

PART 46—SWAP DATA RECORD-KEEPING AND REPORTING REQUIREMENTS: PRE-ENACTMENT AND TRANSITION SWAPS

Sec.

- 46.1 Definitions.
- 46.2 Recordkeeping for pre-enactment swaps and transition swaps.
- 46.3 Swap data reporting for pre-enactment swaps and transition swaps.
- 46.4 Unique identifiers.
- 46.5 Determination of which counterparty must report.
- 46.6 Third-party facilitation of data reporting.
- 46.7 Reporting to a single swap data repository.
- 46.8 Data reporting for swaps in a swap asset class not accepted by any swap data repository.
- 46.9 Voluntary supplemental reporting
- 46.10 Required data standards.
- 46.11 Reporting of errors and omissions in previously reported data.

APPENDIX 1 TO PART 46—TABLES OF MINIMUM PRIMARY ECONOMIC TERMS DATA FOR PRE-ENACTMENT AND TRANSITION SWAPS

AUTHORITY: Title VII, sections 723 and 729, Pub. L. 111–203, 124 Stat. 1738.

SOURCE: 77 FR 35226, June 12, 2012, unless otherwise noted.

§ 46.1 Definitions.

Terms used in this part are defined as follows:

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.

Compliance date means the applicable date, as specified in part 45 of this chapter, 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 and with all applicable provisions of part 45 of this chapter, 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.

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.

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.

Equity swap means any swap that is primarily based on equity securities, including, without limitation: any swap primarily based on one or more broad-based indices of equity securities; and any total return swap on one or more equity indices.

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.

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 under-

lying 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: