

§ 43.3

17 CFR Ch. I (4–1–12 Edition)

available swap transaction and pricing data in a non-discriminatory manner, through the Internet or other electronic data feed that is widely published and in machine-readable electronic format.

Publicly reportable swap transaction means:

(1) Unless otherwise provided in this part—

(i) Any executed swap that is an arm's-length transaction between two parties that results in a corresponding change in the market risk position between the two parties; or

(ii) Any termination, assignment, novation, exchange, transfer, amendment, conveyance, or extinguishing of rights or obligations of a swap that changes the pricing of the swap.

(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

(ii) Portfolio compression exercises.

(3) These examples represent swaps that are not at arm's length and thus are not publicly reportable swap transactions, notwithstanding that they do result in a corresponding change in the market risk position between two parties.

Real-time public reporting means the reporting of data relating to a swap transaction, including price and volume, as soon as technologically practicable after the time at which the swap transaction has been executed.

Remaining party means a party to a swap that consents to a transferor's transfer by novation of all of the transferor's rights, liabilities, duties and obligations under such swap to a transferee.

Reporting party means the party to a swap with the duty to report a publicly reportable swap transaction in accordance with this part and section 2(a)(13)(F) of the Act.

Transferee means a party to a swap that accepts, by way of novation, all of a transferor's rights, liabilities, duties and obligations under such swap with respect to a remaining party.

Transferor means a party to a swap that transfers, by way of novation, all of its rights, liabilities, duties and obli-

gations under such swap, with respect to a remaining party, to a transferee.

Unique product identifier means a unique identification of a particular level of the taxonomy of the product in an asset class or sub-asset class in question, as further described in § 43.4(f) and appendix A to this part. Such unique product identifier may combine the information from one or more of the data fields described in appendix A.

Widely published means to publish and make available through electronic means in a manner that is freely available and readily accessible to the public.

§ 43.3 Method and timing for real-time public reporting.

(a) *Responsibilities of parties to a swap to report swap transaction and pricing data in real-time*—(1) *In general.* A reporting party shall report any publicly reportable swap transaction to a registered swap data repository as soon as technologically practicable after such publicly reportable swap transaction is executed. For purposes of this part, a registered swap data repository includes any swap data repository provisionally registered with the Commission pursuant to part 49 of this chapter.

(2) *Swaps executed on or pursuant to the rules of a registered swap execution facility or designated contract market.* A party to a publicly reportable swap transaction shall satisfy its reporting requirement under this section by executing a publicly reportable swap transaction on or pursuant to the rules of a registered swap execution facility or designated contract market.

(3) *Off-facility swaps.* All off-facility swaps shall be reported by the reporting party as soon as technologically practicable following execution, to a registered swap data repository for the appropriate asset class in accordance with the rules set forth in this part. Unless otherwise agreed to by the parties prior to the execution of the publicly reportable swap transaction, the following persons shall be reporting parties for off-facility swaps:

(i) If only one party is a swap dealer or major swap participant, then the swap dealer or major swap participant shall be the reporting party;

(ii) If one party is a swap dealer and the other party is a major swap participant, then the swap dealer shall be the reporting party;

(iii) If both parties are swap dealers, then the swap dealers shall designate which party shall be the reporting party;

(iv) If both parties are major swap participants, then the major swap participants shall designate which party shall be the reporting party;

(v) If neither party is a swap dealer or a major swap participant, then the parties shall designate which party (or its agent) shall be the reporting party.

(b) *Public dissemination of swap transaction and pricing data*—(1) *Publicly reportable swap transactions executed on or pursuant to the rules of a registered swap execution facility or designated contract market.* A registered swap execution facility or designated contract market shall satisfy the requirements of this subparagraph by transmitting swap transaction and pricing data to a registered swap data repository, as soon as technologically practicable after the publicly reportable swap transaction has been executed on or pursuant to the rules of such trading platform or facility.

(2) *Public dissemination of swap transaction and pricing data by registered swap data repositories.* A registered swap data repository shall ensure that swap transaction and pricing data is publicly disseminated, as soon as technologically practicable after such data is received from a registered swap execution facility, designated contract market or reporting party, unless such publicly reportable swap transaction is subject to a time delay described in § 43.5 of this part, in which case the publicly reportable swap transaction shall be publicly disseminated in the manner described in § 43.5.

(3) *Prohibitions on disclosure of data.* (i) If there is a registered swap data repository for an asset class, a registered swap execution facility or designated contract market shall not disclose swap transaction and pricing data relating to publicly reportable swap transactions in such asset class, prior to the public dissemination of such data by a registered swap data repository unless:

(A) Such disclosure is made no earlier than the transmittal of such data to a registered swap data repository for public dissemination;

(B) Such disclosure is only made to market participants on such registered swap execution facility or designated contract market;

(C) Market participants are provided advance notice of such disclosure; and

(D) Any such disclosure by the registered swap execution facility or designated contract market is non-discriminatory.

(ii) If there is a registered swap data repository for an asset class, a swap dealer or major swap participant shall not disclose swap transaction and pricing data relating to publicly reportable swap transactions in such asset class, prior to the public dissemination of such data by a registered swap data repository unless:

(A) Such disclosure is made no earlier than the transmittal of such data to a registered swap data repository for public dissemination;

(B) Such disclosure is only made to the customer base of such swap dealer or major swap participant, including parties who maintain accounts with or have been swap counterparties with such swap dealer or major swap participant;

(C) Swap counterparties are provided advance notice of such disclosure; and

(D) Any such disclosure by the swap dealer or major swap participant is non-discriminatory.

(c) *Requirements for registered swap data repositories in providing the public dissemination of swap transaction and pricing data in real-time*—(1) *Compliance with 17 CFR part 49.* Any registered swap data repository that accepts and publicly disseminates swap transaction and pricing data in real-time shall comply with part 49 of this chapter and shall publicly disseminate swap transaction and pricing data in accordance with this part as soon as technologically practicable upon receipt of such data, except as otherwise provided in this part.

(2) *Acceptance and public dissemination of all swaps in an asset class.* Any registered swap data repository that accepts and publicly disseminates swap transaction and pricing data in real-

time for swaps in its selected asset class shall accept and publicly disseminate swap transaction and pricing data in real-time for all publicly reportable swap transactions within such asset class, unless otherwise prescribed by the Commission.

(3) *Annual independent review.* Any registered swap data repository that accepts and publicly disseminates swap transaction and pricing data in real-time shall perform, on an annual basis, an independent review in accordance with established audit procedures and standards of the registered swap data repository's security and other system controls for the purposes of ensuring compliance with the requirements in this part.

(d) *Availability of swap transaction and pricing data to the public.* (1) Registered swap data repositories shall publicly disseminate swap transaction and pricing data in a consistent, usable and machine-readable electronic format that allows the data to be downloaded, saved and analyzed.

(2) Data that is publicly disseminated pursuant to this part shall be available from an Internet Web site in a format that is freely available and readily accessible to the public.

(3) Registered swap data repositories shall provide to the Commission a hyperlink to the Internet Web site where publicly disseminated swap transaction and pricing data can be accessed by the public.

(e) *Errors or omissions—(1) In general.* Any errors or omissions in swap transaction and pricing data that were publicly disseminated in real-time shall be corrected or cancelled in the following manner:

(i) If a party to the swap becomes aware of an error or omission in the swap transaction and pricing data reported with respect to such swap, such party shall promptly notify the other party of the error and/or correction.

(ii) If a reporting party to a swap becomes aware of an error or omission in the swap transaction or pricing data which it reported to a registered swap data repository or which was reported by a registered swap execution facility or designated contract market with respect to such swap, either through its own initiative or through notice by the

other party to the swap, the reporting party shall promptly submit corrected data to the same registered swap execution facility, designated contract market or registered swap data repository.

(iii) If the registered swap execution facility or designated contract market becomes aware of an error or omission in the swap transaction or pricing data reported with respect to such swap, or receives notification from the reporting party, the registered swap execution facility or designated contract market shall promptly submit corrected data to the same registered swap data repository.

(iv) Any registered swap data repository that accepts and publicly disseminates swap transaction and pricing data in real-time shall publicly disseminate any cancellations or corrections to such data, as soon as technologically practicable after receipt or discovery of any such cancellation or correction.

(2) *Improper cancellation or correction.* Reporting parties, registered swap execution facilities, designated contract markets and registered swap data repositories shall not submit or agree to submit a cancellation or correction for the purpose of re-reporting swap transaction and pricing data in order to gain or extend a delay in public dissemination of accurate swap transaction or pricing data or to otherwise evade the reporting requirements in this part.

(3) *Cancellation.* A registered swap data repository shall cancel any incorrect data that had been publicly disseminated by publicly disseminating a cancellation of such data, as soon as technologically practicable, in the manner described in appendix A to this part.

(4) *Correction.* A registered swap data repository shall correct any incorrect data that had been publicly disseminated by publicly disseminating a cancellation of the incorrect swap transaction and pricing data and then publicly disseminating the correct data, as soon as technologically practicable, in the manner described in appendix A to this part.

(f) *Hours of operation of registered swap data repositories.* Unless otherwise provided in this subsection, a registered

swap data repository shall have systems in place to continuously receive and publicly disseminate swap transaction and pricing data in real-time pursuant to this part.

(1) A registered swap data repository may declare closing hours to perform system maintenance.

(2) A registered swap data repository shall, to the extent reasonably possible, avoid scheduling closing hours when, in its estimation, the U.S. market and major foreign markets are most active.

(3) A registered swap data repository shall comply with the requirements under part 40 of this chapter in setting closing hours and shall provide advance notice of its closing hours to market participants and the public.

(g) *Acceptance of data during closing hours.* During closing hours, a registered swap data repository shall have the capability to receive and hold in queue any data regarding publicly reportable swap transactions pursuant to this part.

(1) Upon any reopening after closing hours, a registered swap data repository shall promptly and publicly disseminate the swap transaction and pricing data of swaps held in queue, in accordance with the requirements of this part.

(2) If at any time during closing hours a registered swap data repository is unable to receive and hold in queue swap transaction and pricing data pursuant to this part, then the registered swap data repository shall immediately upon reopening issue notice that it has resumed normal operations. Any registered swap execution facility, designated contract market or reporting party that is obligated under this section to report data to the registered swap data repository shall report the data to the registered swap data repository immediately after receiving such notice.

(h) *Timestamp requirements.* In addition to the execution timestamp described in appendix A to this part, registered entities, swap dealers and major swap participants shall have the following timestamp requirements with respect to real-time public reporting of swap transaction and pricing

data for all publicly reportable swap transactions:

(1) A registered swap execution facility or designated contract market shall timestamp swap transaction and pricing data relating to a publicly reportable swap transaction with the date and time, to the nearest second of when such registered swap execution facility or designated contract market:

(i) Receives data from a swap counterparty (if applicable); and

(ii) Transmits such data to a registered swap data repository for public dissemination.

(2) A registered swap data repository shall timestamp swap transaction and pricing data relating to a publicly reportable swap transaction with the date and time, to the nearest second when such registered swap data repository:

(i) Receives data from a registered swap execution facility, designated contract market or reporting party; and

(ii) Publicly disseminates such data.

(3) A swap dealer or major swap participant shall timestamp swap transaction and pricing data relating to an off-facility swap with the date and time, to the nearest second when such swap dealer or major swap participant transmits such data to a registered swap data repository for public dissemination.

(4) Records of all timestamps required by this subsection shall be maintained for a period of at least five years from the execution of the publicly reportable swap transaction.

(i) *Fees.* Any fees or charges assessed on a reporting party, registered swap execution facility or designated contract market by a registered swap data repository that accepts and publicly disseminates swap transaction and pricing data in real-time for the collection of such data shall be equitable and non-discriminatory. If such registered swap data repository allows a fee discount based on the volume of data reported to it for public dissemination, then such discount shall be made available to all reporting parties, registered swap execution facilities and designated contract markets in an equitable and non-discriminatory manner.