in § 45.14 of our responses to Certain Swap Data Repository and Data Reporting Requirements (Part 49).

III. Swap Data Elements Reported to Swap Data Repositories

Swap Data Elements

We appreciate the Commission's efforts to streamline to a core set of data elements that, at the same time, still allow the CFTC to perform its oversight functions. We believe that "right-sizing" the number of data elements necessary to fulfill regulatory oversight functions and providing clear guidance on what is expected to be reported for each data element will lead to high quality data and accurate data being report to the Commission.

In contrast, increasing the volume of reportable data elements over what is already in the proposed Technical Specifications would result in the expenditure of additional resources and costs in order for reporting parties and market infrastructures to build and implement such data elements without commensurate benefit to regulatory oversight. Additionally, the following data reported on a swap-by-swap basis may erode the quality of aggregated information, for example:

- Static data
- Hierarchical entity relationship information
- Collateral Support Annex ("**CSA**") - level data

The questions posed by the Commission below indicate that it is considering adding data elements over and above the 116 already proposed in the Technical Specifications. Before increasing the number of data elements required under the Proposals, we urge the Commission to consider whether the data is already provided through another mechanism or process, including within the Commission. We also encourage the Commission to use established "golden sources" of information available, such as the GLEIF database for parent and ultimate parent entity relationships data in order to obtain the most current and complete data.

Clearing

Q15. The Commission is considering including a data element called "Mandatory clearing indicator" to indicate whether a swap is subject to the clearing requirement in part 50 of the Commission's regulations. The Commission requests specific comment on whether commenters believe this data element could be reported to SDRs.

We believe that a requirement to report a Mandatory Clearing Indicator should not be an additional data element. It is static data. The Commission already requires the reporting of other fields which will allow it to determine whether a swap is subject to the clearing requirement - the CFTC is able to look at whether a trade cleared and/or whether a party to the trade elected an exemption from mandatory clearing, and is able to look at the product that is being reported. A Mandatory Clearing Indicator data element would be duplicative.

In addition, implementation of a Mandatory Clearing Indicator would be burdensome due to the granularity and prescriptiveness of the clearing mandates under §50.4. Further, we believe that the Commission will ultimately be able to use the global UPI to analyze data related to swaps subject to mandatory clearing.

Counterparty

We have provided feedback on several proposed counterparty data elements, below:

Buyer Identifier, Seller Identifier, Payer Identifier, Seller Identifier (#18-21)
We commend the Commission for proposing to align with the CPMI-IOSCO CDE recommendation for reporting "Direction."[38] We note, however, that the CFTC and ESMA[39] proposals specify different allowable values from the CDE Technical Guidance. CFTC proposes the 20 character LEI, while ESMA proposes the four character values of BYER, SLLR, MAKE, or TAKE. Although this is likely a result of the more flexible CPMI-IOSCO recommendation for this data element, we encourage the regulatory community to agree on a unified approach so that market participants will not have to build two different solutions to report the same information.

Counterparty 2 – identifier for natural persons (#14)
The proposal for Counterparty 2 includes an identifier for "natural persons who are acting as private individuals (not business entities)."[40] If mandated, reporting parties would be obligated to use a Varchar(72) format with an allowable value that includes the LEI of the reporting counterparty.[41]

ISO 24366 for a "Natural Person Identifier" is currently being drafted by the global ISO TC68 SC8 WG7 working group to identify natural persons relevant for financial transactions. ISO TC68 SC8 WG7 is currently advocating an "unintelligent" code of 15 characters for Natural Persons Identifier. [42]

Given this, we recommend that the CFTC wait for completion of the ISO 24366 so as not require firms to build an interim solution only to build again for the final one when the ISO standard is published. In the interim, the CFTC should not mandate a specific format nor should it require an allowable value that includes the LEI of the reporting party. Instead, the CFTC should permit reporting counterparties to continue to report natural persons in the same manner they are currently being reported to the SDRs, including use of internal identifiers.

Q16. The CFTC needs the ability to link swap counterparties to their parent entities to aggregate swap data to be able to monitor risk. Given the complicated nature of how some entities are structured within a larger legal entity, the CFTC also needs information related to the ultimate parent entity. The Commission believes this information is necessary to collect for both swap counterparties. The Commission requests specific comment on whether commenters believe this data could be reported as part of swap data reporting. Given the static nature of these relationships, the Commission requests comment on whether reporting counterparties should report parent and ultimate parent information for each swap trade or in a regularly updated (e.g., monthly or quarterly) reference file maintained by SDRs.

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[38] #2.13, CPMI-IOSCO Harmonisation of critical OTC derivatives data elements (CDE)- Technical Guidance, (April 2018).
[39] Fields #19-21 and Article 4, Consultation of Technical standards on reporting, data quality, data access and registration of Trade Repositories under EMIR REFIT.
[40] CFTC proposed Technical Specifications, Data Element #14, Counterparty 2.
[41] Followed by a unique identifier assigned and maintained by the reporting party.
[42] ISO 24366 is still being drafted.

Parent and Ultimate Parent

We do not believe that reporting counterparties should be required to report parent or ultimate parent information to the CFTC on a swap-by-swap basis because this information is currently readily available in the public domain.

The GLEIS, a framework resulting from the FSB's global LEI recommendations to the G20, already requires that legal entities with an LEI provide information on their ultimate and direct accounting consolidating parents.[43] The GLEIF began collecting this data in mid-2017 in the GLEIF Level 2 database. This golden source database provides a publicly and freely available central repository of LEI records and related reference data such as parent and ultimate parent information. The GLEIF has already done the work to build the processes and infrastructure for collecting and providing relationship data to anyone, including regulatory authorities. Requiring that reporting parties report parent and ultimate parent data to the CFTC, and requiring SDRs to maintain a reference file of relationship data, would be duplicative to information available through the GLEIF. [44].

Further, parent and ultimate parent information is static data. Building to a reporting requirement would be costly to reporting counterparties and SDRs with little added benefit as compared to the quality of information already collected and maintained in the GLEIF golden source Level 2 data described above.

Events

Novations

The Associations believe that additional clarity is needed regarding the reporting of novations generally, and more specifically, for the Event Type (#25) "Novation." A novation, as defined in proposed § 45.1(a), is "the process by which a party to a swap legally transfers all or part of its rights, liabilities, duties and obligations under the swap to a new legal party other than the counterparty to the swap under applicable law." A novation, therefore, involves at least three parties: (1) the transferor (or "step-out" party), (2) the remaining party and (3) the transferee (or "step-in" party). The process by which a novation is typically effected begins with an agreement between the step-out and step-in parties, which involves a payment from one party to the other that reflects the current value of the swap, the credit quality of the remaining party, and any other factors that the step-out and step-in parties deem relevant. Such payment is commonly referred to as a "novation fee."

In the draft Technical Specifications, the CFTC includes Examples 4 and 5 to illustrate the proposed use of the Event Type "Novation" in connection with full and partial novations, respectively. These examples illustrate novations where the reporting counterparty on the pre-novation swap is the step-out party (illustrated as "LEI1RPT0001"). The Associations support the reporting flows illustrated.

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[43] LEI ROC policy, *Collecting data on direct and ultimate parents of legal entities in the Global LEI System* (March 10, 2016), https://www.leiroc.org/publications/gls/lou_20161003-1.pdf.

[44] GLEIF, https://www.gleif.org/en/about-lei/common-data-file-format#.

To ensure consistent reporting across industry participants, we request that the CFTC clarify that the "novation fee" between the step-out and step-in party (illustrated as "LEI1RPT0003") is not reportable under either Part 43 or 45, as illustrated in the examples. The novations illustrated in Examples 4 and 5 will be publicly disseminated pursuant to Part 43, so to the extent the novation changes the pricing of the swap, this price information will be publicly disseminated at the time the novation is agreed to by all three parties.

If, however, the CFTC believes to the contrary that the "novation fee" should be reportable, then the Associations request that Example 4 and 5 be amended, or additional examples are added, to illustrate how the CFTC envisions the "novation fee" should be reported, including whether it should be reported as a new swap (even though there is no swap between the step-out and step-in parties), and if so, whether the "novation fee" should be reported with a "Novation" event type indicator, whether it should be reported as the same product type as the novated trade or a new product type, and any other details necessary to inform market participants of the expected reporting flow for novations. We note that where the remaining party is the reporting counterparty for both the pre-novated and post-novated swap, it has no visibility into the "novation fee," and therefore could not include this information in its reports. In addition, if the CFTC believes the "novation fee" to be reportable, we respectfully request an opportunity to review the Commission's proposal prior to finalization, as the topic does not seem to be currently addressed.

Moreover, for a straightforward novation with no changes to the economic terms of the original transaction, the data submitted in Examples 4 and 5 will not include new pricing data, therefore, we question whether public dissemination is warranted.

Inclusion of the prior UTI
Looking at the same Examples 4 and 5 as above, when the reporting counterparty of the novated trade (step-in party "LEI1RPT0003") is not the same as the reporting counterparty of the original trade (step-out party "LEI1RPT0001"), inclusion of the prior UTI by the reporting counterparty of the novated trade will be challenging since the step-in party will not know the prior UTI. For such cases where the reporting counterparty of the original trade is not the same as the reporting counterparty of the novated trade, timely reporting for the reporting counterparty of the novated trade will be helped if the rule requires that the reporting counterparty of the original trade must share the prior UTI with the reporting counterparty of the novated trade in time for step-in party to report the novated trade on a timely basis.

Notionals

Q18. The Commission is considering including the notional schedule data elements from the CDE Technical Guidance. The Commission has learned through experience with swap data that notional data elements are applicable to a substantial number of swaps within certain product areas such as energy swaps and amortizing interest rate swaps. Does such concentration exist and, if so, what gaps would exist in the Commission's ability to evaluate and monitor market activity in these areas if notional schedule data elements are inadequately or improperly represented? The Commission requests comment on whether SDRs and reporting counterparties would be able to both accept and report this information.

The Associations support the inclusion of a "Notional Amount Schedule" data element. The Commission's proposed Technical Specifications enables reporting of the original notional amount using "Notional Amount" (#28), but does not have a way to report changes (if applicable) in notional amounts. Changes to a derivatives contract which are part of the confirmation, such as for amortizing swaps, are not considered lifecycle events. Therefore, reporting notional amounts as they vary through the life of the swap has been historically challenging for industry participants for such contracts since notional changes that are part of the swap contract are not captured in systems as lifecycle events. Adding the data element "Notional Amount Schedule" from the final CDE Technical Guidance (2.78) would remedy this issue and provide the necessary clarity to reporting parties regarding how to report swaps with changing notionals, such as amortizing swaps.

Moreover, retaining "Notional Amount" and adding a data element for notional amount schedule would harmonize CFTC's requirement with the CPMI-IOSCO's global CDE recommendations and the approach taken in ESMA's EMIR refit proposal in Article 5.[45] Harmonization across jurisdictions with respect to reporting requirements increases efficiencies for firms and benefits regulatory oversight in that it enables regulators to more clearly compare swap data information across jurisdictions. To further reduce uncertainty, specify in the Technical Specifications that if Notional Amount Schedule is reported, then the reporting counterparty does not have to update "Notional Amount" (#28) for changing notionals.

Separately, we note that there is a difference in the specification of the technical format between EMIR refit and the CFTC's proposal. The CFTC specifies that the 25 numerical characters includes a decimal point as a character, while ESMA specifies that the decimal point is not considered to be one of the 25 numerical characters. While this may seem like a minor issue, technical differences such as this can cause institutional builds to be unnecessarily more complicated, increasing costs without benefit to regulatory oversight. Since the current EMIR rules already specify that the decimal point is not considered to be a character, we recommend that CFTC align with ESMA on this point.

Q20. The Commission is considering requiring reporting counterparties to provide a USD equivalent notional amount that represents the entire overall transaction for tracking notional volume (in addition to leg-by-leg notional data reported pursuant to other proposed data elements). The Commission believes that this additional data element could allow staff to more effectively assess compliance with CFTC regulations, including but not limited to SD registration and uncleared margin requirements, and help staff more efficiently monitor swap market risk. The Commission specifically requests comment on the frequency with which reporting counterparties should report USD equivalent notional.

Requiring that each individual reporting party convert the notional amount to a USD equivalent will yield fragmented and less meaningful results as compared to using a more centralized conversion approach. The CFTC may be better-placed to perform the conversion when needed to aggregate a USD view. Using a centralized approach, the CFTC can ensure that a consistent

[45] Fields #50 and #59 in Table 2, Consultation of Technical standards on reporting, data quality, data access and registration of Trade Repositories under EMIR REFIT.

reference exchange rate is used across all GBP to USD conversions (for example), the same point is used when converting (mid, bid or ask), and the work is only being done when the Commission needs.

With respect to the Commission's intended application of USD notional equivalents, we do not believe that SDR reporting should be used as a measure for whether a reporting counterparty, or its counterparties, are in compliance with various CFTC regulations aside from the reporting requirements themselves. SDs have not designed their SDR reporting infrastructures as a primary method to demonstrate compliance with other regulations, and their compliance departments have not reviewed the sufficiency of SDR reporting to replace or supplement established processes for demonstrating compliance with other Commission regulations. The objective of SDR reporting is to provide the CFTC with transactional data.

Packages

Q21. The Commission is considering including the additional package transaction data elements from the CDE Technical Guidance. The Commission requests comment on whether SDRs and reporting counterparties would be able to both accept and report this information. The Commission requests specific comment on how SDRs would implement these CDE data elements for reporting counterparties to report the data.

Packages, structured trades, complex transactions, strategies and baskets are exceptionally complex. Definitions of what is considered a package have historically differed from firm to firm, and industry participants do not have a consistent approach to decomposing a package transaction. Consequently, reporting of package transactions can lead to low data quality for the CFTC to aggregate and meaningfully analyze in order to properly assess. Therefore, we do not support adding the further three CDE data elements[46] suggested in this question.

Other Product

Q23. The CFTC intends to collect sufficient granular detail on the economic terms of swaps to conduct independent valuation and stress testing analysis. The CFTC will rely on UPI for many product related data elements, but forthcoming UPI standards may not describe some swaps with enough detail to allow the CFTC to independently value the transaction. Are there additional product data elements the CFTC should collect outside of UPI to ensure the CFTC may independently value swaps with sufficient accuracy.

Product identification, UPI

The Associations appreciate the Commission's work at the international level to complete development of the UPI framework. We support the proposal[47] that reporting counterparties continue to report, and SDRs continue to accept, the product-related data elements as they are

[46] *See* #2.93-2.95, Package transaction spread, Package transaction spread currency, Package transaction notation, CPMI-IOSCO Harmonisation of critical OTC derivatives data elements (CDE)- Technical Guidance, (April 2018).
[47] Part 45 Proposal at 21610.

currently, until the Commission designates a UPI pursuant to § 45.7. This will prevent the need for interim builds for reporting parties and SDRs before the global UPI is finalized.
Having said so, we suggest that the Commission waits until the UPI standard is implemented in order to determine with more certainty whether particular swaps are not described in sufficient detail, before requiring additional product data elements.

Settlement

Q24. Should the Commission include the additional swap data element related to settlement included in the CDE Technical Guidance? Please comment on alternative methods to report offshore currencies that are not included in ISO 4217 currency code list.

We have been supportive of the Commission's efforts[48] to simplify rules, regulations and practices, and to "right-size" the data reported to SDRs.[49] However, if the CFTC determines that it is necessary to collect additional information on trades involving offshore currencies, then we believe that the CDE field "Settlement Location"[50] would be an efficient alternative to doing so. We note, however, that ESMA is not proposing to adopt "Settlement Location" under the EMIR refit,[51] and instead proposes "*that for the derivatives traded in off-shore currencies, the counterparties report onshore currency in the relevant fields."*
Other alternatives, such as adding exceptions (e.g. CNH for offshore renminbi) to the ISO 4217 currency code list have not historically been supported by the Associations.

Transaction-Related

We have provided feedback on several proposed transaction-related data elements, below:

Platform Identifier (#88)
The definition of what is considered a platform varies globally. Posting a list of what or which specific entities the Commission considers to be a "platform" would bring clarity and improve the consistency of what will be reported for Platform Identifier.

Prime Brokerage transaction identifier (#89)
We have significant concerns related to the prime brokerage data element proposed in Part 45, the "*Prime Brokerage transaction identifier.*"

Proposed Data Element #89 makes proper and timely compliance by reporting parties for the mirror swaps dependent on the reporting party of the trigger swap (or mirror swap for instance in case of more complex structures like reverse give-ups) to send the identifier to such other reporting parties. This poses significant compliance challenges given that such party has no regulatory obligation to pass on the identifier in a timely and properly ingestible manner to the

[48] Project KISS (May 24, 2017), https://www.cftc.gov/idc/groups/public/@lrfederalregister/documents/file/2017-10622a.pdf.
[49] Roadmap to Achieve High Quality Swaps Data (July 20, 2017)
[50] See #2.21, Harmonisation of critical OTC derivatives data elements (CDE)- Technical Guidance, (April 2018).
[51] See §4.4.3.3 Settlement, Consultation of Technical standards on reporting, data quality, data access and registration of Trade Repositories under EMIR REFIT.

other reporting parties who have their own P45 reporting obligations for the relevant mirror swaps. Additionally, in certain scenarios there may even be no prime broker transaction identifier to be passed on due to existing CFTC exemptions (including no-action relief or cross border guidance/rules) relating to reporting obligations under P43 and/or P45 or potentially in cases where the same swap dealer acts as ED and PB.

Equally important, proposed Data Element #89 was developed based on the most common form of prime brokerage arrangement. However, for prime brokerage give-up arrangements that result in several mirror swaps, the requirement to include the USI/UTI of the trigger swap in the reporting of all related mirror swaps may be a challenge particularly in structures where a prime broker to a mirror swap is not also a party to the trigger swap and would, thus, not be privy to the UTI/USI of the trigger swap but only to the UTI/USI of all mirror swaps to which the prime broker is a party. Building technological and operational capability for all the different prime brokers who are reporting their respective mirrors swaps to attach a common *Prime Broker transaction identifier* that is also attached to the trigger swap (or, in a simplified model in cases where the prime broker is not a party to the trigger swap, to attach the USI/UTI of another mirror swap to which the prime broker is a party) is extremely costly and complex. Such high costs and complexity may disincentivize medium- and smaller-sized liquidity providers from participating in such transactions, creating adverse impacts on liquidity.

Moreover, the Commission already has the authority to require any swap dealer to provide any information relating to a swap, including asking any prime broker to map swaps (trigger and mirror swaps) that result from a trigger swap and to which such swap dealer is a party. In addition, the reporting of the *Prime Brokerage transaction indicator* (reportable under P45) for all trigger and mirror swaps should help identify prime broker intermediated transactions in reported SDR data.

Thus, for these reasons, Proposed P45 Data Element #89 would only increase the cost and complexity of reporting without commensurate benefit to regulatory oversight. In this regard, we strongly urge the Commission not to adopt P45 Data Element #89.

Jurisdiction Indicator (#95)

The Part 45 Proposal adds a data element "Jurisdiction Indicator," which is defined as "[t]he jurisdiction(s) that is requiring the reporting of the transaction." Reporting the relevant jurisdiction(s) for each swap is very difficult as reporting counterparties may not know to what extent their counterparty has a separate reporting obligation in other jurisdictions. Securing this information would require the reporting counterparty to reach out to each of its counterparties, who may have varying obligations depending on the type of swap, for each transaction at or shortly after execution, which is a burdensome undertaking as this data is not currently collected. It is also unclear whether and how the current list of nine jurisdictions listed could expand or contract and whether such changes would be subject to the public rulemaking process. Further, we note that this is not globally recommended CDE field.

For these reasons, we strongly suggest that "Jurisdiction Indicator" not be added as a reportable data element until its purpose and the CFTC's objective for its requirement are clearer to reporting counterparties and have also been subjected to a thorough cost benefit analysis.

Q26. Should the Commission expand the Non-standardized term indicator (82) data element to apply to any non-standard term, regardless of impact on price? Should the Commission instead create a part 45-specific data element for non-standard terms that would not be publicly disseminated, and still have Non-standardized term indicator (82) for real-time public reporting?

We do not believe that the Commission should expand the Proposal to require a Part 45-specific "non-standard term indicator"[52] that would be reportable, regardless of impact on price, because:

- the ISDA taxonomy can account for the presence of non-standard terms through the reporting of "exotic" or "other" (e.g. "exotic" would indicate there are likely to be non-standard terms),
- existing Part 45 data requirements facilitate the determination of whether the terms of a particular swap are non-standard, and
- in the future, we believe the global UPI will be able to account for non-standardized terms, so requiring an interim build prior to more certainty around the UPI would place an unnecessary burden on reporting counterparties and may be duplicative to what can be achieved through the UPI.

A Part 45 specific data element to flag any non-standard terms (regardless of impact on price) has attributes reminiscent of the current PET "any other terms" as it would be difficult to assess what is considered as non-standard and would potentially need manual intervention to report. Depending on what the CFTC is trying to achieve with this additional P45 data element, we propose that the Commission revisit whether there is a need for a P45 non-standard terms indicator when it is able to evaluate the indicator within the context of the global UPI, after the implementation of UPI reporting.

Q27. The Commission is considering including a data element called "Trade execution requirement indicator" to indicate whether a swap is subject to the Commission's trade execution mandate. The Commission requests specific comment on whether commenters believe this data element could be reported.

We do not support the addition of this data element. We believe that this information is already be available to the CFTC by looking at the product that is being reported, whether the trade is SEF executed and cleared and whether a party to the trade elected an exemption from mandatory clearing. Adding this additional field will cause further costs with no commensurate benefit to the Commission.

[52] We support the non-standardized pricing indicator (#82) for P43, however we note that the data element is called "non-standardized pricing indicator" within the Technical Specifications but "non-standardized term indicator" in the Index of Data Elements.

Valuations

Q28. The Commission is considering including the following valuation data elements that were not included in the CDE Technical Guidance: discount index; discount index tenor period; discount index tenor period multiplier; next floating reference reset date; underlying spot or reference rate. Would reporting counterparties be able to report this information to SDRs each day? Could the Commission obtain this information from different source? Could the Commission require this information less frequently? Is reporting reset dates more efficient than reporting the full calendar generation logic (including business day calendars and reset lookback terms) of swaps?

We do not support the Commission's proposed additional valuation data elements. The Proposals already require firms to report the valuation of the swaps; requiring these additional data elements is not necessary and will not be helpful for the purpose of validating the reported valuation amount.

The approach to valuation varies by product and firm, and therefore significant analysis would be required to determine a comprehensive list of inputs that would cover all types of swaps. Given the data that can be practically provided in the context of transaction reporting, we do not believe that it will be feasible for the CFTC to accurately replicate, and thereby validate, a reporting counterparty's swap valuations. As such, there is a high probability of misaligned results and misleading conclusions regarding the accuracy of the valuations.

Further, certain data elements being considered, such as "Underlying Spot" or "Reference Rate" are contract intrinsic, so they are not individually confirmed between parties during the life of the trade. We therefore do not believe that these should be required to be reported as a lifecycle event via continuation data reporting.

In its final CDE Technical Guidance, the CPMI-IOSCO Harmonisation Group recommended four data elements - Valuation Amount, Valuation Currency, Valuation Method, and Valuation Timestamp. The CFTC's proposed Technical Specifications already includes two fields[53] *beyond* that of the CPMI-IOSCO global recommendations. The additional five fields being considered would, if adopted, result in a total of eleven reportable valuation fields under the CFTC reporting regime, which would be more than double that of CPMI-IOSCO.

In addition, Discount Index, Discount Index Tenor Period, Discount Index Period Multiplier, next floating Reference Reset Date, Underlying Spot or Reference Rate, as well as Last Floating Reference Value and Last Floating Reference Reset Date are not included in the EMIR refit proposals, making these seven additional valuation data elements CFTC-specific, as shown in Table 3, below:

[53] "Last floating reference value" and "last floating reference reset date".

Table 3: Valuation Data Elements being considered in the Proposals, as compared to CDE and EMIR

Data Element	CDE	Current EMIR	Current CFTC	EMIR Refit	CFTC Rewrite	
Discount index	x	x	x	x	✓	Question 28
Discount index tenor period	x	x	x	x	✓	Question 28
Discount index tenor period multiplier	x	x	x	x	✓	Question 28
Next floating reference reset date	x	x	x	x	✓	Question 28
Underlying spot or par rate	x	x	x	x	✓	Question 28
Last floating reference reset date	x	x	x	x	✓	Tech Spec #97
Last floating reference value	x	x	x	x	✓	Tech Spec #98
Valuation amount	✓	✓	✓	✓	✓	Tech Spec #99
Valuation currency	✓	✓	✓	✓	✓	Tech Spec #100
Valuation method	✓	✓	✓	✓	✓	Tech Spec #101
Valuation timestamp	✓	✓	✓	✓	✓	Tech Spec #102

In line with the Commission's goals of updating the swap reporting rules to streamline reporting, reduce and "right-size" the number of data elements that are reported, the CFTC's valuation data requirements should be limited to only the four core data elements (i.e., Valuation Amount, Valuation Currency, and Valuation Method and Valuation Timestamp). This would align CFTC's requirements with both the EMIR refit proposal and the global CDE recommendations.

We believe that a better way for the Commission to obtain additional information related to valuations would be through the Monthly Risk Data Reporting Requirements for SDs.[54] SDs comply with these requirements by sending reports to the National Futures Association (NFA). These reports include "Total Swaps Current Exposure" both before and net of collateral, as well as a list of the fifteen largest swaps counterparty current exposures. If necessary, the Commission could examine a SD in the event of any concerns regarding its valuation methods.

Q29. The CFTC intends to collect information to independently validate individual swap values (also known as "mark-to-market" or "fair value"), portfolio aggregated values, and the value of collateral posted to meet initial and variation margin requirements. One method is to require parties to report the aggregate valuations of all financial instruments (including swaps and other cross margined products) associated with a Collateral Portfolio Code. What other validation and cross referencing information should the Commission collect in addition to the proposed data elements? Is there a more efficient way to collect data on the value of individual swaps, portfolios, and the margin posted and collected against these positions?

As swap valuation is calculated at the transaction level, we recommend that valuation data reporting should only be required at the transaction level, and not at the portfolio level.
As stated in our response to question 28 above, we recommend that in the alternative to the collection of data on swap portfolio valuation as part of SDR reporting, the Commission should consider referencing the data provided in the NFA Monthly Risk Reports for further information.

[54] Further information available at: https://www.nfa.futures.org/news/newsNotice.asp?ArticleID=4817

Margin

Q30. The Commission is interested in determining the quality of collateral posted. Comparing pre- and post-haircut values is one way to gain this information. Should the Commission consider other ways, such as collecting specific information on the contents of the collateral portfolio?

Most collateral posted is liquid, high-quality collateral with corresponding haircuts, as described in the Commission's *Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants*[55] (the **"CFTC Margin Rules"**) and the *Margin and Capital Requirements for Covered Swap Entities*[56] of the U.S. prudential regulators (the **"USPR Margin Rules"**) (together the **"Margin Rules"**). The vast majority of the swaps market in the U.S. is now subject to regulatory margin requirements with the remainder expected to come into scope by September 1, 2022. In addition, as specified in the ISDA Margin Survey Year-End 2019, 83.9% of regulatory IM for uncleared derivatives received by the 20 phase-one firms was government securities while 14.3% of regulatory VM was government securities and 82.6% was cash. Thus steadily increasing proportion of specific types of collateral is being posted to meet regulatory IM and VM requirements. Accordingly, there is limited regulatory value in including additional reporting fields and collecting specific information on the contents of the collateral portfolio. There is not a common taxonomy for collateral, and therefore it would be difficult to provide consistent, meaningful information on the specific instruments that have been posted within the SDR reporting framework.

Q31. The proposed swap data elements allow for single collateral portfolio ID for both initial margin and variation margin. Should the Commission consider other approaches to collecting this information to account for when variation margin cash flows are separated between swaps that may not all be subject to initial margin?

The Commission should allow a reporting counterparty the option to report up to two collateral portfolio IDs for each swap, one which would correspond to the VM requirement and the other to the IM requirement. This is important because each swap may be treated differently for purposes of margining depending on whether it is subject to regulatory VM and/or IM requirements under the Margin Rules and whether it is subject to non-regulatory VM or IM (also known as "Independent Amount" or "IA") requirements in accordance with the CSA, Collateral Support Deed ("CSD") or other collateral agreement in place between the parties.

An approach that uses a single portfolio code may provide misleading information, since the Commission would be unable to understand with certainty which swaps had been included in a particular margin calculation. For instance, a physically settled foreign exchange swap may be included in the regulatory VM calculation for a netting set if a counterparty elects to include it in the regulatory VM netting set, but is excluded in the regulatory IM calculation. If a single portfolio code is used for the swap, with the VM and IM amounts reported for the relevant portfolio, it will appear that the swap is fully collateralized when in actuality, it was only included

[55] 81 Fed. Reg. 636 (Jan. 6, 2016).
[56] 80 Fed. Reg. 74840 (Nov. 30, 2015).

in the VM calculation. This limitation exists in respect of the EMIR trade reporting requirements, which currently allow for use of a single portfolio code for each reported transaction.

A clear and consistent approach for SDs, MSPs and DCOs to report information on margin and collateral fields is essential to the value of the reported data, especially in the case that such data fields are derived from the CDE Technical Guidance, in which case firms should have the option to implement a single global approach to the treatment of these data elements. Although the EU currently allows for use of a single portfolio code, the specifications prescribed in the Republic of Korea[57] allow for use of two portfolio codes. We suggest that all jurisdictions allow for the reporting of two portfolio codes, which would facilitate more consistent and useable data.

Q32. The Commission is proposing to collect new margin and collateral information from reporting counterparties that are SDs, MSPs, and DCOs. Some of this information could be reported at the portfolio level, rather than the transaction level. Do reporting counterparties or SDRs have feedback for the Commission on how portfolio level, as opposed to transaction level, reporting would work in practice? Are there challenges the Commission should consider? What are alternatives or solutions for collecting this information?

Margin and collateral information should be reported at the portfolio level, or where applicable, for a subset of a portfolio to which specific margin requirements apply. Whether regulatory or non-regulatory (i.e., IA), margin amounts to be called or posted are calculated on a portfolio basis. For both regulatory and non-regulatory VM, either a single netted VM amount is calculated for each one-directional VM amount or, if agreed between the parties, both legacy swaps (those not subject to regulatory margin requirements) and swaps subject to regulatory VM are included in a single VM calculation.

For both regulatory IM and IA, each margin amount is calculated based on the relevant portfolio or sub-portfolio. For regulatory IM, which requires a two-way exchange, both a collect and a post amount of IM is calculated based on the set of swap transactions that are subject to the IM requirement. The IM amount is either based on an amalgamation of derivatives transactions subject to regulatory margin requirements in various global jurisdictions, or, more commonly, separate calculations are run for each jurisdiction relevant to the pair of counterparties, and the highest calculated amount will be used to meet the collection or posting requirement. This is referred to as the "higher of" approach, and ensures the IM meets or exceeds all relevant regulatory margin requirements. Regulatory IM calculations are conducted primarily using the ISDA SIMM™ ("**SIMM"**), and secondarily, using the regulatory schedule in the Margin Rules ("**GRID"**). In the case of a quantitative IM model like SIMM, the Margin Rules allow for netting and diversified benefits of risks within a product class (e.g. credit). The GRID has a limited netting benefit as well. As such, in either case, firms are calculating at a portfolio level.
In the event a pair of counterparties have an agreement for a one-way or two-way bilateral exchange of IA, this may be factored into the amount of regulatory IM that is exchanged in order

[57] Korea Exchange Trade Repository Data Elements (available on https://tr.krx.co.kr/).

to effectively meet both sets of requirements[58]. For instance, the regulatory IM amount posted may be determined based on the highest of the calculated IA and the regulatory IM amount.

The Associations recognize the Commission's rationale for requiring margin and collateral information - providing better transparency to the margins available in the market to address periods of volatility and counterparty credit risk. However, the margin and collateral data reported to the Commission will be inherently limited in its value to assess the sufficiency of such margin amounts because most portfolio margin calculations are comprised of swaps, security-based swaps (SBS) and other products which may be subject to uncleared margin regulations in other jurisdictions (e.g. equity options). These products may offset each other in margin calculations or be additive to the overall margin depending on the constituency of the portfolio.

Related to this, because almost all portfolios on which a margin calculation is conducted will also contain SBS and other products, the CFTC-specific Data Element "Portfolio containing non-reportable component indicator" will almost always be "True" since only swaps are reportable under the Commission's Part 45 requirements. We therefore recommend that the Commission eliminate this data element because it will not provide valuable additional information.
In addition, we question the value of the requirement to report the CFTC-specific field "Affiliated counterparty for margin and capital indicator," which is intended to help the Commission assess compliance with the Margin Rules. The affiliate relationship of an entity can already be determined via the level 2 data in the Global LEI database and need not be reported on a transaction level basis.

Appendix 1 to Part 45

The Commission additionally requests comment on all aspects of the proposed swap data elements in Appendix 1.

Technical Specifications and Appendices[59] - Process for notice and comment for changes
We support the use of "Technical Specifications," similar to the data validation table that has been used by the industry for EMIR reporting. The prescriptive format, allowable values and clear trade repository validations proposed in the swap data reporting amendments will improve the quality of reported data. However, the distinction between Appendix 1 of Part 45 and Appendix C of Part 43 versus the Technical Specifications is unclear, and therefore the process for any changes and ability for public comment related to the Technical Specifications is similarly unclear to market participants. The Proposal states that "…the Commission is proposing to list the swap data elements required to be reported to SDRs pursuant to part 45 in appendix 1 to part 45" and "the Commission is proposing to list the swap transaction and pricing data elements required to be reported to, and then publicly disseminated by, SDRs pursuant to part 43 in

[58] See *Margin Approaches – The Relationship between Independent Amount and Regulatory IM* for further information: https://www.isda.org/a/6NhME/Margin-Approaches-9th-Aug-2019.pdf.
[59] Appendix 1 of Part 45 and Appendix C of Part 43.

appendix C to part 43." However, further on, the text seems to indicate that the entire Technical Specifications will be published in the Federal Register.[60]

The CFTC Technical Specifications, similar to the EMIR validation table,[61] contain the reportable data elements and the validation rules applied by SDRs to ensure that reporting is performed according to the CFTC reporting rules. Since the Technical Specifications contain a wider scope of information that go beyond the swap data elements required to be reported, we believe that taking an approach similar to EMIR would be practicable. ESMA publishes the data validation table on an "EMIR Reporting" web landing page,[62] while only the data elements required to be reported, format and applicable types of derivatives contracts appear in the rule text[63]. If the CFTC were to take a similar approach, it would still allow the ability for public comment on any future changes to the data required to be reported to the SDRs, but would provide greater flexibility to make adjustments (e.g. due to industry feedback or completion of a developing ISO for example) that do not change the swap data elements required to be reported.

See also our comments in § 45.15 "Delegation of Authority."

Q35. The Commission has not proposed any specific implementation requirement to report multiple values for the same data element when applicable. The Commission thinks that it is best to leave the implementation details to market conventions and SDR requirements. Should the Commission consider a set approach to report multiple values? If so, please provide details on the suggested approach.

Where possible, the Technical Specifications should specify which data elements will be permitted by the CFTC to be reported with multiple values to reduce uncertainties for reporting parties. In terms of the implementation details, we believe the SDRs are able to provide validations that will include the cardinality of a given message field.

Q36. The Commission is considering requiring reporting counterparties to indicate whether a specific swap: (1) was entered into for dealing purposes (as opposed to hedging, investing, or proprietary trading); and/or (2) need not be considered in determining whether a person is a swap dealer or need not be counted towards a person's de minimis threshold as described in paragraph (4) of the "swap dealer" definition in § 1.3 pursuant to one of the exclusions or exceptions in the swap dealer definition (e.g., the insured depository institution provision in paragraph (4)(C) or exclusion in paragraph (5) of the "swap dealer" definition in § 1.3, the inter-affiliate exclusion in paragraph (6)(i) of the "swap dealer" definition, etc.). In the past, the Commission staff has identified the lack of these fields as limiting constraints on the usefulness of SDR data to identify which swaps should be counted towards a person's de

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[60] Part 45 Proposal at 21610 "DMO is publishing draft technical specifications for reporting the swap data elements in appendix 1 to part 45 to SDRs, as specified in proposed § 45.13(a)(1), and for reporting and publicly disseminating the swap transaction and pricing data elements in appendix C to part 43."
[61] ESMA EMIR Validation Rules, last updated 20 December 2019 (updates applicable from 20 June 2020).
[62] EMIR Reporting https://www.esma.europa.eu/policy-rules/post-trading/trade-reporting.
[63] Commission Implementing Regulation (EU) 2017/105 of 19 October 2016 amending Implementing Regulation (EU) No 1247/2012, page 8 Table 1 - Counterparty Data; Table 2 - Common Data https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32017R0105&from=EN.

minimis threshold, and the ability to precisely assess the current de minimis threshold or the impact of potential changes to current exclusions. Given the Commission's ongoing surveillance for compliance with the swap dealer registration requirements, the Commission requests comment on this potential field.

The Associations do not support the inclusion of these data fields. A reporting counterparty should not be required to obtain information about whether the swap is a dealing swap for its counterparty.

IV. Compliance Date

The Commission requests comment on all aspects of the proposed compliance date.

Proposed one year to implement

We support a single Part 43, Part 45, and Part 49 compliance date of at a minimum of 12 months from the date the final rules are published in the Federal Register, in consideration of the anticipated compliance dates for security-based swap reporting to the SEC, and reporting amendments for other jurisdictions, such as the SEC.

The Commission asserts that it expects to finalize all the rules at the same time, even though the Proposals[64] were approved separately. However, if this ultimately changes, then we support a compliance date at a minimum of 12 months from the date the last rule from the set of final rules is published in the Federal Register.

Amendments on a "going forward" basis only

The Associations respectfully request that the amendments to the Commission's swap reporting rules clarify that requirements should be applied on a "going forward" basis and only apply to swaps and events occurring on or after the compliance date of the amended rules. For the avoidance of doubt, this would include the clarification that UTI requirements only apply to new swap transactions, not to swaps prior to compliance date that have a USI.

Early Compliance Date for § 45.5

Please see comments entitled "§ 45.5 Compliance Date" and "Global Implementation Timelines" in the response to § 45.5.

[64] Part 45 Proposal at 21614.

Part 20 Large Trader Reporting for Physical Commodity Swaps

Q37. Part 20 of the Commission's regulations ("Large Trader Reporting for Physical Commodity Swaps") contains a "sunset provision" in § 20.9 that would take effect upon "a Commission finding that, through the issuance of an order, operating [SDRs] are processing positional data and that such processing will enable the Commission to effectively surveil trading in paired swaps and swaptions and paired swap and swaption markets." The Commission can now analyze swap data from the SDRs for various purposes, such as re-evaluating the current swap categories and determine appropriate minimum block and cap sizes in part 43. In addition, the same physical commodity swaps reported to the Commission directly through part 20 reporting are being reported to SDRs under part 45. In conjunction with the Commission's proposals to update its swap reporting regulations, should the Commission review part 20 to determine whether it would be appropriate to sunset part 20 reporting according to the § 20.9?

We agree with the Commission's assertions and believe that it is an appropriate time, in conjunction with the CFTC's Proposals, to review Part 20 to determine whether it would be appropriate to sunset Part 20 according to the §20.9 "Sunset provision." In a November 2019 statement[65] related to progress on the CFTC Data Protection Initiative and the creation of a Data Catalogue,[66] Commissioner Stump identified Part 20 as one area potentially "ripe for streamlining" based "on the current frequency of use and the regulatory value of the data." We are fully supportive of eliminating large trader reporting requirements, concurrent with the final Part 45 rule.

[65] *See* Statement of CFTC Commissioner Dawn D. Stump Announcing Further Progress in the CFTC's Data Protection Initiative (November 21, 2019), *available at* https://www.cftc.gov/PressRoom/SpeechesTestimony/stumpstatement112119.
[66] *See* Statement of CFTC Commissioner Dawn D. Stump on Data Protection Initiative (March 1, 2019), *available at* https://www.cftc.gov/PressRoom/SpeechesTestimony/stumpstatement030119.

B. Proposed Amendments to the Commission's Regulations Relating to Certain SDR and Data Reporting Requirements ("Part 49" or "P49")

I. Proposed Amendments to Part 49[67]

§ 49.2 Definitions

Q1. Are there any proposed amendments to definitions in existing regulations in part 49 that are unclear or inaccurate?

Yes, below we have identified several definitions that would benefit from further clarity:

(a) **Open swap.** The term open swap is proposed to mean "an executed swap transaction that has not reached maturity or the final contractual settlement date, and has not been exercised, closed out, or terminated."

There is no market practice of reporting a "final contractual settlement date." Market practice is to report expiration, maturity date, or termination date. Additionally, the definition should take into consideration that it is possible for events to affect parts of a trade. Therefore we suggest that the definition of "open swap" be clarified to "an executed swap transaction that has not reached maturity or expiration ~~the final contractual settlement~~ date, and has not been fully exercised, closed out, or terminated."

Open swaps report. We propose that "Open Swaps Report" be defined in § 49.2 as a report that is a collation of the mandated Part 45 data elements, or a subset, which can be provided to reporting parties using various methods that take into account existing technological infrastructures and flows of data between SDRs and their members.

(b) **As soon as technologically practicable.** The term "as soon as technologically practicable" is proposed to mean as soon as possible, taking into consideration the prevalence, implementation, and use of technology by comparable market participants**.**

The CFTC has indicated in the proposals its intention to standardize the meaning and use of "as soon as technologically practicable" across the Commission's swap reporting regulations.[68] Therefore we support the addition of the identical definition of "as soon as technologically practicable" to § 49.2 and § 45.1.

[67] Question numbers are cross-referenced with the Notice of Proposed Rulemakings.
[68] Part 49 Proposal at 21046.

§ 49.9 Open Swaps Reports Provided to the Commission

The Commission requests comment on all aspects of the proposed changes to § 49.9.

Transmission of the open swaps report
Proposed § 49.9 will give the CFTC broad discretion as to the method, timing, frequency, and format of the swap data to be transmitted from the SDR to the Commission. To avoid unintended consequences for reporting parties, any revisions to the method, timing, frequency, or format of the open swaps reports provided by the SDR to the Commission should not: (i) result in revisions to reports provided by the SDR to reporting parties, as this could increase costs for the reporting party, or (ii) require reporting parties to submit additional data, or to submit previously reported data in a different data format.

§ 49.10 Acceptance and Validation of Data

The Commission requests comment on all aspects of the proposed changes to 49.10.

Since SDR data is proposed to be defined as the "specific data elements and information required to be reported to a swap data repository or disseminated by a swap data repository pursuant to two or more of parts 43, 45, 46, and/or 49," we request that proposed § 49.10[69] clarify that only the SDR data which is subject to the Commission's public dissemination requirements would be disseminated to the public.

§ 49.11 Verification of Swap Data Accuracy

The Commission requests comment on all aspects of the proposed changes to 49.11.

Please refer to related responses regarding verification of swap data accuracy under proposed § 45.14.

Q2. Is the Commission's proposed approach, which does not involve non-reporting counterparties in the verification process, an effective approach to verification? Why or why not? Are there additional benefits or costs to involving non-reporting counterparties in the verification process that have not been considered? Please be specific

We do not see issues with the proposal that non-reporting counterparties not be involved with any verification process.

[69] "(3) A swap data repository shall disseminate corrected SDR data to the public…
(4) A swap data repository shall establish, maintain, and enforce policies and procedures designed for the swap data repository to accept corrections for errors and omissions, to correct the errors and omissions as soon as technologically practicable after the swap data repository receives a report of errors or omissions, and to disseminate such corrected SDR data to the public…"

Q3. Should the Commission be more prescriptive in how the SDRs must distribute the open swaps reports to reporting counterparties pursuant to proposed § 49.11(b)? If so, what should be the requirements included in the prescribed approach? Please be specific.

Since reporting parties and trade repositories have already built ways to communicate and share data, including various types of reports, existing mechanisms and flows should be leveraged to alleviate unnecessary costs and resource expenditures. Therefore, rather than mandating a prescriptive way in which sharing reports between reporting counterparties and SDRs must occur, the rules should allow for a broader approach that would enable parties to continue using established mechanisms if desired, including accessing portals, or receiving reports from SDRs.

Q4. Should the Commission be more prescriptive for the distribution timing and formatting for the open swaps reports the SDRs would provide to the reporting counterparties pursuant to proposed § 49.11(b)(2) and (3)? If so, what should be the requirements in the prescribed approach? Please be specific.

Yes, regarding the timeframes related to open swaps reports under § 45.14, we believe that the Commission should explicitly specify that open swaps reports may be distributed to reporting parties only on ”business days” as defined in proposed § 45.1.[70]

Additionally, if reporting parties are required to verify the open swaps report data within a certain timeframe, use of number of ”business hours”[71] and requiring that the SDR include the date and time the report was sent, would reduce uncertainties.

Q6. Should the Commission require the verification of all swap data messages, as opposed to open swaps reports? Please explain why or why not. If so, what would be the costs and benefits associated with requiring the verification of all swap data messages? Please be specific.

A requirement for reporting parties to verify all swap data messages as opposed to verification of a periodic open swap report would increase the cost and complexity of compliance without commensurate benefit to regulatory oversight. The cost of creating the infrastructure to verify each swap data message would be substantial for reporting parties, as well as SDRs, vendors and third party providers.

In its Roadmap, the Commission conveyed its intention to streamline and right-size a set of clear, enumerated data elements that would be mandated under the revised reporting rules. In comparison, SDR swap data messages are not directly mandated by regulation. Imposing the obligation to verify messages that are not regulatory mandated and could be changed or expanded in number at any time, and would need to be updated whenever the SDR revises swap data messages would require market participants to build complex compliance systems, resulting increased costs without any benefit to data accuracy.

[70] *Business day* means each twenty-four hour day, on all days except Saturdays, Sundays, and Federal holidays.
[71] *Business hours* means consecutive hours during one or more consecutive business days.

In this regard, we believe that proposed § 49.11(b)(1) and § 49.9(a) which state that the content of open swaps reports must contain "an accurate reflection of the swap data for every swap data field" required to be reported leaves room for interpretation. It could be read as allowing multiple swap data messages to represent a single mandated data element, thereby expanding the number of swap data fields that a reporting party would need to review for accuracy. Amending the text to read as "swaps reports that contain swap data for every swap data field required to be reported for swaps pursuant to part 45" and explicitly clarifying that an "open swaps report" is "comprised of Part 45 mandated data elements (or a subset) from the Technical Specifications" would reduce such ambiguity.

Q7. Should the Commission require verification of open swaps reports more or less frequently than weekly for reporting counterparties that are SDs, MSPs, or DCOs? If so, please explain why and suggest a more appropriate verification frequency.

Please see our responses regarding verification of reported data under proposed § 45.14 and responses to the prior questions in this section.

Q9. Should reporting counterparties also be required to verify the completeness and accuracy of swap transaction and pricing data submitted pursuant to part 43? Please explain why or why not.

We do not believe that reporting counterparties should be separately required to verify the completeness and accuracy of Part 43 swap transaction and pricing data since Part 43 data is a subset of Part 45 under the amendments.

§ 49.17 Access to SDR Data

Q18. Is there a need to further clarify any of the requirements of the revised paragraphs of proposed § 49.17? If so, which requirements and what information need to be clarified? Please be specific.

While we generally support the new definitions such as SDR Data and SDR Information, because they help market participants distinguish between different types of data, we propose that language be added to § 49.17(g)[72] to convey that SDR Information that is specific to a reporting party and its transaction cannot be used for commercial or business purposes by the swap data repository without first obtaining the reporting party's consent.

[72] § 49.17(g) *Commercial uses of data accepted and maintained by the registered swap data repository prohibited.* "Swap data accepted and maintained by the swap data repository generally may not be used for commercial or business purposes by the swap data repository or any of its affiliated entities."

§49.26 Disclosure Requirements of Swap Data Repositories

Q23. Should the Commission require any other specific information be disclosed by SDRs to facilitate market participants' informed decision making? If so, please describe what other information should be disclosed and why. Please be specific.

We support the requirement for SDRs to provide written policies and procedures to a reporting party regarding reporting, verification process, validation procedures, and errors and omissions. Along these lines, we believe SDRs should also be required to provide any revisions to such policies and procedures to the reporting party within a reasonable time prior to implementing the revisions.

§ 49.28 Operating Hours of Swap Data Repositories

Q24. Does proposed § 49.28 provide SDRs sufficient flexibility to conduct necessary maintenance on their electronic systems while still facilitating the availability of SDR data for the Commission and the public? Please be specific.

We believe that business flow considerations should be taken into account in addition to sufficient flexibility for SDRs when considering operating hours. To balance both these interests, we propose that §49.28(a)(1) be revised to "A swap data repository may establish normal closing hours to perform system maintenance during periods when, based on historical volumes, ~~in the reasonable estimation of the swap data repository~~, the swap data repository typically receives the least amount of SDR data…."

§ 49.30 Form and Manner of Reporting and Submitting Information to the Commission

Q25. Should the Commission provide a single format or coding structure for each SDR to deliver reports and other information in a consistent manner? Are existing standards and formats sufficient for providing the Commission with requested information? Please explain why or why not?

Q26. Should the Commission require specific electronic data transmission methods and/or protocols for SDRs to disseminate reports and other information to the Commission? Please explain why or why not?

For the sake of clarity, where the Commission might require certain messaging formats (e.g. XML, FpML, CSV etc.) to be used from the SDR to the Commission ("outbound"), we would highlight that this does not result in a mandate that the same message format type be required from the reporting party to the SDRs ("inbound") for reportable swap data, at this time. This is because at present, not all reporting parties are built in a uniform way with respect to messaging formats.

ISDA Common Domain Model (ISDA CDM)

Having said the above, please refer to the response to Q13 in § 45.13 of Part 45 regarding use of the ISDA CDM to potentially eliminate the need for "translations" performed by the SDR.

II. Proposed Amendments to Part 45

§ 45.2 Swap Recordkeeping

We support the amendment's proposed move of SDR duties in current § 45.2(f) from P45 to Part 49.

Review potentially conflicting provisions in Regulations

We respectfully request that the Commission review possible inconsistencies in provisions, such as the one between the swaps recordkeeping rule in § 45.2[73] and the recordkeeping requirements under § 1.31.[74] § 1.31 requires that electronic records for swaps are readily accessible for the entire record retention period, which is usually not less than five years after the termination of the swap transaction. However, under § 45.2,[75] SDs and MSPs must have readily accessible records through real-time electronic access throughout the life of the swap and for two years following the swap's final termination, and records must be retrievable within three business days through the remainder of the five year period following final termination of the swap. Cross-referencing requirements to eliminate inconsistencies and to avoid potentially overlapping or conflicting provisions will reduce confusion and help reporting counterparties understand their obligations under the Commission's regulations.

§ 45.14 Verification of Swap Data Accuracy and Correcting Errors and Omissions in Swap Data

The Commission requests comment on all aspects of the proposed changes to 45.14.

Below, we provide comments on four areas of concerns: (1) content of the open swaps report; (2) verification of swap data accuracy; (3) corrections of errors and omissions; and (4) dead swaps.

Content of the open swaps report

§ 45.14 proposes that "[i]n order to verify the accuracy and completeness of swap data for swaps for which it is the reporting counterparty… a reporting counterparty shall reconcile its internal books and records for each open swap for which it is the reporting counterparty with every open swaps report provided to the reporting counterparty by **a[n] [SDR]**[76]…" Although we understand that "swap data" is meant to reference P45 data, we believe it would beneficial to reporting parties, SDRs, and the CFTC if the rules under Part 45 were more specific about the content of the open swaps report. In this regard, we support clarifying that the open swaps reports would be comprised of the mandated P45 data elements (or a subset) as validated from the Technical Specifications.

Clarifying and standardizing the content of open swaps reports would enhance legal certainty, create consistency between open swaps reports from SDR to SDR (which is also beneficial to reporting parties and the Commission), and help ensure that the contents of the open swaps report

[73] See 17 C.F.R. § 45.2.
[74] See 17 C.F.R. § 1.31.
[75] See 17 C.F.R. § 45.2(e)(1)
[76] Emphasis added.

do not expand beyond the mandated P45 data elements for which reporting counterparties are obligated to report and for which they will have built.

Further, the CFTC has reached out in the past to reporting parties with questions about a particular report that the CFTC received from the SDR, but reporting parties have found it challenging to quickly grasp precise issues in order to respond quickly, in cases where parties had no access to a copy of the report. Standardization of the open swaps report and accessibility to the same open swaps report would help resolve these compliance challenges. Additionally, open swaps reports provided by the SDR to the Commission should be identical to the open swaps reports provided by the SDR to the reporting party. That way, all parties can refer to the same document should the Commission have questions regarding the report. If the reports cannot be identical, then providing access to a copy to the reporting party would also help resolve these challenges.

See related comments in §49.9 "Transmission of the open swaps report."

Verification of swap data accuracy to an SDR

Under proposed § 49.11, each SDR is required to provide the Commission with open swaps reports that contain swap data for every swap data field required to be reported pursuant to P45.[77] § 45.14 proposes that a reporting counterparty shall reconcile its internal books and records for each of its open swaps with every open swaps report provided by the SDR. It also provides that for every open swaps report it receives, the reporting counterparty must actively submit either a verification of data accuracy or a notice of discrepancy to the SDR. This verification of accuracy or notice of discrepancy must be communicated within 48 hours for SDs and DCOs.[78]

We believe that the proposed prescriptive approach to verification would result in considerable costs for reporting parties to implement. The Commission will achieve its goal to improve the quality of swap through the proposed implementation of prescriptive fields and allowable values, clear definitions, consistent adoption of globally harmonized data elements, and precise, transparent validations. It is not clear that the additional costs to reporting parties of implementing proposed § 45.14 would enhance the quality of swap data enough to outweigh the potential costs.

Additionally, we do not believe that the proposed prescriptive approach for "active" verification, which includes strict deadlines, is warranted given that reporting counterparties already have obligations under the reporting rules to ensure that the data reported to the Commission is (and remains) accurate.

Further, we note that, SDs are already required to verify the accuracy of data through the portfolio reconciliation process.[79] Requiring verification on top of this and in a more prescriptive fashion increases costs without commensurate benefit to regulatory oversight.

[77] Note our comments under § 49.11 regarding change of text to "swaps reports that contain swap data for every swap data field required to be reported for swaps pursuant to part 45."
[78] The Proposal provides 96 hours for non-SDs or MSPs.
[79] We suggest that, for parties subject to § 45.14, any errors identified during the portfolio reconciliation process should be reflected in the errors and omissions process under § 45.14.

Instead, we propose that the Commission adopt a more principles-based approach to verification, where in reporting parties would be obligated to have policies and procedures to periodically reconcile the relevant SDR data with the data from their internal books and records for accuracy. This could be done on a periodic basis; we suggest monthly for SDs and quarterly for non-SDs.[80] Under this approach, SDRs or the Commission may also request evidence that verification was conducted.

In addition, we believe that SDRs should be required to provide rejections statistics reports, including reason categories for the rejections. Such rejections statistic reports could more clearly illustrate the level of data quality going forward and provide a way to track data patterns. These reports will provide transparency to reporting parties and the Commission, and over time, can help provide valuable insight into how the Technical Specifications and validations can evolve to further improve the quality of reported data.[81] The report provided by the SDR to the Commission should be identical to the report provided by the SDR to the reporting party. That way, all parties can refer to the same document should the Commission have questions about particular statistics.

We believe that using this principles-based approach would achieve the Commission's objectives, without having market participants incur significant costs.

If the Commission ultimately mandates the verification process as currently proposed in § 45.14, at a minimum, reporting counterparties should not be required to verify data for a swap in an open swaps report if they had already performed verification for that particular swap in a prior open swaps report. In other words, reporting counterparties would be permitted to verify data for the "delta" universe of open swaps from report to report, instead of requiring the reporting party to verify swap data on the same swap repeatedly. In addition, SDRs should only be permitted to provide reports to reporting parties on "business days,"[82] (including a timestamp of the date and time the report was sent) and the 48- and 96-hour windows should be counted only in terms of "business hours"[83] to reduce uncertainty.

Correction of errors and omissions

There are different types of changes that could be categorized as "errors" by individual reporting parties, and errors occur with varying orders of magnitude. Depending on the particular error, market participants need sufficient time to trace and investigate what occurred in order to pinpoint the source, assess the scope and impact, and then determine how to remediate and the necessary actions or resources needed to remediate. Proposed § 45.14 and § 43.3, however, take a "one size fits all" approach to swap data or swap transaction and pricing data respectively that does not properly account for different errors and omission scenarios and levels of materiality. Instead, the proposed rules assign the same three business day window from discovery of the error to remediate the error or notify the CFTC of such error. This will result in an excessive

[80] Regardless of the frequency in which SDRs are required to provide open swaps reports in § 49.11.
[81] The same report should be provided to reporting parties as to the Commission so that there is clarity when the Commission has a question about a particular statistic.
[82] *Business day* means each twenty-four hour day, on all days except Saturdays, Sundays, and Federal holidays (as defined in proposed § 45.1)
[83] *Business hours* means consecutive hours during one or more consecutive business days.

volume of notifications or other written correspondences being sent to the DMO[84] for errors that may not be considered to be material. In turn, the CFTC would expend valuable time and resources to sift through all the faxes, emails, and mail notices received, even though many of the written notices may include fairly immaterial errors (i.e., errors which market participants would not consider to be material in the evaluation of systemic risk).

In addition, the proposed 3-business day window to either correct the error or notify the DMO with an initial assessment and remediation plan for such error is not practicable in many instances. Particularly with respect to the notification requirement, the reporting party would have to prepare a letter that would be sent to the CFTC's DMO and obtain the appropriate internal approvals whenever such party is uncertain as to whether it will be able to make the 3-business day window to submit corrected data to the SDR. The cycle of drafting and tapping internal resources must be done each time the party is uncertain whether it can make the 3-day window to correct – even for immaterial errors. This would result in an unnecessarily high use of resources which may be better spent in actually remediating the reporting error or omission.[85]

Instead, we propose an alternative less prescriptive approach, under which a reporting party would have the obligation to track all errors and omissions and should be required to establish and maintain policies and procedures reasonably designed to capture and maintain a log of errors, omissions, and remediation. Under this approach, the reporting party would be obligated to notify the DMO of any materially non-compliant errors or omissions as soon as technologically and reasonably practicable after due review of the underlying facts and circumstances. The reporting party could also be required to make the error, omission and remediation log available to DMO upon request. This type of approach together with the reporting counterparty's reporting obligations would be a more practicable method to achieve the Commission's objections of ensuring the accuracy of SDR data, without incurring high costs and an extensive use of both market participants' and the CFTC's resources.

Dead swaps

§ 45.14 and § 43.3 propose that when a reporting party becomes aware of an error or omission, that the reporting counterparty must submit the corrected or omitted data for the swap to the SDR, *regardless of the state of the swap*. Reporting errors or omissions for swaps that have matured, terminated or otherwise closed (i.e., "dead" swaps) could create a number of significant operational and infrastructure build issues for market participants.

Under the proposed approach, SDRs would be compelled to make swap data (or swap transaction and pricing data) readily available to reporting counterparties for an indefinite period of time,[86]

[84] § 45.14(b)(ii) "If the swap execution facility, designated contract market, or reporting counterparty is unable to correct the errors or omissions within three business days following discovery of the errors or omissions, the swap execution facility, designated contract market, or reporting counterparty shall immediately inform the Director of the Division of Market Oversight, or such other employee or employees of the Commission as the Director may designate from time to time, in writing, of such errors or omissions and provide an initial assessment of the scope of the errors or omissions and an initial remediation plan for correcting the errors or omissions."

[85] Any requirement for error corrections should be for the last position of the swap, rather than for each event in the life of the swap; a requirement to correct each event in a swap would increase the burden further.

[86] 17 CFR 45.2(f) and 17 CFR 49.12, "A registered swap data repository shall maintain swap data (including all historical positions) throughout the existence of the swap and for five years following final termination of the swap, during which time the

even if the swap is dead, in case the RCP needs to correct data. This conflicts with existing recordkeeping requirements which only require SDRs to retain records for five years. In practice, this would likely mean that reporting counterparties would need to retain records indefinitely as well.

In addition, Proposals will move the swap reporting rules to a new validation framework. As drafted, the requirement that any dead swap which needs to be corrected or submitted due to omission may no longer be able to be submitted to the SDR using pre-Compliance Date validation parameters. As a result, reporting counterparties would have to revise builds to be able to report errors and omissions for dead swaps with post-Compliance Date validation parameters, or SDRs would have to make available both pre- and post-Compliance Date validation parameters. This would be an additional implementation burden to the industry.

Correcting errors for dead swaps increases the cost and complexity of compliance without any added benefits to regulatory oversight. As such swaps no longer pose risks to U.S. markets, it is unclear how correcting any errors would enhance the Commission's ability to monitor risk. Accordingly, we believe that such requirement should be eliminated in the final rules.

If, however, the CFTC has reason to believe that the correction of errors and omissions of dead swaps provides valuable insight into systemic risk, then the requirement should be limited to record retention requirements of the reporting counterparty[87] (i.e., only required to be corrected if the error or omission is detected within the record retention period), and the requirement should be limited to corrections related to counterparty, price and product only.

Q27. Should the Commission be more prescriptive in how reporting counterparties must complete the verification process? If so, please describe in detail.

Please refer to previous responses above in this section.

III. Proposed Amendments to Part 43

§ 43.3 Method and Timing for Real-time Public Reporting

The Commission requests comment on all aspects of the proposed changes to § 43.3.

Refer to responses above for proposed §45.14 which also apply similarly to § 43.3. For § 43.3 (f) and (g), we support moving SDR responsibilities from P43 to P49.

records must be readily accessible by the swap data repository and available to the Commission via real-time electronic access; and in archival storage for which such swap data is retrievable by the swap data repository within three business days."

[87] e.g., § 1.31 and § 45.2.

IV. Proposed Amendments to Part 23

Q28. Should proposed § 23.204(c) and § 23.205(c) specify the elements to be included in the required policies and procedures? If so, what specific elements should be included in the proposed regulation, and why? Please be specific.

We believe that the CFTC should take a principles-based approach to § 23.204(c) and § 23.205(c), similar to the one currently drafted, and not include the details of the elements itemized in the preamble[88] to be included in swap dealer policies and procedures. This will enable swap dealers and MSPs to develop the policies and procedures it views as necessary to comply with its obligations under Part 43 and Part 45.

The itemized elements for both § 23.204(c) and § 23.205(c) include reviewing and assessing the performance and operational capability of any third party that carries out duties duty required by Part 45 and Part 43 on behalf of the SD or MSP. The Associations request clarification regarding who qualifies as third parties, including clarity that parties such as GMEI or the SDR acting on behalf of the reporting party (e.g., for block trade determination) would not be considered third parties for these purposes.

V. Request for Comments

Q31. Are additional changes necessary to parts 23, 43, 45, and 49 (or other parts of the regulations) to ensure the quality of reported SDR data held and maintained by SDRs? If so, please explain.

We note that under current CFTC regulation § 23.502, swap dealers must engage in portfolio reconciliation for the material terms of each trade. The current definition of "Material Terms" under § 23.500 references current Appendix I of Part 45 with exclusions[89] (also known as "Excluded Data Fields") not necessary for the ongoing rights and obligations of the counterparties. Once the Part 45 rule has been finalized, the CFTC should make conforming amendments to § 23.500 thereafter subject to public comment in order to avoid confusion on what data fields should be reconciled to conform to the proposed amendments to Part 45.

[88] Part 49 Proposal at 21073.
[89] https://www.cftc.gov/sites/default/files/idc/groups/public/@lrfederalregister/documents/file/2016-10565a.pdf.

C. Amendments to Real-Time Public Reporting Requirements ("Part 43" or "P43")

I. Proposed Amendments to Part 43[90]

§ 43.2 Definitions

The Commission requests comment on all aspects of the proposed changes to 43.2

Publicly reportable swap transaction

We recommend revising the definition of "publicly reportable swap transaction" to clarify the list of swaps that do not fall within the definition to reduce any ambiguities. We have proposed revisions to the rule text below:

(2) Examples of executed swaps that do not fall within the definition of publicly reportable swap may include:

(i) ~~Internal swaps between one-hundred percent owned subsidiaries of the same parent entity; and~~ Swaps positions resulting from Inter-affiliate activities, as defined in paragraph 6(i) of the definition of "swap dealer" in CFTC regulation 1.3;

(ii) Portfolio compression exercises;

(iii) Post-allocation swaps.

We note that current Part 43 created an inconsistency as to the type of swap transactions that may be considered "publicly reportable swap transactions."[91] The CFTC provided a correction in subsequent rulemaking.[92] This inconsistency and subsequent correction, however, created uncertainty in the market as to when inter-affiliate swaps between banks and their affiliates should be publicly reportable. For the avoidance of doubt, the CFTC should amend the language in § 43.2 to clarify that the Part 43 amendments to "publicly reportable swap transactions" will supersede the guidance previously provided and that swaps between majority-owned affiliates should not be publicly reportable.

§ 43.3 Method and Timing for Real-time Public Reporting

Off-Facility Swaps § 43.3(a)(3)

§ 43.3(a)(3) proposes to clarify that in situations where the parties to an off-facility publicly reportable swap transaction must designate which of them is the reporting counterparty, parties must make such designation prior to the execution so that there is no delay to P43 reporting. Market participants have been using the industry best practice ISDA reporting tie-breaker logic[93] for situations where two parties to a swap transaction are on the same hierarchical level to determine in an objective manner who should be the reporting counterparty. We note that there has been widespread adoption of the industry best practice tie-breaker logic and requests that the

[90] Question numbers are cross-referenced with the Notice of Proposed Rulemakings.
[91] Footnote 44, 77 Fed. Reg. 1182 (January 9, 2012).
[92] 77 Fed. Reg. 48060.
[93] https://www.isda.org/a/Up7TE/2018-March-12_corrected_Asset-Class-tiebreaker-logic_public.pdf.

CFTC confirm that so long as both counterparties incorporate a widely accepted industry practice into their internal policies and procedures, they will have met the requirements of § 43.3(a)(3).

Post-Priced Swaps § 43.3(a)(4)

The Associations appreciate the Commission's efforts to provide clarity on the reporting of "post-priced swaps" ("**PPS**"), and support the Commission's preliminary view that PPS should benefit from a reporting delay. As acknowledged in the Proposals,[94] the reporting of PPS before the price is determined does not serve any price discovery function and may constitute "unhelpful noise," confusing market participants, as well as increasing the costs of related hedging activities. The Associations strongly agree with this conclusion and provide below more detailed comments within the questions posed in the release.

Q2. Instead of permitting a delay for PPS, should reporting counterparties be required to submit PPSs ASATP after execution using the Post-priced swap indicator (59), leaving the price empty and then be required to update that entry after the price is determined?

We believe that PPS should benefit from a reporting delay before being publicly disseminated by the SDR. Reporting counterparties should be able to submit data to the SDR as soon as available, and that the SDR should be permitted to delay public dissemination (similar to the process for block trades).

Q3. Should the Commission permit an indefinite delay for reporting STAPD for PPSs? In other words, should reporting such data be required only once the price and/or other Variable Terms is/are known regardless of how long that takes? The Commission notes that such swaps could be flagged on the public tape as PPSs once reported. Alternatively, should the Commission set a shorter deadline for reporting STAPD for PPS?

We believe that PPS reporting under Part 43 should be delayed until (a) the price is determined, or (b) 11:59pm eastern time on the next business day *following the execution date*. If the price is still not yet known at that time, the reporting counterparty would report the fields that are then known, as described in the Proposals. We believe that the majority of PPS would have the price determined prior to the T+1 cutoff proposed above, significantly reducing potential unnecessary costs.

Please see the response to Q26 in Part 43 under the §43.3(a)(4) Cost & Benefits discussion for further description of the rationale for this suggestion.

[94] Part 43 Proposal at 21522.

Q4. Should the Commission exclude from the PPS definition and/or from the reporting delay in proposed § 43.3(a)(4) swaps for which a price is not known at execution because it is contingent upon the outcome of SD hedging? Would permitting such swaps to receive the reporting delay in proposed § 43.3(a)(4) cause market participants to intentionally delay reporting in reliance on the need to hedge a swap where such market participants do not delay their reporting under current Commission reporting regulations?

Swaps for which a price is not known at execution because it is contingent upon the outcome of SD hedging should benefit from a reporting delay. We do not believe that permitting such swaps to receive the reporting delay in proposed § 43.3(a)(4) would change trading behavior.

Q6. Should the Commission modify its PPS indicator in appendix C, or add another indicator, to require market participants to indicate whether a swap is a PPS because it is contingent upon the outcome of SD hedging?

No, PPS can include swaps for which a price is not known because it is contingent on SD hedging, but can also include swaps for which a price is not known because the price will be determined by reference to an objective market measure. Requiring reporting counterparties to distinguish between these types of PPS would exacerbate the potential for other market participants to trade ahead of SD hedging because this universe of PPS would be clearly identified.

Q7. Should the Commission modify its PPS indicator, or add another indicator, to require market participants to indicate whether a swap is a PPS based on other common reasons, such as the price being determined based on the volume-weighted average price (also known as "VWAP") of an index level at market close?

The Commission should not modify its PPS indicator. Modifying the PPS indicator to contain more granular information about the type of PPS could exacerbate the issues (e.g. front running) that the PPS proposal intends to remedy.

<u>P43 Reporting of Equity Swaps</u>

In addition to PPS, we would look forward to a dialogue with the Commission to discuss other challenges, such as for P43 reporting of Equity Swaps. The dialogue would help reporting parties obtain clarity and improve the consistency of what is reported.

<u>Prime Brokerage § 43.3(a)(6)</u>

Q9. Did the Commission accurately describe the prime brokerage swap transaction structures discussed above? Should the real-time public tape reflect the number of mirror swaps related to a given trigger swap to provide information to the public on the number of prime brokerage swap transaction structures with multiple mirror swaps? Would such an indicator provide useful information to market participants?

Due to the technical nature of our recommendation, we believe it would be more helpful to the Commission if we provided redline edits to the proposed rule text. Thus, we have provided our suggestions for modification to the proposed rule text in the Appendix to this letter ("ISDA/SIFMA Proposed Text Modifications").

In response to the second question, the number of mirror swaps does not affect the pricing information and, thus, is not useful to the public. All pricing data that is of interest to the public is made available through the Part 43 reporting of the trigger swap. In addition, it is not practicable to require such reporting because the relevant reporting counterparty may not know the number of mirror swaps that result from the trigger swap, for instance, in cases of reverse give-up or allocation scenarios.

Q10. Should the Commission scale back the scope of the exclusion of mirror swaps from the PRST definition in proposed § 43.3(a)(6)(i) such that each of the following swaps would be PRSTs: (a) swaps executed as part of partial reverse give-up arrangements and/or (b) swaps executed as part of other prime brokerage transaction structures in which the notional amount of a mirror swap may differ from the notional amount of the corresponding trigger swap? Should the Commission scale back the scope of the exclusion of mirror swaps from the PRST definition in proposed § 43.3(a)(6)(i) such that the exclusion would be limited to "plain vanilla" mirror swaps?

No, we do not believe the Commission should scale back on its proposed exclusion of mirror swaps from publicly reportable swap transactions. previously mentioned, mirror swaps do not represent new pricing events, regardless if they form part of a more complex prime brokerage arrangement such as reverse give-ups. Narrowing the Commission's proposed exclusion would only introduce complexity to the reporting framework and increase the cost of compliance, without any added benefit to price transparency. While we appreciate that the Commission has proposed to impose real-time reporting requirements on trigger swaps, and not mirror swaps, we remain concerned that Commission's proposal does not adequately address the situation where the reporting obligation of a trigger swap may fall on a prime broker. Specifically, when a pricing event occurs between two non-swap dealers, as we have stated in the past, we believe that the related trigger swap should be reported upon acceptance of the prime broker (instead of when the pricing event occurs, as that is not practicable).

Such an approach would resolve longstanding compliance challenges and allow U.S. clients to have more access to non-dealer liquidity. This will, in turn, deepen the liquidity available in prime brokerage services to US customers. The ISDA/SIFMA Proposed Text Modifications provide specific changes that would address these recommendations.

We understand that this approach *may* cause a delay in the reporting of such swap to the public;[95] as such, we would support the use of a "prime broker transaction indicator" that is reportable for prime broker intermediated transactions. We believe that this indicator should only be used

[95] The extent of delay will vary (and in some cases will be non-material). For example, pricing via electronic means are likely to have/result in shorter delays as compared to manual/voice means. Other factors that may impact the extent of delay include the sophistication of the prime broker client's operational and systems capability and whether the client is using automated means (with little or no manual intervention) for delivering its notice of the trades to its prime broker.

where the trigger swap is reported by a prime broker upon acceptance of the trigger swap. This would serve to indicate to the public that the pricing data may have been reported later than the occurrence of the pricing event.

In contrast, we believe that the prime broker transaction indicator should not be subject to public dissemination if a trigger swap is reported upon the occurrence of the pricing event. Under this scenario, a flag or indicator is not needed because the public receives the pricing data in real time (like for any other P43 reportable trade).

Q11. If a SD executed one or more swaps to hedge a swap that the SD had executed with a counterparty, and the hedging swap(s) was/were executed at the same price as the swap being hedged, the hedging swap(s) generally would be a PRST or PRSTs and, thus, subject to part 43 reporting. Given the similarity of such transaction structures to trigger swap-mirror swap transactions structures, is it appropriate to treat mirror swaps as non-PRSTs pursuant to proposed § 43.3(a)(6)?

Yes. While we could engage with the Commission in a separate discussion whether there should also be an exemption from public price dissemination for some hedges, hedges are transactions that occur in the market, whereas mirror swaps are solely entered into as a function of a prime broker acting as a credit intermediary between parties that agreed to the terms of the relevant swap. Specifically, a swap is priced and agreed to between an SD and the counterparty. The hedge for that swap is priced and agreed to between the SD and a different counterparty. Each is a separate arms-length pricing activity, even in situations where the price separately agreed to for each trade turns out to be the same price (and that is not always the case).

By way of analogy only, a block trade is a pricing event but the resulting allocations from a block are not new pricing events. There is no new pricing activity that occurs with an allocation, and the Commission has acknowledged this by not subjecting allocations to real-time reporting. The same can be said for trigger and mirror swaps - the trigger swap is the sole pricing event and there is no new pricing activity in the resulting mirror swap(s).

Q12. Should the Commission modify proposed § 43.2(a) to include a carve out for prime brokerage service fees to reflect that such fees might not be included in all such mirror swaps?

We believe that this is adequately covered by using the word “may” in clause (3) of the proposed Mirror Swap definition.

Q13. Is the proposed definition of “prime broker” sufficient and clear enough to accurate describe the term as understood in common industry practice? Is it sufficiently narrow to limit the non-reporting of mirror swaps to transactions involving “prime brokers,” as that term is understood in the market? If the Commission should propose a different definition of “prime broker,” what should that definition be?

We are supportive of the Commission’s proposed definition for “prime broker” and believe it accurate describes the term as understood in common industry practice. We do anticipate

challenges with the related definitions for "mirror swap" and "trigger swap." We have provided our suggested revisions in the ISDA/SIFMA Proposed Text Modifications. We have proposed revisions to these definitions that would reduce ambiguity and ensure that such definitions could be used across various swap asset classes that may form part of a prime brokerage arrangement.

§ 43.6 – Block Trades

We have serious concerns related to the proposed block size methodologies that we believe, if not remedied in the final rule, will have a significant adverse effect on the liquidity of the swaps market. To address such concerns, the Associations have submitted a separate comment letter addressing Block delay, Block Trades, Cap sizes, and the process to determine appropriate rounded notional or principal amounts to address such concerns.

II. Swap Transaction and Pricing Data Reported to and Publicly Disseminated by Swap Data Repositories

Request for Comment: The Commission requests comment on all aspects of the proposed STAPD elements in appendix C and DMO's proposed technical standards and validation conditions.

Technical Specifications and Appendices[96] - Process for notice and comment for changes
See "Technical Specifications – Process for notice and comment for changes" in the response for Appendix 1 to Part 45.

Category: Clearing

Q23. Should the Commission publicly disseminate any additional data elements related to clearing, including the DCO where the swap is intended to be cleared? Please provide comment on any challenges market participants would face in reporting this information for PRSTs.

Clearing Swaps – original swap ("alpha")
The submission in row 2 of Example 6 (i.e. "New - Clearing Novation") in the Technical Specifications indicates that alpha terminations reported to the swap data repository to which the swap that was accepted for clearing would be publicly disseminated. Although the DCOs may have further comments, our initial feedback is that reporting terminated alphas to the public tape creates a certain level of "noise" with little incremental value.

[96] i.e., Appendix 1 of Part 45 and Appendix C of Part 43.

Category: Packages

Q24. The 2019 Part 45 NPRM requests specific comment on whether the Commission should adopt additional data elements related to package transactions according to the CDE Technical Guidance. Should the Commission also require SDRs to publicly disseminate the additional data elements related to package transactions? Do any of the Commission's proposed package transaction data elements create implementation challenges for SDRs?

As previously mentioned in our response to Q21 in Part 45, packages, structured trades, complex transactions, baskets, strategies and baskets are exceptionally complex. Since definitions of what is considered a package differ from firm to firm and industry participants do not have a consistent approach to decomposing a package transaction, reporting of package transactions to the tape can result in fingerprinting. Therefore, we do not support additional CDE data elements above those already in the Technical Specifications for Packages.

Category: Transaction-Related

We have provided feedback on several proposed transaction-related data elements, below:

Block trade election indicator (#83)
The Associations ask the Commission to clarify the condition that this indicator is reported once and is not required to be updated for the life of the UTI, in the Technical Specifications.

Execution Timestamp (#86)
In response to the Commission's statements[97] regarding execution timestamps and the potential gap in time between when a trade is agreed over the phone or chat and entered into a trading system, we note that meeting this requirement is challenging and the costs of compliance may outweigh the regulatory benefit. Although information regarding the time a trade is agreed is available in voice systems for recordkeeping and trade reconstruction purposes, it is extremely difficult for reporting counterparties to ingest such timestamps into reporting systems under the timeframes required by Part 43. Reporting systems are often separate from and not easily integrated into systems used for recordkeeping of voice and electronic communications. Accordingly, the Associations request that the CFTC clarify that a reporting counterparty meets this requirement with respect to trades agreed over the phone or chat so long as they have reasonably designed policies and procedures and controls in place to ensure that these trades are entered into front-end trading systems as soon as possible.

[97] *See* Part 43 Proposal at 21544, "…the Commission reminds reporting counterparties that execution timestamp is the date and time that the swap was executed, *not* the date and time that the swap was recorded in a computer system (e.g., a trade capture system) or transmitted to an SDR. The Commission is concerned that some market participants incorrectly report an execution timestamp that indicates when a swap executed orally was recorded in market participants' computer systems, regardless of whether any time has passed since swap execution. Similarly, some market participants incorrectly report an execution timestamp that indicates when a swap executed electronically was transmitted to an SDR, regardless of whether any time has passed between execution and transmission. Reporting of incorrect execution timestamps in instances such as these violates the reporting requirements of part 43.

Prime broker transaction indicator (#90)

We believe that the "prime broker transaction indicator" that is reportable for prime broker intermediated transactions should only be subject to public dissemination where the trigger swap is reported by a prime broker upon acceptance of the trigger swap. This would indicate to the public that the pricing data may have been reported later than the occurrence of the pricing event. The prime broker transaction indicator does not enhance price transparency nor would it serve any price discovery purpose if the trigger swap is reported upon the occurrence of the pricing event. Also, information relating to trading arrangements similarly do not enhance market transparency as they do not provide any new or additional information with respect to pricing.

III. Compliance Date

Request for Comment: The Commission requests comment on all aspects of a one year compliance date.

Please see comments under "Compliance Date" in the response to Part 45.

IV. Related Matters

§ 43.3(a)(4) – Costs & Benefits: Post-Priced Swaps

Request for Comment: The Commission requests comment on its consideration of the costs and benefits of proposed § 43.3(a)(4), including regarding issues and questions specifically identified below. Please provide data, statistics, or other supporting information for positions asserted.

Q26. Are there additional costs or benefits that the Commission should consider? If so, please identify and, where quantifiable, provide data or other information to assist the Commission in quantifying them.

There is a potential cost to customers that results from the proposed 11:59pm eastern time cutoff for PPS, particularly in the context of global equity index trades. For example, if a customer agrees on a large notional trade on a global equity index at 9:00am Tokyo time (e.g. before 11:59pm eastern time on the execution date) for strike as soon as possible (which is a common fact pattern), then the dealer may hedge part or all of the Asia exposure on the execution date, and the US, Canada, Latin America and EMEA exposure the next business day. A P43 report at 11:59pm eastern time on the execution date with a PPS indicator could indicate to other market participants that a dealer will continue hedging a large notional trade on T+1, which could hurt the client's execution.[98] Thus, for these reasons we recommend that the reporting be delayed *at least* until 11:59pm eastern time on the next business day *following the execution date*.

[98] We note that the public disclosure of the Spread, as proposed, would indicate the direction of the trade.

Q27. Are there alternatives that would generate greater benefits and/or lower costs?

We believe that P43 reporting of PPS should be either (a) delayed indefinitely until the price is determined, or (b) in the alternative, delayed until 11:59pm eastern time on the next business day *following the execution date* (and if the price is not yet known at that time, the reporting counterparty would report the fields that are then known, as described in the Proposals. With respect to (b), we believe that the significant majority of PPS would have the price determined prior to this T+1 cutoff, substantially reducing the potential costs described in the response to the prior question directly above.

Q28. What percentage of PPSs have their prices determined by midnight on the date of execution (by asset class and overall)? What percentage of Variable Terms Swaps have their prices determined by midnight on the date of execution (by asset class and overall)? Do market participants have trouble reporting, and do SDRs have difficulty disseminating, PPS trades, because the placeholder terms of the swaps (including, but not limited to, placeholder values such as zero or blank fields) are inconsistent with SDRs' allowable values?

We preliminarily believe that the majority of PPS (other than global index swaps) do have their prices determined by midnight on the date of execution. Reporting placeholder fields with a value of zero frequently results in the trade report getting rejected by the SDR, consequently eliciting the potential practice of not reporting swaps until all values are known.

§ 43.3(a)(6) - Costs & Benefits: Prime Brokerage

Request for Comment: The Commission requests comment on its consideration of the costs and benefits of proposed § 43.3(a)(6), including regarding issues and questions specifically identified below. Please provide data, statistics, or other supporting information for positions asserted.

Q36. Can the double-reporting concerns be addressed by the alternative of adding an additional reporting field to indicate if a swap is a trigger or a mirror? If so, what are costs and benefits of this alternative approach relative to what is being proposed?

Adding an additional reporting field would only result in added costs and complexity to prime broker reporting, without commensurate benefit to regulatory oversight. As we have discussed above, real-time reporting of mirror swaps would not enhance price transparency nor serve any price discovery purpose given that there would be no new or additional pricing information released to the market. The public dissemination of mirror swaps with a mirror swap flag would only create noise on the tape.

Q37. How common are mirror swaps? What percentage are "plain vanilla" as characterized above as compared to more complex scenarios? What would the cost-benefit differences be between plain vanilla and non-plain vanilla mirror swaps?

All prime broker intermediated transactions have at least one mirror swap. The Associations cannot speak to percentages. As the Commission is aware, firms have strict internal policies on what sort of information can be shared with or amongst other firms.

In general, mirror swaps are a natural feature of prime brokerage service because the prime broker is a credit intermediary and stands between, at the very least, two swaps of which would be the mirror swap. A plain vanilla structure may also have more than one mirror swap (such as where an asset manager manages a number of investment funds (each, with its own LEI) and uses a common prime broker. There are also other non-vanilla structures that result in levels of reverse give up downstream. These structures are client demand driven in their search for competitive liquidity to satisfy best execution obligation, and in their desire for structures that protect their identity and trading strategies from the dealing market. It is difficult to quantify the cost or benefit in monetary terms, but the key cost would be to prevent US clients from having those services and accessing such liquidity.

D. Additional Comments to Parts 43, 45, and 49

Cost and Benefit Considerations of the Swap Data Reporting Amendments

The Proposals mark a substantial change, as compared to the existing rules, in reportable fields, specificity, validations, and shift towards harmonization of global data elements. Industry participants will need to expend a significant amount of resources, time, and cost to implement the Proposals – to source the extra data, build the systems and processes to collect and store the appropriate data, connect the data into reporting and front-office systems, and then retrieve the information in reporting systems. However, we believe that the amendments are a constructive, beneficial move in the right direction towards supporting the global harmonization efforts, aligning regulatory reporting timelines appropriately with other jurisdictions, "right-sizing" the number of reportable data elements necessary to fulfill regulatory mandates, and improving clarity and specificity about what and how to report.

Ultimately, we believe that the proposed amendments will improve the quality of the data submitted to help ensure that the Commission obtains more accurate, high quality data on swap transactions to fulfill its regulatory oversight role.

Consider No-Action Reliefs for substituted compliance or codification

The Associations have appreciated historical efforts of CFTC staff to provide interpretative and no-action relief as mechanism to temporarily alleviate compliance burdens and impracticable regulatory requirements. Some of these temporary solutions, however, have lasted for a number of years. To reduce legal uncertainty, we believe that such positions should be made permanent through codification in the final rule, including those listed in the joint IIB/ISDA/SIFMA request[99] that have not yet been addressed. In particular, we ask the Commission to codify or provide substituted compliance to existing staff no-action letter (NAL) related to the reporting of swaps between non-U.S. persons ("**NAL 17-64**").[100] The NAL provides relief from U.S. reporting requirements for transactions between non-U.S. SDs established in certain jurisdictions that are not affiliated with U.S. entities and non-U.S. counterparties that are not guaranteed affiliates, or conduit affiliates, of a U.S. person. This has been in effect for almost seven years, and we are not aware that this relief has impeded the Commission's oversight authority over U.S. markets that would warrant a change in course at this time. Importantly, these transactions are already subject to the regulatory reporting requirements of their home jurisdictions, which would allow the Commission to access information, in case of any compliance or enforcement challenges. [101]

[99] Joint IIB/ISDA/SIFMA Request for an Extension of Certain CFTC No-Action Reliefs, https://www.isda.org/a/4IiDE/iib-isda-sifma-joint-nar-extension-request-with-removal-of-time-limitations.pdf (July 24, 2017).
[100] CFTC Letter No. 17-64 (Nov. 30, 2017).
[101] We make similar comments in the ISDA Comment Letter to the CFTC Cross-Border Application of the Registration Thresholds and Certain Requirements Applicable to Swap Dealers and Major Swap Participants (March, 9, 2020).

Utilize technology to reduce costs and drive consistency of reporting

Regulation should remain technology-neutral and principles-based in order to facilitate the adoption of new technologies. The ISDA CDM, which is a digital model for financial product and event data and processes, including collateral data and processes, would allow consistent implementation of counterparties' reporting obligations and its various components.[102]

In the area of regulatory compliance and reporting, the CDM can have a transformative impact. Using this open source model, market participants and regulators can come together to tackle new regulatory requirements and build prototype solutions as code through open industry initiatives. These solutions can be tested publicly with regulators involved. Regulators can be given the opportunity to view the test results and offer their guidance for changes that should be made to prototypes. The final implementation code will be then made available to the whole market for consistent implementation of the regulatory requirements, thus alleviating the risk of inconsistent rule implementation across the market, which we see in the market today. Importantly, the CDM enables new technologies,[103] such as Artificial Intelligence and Distributed Ledger Technologies, to be deployed in areas like regulatory reporting.

ISDA demonstrated the application of the CDM to regulatory reporting in a pilot with the Bank of England and Financial Conduct Authority in the United Kingdom in 2019. ISDA also demonstrated the same potential of the CDM applied to CFTC reporting rules at the CFTC Technology Advisory Committee meeting on February 26th 2020.[104] We encourage the Commission to continue to explore technological solutions such as the CDM to help improve the consistency of reporting and reduce costs.

[102] ISDA aims to model all the processes and data which pertain to the life cycle of a trade, i.e., everything from contract formation, to clearing, collateral and margin exchange, novation, calculation of performance and payment of cashflows.
[103] To integrate with these new technology innovators, the ISDA CDM is generated in several language distributions automatically for ease of deployment on these new technologies natively (i.e. JAVA, DAML, SCALA, TypeScript and others in the future).
[104] A video of this demonstration can be found here: CFTC reporting rules via ISDA CDM (demo video).

E. Conclusion

We appreciate the opportunity to comment on the Proposals. The Associations welcome the opportunity to discuss the comments or points raised in our responses. Please contact us or Eleanor Hsu at (212) 901-6051 should you have any questions or if we can provide additional information.

Sincerely,

Scott O'Malia
Chief Executive Officer
International Swaps and Derivatives Association, Inc.

Ken Bentsen
CEO & President, SIFMA

F. Appendices

(1) Reporting Counterparty Determination – aligning Part 43 and Part 45

ISDA/SIFMA Proposed Text Modifications (refer to Part 45 comments for § 45.8).

45.8(d)(1) revised to:

~~(1) For a swap executed on or pursuant to the rules of a swap execution facility or designated contract market,~~ the counterparties shall select ~~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.~~

45.8(f)(1) and 45.8(f)(2) revised to:

~~(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.~~

45.8(g), 45.8(g)(1)-(4) as drafted revised to:

(~~g~~) If a reporting counterparty selected pursuant to paragraphs (a) through (e~~f~~) of this section ceases to be a counterparty to a swap due to an assignment or novation, the reporting counterparty for the swap as assigned or novated ~~reporting of required swap continuation data following the assignment or novation~~ shall be determined between ~~selected from~~ the two ~~current~~ counterparties to such swap as provided in Part 45.8 (a)-(e).~~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.~~

45.8(h)(2) as drafted revised to:

(2) For any swap executed on a ~~To achieve this, the~~ swap execution facility or designated contract market the determination which party to the swap will be the reporting counterparty shall be determined between the two parties to such swap as set forth in Part 45.8 (a)-(e). ~~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.~~

(2) Prime Brokerage

ISDA/SIFMA Proposed Text Modifications[105] (refer to Part 43, Question 9)

Definitions:

Prime broker means, with respect to a mirror swap and its related trigger swap, a swap dealer acting in the capacity of a prime broker with respect to such swaps.

Prime brokerage agency arrangement means an arrangement pursuant to which a prime broker authorizes one of its clients, acting as agent for such prime broker, to cause the execution of a ~~trigger~~ prime broker swap.

Prime broker swap means any swap to which a swap dealer acting in the capacity as prime broker is a party.[106]

Prime brokerage agent means a client of a prime broker who causes the execution of ~~a trigger swap~~ one or more Prime broker swap(s) acting pursuant to a prime brokerage agency arrangement.

Pricing event means the completion of the negotiation of the material economic terms and pricing of a trigger swap.

Mirror swap means a swap:

~~(1) to which a prime broker is a counterparty or both counterparties are prime brokers;~~

(2) that is executed contemporaneously with a corresponding trigger swap;

(3) that has identical terms and pricing as the contemporaneously executed trigger swap (except that a mirror swap, but not the corresponding trigger swap, may include any associated prime brokerage service fees agreed to by the parties and except as provided in the final sentence of this "mirror swap" definition);

(4) with respect to which the sole price forming event is the occurrence of the contemporaneously executed trigger swap; and

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[105] We note that Trigger and Mirror Swaps are also reportable under P45 (unless exempt by the Commission or the DMO) with Trigger and Mirror Swaps that are physically-settled FX forwards or physically-settled FX swaps being reportable under P45 only, not P43. We note that additional amendments for the P45 reporting requirements of Trigger and Mirror Swaps are not necessary, particularly because the reporting counterparty determination for these trades can follow the general reporting counterparty hierarchy set forth in § 45.8. However, in the prime brokerage section of our letter above, we provide specific comments related to the proposed "prime broker transaction identifier" and "prime broker transaction identifier" requirements. In addition, for SEF-executed Trigger Swaps, please refer to our more general comments on SEF-executed trades that the reporting counterparty determination for the P45 swap continuation data reporting obligation should follow the hierarchy set forth in § 45.8 without any involvement or determination by the SEF on which the trade has been executed.

[106] As discussed previously discussed with the CFTC, a corresponding update of Part 23 external business conduct rules (§23.431 Disclosures of material information) to account for prime brokerage arrangements will be crucial. While that is a task that the industry will pursue with the DSIO, the Commission's goals of simplification and harmonization will be better served if key definitions in the updated P43 rule can be used in that context (as opposed to creating a whole new set of prime brokerage related terms). We note that our proposed changes are designed to enable this, and we look forward to working with the DSIO and the Commission on these issues. Separately, our proposed changes are also meant to avoid any unintended outcomes of limiting "prime brokerage agency arrangement" to the execution of the trigger swap as the resulting mirror swaps are also part of "prime brokerage agency arrangements."

(5) the execution of which is contingent on, or is triggered by, the execution of the contemporaneously executed trigger swap. The contractually agreed payment and delivery amounts under[107] a mirror swap may differ from those of the corresponding trigger swap, including, but not limited to, in the case of a mirror swap that is part of a partial reverse give-up; provided, however, that in such cases, (i) the aggregate contractually agreed payments and delivery amounts under all such mirror swaps to which the prime broker that is a counterparty to the trigger swap is also a counterparty shall be equal to the aggregate of the contractually agreed payments and delivery amounts under the corresponding trigger swap and (ii) the market risk and contractually agreed payments and delivery amounts of all such mirror swaps to which a prime broker that is not a counterparty to the corresponding trigger swap is a party will offset each other, resulting in such prime broker having a flat market risk position at the execution of such mirror swaps.[108]

~~The notional amount of a mirror swap may differ from the notional amount of the corresponding trigger swap, including, but not limited to, in the case of a mirror swap that is part of a partial reverse give-up; provided, however, that in such cases, (i) the aggregate notional amount of all such mirror swaps to which the prime broker that is a counterparty to the trigger swap is also a counterparty shall be equal to the notional amount of the corresponding trigger swap and (ii) the market risk and contractual cash flows of all such mirror swaps to which a prime broker that is not a counterparty to the corresponding trigger swap is a party will offset each other (and the aggregate notional amount of all such mirror swaps on one side of the market and with cash flows in one direction shall be equal to the aggregate notional amount of all such mirror swaps on the other side of the market and with cash flows in the opposite direction), resulting in such prime broker having a flat market risk position.~~

Trigger swap means a swap: (1) that is executed pursuant to one or more prime brokerage agency arrangements; (~~2) to which a prime broker is a counterparty or both counterparties are prime brokers~~; (3) that serves as the contingency for, or triggers, the execution of one or more corresponding mirror swaps; and (4) that is a publicly reportable swap transaction that is required to be reported to a swap data repository pursuant to this part ~~and part 45 of this chapter.~~ or, otherwise, exempt from such reporting by the Commission.[109] A prime broker swap executed on or pursuant to the rules of a swap execution facility or designated contract market shall be treated as the trigger swap for purposes of this part.

Part 43.3 (a) Method and Timing for Real Time Public Reporting

(6)~~Mirror swaps.~~ Prime Broker Swaps.

(i) A mirror swap is not a publicly reportable swap transaction. ~~Execution of a trigger swap, for purposes of determining when execution occurs under paragraphs (a)(1)-(3) of this section, shall be deemed to occur at the time of the pricing event for such trigger swap.~~

[107] Some publicly reportable swaps (e.g., currency options that settle via delivery) do not use a notional concept.

[108] We strongly believe that simplifying the definition, while maintaining the core intent of the Commission's proposed changes, would avoid interpretive challenges that a complex definition could result in.

[109] Where the trigger swap has been exempt from public reporting by the CFTC, we do not believe that the related mirror swaps (which are not new price forming events) should then become P43 reportable. The other changes are just conforming to the simplifications and clarifications noted in the prior footnotes.

~~(ii) If, with respect to a given set of swaps, it is unclear which are mirror swaps and which is the related trigger swap (including, but not limited to, situations where there is more than one prime broker counterparty within such set of swaps and situations where the pricing event for each set of swaps occurs between prime brokerage agents of a common prime broker), the prime brokers shall determine which swap is the trigger swap and which are mirror swaps. With respect to a trigger swap to which a prime broker is a party, the counterparty that falls within the highest level of the reporting counterparty determination hierarchy set forth in paragraph (a)(3) of this section is the reporting counterparty; if both counterparties fall within the same level of that hierarchy, they shall determine who is the reporting counterparty for such trigger swap pursuant to paragraphs (a)(3)(iii), (iv), or (v) of this section, as applicable. Notwithstanding the foregoing, if the counterparty to a trigger swap that is not a prime broker is a swap dealer, then that counterparty shall be the reporting counterparty for the trigger swap.~~

(ii) Trigger swaps[110] that are required to be reported to a swap data repository pursuant to this part shall be reported in accordance with the following: (1) trigger swaps executed on or pursuant to the rules of a swap execution facility or designated contract market, shall be reported pursuant to the requirements set out in paragraphs (a)(2) of this section; and (2) for off-facility trigger swaps the reporting counterparty determination and reporting requirements shall be pursuant to Part 43.3(a)(3), [111,] provided, that, (x) if the counterparty to a trigger swap is a swap dealer but is not a prime broker with respect to that trigger swap, then, that counterparty shall be the reporting party for that trigger swap and that trigger swap shall be reported as soon as technologically practicable after the pricing event, and, (y) if a prime broker is the reporting counterparty for a trigger swap, then, that trigger swap shall be reported as soon as technologically practicable after the acceptance of such trigger swap by the prime broker, which report by the prime broker shall include a prime broker transaction indicator [112], [113] .

(iii) If, with respect to a given set of swaps, it is unclear which is, or are the mirror swap(s) and which is the related trigger swap ~~, the reporting counterparty for the trigger swap shall be determined pursuant to paragraph (a)(3) of this section.~~ (including, but not limited to, situations where there is more than one prime broker counterparty within such set of swaps and situations where the pricing event for each set of swaps occurs between prime brokerage agents of a common prime broker); or (y) under the prime brokerage agency arrangement, the trigger swap

[110] Some of changes are intended to clarify that there is no deviation from the general reporting party determination hierarchy set forth in §§ 43(a)(2) and (3).

[111] This cross reference should be updated if the reporting counterparty determination in P43 is harmonized with reporting counterparty determination provision in P45 (as we have commented on elsewhere in this letter).

[112] Over the past 8 years, dealers have shown a reluctance to delegate regulatory responsibility to non-swap dealers (many of whom will not have the necessary reporting systems); as a result we expect dealers to be the reporting counterparty for the trigger swap and report that swap ASTP (which is not practicable prior to accepting the swap). We believe that this approach would not only resolve longstanding compliance issues but would also enable U.S. prime broker clients to have more access to non-dealer liquidity in their search for competitive liquidity. We would also support a requirement to use the "prime broker transaction indicator" for P43 reporting to flag these trades to the market. We have explained these comments and recommendations further earlier in the letter, particularly in the section of this letter that address prime brokerage transactions.

[113] P45 has a proposed reporting timeline of T+1 (for SD reporting parties). We assume that PB reporting of trigger swap upon acceptance will be feasibly within such T+1 timeline.

would occur between two prime brokers[114], the prime broker(s) shall determine which of the prime broker swaps shall be treated as the trigger swap and which are mirror swaps.

~~(iv) Trigger swaps described in paragraphs (a)(6)(ii) and (iii) of this section shall be reported pursuant to the requirements set out in paragraphs (a)(2) or (a)(3) of this section, as applicable, except that the provisions of paragraph (a)(6)(ii) of this section, rather than the provisions of paragraph (a)(3) of this section, shall govern the determination of the reporting counterparty for purposes of the trigger swaps described in paragraph (a)(6)(ii) of this section.~~

[114] Inserted to address double give-ups arrangements where two prime brokerage clients and give up to their respective prime brokers. In certain situations, prime brokerage clients are also registered swap dealers and, as such, could be in a position to report a prime broker swap that has been designated as the trigger swap as soon as technologically practicable after the pricing event.