

## § 46.2

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currencies, changes in such rates, or other aspects of such rates (sometimes known as “cross-currency swaps”).

*Interest rate swap* means any swap which is primarily based on one or more interest rates, such as swaps of payments determined by fixed and floating interest rates; or any swap which is primarily based on rates of exchange between different currencies, changes in such rates, or other aspects of such rates (sometimes known as “cross-currency swaps”).

*International swap* means a swap required by U.S. law and the law of another jurisdiction to be reported both to a swap data repository and to a different trade repository registered with the other jurisdiction.

*Major swap participant* has the meaning set forth in CEA section 1a(33) and in part 1 of this chapter.

*Minimum primary economic terms* means, with respect to a historical swap, the terms included in the list of minimum primary economic terms for swaps in each swap asset class found in appendix 1 to this part.

*Minimum primary economic terms data* means all of the data elements necessary to fully report all of the minimum primary economic terms required by this part to be reported for a swap in the swap asset class of the swap in question.

*Mixed swap* has the meaning set forth in CEA section 1a(47)(D), and refers to an instrument that is in part a swap subject to the jurisdiction of the Commission, and in part a security-based swap subject to the jurisdiction of the SEC.

*Multi-asset swap* means a swap that does not have one easily identifiable primary underlying notional item, but instead involves multiple underlying notional items within the Commission’s jurisdiction that belong to different asset classes.

*Non-SD/MSP counterparty* means a swap counterparty that is neither a swap dealer nor a major swap participant.

*Other commodity swap* means any swap not included in the credit, equity, foreign exchange, or interest rate asset classes, including, without limitation, any swap for which the primary underlying item is a physical commodity or

the price or any other aspect of a physical commodity.

*Pre-enactment swap* means any swap entered into prior to enactment of the Dodd-Frank Act of 2010 (July 21, 2010), the terms of which have not expired as of the date of enactment of that Act.

*Reporting counterparty* means the counterparty required to report swap data pursuant to this part, selected as provided in § 46.5.

*Required swap continuation data* means all of the data elements that must be reported during the existence of a swap as required by part 45 of this chapter.

*Swap data repository* has the meaning set forth in CEA section 1a(48), and in part 49 of this chapter.

*Swap dealer* has the meaning set forth in CEA section 1a(49), and in part 1 of this chapter.

*Transition swap* means any swap entered into on or after the enactment of the Dodd-Frank Act of 2010 (July 21, 2010) and prior to the applicable compliance date on which a registered entity or swap counterparty subject to the jurisdiction of the Commission is required to commence full compliance with all provisions of this part, as set forth in the preamble to this part.

### § 46.2 Recordkeeping for pre-enactment swaps and transition swaps.

(a) *Recordkeeping for pre-enactment and transition swaps in existence on or after April 25, 2011.* Each counterparty subject to the jurisdiction of the Commission that is a counterparty to any pre-enactment swap or transition swap that is in existence on or after April 25, 2011 shall keep the following records concerning each such swap:

(1) *Minimum records required.* Each counterparty shall keep records of all of the minimum primary economic terms data specified in appendix 1 to this part.

(2) *Additional records required to be kept if possessed by a counterparty.* In addition to the minimum records required pursuant to paragraph (a)(1) of this part, a counterparty that is in possession at any time on or after April 25, 2011 of any of the following documentation shall keep copies thereof:

(i) Any confirmation of the swap executed by the counterparties.

(ii) Any master agreement governing the swap, and any modification or amendment thereof.

(iii) Any credit support agreement, or other agreement between the counterparties having the same function as a credit support agreement, relating to the swap, and any modification or amendment thereof.

(3) *Records created or available after the compliance date.* In addition to the records required to be kept pursuant to paragraphs (a)(1) and (2) of this section, each counterparty to any pre-enactment swap or transition swap that remains in existence on the compliance date shall keep for each such swap, from the compliance date forward, all of the records required to be kept by section 45.2 of this chapter, to the extent that any such records are created by or become available to the counterparty on or after the compliance date.

(4) *Retention form.* Records required to be kept pursuant to this section with respect to historical swaps in existence on or after April 25, 2011, must be kept as required by paragraph (a)(4)(i) or (ii) of this section, as applicable.

(i) Records required to be kept by swap dealers or major swap participants may be kept in electronic form, or kept in paper form if originally created and exclusively maintained in paper form, so long as they are retrievable, and information in them is reportable as required by this part.

(ii) Records required to be kept by non-SD/MSP counterparties may be kept in either electronic or paper form, so long as they are retrievable, and information in them is reportable, as required by this part.

(b) *Recordkeeping for pre-enactment and transition swaps expired or terminated prior to April 25, 2011.* Each counterparty subject to the jurisdiction of the Commission that is a counterparty to any pre-enactment swap or transition swap that is expired or terminated prior to April 25, 2011 shall keep the following records concerning each such swap:

(1) *Pre-enactment swaps expired prior to April 25, 2011.* Each counterparty to any pre-enactment swap that expired or was terminated prior to April 25, 2011

shall retain the information and documents relating to the terms of the transaction that were possessed by the counterparty on or after October 14, 2010 (17 CFR 44.00 through 44.02). Such information may be retained in the format in which it existed on or after October 14, 2010, or in such other format as the counterparty chooses to retain it. This paragraph (b)(1) does not require the counterparty to create or retain records of information not in its possession on or after October 14, 2010, or to alter the format, *i.e.*, the method by which the information is organized and stored.

(2) *Transition swaps expired prior to April 25, 2011.* Each counterparty to any transition swap that expired or was terminated prior to April 25, 2011 shall retain the information and documents relating to the terms of the transaction that were possessed by the counterparty on or after December 17, 2010 (17 CFR 44.03). Such information may be retained in the format in which it existed on or after December 17, 2010, or in such other format as the counterparty chooses to retain it. This paragraph (b)(2) does not require the counterparty to create or retain records of information not in its possession on or after December 17, 2010, or to alter the format, *i.e.*, the method by which the information is organized and stored.

(c) *Retention period.* All records required to be kept by this section shall be kept from the applicable dates specified in paragraphs (a) or (b) of this section through the life of the swap, and for a period of at least five years from the final termination of the swap.

(d) *Retrieval.* Records required to be kept pursuant to this section shall be retrievable as follows.

(1) *Retrieval for pre-enactment and transition swaps in existence on or after April 25, 2011.* Records concerning pre-enactment and transition swaps in existence on or after April 25, 2011, shall be retrievable as follows:

(i) Each record required to be kept by a counterparty that is a swap dealer or major swap participant shall be readily accessible via real time electronic access by the counterparty throughout the life of the swap and for two years following the final termination of the

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swap, and shall be retrievable by the registrant or its affiliates within three business days through the remainder of the period following final termination of the swap during which it is required to be kept.

(ii) Each record required to be kept by a non-SD/MSP counterparty shall be retrievable by the counterparty within five business days throughout the period during which it is required to be kept.

(2) *Retrieval for pre-enactment and transition swaps expired or terminated prior to April 25, 2011.* Records concerning pre-enactment and transition swaps expired or terminated prior to April 25, 2011, shall be retrievable by the counterparty within five business days throughout the period during which they are required to be kept.

(e) *Inspection.* All records required to be kept pursuant to this section by any registrant or its affiliates or by any counterparty subject to the jurisdiction of the Commission shall be open to inspection upon request by any representative of the Commission, the United States Department of Justice, or the Securities and Exchange Commission, or by any representative of a prudential regulator as authorized by the Commission. Copies of all such records shall be provided, at the expense of the entity or person required to keep the record, to any representative of the Commission upon request. With respect to historical swaps in existence on or after April 25, 2011, copies of records required to be kept by any swap dealer or major swap participant shall be provided either by electronic means, in hard copy, or both, as requested by the Commission, with the sole exception that copies of records originally created and exclusively maintained in paper form may be provided in hard copy only; and copies of records required to be kept by any non-SD/MSP counterparty shall be provided in the form, whether electronic or paper, in which the records are kept. With respect to historical swaps expired or terminated prior to April 25, 2011, records shall be provided in the form, whether electronic or paper, in which the records are kept.

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#### § 46.3 Swap data reporting for pre-enactment swaps and transition swaps.

(a) *Reporting for pre-enactment and transition swaps in existence on or after April 25, 2011—(1) Initial data report.* For each pre-enactment swap or transition swap in existence on or after April 25, 2011, the reporting counterparty shall report electronically to a swap data repository (or to the Commission if no swap data repository for swaps in the asset class in question is available), on the compliance date, the following:

(i) All of the minimum primary economic terms data specified in appendix 1 to this part that were in the possession of the reporting counterparty on or after April 25, 2011;

(ii) The legal entity identifier of the reporting counterparty required pursuant to § 46.4; and

(iii) The following additional identifiers:

(A) The internal counterparty identifier or legal entity identifier used by the reporting counterparty to identify the non-reporting counterparty; and

(B) The internal transaction identifier used by the reporting counterparty to identify the swap.

(2) *Reporting of required swap continuation data.* (1) For each uncleared pre-enactment or transition swap in existence on or after April 25, 2011, throughout the existence of the swap following the compliance date, the reporting counterparty must report all required swap continuation data required to be reported pursuant to part 45 of this chapter, with the exception that when a reporting counterparty reports changes to minimum primary economic terms for a pre-enactment or transition swap, the reporting counterparty is required to report only changes to the minimum primary economic terms listed in appendix 1 to this part and reported in the initial data report made pursuant to paragraph (a)(1) of this section, rather than changes to all minimum primary economic terms listed in appendix 1 to part 45.

(ii) Swap continuation data reporting is not required for a pre-enactment or transition swap in existence on or after April 25, 2011, that has been cleared by a designated clearing organization.