
*Via E-mail*

May 27, 2014

Secretary of the Commission
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20581

**Regarding: (RIN Number 3038-AE12) Review of Swap Data Recordkeeping and Reporting Requirements**

Dear Ms. Jurgens:

The Financial Services Roundtable[1] ("FSR") respectfully submits these comments with respect to the request for comment of the Commodity Futures Trading Commission (the "Commission") titled Review of Swap Data Recordkeeping and Reporting Requirements (the "Request for Comment").[2]

Many of our members qualify routinely as the reporting counterparty under Part 45 of the Commission's regulations by virtue of being swap dealers ("SDs") or financial entities. As such, our members have been involved in many industry discussions surrounding the Commission's reporting requirements. While many aspects of the reporting regime have functioned well, we believe that there are certain areas that could be improved, and we therefore appreciate the Commission's efforts to improve its reporting regime.

The scope of the Commission's inquiry is sufficiently broad that we found it necessary to focus on a limited number of specific aspects of the reporting regime that are of particular concern to our members and specific questions raised by the

[1] As advocates for a strong financial future, FSR represents the largest integrated financial services companies providing banking, insurance, payment and investment products and services to the American consumer. Member companies participate through the Chief Executive Officer and other senior executives nominated by the CEO. FSR member companies provide fuel for America's economic engine, accounting directly for $98.4 trillion in managed assets, $1.1 trillion in revenue, and 2.4 million jobs.

[2] Review of Swap Data Recordkeeping and Reporting Requirements, 79 Fed. Reg. 16689 (March 26, 2014).

Commission. However, we urge the Commission to continue to review its reporting requirements as additional data is received.

## I. Valuation Data

The Commission has asked about the most effective means for valuation data to be reported to swap data repositories ("SDRs") to facilitate Commission oversight, and whether SDs and major swap participants ("MSPs") should continue to be required to report their own valuation data for cleared swaps to SDRs.[3] We believe that the relevant derivative clearing organization ("DCO") should be the only entity reporting such valuation data to the Commission for cleared swaps.

Under Commission Rule 45.4(b)(2)(i), the relevant DCO is required to report valuation data on a daily basis for cleared swaps. DCOs generally rely on input from their clearing members, which may include SDs and MSPs, to determine appropriate valuation data, and thus undergo a process of validating such data through market input that is likely to be more comprehensive than any process supporting valuation data for a single SD or MSP. Additionally, a DCO's valuation is the one that is used for purposes of issuing margin calls and ultimately settling cleared swaps, so an SD's or MSP's independent valuation is of little, if any, relevance and may result in confusion in certain instances. Therefore, we believe that the Commission should eliminate the requirement for SDs and MSPs to report valuation data for cleared swaps.

## II. Guarantees

The Commission has asked whether the fact that a swap is guaranteed should be a required data element for SDR reporting, what information should be provided, and what challenges such reporting would present to the reporting counterparty.[4] We do not believe that the Commission should require counterparties to report any information regarding the fact that a swap is guaranteed.

The complications that would result from requiring reporting of a swap guarantee are most apparent in the common context of swaps entered into by a bank counterparty with commercial end-user/borrowers that are secured and guaranteed under the borrower's credit agreement. Credit agreements often include guarantees and pledges by a number (sometimes dozens) of affiliated entities, the identity of which may change over time as a result of mergers,

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[3] *See* Request for Comment, 79 Fed. Reg. at 16691, Question 8.

[4] *See* Request for Comment, 79 Fed. Reg. at 16693, Question 29(d). Note that the Commission indicated in its product definitions rule that it would provide such clarity at a later date. *See* Further Definition of "Swap," "Security-Based Swap," and "Security-Based Swap Agreement"; Mixed Swaps; Security-Based Swap Agreement Recordkeeping; Final Rule, 77 Fed. Reg. 48208, 48225-26 (Aug. 13, 2012).

acquisitions, dispositions and internal reorganizations. Guarantors may be added and released with some regularity, particularly in larger corporate groups. The bank counterparty may not even know with certainty which entities are guarantors, since entities that are not eligible contract participants are typically excluded automatically as guarantors of the swap even if they have signed the credit agreement. Additionally, a bank counterparty will typically not have detailed information on all guarantors, such as would be required consistent with full treatment under Commission Rules 45.3 and 45.4. If guarantees were required to be reported as swaps, it is likely that all guarantors would be required to obtain a legal entity identifier ("LEI") in order to comply with such a requirement, which would generally add an unnecessary cost for commercial entities that are not swap counterparties in their own right.

In general, we believe that requiring the reporting of swap guarantees would add little value for guarantees provided by affiliated entities and would create a significant burden ultimately on the end user guarantors to provide ongoing information to the reporting counterparty, as well as significant risk of error in the reporting as the status and identity of the guarantors shift over time. Many of the data requirements specified in Part 45 are either inapplicable to guarantees or would result in redundancy and inefficiency.

We therefore urge the Commission not to require that swap guarantees be reported under Part 45. We note, however, that if the Commission were to require such information to be reported, it must clearly delineate the types of agreements that would be considered a "guarantee" and therefore subject to the reporting requirement, and resolve other foreseeable issues in this regard, such as (i) the specific creation and continuation data fields that must be completed, (ii) whether LEIs must be obtained for all guarantors (although we strongly encourage the Commission not to impose this requirement), (iii) who the appropriate reporting counterparty would be, and (iv) how cleared swaps that are technically subject to blanket (all-obligation) guarantees should be treated. The Commission would also need to determine an appropriate vehicle for the report—*e.g.*, whether the guarantee would be included in the report for the underlying swap or would need to be separately reported.

## III. Swaps with Multiple Counterparties

The Commission has asked how information should be provided for a swap with more than two counterparties.[5] We believe that most of the data required under Part 45 can be reported under the normal procedures even in such circumstances. However, we note that the Exhibits to Part 45 only require the LEI of the reporting counterparty and the non-reporting counterparty to be reported,

[5] *See id.* at 16694, Question 30(a).

and do not contemplate the possibility of multiple non-reporting counterparties.[6] We understand that market participants take differing views on whether an LEI must be reported for each counterparty when there are multiple counterparties on one side of a transaction. We believe such multiple-counterparty swaps are most likely to come up in the context of commercial end-users, and thus that the utility of having multiple LEIs for affiliated entities is limited. We suggest that the Commission should not require each affiliated entity to a multi-party swap to provide a separate LEI.

## IV. Cross-Border Harmonization

Commission Rule 45.3(h) requires the reporting counterparty for an international swap (*i.e.*, swaps that are required to be reported by U.S. law and the law of another jurisdiction) to report to the relevant 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.[7] This provision is intended to provide a method for the Commission and non-U.S. regulators to avoid "double-counting" swaps reported to a U.S. SDR and a non-U.S. trade repository.

To our knowledge, however, no other jurisdiction has required reporting parties to international swaps to identify this information. European regulators, for example, require derivatives counterparties (or an execution platform, if applicable) to create a unique trade identifier ("UTI") for such derivatives contract,[8] but have stated that "[f]or derivative contracts that are also reportable under the provisions of the Dodd-Frank Act, the same value as would be reported under the Dodd-Frank Act, i.e. the Unique Swap Identifier, could be used."[9] Rather than imposing a separate workflow requirement on international swaps, then, European regulators would identify such swaps by virtue of their identical swap identifiers. This also has the advantage of attributing only one identifier to an international swap, whereas under Commission Rule 45.3(h), a single swap could have two identifiers.

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[6] *See, e.g.*, Swap Data Recordkeeping and Reporting Requirements, 77 Fed. Reg. 2136, 2214 (Jan. 13, 2012).

[7] *See* 17 C.F.R. § 45.3(h).

[8] *See* Commission Delegated Regulation (EU) No 148/2013 (Table 2, Field 8) (stating that, in the absence of a Trade ID agreed at the European Level, a unique code should be generated and agreed with the other counterparty); Commission Implementing Regulation (EU) No 1247/2012 (stating that a Trade ID can have up to 52 alphanumerical digits).

[9] *See* Questions and Answers, Implementation of the Regulation (EU) No 648/2012 on OTC derivatives, central counterparties and trade repositories (EMIR) at 65, *available at* http://www.esma.europa.eu/system/files/2014-297_qa_vii_on_emir_implementation_20_march_14_0.pdf.

We note the existence of a further problem in cases where the U.S. reporting counterparty is not the counterparty effecting the report in the foreign jurisdiction—the former will typically not have information regarding the data reported by the latter and often no ready way of obtaining it on a timely basis. This fact pattern concerns particularly our members who are not swap dealers.

We note that The International Swaps and Derivatives Association, Inc. ("ISDA") has published a paper setting forth certain best practices for identifying international swaps titled *Unique Trade Identifiers (UTI): Generation, Communication and Matching*.[10] We believe that adopting these best practices would address the Commission's goals behind Commission Rule 45.3(h). Specifically, one of the "key principles" of this paper is that "[i]f a trade requires a Unique Swap Identifier (USI), this should be used as the UTI."[11] Therefore, if the counterparties to an international swap use the same identifier to report such swap to two different SDRs, then the relevant regulators could avoid double-counting by disregarding one of the two swaps with the same identifier. We therefore urge the Commission to adopt the ISDA best practices, and note that if the Commission were to do so, it should amend Rule 45.3(h) accordingly.

## V. Uniform Reporting Standards

The Commission requested comment on any challenges associated with reporting required data fields.[12] We have found that some SDRs permit certain data fields to be completed in any number of different ways, which causes difficulty for market participants using automated portfolio reconciliation systems. For example:

- For interest rate swaps, some reporting parties report "LIBOR," some report "USD LIBOR," some report "T3750," and others report "BBA LIBOR."
- For all swaps, some SDRs do not mandate that reporting parties use a given rounding convention or decimal point convention. As a result, some reporting counterparties report rates as the percentage (*e.g.*, 2.5%) while others report the same rate as a decimal fraction (*e.g.*, .025).
- For interest rate swaps, some reporting counterparties report the "initial notional" and others report amortized notionals, which are not always taken from the current period.

We therefore encourage the Commission to promulgate rules or issue interpretations standardizing the data elements used for reporting purposes, or to

[10] ISDA, *Unique Trade Identifier (UTI): Generation, Communication and Matching* (July 15, 2013).

[11] *See id.* at 4.

[12] *See* Request for Comment, 79 Fed. Reg. at 16693, Question 28.

work with SDRs to ensure that they establish prescriptive and uniform standards for data reporting.

We have also found that SDRs do not have a consistent approach to allowing counterparties to verify reported information. In some cases, SDRs do not have any effective method for counterparties to review and verify this information. We therefore encourage the Commission to prescribe a manner by which SDRs permit swap counterparties to review and verify swap data.

## VI. Streamlining the Reporting Process

We urge the Commission to consider streamlining the reporting process under Part 45 in at least two ways:

- Amortizing swaps are swaps with a notional amount that varies over the life of the swap in accordance with levels prescribed at the time of execution. Under the Commission's current regulations, a reporting counterparty for an amortizing swap that uses a life-cycle method for continuation data reporting must submit a report each time the notional changes, even though such changes were agreed to at the time of execution. We believe that these changes should be reported as part of the initial primary economic terms report, and that a reporting counterparty should only be required to report any changes to the initial amortization schedule.
- A report for a plain vanilla swap only requires a small number of data fields to be completed since many of the fields under Part 45 are not relevant. We therefore encourage the Commission to create a streamlined process for reporting such swaps, with a reduced number of data fields. We believe that this would reduce the burden on and costs incurred by many smaller banks that are required to report under the Commission's regulations.

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Again, we appreciate the opportunity to comment. If you have any questions about these comments, please do not hesitate to call me at (202) 589-2424.

Sincerely,

Richard Foster
Vice President and Senior Counsel for
Legal and Regulatory Affairs
Financial Services Roundtable