

CFTC Issues Final Swaps Reporting Rules

On November 25, 2020, the Commodity Futures Trading Commission (“**CFTC**”) published in the Federal Register three final rules that amend the CFTC’s regulations governing real-time swaps public reporting, swaps regulatory reporting, and swaps data verification (collectively, the “**Final Rules**”). Generally, the Final Rules seek to simplify and streamline reporting requirements and harmonize the CFTC’s reporting rules with international standards. In summary, key changes made by the Final Rules include the following:

Real-Time Public Reporting. With respect to real-time public reporting, the Final Rules:

- Retain the existing block trade public dissemination delays, which generally range from 15 minutes to 2 hours after execution depending upon the transaction type, in lieu of a universal 48-hour delay, as was proposed;
- Adjust the minimum block sizes (above which a trade is eligible for a public dissemination delay and an exception from certain trade execution requirements) and notional cap sizes (above which the full notional amount of a trade is not publicly disseminated) using a methodology that will increase those sizes compared to current rules, making fewer swaps eligible;
- Permit the reporting counterparty to delay reporting an off-facility swap for which the price is not determined as of the time of execution until the earlier of the price being determined and 11:59:59 pm eastern time on the execution date; and
- Codify previously expired no-action relief from real-time public reporting requirements for the “mirror swap” in a prime brokerage agency arrangement while also requiring the “trigger swap” in such an arrangement to be reported as soon as technologically practicable after execution.

Swaps Regulatory Reporting. Concerning swaps regulatory data reporting, the Final Rules:

- Combine the primary economic terms and confirmation data into a single swap data creation report;
- Extend reporting deadlines (e.g., from as soon as technologically practicable to T+1 following the execution date for swaps where a swap dealer (“**SD**”) is a party, and T+2 for commercial end users);
- Eliminate the requirement to report information relating to “international swaps”;
- Repeal the “state data” reporting method, so that life cycle reporting will be the only permissible continuation data reporting method;
- Require that SDs and major swap participants (“**MSPs**”) report collateral and margin data in addition to the valuation data that they currently report;
- Eliminate the valuation data reporting requirements for reporting counterparties that are not SDs, MSPs, or derivatives clearing organizations (“**DCOs**”) (e.g., commercial end users);
- Adopt a requirement to identify swaps using unique transaction identifiers (“**UTIs**”), consistent with international standards in lieu of unique swap identifiers;
- Require each financial entity reporting counterparty to obtain a Legal Entity Identifier (“**LEI**”) for a counterparty to the extent such counterparty does not have an LEI but is eligible to receive one (or report such counterparty to the CFTC, if this is not practicable);
- Require SDs, MSPs, swap execution facilities (“**SEFs**”), designated contract markets (“**DCMs**”), DCOs, and swap data repositories (“**SDRs**”) to renew their LEIs annually, while not requiring other counterparties (e.g., commercial end users) to do so; and

- Overhaul the data fields for swaps set forth in Appendix 1 to Part 45 to align them with technical guidance contained in international standards.

Swaps Data Verification. With regard to swaps data verification, the Final Rules:

- Establish requirements to ensure consistent validations across SDRs and standards for responses to SDR error messages;
- Adopt a new requirement for a SD, MSP and DCO reporting counterparties to verify the accuracy and completeness for all of its open swaps at least once every 30 days and all other reporting counterparties once every calendar quarter, using a verification method that the Final Rules require SDRs to provide;
- Require any SEF, DCM, or reporting counterparty to correct errors in swap data within 7 business days (or else notify CFTC staff) for both open swaps and swaps terminated or expired within applicable record retention periods; and
- Specify data correction requirements for non-reporting counterparties.

The Final Rules become effective on January 25, 2021, with a compliance date of May 25, 2022, except for the revised minimum block trade sizes and cap sizes, which have a compliance date of May 25, 2023.

A more detailed discussion of key provisions of the Final Rules follows.

I. Real-Time Reporting Rule Amendments

The Final Rules amending Part 43 update several aspects of the CFTC's real-time public swap reporting and dissemination requirements. The amendments address, among other things:

- a proposal to adopt a uniform standard for block trade reporting delays,
- the methodology for calculating size thresholds for block trades and transaction value reporting caps,
- issues related to reporting post-transaction priced swaps, and
- issues related to disseminating swaps associated with prime brokerage arrangements.

A. Bespoke Block Trade Public Dissemination Delays

In February 2020, the CFTC proposed a rule that would impose a uniform 48-hour delay in reporting swap transaction and pricing data. The CFTC received 18 comments on this proposal, 15 of which were opposed to the proposed rule. The commenters noted several concerns, including around transparency, price discovery, and market liquidity.

The CFTC credited the concerns expressed by the commenters. Rather than adopt a single uniform 48-hour standard for block trade public dissemination delays, the Final Rules return to a scheme of bespoke determinations regarding the appropriate length of delay. Market participants are expected to use various factors – including market depth and liquidity, type of market participant, asset class, and method of execution – to consider the time frame within which to report block trades. As a practical matter, the Final Rules adopted by the CFTC are designed to impose shorter public reporting delays on many block trades than would have been standard under a one-sized-fits-all 48-hour approach that had been considered.¹

¹ See Real-Time Public Reporting Requirements, 85 Fed. Reg. 75442-44, 75475, 75498 (Nov. 25, 2020); CFTC Reg. §43.5.

B. Increasing Transaction Value for Block Treatment and Reporting Caps

The Final Rules change the threshold for a swap to be eligible for a block trade reporting delay and for a market participant to mask the size of certain swap transactions. These changes generally improve market transparency.

Under the Final Rule, a transaction will be treated as a block trade – and eligible for a block trading dissemination delay – based on the 67% notional calculation, rather than previously used 50% notional calculation.² As a result, the Rules will require a higher threshold to qualify for block trade treatment and therefore a higher threshold to qualify for a dissemination delay.

In the Final Rules, the CFTC also increased the maximum value of a transaction that will be publicly reported. In general, block trades are reported at their actual transaction value. However, the rules impose a cap on the amount reported, such that the transaction value reported will be the capped amount if the actual value exceeds the cap. In the Final Rules, the CFTC increased the cap from 67% notional to 75% notional. The practical effect of this change should be that more transactions will be reported at their actual notional value, rather than at the maximum capped reported value.³

C. Reporting Transactions with an Undetermined Price

The Final Rules address and resolve uncertainty in Part 43 regarding the reporting of swaps transactions that are valued after the transaction. Prior to these amendments, these swaps transactions were publicly reported without pricing data. Of course, that approach reduced transparency around the value of the transaction.

Under the Final Rules, the reporting counterparties are allowed to report these swaps transactions as soon as technologically practicable after pricing occurs, but in any event no later than by 11:59:59 on the execution date of the transaction. If the reporting parties cannot determine the price by the deadline, they shall report all required data fields except for the price and any other transaction or pricing data that is not yet determined. This change also is intended to improve market transparency, as more transactions should be reported with pricing data that is determined post-transaction, rather than without any pricing data.⁴

D. Clarifying Reporting of Mirror and Trigger Swaps

In the Final Rules, the CFTC also resolved uncertainty created by the expiration of no-action relief related to "mirror swaps" that are executed in connection with prime brokerage arrangements. Under the current rule, parties are required to report any offsetting swap executed with prime brokers (that is, the "mirror" swap), along with the initial swap negotiated between a prime brokerage client and an executing broker (that is, the "trigger swap"). This approach created potential duplication, as well as confusion over the independence of the transactions. The Final Rules eliminate the duplication and potential market confusion by requiring the reporting of only the trigger swap and exempting the mirror swap from the public reporting requirements.⁵

² See Real-Time Public Reporting Requirements, 85 Fed. Reg. 75452-53 (Nov. 25, 2020); CFTC Reg. §43.6.

³ See Real-Time Public Reporting Requirements, 85 Fed. Reg. 75471, 75475, 75498 (Nov. 25, 2020); CFTC Reg. §43.6.

⁴ See Real-Time Public Reporting Requirements, 85 Fed. Reg. 75428-31 (Nov. 25, 2020); CFTC Reg. §43.3(a)(4).

⁵ See Real-Time Public Reporting Requirements, 85 Fed. Reg. 75432-36 (Nov. 25, 2020); CFTC Reg. §43.3(a)(6).

II. Swap Regulatory Reporting Amendments

Part 45 of the CFTC's regulations require the regulatory reporting of swap data to SDRs for the benefit of the CFTC by SDs and other reporting counterparties. Part 45 data is intended to provide the Commission with a more fulsome set of data than Part 43 data, which encompasses more limited data for real-time public reporting. Data required by Part 45 provides the CFTC with the data it needs to effectively oversee the swaps markets. The amendments to Part 45 ("**Part 45 amendments**")⁶ are intended to:

- Streamline the data reporting process for new swaps;
- Lengthen the reporting deadlines for reporting counterparties, SEFs, DCMs and SDRs; and
- Provide relief for non-SD/MSP/DCO reporting counterparties (e.g., commercial end users).

The Part 45 amendments also require the reporting of uncleared swap margin data and define and adopt swap data elements that harmonize with international technical guidance, as well as adopt UTIs and certain changes with respect to LEIs.

A. Streamlining the Reporting Process

The Part 45 amendments require reporting counterparties, SEFs, DCMs and DCOs to submit a single data report at execution of a swap, rather than two separate reports for primary economic terms ("**PET**") data and confirmation data that is currently required under the Part 45 regulations. In addition, the amendments make changes with respect to the timing of the swap creation data report. Currently, SEFs and DCMs are required to report all PET data as soon as technologically practicable after execution of a swap. If the swap is not intended to be cleared at a DCO, the SEF or DCM is also required to report confirmation data for the swap as soon as technologically practicable after execution. For off-facility swaps, PET data and confirmation data, as applicable, must be reported as soon as technologically practicable after execution or confirmation, with differing deadlines based on the type of swap and type of reporting counterparty.

The Part 45 amendments revise the reporting schedule for the single combined swap creation data report as follows:

- SEF or DCM. Reporting required by **T+1** (*i.e.*, the next business day) following the execution date.⁷
- SD/MSP/DCO reporting counterparties. Reporting required by **T+1** following the execution date.⁸
- Non-SD/MSP/DCO reporting counterparties. Reporting required by **T+2** following the execution date.⁹

In addition, with regard to swaps continuation data, the Part 45 amendments eliminate the option for state data or "snapshot" reporting, so that only life-cycle event data for swaps is permitted.¹⁰ Consistent with the extension of deadlines for swap creation data reporting, the Part 45 amendments extend the deadline for reporting swap continuation data for SD/MSP/DCO reporting counterparties to T+1 following any life cycle event and update the exception for corporate events of the non-reporting counterparty to T+2. For non-SD/MSP/DCO reporting counterparties, the life cycle event reporting deadline is T+2 following the life cycle event.¹¹

For end-users that are reporting counterparties, the Part 45 amendments provide regulatory relief with respect to valuation data. Specifically, for non-SD/MSP/DCO reporting counterparties, the Part 45

⁶ See Swap Data Recordkeeping and Reporting Requirements, 85 Fed. Reg. 75503 (Nov. 25, 2020).

⁷ See CFTC Reg. §45.3(a).

⁸ See CFTC Reg. §45.3(b)(1).

⁹ See CFTC Reg. §45.3(b)(2).

¹⁰ See 85 Fed. Reg. at 75512.

¹¹ See CFTC Reg. §45.4.

amendments remove requirements to report valuation data quarterly as is required under the existing Part 45 regulations.¹² This relief is in addition to that noted above with respect to swap creation data, under which end-users, as non-SD/MSP DCO reporting counterparties, are required to report swap creation data within a longer timeframe (i.e. T+2), rather than within 24 business hours under the current regulations. It should be noted that the daily valuation data requirement has been retained with respect to SD/MSP/DCO reporting counterparties in Part 45, as amended.¹³

B. Margin and Collateral Data

The Part 45 amendments will require SDs and MSPs to provide daily collateral data on uncleared swaps.¹⁴ “Collateral data” is defined as “the data elements necessary to report information about the money, securities, or other property posted or received by a swap counterparty to margin, guarantee, or secure a swap.”¹⁵ With this data, the CFTC believes that its ability to monitor for systemic risk will be significantly improved.

C. Harmonization with International Technical Standards

When the CFTC adopted its swap data reporting regulations in early 2012, it was the first mover among the G-20 countries to promulgate such regulations after the Pittsburgh Summit. Since their adoption, many non-US regulators have adopted their own swap data reporting requirements. More recently, in an effort to promote harmonization among countries’ swaps reporting regimes, the Committee on Payments and Infrastructures and the International Organization of Securities Commissioners (“CPMI-IOSCO”), adopted technical guidance.¹⁶ The CFTC has been involved in the CPMI-IOSCO working group, serving as co-chair to develop international standards on critical data elements (“CDEs”) with the central goal of developing harmonized guidance for swap data reporting.

The Part 45 rule amendments generally align the CFTC’s data reporting fields with the technical guidance set forth by CPMI-IOSCO. Along with the Part 45 amendments, the CFTC also has published technical specifications available on the CFTC’s website, which include data elements that are unique to CFTC reporting, as well as the CDEs. As a result, the Part 45 amendments consolidate hundreds of different data fields that are currently required by SDRs into a total of 128 data fields.¹⁷

D. Adoption of UTIs

In addition to CDE fields, the Part 45 amendments adopt the use of a UTI in place of the currently required unique swap identifier (“USI”) as recommended by separate CPMI-IOSCO Technical Guidance regarding UTIs.¹⁸ UTIs will now be required to identify each swap in all recordkeeping and swaps data reporting. The change from USIs to UTIs will further conform the CFTC’s swap data reporting regulations with those of international regulators.

The UTI has a maximum length of 52 characters, containing the Legal Entity Identifier (“LEI”) of the generating entity and an alphanumeric code generated and assigned to that swap. With respect to swaps executed on a SEF or DCM, the Part 45 amendments require SEFs and DCMs to generate and assign UTIs at or as soon as technologically practicable after execution, but before reporting swap creation data. With respect to off-facility swaps, the Part 45 amendments require SDs, MSPs and financial entities that are reporting parties to generate and assign UTIs following execution of the swap, but prior to the reporting

¹² See 85 Fed. Reg. at 75512.

¹³ See CFTC Reg. §45.4(c)(2)(i).

¹⁴ See CFTC Reg. §45.4(c)(2)(ii).

¹⁵ CFTC Reg. §45.1 (definition of the term “collateral data”).

¹⁶ See CPMI-IOSCO, Technical Guidance, Harmonisation of Critical OTC Derivatives Data Elements (other than UTI and UPI) (Apr. 2018) (“CDE Technical Guidance”).

¹⁷ See Appendix 1 to Part 45.

¹⁸ See CPMI-IOSCO, Technical Guidance, Harmonisation of the Unique Transaction Identifier (Feb. 2017).

swap creation data.¹⁹ Note that the requirement for financial entities to generate and assign UTIs represents an expansion from current Part 45 requirements with respect to USIs.

The Part 45 amendments also require that UTIs be transmitted to the non-reporting party within the applicable deadline for reporting swap creation data. For off-facility swaps in which a non-SD/MSP/DCO/financial entity is the reporting counterparty, e.g., a commercial end user, the Part 45 amendments provide such counterparties with the option to generate the UTI or to request that the SDR to which swap creation data is reported generate the UTI.²⁰ SDRs are required to generate the UTI as soon as technologically practicable after a request to do so.

The Part 45 amendments require the UTI for a swap be included in all records and all swap data reporting concerning that swap from the time the UTI is created or received, throughout the existence of the swap, and for as long as any records concerning the swap are required to be kept under CFTC regulations.²¹ A new provision requires that registered entities (e.g., DCMs, SEFs) and reporting counterparties ensure that any third-party service providers that are contracted to facilitate swaps reporting are obligated to create and transmit UTIs.²²

The adoption of the UTIs has rendered the regulations applicable to “international swaps” unnecessary. Currently, for swaps that are required by U.S. law and the law of another jurisdiction to be reported to both an SDR and to a different trade repository registered with the other jurisdiction (*i.e.*, international swaps), the reporting counterparty to such a swap must report to an SDR the identity of the non-U.S. trade repository to which the swap is also reported, and the swap identifier used by the non-U.S. trade repository. The Part 45 amendments remove this requirement, given that the UTI should be the same and that the CFTC expects regulators to have global trade repository access.²³

E. Changes Regarding LEIs

Also consistent with the CDE Technical Guidance, the Part 45 amendments amend the regulations regarding LEIs.²⁴ Specifically, the Part 45 amendments require each SEF, DCM, DCO, SDR, counterparty to any swap that is eligible to receive an LEI and third-party reporting service provider to obtain and be identified in all swaps recordkeeping and swap data reporting by an LEI. In addition, the Part 45 amendments require each SD or other financial entity counterparty (but not DCOs) to use best efforts to obtain an LEI for a counterparty that does not have one, to the extent the counterparty is eligible for an LEI. If following best efforts the counterparty does not or refuses to obtain an LEI, the reporting counterparty is required to promptly provide the identity and contact information of the counterparty to the CFTC.²⁵

The Part 45 amendments further require that SDs, MSPs, SEFs, DCMs, DCOs and SDRs to maintain and renew their LEIs in accordance with the standards set by the Global Legal Entity Identifier System. Counterparties not included in this list are not required to renew their LEIs, which means that commercial end users will not be required to maintain their LEIs as is presently the case.

III. Data Verification Amendments

The CFTC's regulations currently require SDRs to engage in swap data verification in order to help ensure the accuracy of data reported to SDRs and the CFTC pursuant to Parts 43 and 45. The amendments

¹⁹ See CFTC Reg. §45.5.

²⁰ See CFTC Reg. §45.5(c).

²¹ See CFTC Reg. §45.5(f).

²² See CFTC Reg. §45.5(g).

²³ See 85 Fed. Reg. at 75511-512.

²⁴ See CFTC Reg. §45.6.

²⁵ See CFTC Reg. §45.6(d)(3).

to Parts 43, 45 and 49 (the Data Verification amendments)²⁶ seek to improve data accuracy and provide enhanced and streamlined oversight of SDRs and data reporting generally. In furtherance of these goals, the amendments among other things modify existing rules that require SDRs to establish policies and procedures to validate the accuracy of swap data with both counterparties to a swap, and require reporting counterparties to verify the accuracy of swap data in accordance with those procedures. The Data Verification amendments also amend data correction requirements.

A. Validation of Data

SDRs are required under the Final Rules to validate each data report submitted according to the validation conditions approved in writing by the Commission and notify the reporting counterparty, SEF, DCM, or third-party service provider submitting the report whether the report satisfied the data validation procedures of the SDR as soon as technologically practicable after accepting the SDR data report.²⁷ If SDR data contains one or more data validation errors, the SDR must send a data validation error message to the DCM, SEF, reporting counterparty, or third-party service provider that submitted such SDR data as soon as technologically practicable after acceptance of such data. Such a message should indicate the specific data validation error or errors.²⁸ After receiving an error message, each reporting counterparty, SEF, DCM, and DCO must satisfy the swap data validation procedures of the SDR receiving the swap data. If a data report does not satisfy the data validation procedures of the SDR, the reporting counterparty, SEF, DCM, or DCO will be deemed to not have satisfied its reporting obligations.²⁹ The CFTC states that these validation requirements are intended to ensure consistent validations across SDRs and provide standards for responses to error messages.³⁰

B. Verification of Data

Under the Data Verification amendments, SDRs will be required to provide a mechanism for reporting counterparties to access and verify the data for their open swaps held at the SDR.³¹ As a result, each reporting counterparty will be required to compare the SDR's data with the reporting counterparty's own records and verify that there are no errors for each data field for each open swap that the reporting counterparty was required to report. A reporting counterparty that is an SD, MSP or DCO must perform verification once every thirty calendar days. All other reporting counterparties, including commercial end user reporting counterparties, must perform verification once every calendar quarter, provided that there are at least two calendar months between verifications. Reporting counterparties are not required to notify the relevant SDR regarding the result of any verification (unless there is an error as described below), but must keep a log of each verification that it performs. The log must include all errors discovered during the verification, as well as the corrections made, and is in addition to all other swaps recordkeeping requirements.

C. Corrections

Reporting parties that *by any means* (and not just through the data verification process described above) become aware of any error relating to swap data that it was required to report under part 45,³² must

²⁶ See Certain Swap Data Repository and Data Reporting Requirements, 85 Fed. Reg. 75601 (Nov. 25, 2020).

²⁷ See CFTC Reg. §49.10(c)(1).

²⁸ See CFTC Reg. §49.10(c)(2).

²⁹ See CFTC Reg. §45.13(b).

³⁰ See 85 Fed. Reg. at 75539.

³¹ See CFTC Reg. §49.11.

³² Errors are described in CFTC Reg. §45.14(c), which provides that for the purposes of § 45.14, there is an error when swap data is not completely and accurately reported. Under final § 45.14(c)(1), errors include, but are not limited to: (i) where swap data is reported to an SDR, or is maintained by an SDR, containing incorrect information (i.e. the swap data is present, but is incorrect); (ii) where some required swap data for a swap is reported to an SDR, or is maintained by an SDR, and other required swap data is omitted (i.e. some required swap data elements are blank); (iii) where no required swap data for a swap is reported to an SDR, or maintained by

correct any errors or omissions as soon as technologically practicable, but no later than within seven business days of discovery.³³ To correct an error or omission, the reporting counterparty is required to submit complete and accurate swap data to the SDR that maintains the swap data for the relevant swap, or completely and accurately report swap data for a swap that was not previously reported to an SDR, in accordance with the policies of the SDR. If a reporting party believes that it cannot correct the data within seven business days, it must notify the CFTC's Division of Market Oversight within 12 hours of that determination. This notification must generally include an initial assessment of the scope of the error or errors and an initial remediation plan, if one exists.³⁴

While the Data Verification amendments largely place the verification and correction responsibilities on reporting counterparties, they also impose certain requirements on non-reporting counterparties. Specifically, if a non-reporting counterparty that by any means discovers an error must notify the reporting counterparty of the error. The notification must be made as soon as technologically practicable after discovery, but not later than three business days following discovery of the error.³⁵ Non-reporting counterparties are not required to verify swap data, however, and the notification requirement only extends to errors that the non-reporting counterparty discovers. If an error exists, the reporting counterparty, and not the non-reporting counterparty, will be required to correct the error. Although the proposed rules would have required the reporting counterparty and non-reporting counterparty to agree regarding an error, that requirement was omitted from the Final Rules. Thus, it is up to the reporting counterparty to determine if there is an error and report it.

Note that the error correction requirement applies irrespective of the status of the swap that is the subject of the incorrect or omitted swap data, including a swap that has been terminated or matured. However, the error correction requirement does not apply to swaps for which the applicable record retention period under CFTC Reg. § 45.2 has expired at the time the error is discovered.³⁶

IV. Compliance Dates

The CFTC has adopted a unified compliance date for the Final Rules that is May 25, 2022, except that the revised minimum block trade sizes and cap sizes will have a compliance date of May 25, 2023.

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an SDR, at all (i.e. none of the swap data was reported as required and/or is missing from the SDR); and (iv) where swap data for swaps that are no longer open is maintained by an SDR as if the swaps are still open (i.e., swap data for swaps that are no longer open swaps is still available during the verification process).

³³ See CFTC Reg. §45.14(a)(1)(i).

³⁴ See CFTC Reg. §45.14(a)(1)(ii).

³⁵ See CFTC Reg. §45.14(a)(2).

³⁶ See CFTC Reg. §45.14(a)(3).