

following information with respect to the swap transaction:

(i) A copy of the transaction confirmation, in electronic form if available, or in written form if there is no electronic copy;

(ii) The time, if available, that the transaction was executed; and

(2) Report to the Commission on request, in the form and manner prescribed by the Commission, any information relating to the swap transaction.

NOTE TO PARAGRAPH (a). In order to comply with the reporting requirements contained in paragraphs (a)(1) and (a)(2) of this section, each counterparty to a post-enactment pre-effective swap transaction that may be required to report such transaction should retain, in its existing format, all information and documents, to the extent and in such form as they exist on the effective date of this section, relating to: the terms of a swap transaction, including but not limited to any information necessary to identify and value the transaction (*e.g.*, underlying asset and tenor); the date and time of execution of the transaction; volume (*e.g.*, notional or principal amount); information relevant to the price and payment for the transaction until the swap is terminated, reaches maturity or is novated; whether the transaction was accepted for clearing and, if so, the identity of such clearing organization; any modification(s) to the terms of the transaction; and the final confirmation of the transaction.

(b) Reporting party. The counterparties to a swap transaction shall report the information required under paragraph (a) of this section as follows:

(1) Where only one counterparty to a swap transaction is a swap dealer or a major swap participant, the swap dealer or major swap participant shall report the transaction;

(2) Where one counterparty to a swap transaction is a swap dealer and the other counterparty is a major swap participant, the swap dealer shall report the transaction; and

(3) Where neither counterparty to a swap transaction is a swap dealer or a major swap participant, the counterparties to the transaction shall select the counterparty who will report the transaction.

[75 FR 78896, Dec. 17, 2010]

PART 45—SWAP DATA RECORD-KEEPING AND REPORTING REQUIREMENTS

Sec.

45.1 Definitions.

45.2 Swap recordkeeping.

45.3 Swap data reporting: Creation data.

45.4 Swap data reporting: Continuation data.

45.5 Unique swap identifiers.

45.6 Legal entity identifiers.

48.7 Unique product identifiers.

45.8 Determination of which counterparty must report.

45.9 Third-party facilitation of data reporting.

45.10 Reporting to a single swap data repository.

45.11 Data reporting for swaps in a swap asset class not accepted by any swap data repository.

45.12 Voluntary supplemental reporting.

45.13 Required data standards.

45.14 Reporting of errors and omissions in previously reported data.

APPENDIX 1 TO PART 45—TABLES OF MINIMUM PRIMARY ECONOMIC TERMS DATA.

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

SOURCE: 77 FR 2197, Jan. 13, 2012, unless otherwise noted.

§ 45.1 Definitions.

As used in this part:

Asset class means the broad category of goods, services or commodities, including any “excluded commodity” as defined in CEA section 1a(19), with common characteristics underlying a swap. The asset classes include credit, equity, foreign exchange (excluding cross-currency), interest rate (including cross-currency), other commodity, and such other asset classes as may be determined by the Commission.

Business day means the twenty-four hour day, on all days except Saturdays, Sundays, and legal holidays, in the location of the reporting counterparty or registered entity reporting data for the swap.

Business hours means consecutive hours during one or more consecutive business days.

Compliance date means the applicable 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.

Confirmation (“confirming”) means the consummation (electronically or otherwise) of legally binding documentation (electronic or otherwise) that memorializes the agreement of the parties to all terms of a swap. A confirmation must be in writing (whether electronic or otherwise) and must legally supersede any previous agreement (electronically or otherwise).

Confirmation data means all of the terms of a swap matched and agreed upon by the counterparties in confirming the swap. For cleared swaps, confirmation data also includes the internal identifiers assigned by the automated systems of the derivatives clearing organization to the two transactions resulting from novation to the clearing house.

Credit swap means any swap that is primarily based on instruments of indebtedness, including, without limitation: Any swap primarily based on one or more broad-based indices related to instruments of indebtedness; and any swap that is an index credit swap or total return swap on one or more indices of debt instruments.

Derivatives clearing organization has the meaning set forth in CEA section 1a(9), and any Commission regulation implementing that Section, including, without limitation, §39.5 of this chapter.

Designated contract market has the meaning set forth in CEA section 5, and any Commission regulation implementing that Section.

Electronic confirmation (confirmation “occurs electronically”) means confirmation that is done by means of automated electronic systems.

Electronic reporting (“report electronically”) means the reporting of data normalized in data fields as required by the data standard or standards used by the swap data repository to which the data is reported. Except where specifically otherwise provided in this chapter, electronic reporting does not include submission of an image of a document or text file.

Electronic verification (verification “occurs electronically”) means verification that is done by means of automated electronic systems.

Financial entity has the meaning set forth in CEA section 2(h)(7)(C).

Foreign exchange forward has the meaning set forth in CEA section 1a(24).

Foreign exchange instrument means an instrument that is both defined as a swap in part 1 of this chapter and included in the foreign exchange asset class. Instruments in the foreign exchange asset class include: Any currency option, foreign currency option, foreign exchange option, or foreign exchange rate option; any foreign exchange forward as defined in CEA section 1a(24); any foreign exchange swap as defined in CEA section 1a(25); and any non-deliverable forward involving foreign exchange.

Foreign exchange swap has the meaning set forth in CEA section 1a(25). It does not include swaps 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”).

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.

Life cycle event means any event that would result in either a change to a primary economic term of a swap or to any primary economic terms data previously reported to a swap data repository in connection with a swap. Examples of such events include, without limitation, a counterparty change resulting from an assignment or novation; a partial or full termination of the swap; a change to the end date for the swap; a change in the cash flows or rates originally reported; availability

§ 45.1

17 CFR Ch. I (4–1–14 Edition)

of a legal entity identifier for a swap counterparty previously identified by name or by some other identifier; or a corporate action affecting a security or securities on which the swap is based (e.g., a merger, dividend, stock split, or bankruptcy).

Life cycle event data means all of the data elements necessary to fully report any life cycle event.

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

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-electronic confirmation (confirmation “does not occur electronically”) means confirmation that is done manually rather than by means of automated electronic systems.

Non-electronic verification (verification “does not occur electronically”) means verification that is done manually rather than by means of automated electronic systems.

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

Off-facility swap means a swap not executed on or pursuant to the rules of a swap execution facility or designated contract market.

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.

Primary economic terms means all of the terms of a swap matched or affirmed by the counterparties in verifying the swap, including at a minimum each of the terms included in the most recent FEDERAL REGISTER release

by the Commission listing minimum primary economic terms for swaps in the swap asset class in question. The Commission's current lists of minimum primary economic terms for swaps in each swap asset class are found in appendix 1 to part 45.

Primary economic terms data means all of the data elements necessary to fully report all of the primary economic terms of a swap in the swap asset class of the swap in question.

Quarterly reporting (“reported quarterly”) means reporting four times each fiscal year, following the end of each fiscal year quarter, making each quarterly report within 30 calendar days of the end of the fiscal year quarter.

Reporting counterparty means the counterparty required to report swap data pursuant to this part, selected as provided in § 45.8.

Required swap continuation data means all of the data elements that must be reported during the existence of a swap to ensure that all data concerning the swap in the swap data repository remains current and accurate, and includes all changes to the primary economic terms of the swap occurring during the existence of the swap. For this purpose, required swap continuation data includes:

(1) All life cycle event data for the swap if the swap is reported using the life cycle reporting method, or all state data for the swap if the swap is reported using the snapshot reporting method; and

(2) All valuation data for the swap.

Required swap creation data means all primary economic terms data for a swap in the swap asset class in question, and all confirmation data for the swap.

State data means all of the data elements necessary to provide a snapshot view, on a daily basis, of all of the primary economic terms of a swap in the swap asset class of the swap in question, including any change to any primary economic term or to any previously-reported primary economic terms data since the last snapshot. At a minimum, state data must include each of the terms included in the most recent FEDERAL REGISTER release by

the Commission listing minimum primary economic terms for swaps in the swap asset class in question. The Commission's current lists of minimum primary economic terms for swaps in each swap asset class are found in appendix 1 to part 45.

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.

Swap execution facility has the meaning set forth in CEA section 1a(50) and in part 37 of this chapter.

Valuation data means all of the data elements necessary to fully describe the daily mark of the transaction, pursuant to CEA section 4s(h)(3)(B)(iii), and to § 23.431 of this chapter if applicable.

Verification ("verify," "verified," or "verifying") means the matching by the counterparties to a swap of each of the primary economic terms of a swap, at or shortly after the time the swap is executed.

§ 45.2 Swap recordkeeping.

(a) *Recordkeeping by swap execution facilities, designated contract markets, derivatives clearing organizations, swap dealers, and major swap participants.* Each swap execution facility, designated contract market, derivatives clearing organization, swap dealer, and major swap participant subject to the jurisdiction of the Commission shall keep full, complete, and systematic records, together with all pertinent data and memoranda, of all activities relating to the business of such entity or person with respect to swaps, as prescribed by the Commission. Such records shall include, without limitation, the following:

(1) For swap execution facilities, all records required by part 37 of this chapter.

(2) For designated contract markets, all records required by part 38 of this chapter.

(3) For derivatives clearing organizations, all records required by part 39 of this chapter.

(4) For swap dealers and major swap participants, all records required by part 23 of this chapter, and all records

demonstrating that they are entitled, with respect to any swap, to elect the clearing requirement exception pursuant to CEA section 2(h)(7).

(b) *Recordkeeping by non-SD/MSP counterparties.* All non-SD/MSP counterparties subject to the jurisdiction of the Commission shall keep full, complete, and systematic records, together with all pertinent data and memoranda, with respect to each swap in which they are a counterparty, including, without limitation, all records demonstrating that they are entitled, with respect to any swap, to elect the clearing requirement exception in CEA section 2(h)(7).

(c) *Record retention.* All records required to be kept pursuant to this section shall be retained with respect to each swap throughout the life of the swap and for a period of at least five years following the final termination of the swap.

(d) *Retention form.* Records required to be kept pursuant to this section must be kept as required by paragraph (d)(1) or (2) of this section, as applicable.

(1) Records required to be kept by swap execution facilities, designated contract markets, derivatives clearing organizations, 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 section.

(2) 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 section.

(e) *Record retrievability.* Records required to be kept by swap execution facilities, designated contract markets, derivatives clearing organizations, or swap counterparties pursuant to this section shall be retrievable as provided in paragraphs (e)(1) and (2) of this section, as applicable.

(1) Each record required by this section or any other section of the CEA to be kept by a swap execution facility,