



May 27, 2014

**VIA E-MAIL AND ON-LINE SUBMISSION**

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

**Re: Request for Comment on Part 45 and Related Provisions of Commission's Swap Data Reporting Rules**

Dear Ms. Jurgens:

CME Group Inc. ("CME Group") appreciates the opportunity to comment on the Commodity Futures Trading Commission's (the "CFTC's" or "Commission's") recent request for comment on swap data recordkeeping reporting requirements of Part 45 and related regulatory provisions.<sup>1</sup> CME Group is one of the world's largest and most diverse derivatives marketplaces. CME Group has multiple registered trade repositories, including a swap data repository in the U.S. CME Group also includes CME Clearing, a derivatives clearing organization ("DCO") and one of the largest central counterparty clearing services in the world.

We commend the Commission for launching this public process to revisit the swap data reporting and SDR rules to ensure these rules are "effective, efficient, and provide the necessary regulatory information."<sup>2</sup> As noted by Acting Chairman Wetjen and Commissioner O'Malia, it is clear that changes are needed in order to improve the quality of data collected through the regulatory reporting regime.<sup>3</sup> We also commend staff for issuing a very thoughtful request for comment that, in our view, effectively highlights many of the problems that need to be resolved.

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<sup>1</sup> See Review of Swap Data Recordkeeping and Reporting Requirements, 79 Fed. Reg. 16689 (Mar. 26, 2014)("Request For Comment").

<sup>2</sup> Request For Comment at 16690 (March 26, 2014).

<sup>3</sup> Transcript of the February 10, 2014 Technology Advisory Committee Meeting ("Transcript"), Wetjen at p. 10-12, available at [http://www.cftc.gov/ucm/groups/public/@newsroom/documents/file/tac\\_021014\\_transcript.pdf](http://www.cftc.gov/ucm/groups/public/@newsroom/documents/file/tac_021014_transcript.pdf); Keynote Address by Commissioner Scott D. O'Malia, The Future of Financial Standards – SWIFT Institute, SWIFT's Standards Forum, and the London School of Economics and Political Science, London, England (March 25, 2014), available at <http://www.cftc.gov/PressRoom/SpeechesTestimony/opaomalia-34>.

## **Background and Executive Summary**

Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 ("DFA") amended the Commodity Exchange Act ("CEA") to, among other things, establish a comprehensive framework for the regulatory and public reporting of swap data. New CEA 4r requires "regulatory" reporting of all uncleared swaps to a swap data repository ("SDR") for the purpose of providing the CFTC with access to this data for regulatory purposes. New CEA 2(a)(13) calls for "public" reporting of swap transaction and pricing data of uncleared and cleared swaps to enhance price discovery.

Three years ago, the Commission adopted two sets of rules to implement these statutory provisions. One set, adopted as "Part 45," requires market participants to make complete and detailed transaction reports for both uncleared and cleared swaps for the purpose of establishing comprehensive records that could be accessed by the Commission for regulatory purposes. The other set, adopted as "Part 43," requires reporting parties to make reports to facilitate the public dissemination of data regarding uncleared and cleared swap trades for the purpose of providing transparency to the public.<sup>4</sup>

Since the reporting rules were adopted, the Commission has promulgated rules and staff has issued guidance (collectively, "STP") calling for straight through processing of many swaps.<sup>5</sup> STP requires each swap that is executed on a trading platform<sup>6</sup> and intended to be cleared (an "ITBC Swap") to be submitted for clearing and accepted or rejected for clearing within a matter of seconds.<sup>7</sup> Whether accepted or rejected, an ITBC Swap will no longer exist immediately after it is submitted for clearing.<sup>8</sup> This market structure differs greatly from bilaterally executed swaps that are not intended to be cleared.

We believe the basic problems confronting the Commission stem from the current reporting rule set's failure to distinguish between ITBC Swaps and those swaps that are not intended to be cleared (each, a "Bilateral Swap"). The CFTC's current reporting rules largely require both categories of swaps to be reported in the same manner.<sup>9</sup> But there are fundamental processing differences between the two categories of swaps that are very apparent now and require differential reporting treatment. The

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<sup>4</sup> Because Parts 43 and 45 collectively establish requirements of swap data reporting to an SDR and should operate in a coordinated manner, this letter addresses changes needed to Part 43 as well as to Part 45. See Swap Data Recordkeeping and Reporting Requirements, 77 Fed. Reg. 2136, 2179 (Jan. 13, 2012) (noting that reporting under Parts 43 and 45 share many of the same costs and benefits and therefore these "rules should operate in a coordinated manner").

<sup>5</sup> See, e.g., CFTC regulations 1.73, 1.74, 37.702(b), 38.601, and 39.12(b)(7) and September 26, 2013 Staff Guidance on Swaps Straight-Through Processing ("STP Guidance").

<sup>6</sup> That is, a swap execution facility ("SEF") or designated contract market ("DCM").

<sup>7</sup> See, e.g., CFTC regulations 37.702(b), 38.601, and 39.12(b)(7) and STP Guidance. STP also requires that pre-execution risk management and a credit check are conducted on an ITBC Swap that is executed on a trading platform. See CFTC regulations 1.73 and 1.74.

<sup>8</sup> A swap that is accepted for clearing is extinguished pursuant to CFTC regulation 39.12(b)(6). A swap that is submitted, but not accepted, for clearing is to be deemed void *ab initio* pursuant to the STP Guidance (discussed more below).

<sup>9</sup> Parties who have entered into a swap that is not intended (or required) to be cleared may of course later choose to clear on a voluntary basis. The swap would become an ITBC Swap at the point in time that the parties amend the original terms to require clearing.

problems with the current rule set have caused the marketplace to build out unnecessary and redundant reporting connections for ITBC Swaps that are costly, clash with STP and, even in the best light, do not provide any corresponding benefits. There is simply no value in having execution venues report ITBC Swaps that will, at most, exist only for a few seconds because essentially the same set of information for these swaps is simultaneously submitted to a clearinghouse as part of a clearing submission.

These issues should be addressed by (1) making relatively simple amendments to the reporting rules so that the act of submitting an ITBC Swap to a DCO for clearing completely discharges all reporting duties each swap counterparty and any SEF or DCM may have for that particular swap and (2) clarifying that the DCO is the only party with reporting responsibilities for an ITBC Swap including all cleared swaps resulting from the ITBC Swap. These adjustments would be entirely consistent with Congressional intent and, more importantly, would ensure that the Commission gets data directly from the source, increasing its accuracy while simultaneously lowering operational risk, cost and burden.

### **There Are Two Different Market Structures for Swaps Now**

Congress directed the Commission to build out two separate market structures for swaps. The first market structure was for standardized types of swaps that could be traded on centralized platforms and cleared by clearinghouses. For the most liquid types of these standardized swaps, Congress instructed the Commission to require trading on either DCMs or newly formed SEFs and clearing at a DCO. The second market structure was for bespoke types of swaps which are better suited to an over-the-counter market structure. Congress instructed the Commission to allow counterparties to continue negotiating these types of bespoke swaps on a bilateral basis without clearing.<sup>10</sup>

During the rulemaking phase for the reporting rules, the Commission grappled with the issue of how to report cleared swaps. Some commenters specifically called for establishment of a reporting system whereby the DCO acted as sole reporter for centrally cleared swaps while allowing executing parties to handle reporting chores for uncleared swaps. However, the Commission declined to take this approach, in part, based on the following premise:

“Allowing the first report of swap data concerning a swap to come from a DCO following clearing, or from a counterparty following full legal confirmation, would result in reporting delays that the Commission does not believe are desirable. Without reporting of primary economic terms data shortly following execution of a swap, regulators examining SDR data for regulatory purposes in many cases would not see the swap in question for hours or in some cases nearly an entire day (if initial reporting followed clearing), or even for days or weeks (if initial reporting followed full legal confirmation). This lack of complete swap data would

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<sup>10</sup> For any given swap, the set of applicable market structure rules is known at the point of execution. That is, when consummated, every swap is either subject or not subject to the rules of a DCM or SEF and is either intended to be cleared or intended to not be cleared.

frustrate fundamental purposes of financial reform, recognized not only by Congress in passing Dodd- Frank, but internationally.”<sup>11</sup>

In the end, the Commission elected to promulgate rules that required *all* swaps to be reported at the point of execution rather than distinguishing between cleared and uncleared swaps and selecting the DCO as sole reporter of cleared swaps. This decision had the unintended effect of creating the potential for ITBC Swaps to be reported to an SDR (and the public) prior to being accepted for clearing.

Part of the reason the Commission’s reporting rules did not distinguish between ITBC Swaps and Bilateral Swaps for reporting purposes is because at the time they were finalized the Commission had not yet implemented its full set of rules defining the market structure for ITBC Swaps and Bilateral Swaps. Specifically, the reporting rules preceded the execution, clearing and SEF rules. Since that time, STP has been issued and clarified the required treatment for ITBC Swaps (which are subject to SEF or DCM Rules). STP now requires an ITBC Swap that is executed on a SEF or DCM to be submitted for clearing and either accepted or rejected by the DCO as soon as technologically practicable after execution.<sup>12</sup> Staff defined this timeframe as a matter of seconds.<sup>13</sup> Because these swaps must be submitted to the DCO for clearing and either accepted or rejected for clearing almost instantly after execution, it is now clear that there would not be any undesirable delays associated with obtaining the relevant data from the DCO after clearing.<sup>14</sup> In fact, the DCO is best positioned to report the relevant data quickly to the regulators and the public.

Recent Commission guidance has now clarified why reporting on ITBC Swaps must occur after clearing. STP clarified that when an ITBC Swap that is entered into on a platform is rejected for clearing by the clearinghouse, a material term to the contract remains unfulfilled and the transaction is deemed void *ab initio*.<sup>15</sup> That is, the ITBC Swap is not legally binding unless and until it is accepted for clearing by the clearinghouse. As discussed above, because the requirement in the Part 43 and Part 45 rules to report an ITBC Swap is triggered by execution, and not acceptance for clearing, the current rules have been read to require reporting on ITBC Swaps prior to the point in time that such swap is legally binding.<sup>16</sup>

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<sup>11</sup> See Proposing Release for Swap Data Recordkeeping and Reporting Requirements, 75 Fed. Reg. 76574, 76582 (Dec. 8, 2010).

<sup>12</sup> See CFTC regulations 37.702(b), 38.601, and 39.12(b)(7).

<sup>13</sup> STP Guidance at 5. More specifically, staff reported that recent data has shown that DCOs now accept at least 93% of trades within three seconds or less and 99% of trades within ten seconds or less. "Accordingly, "as soon as technologically practicable" is now within 10 seconds."

<sup>14</sup> Although STP does not address how quickly swaps which are intended to be cleared but are not subject to SEF or DCM rules must be accepted or rejected for clearing, relying upon the DCO for relevant data post clearing should not generally result in delays that exceed delays currently permitted under the rules.

<sup>15</sup> See *id.* As noted by staff, "[t]he price of a swap depends, in part, on whether it is intended to be cleared. Consequently if a swap that is intended to be cleared is rejected [for clearing], a material term to the contract is unfulfilled." See STP Guidance at 5. In the rare event that a DCO rejects an ITBC Swap for clearing, the DCO is best suited to provide the CFTC with access to any records needed with respect to the rejected ITBC Swap.

<sup>16</sup> The current definition of "execution" in Part 43 refers to "an agreement by the parties....to the terms of a swap that legally binds the parties to such swap terms under applicable law."

The Commission's Request for Comment implicitly recognized this basic problem by asking whether there is a need for alpha swap reporting at all, or whether alpha swaps even exist.<sup>17</sup>

Finally, the very important market structure differences between ITBC Swaps and Bilateral Swaps by themselves justify differing reporting treatment. The original counterparties to ITBC Swaps never face each other from a risk standpoint but rather face the clearinghouse if the ITBC Swap is accepted for clearing.<sup>18</sup> The platform that matches an ITBC Swap has no connection to the resulting cleared swaps that persist after the DCO accepts the ITBC Swap for clearing. But the DCO to which ITBC Swaps are submitted for clearing already maintain data on each ITBC Swap and every swap resulting from clearing of each ITBC Swap separate and apart from Part 45. The CFTC could access this information directly at the DCO rather than requiring the data to be reported to an SDR for regulatory purposes. To the extent the Commission elects to require data on ITBC Swaps to be reported to an SDR for regulatory purposes, the DCO is best situated to report all such data to the SDR. The DCO is the only entity that can immediately report after clearing and is the entity that will provide the fastest dissemination of the information to the public.

By contrast, Bilateral Swaps are not subject to the STP requirement and the counterparties to these swaps face each other for the duration of their existence. The reporting counterparties themselves (and if the swap is subject to the rules of a SEF or DCM, the SEF or DCM) are therefore in the best position to report on these swaps.

#### **The Rules Must Be Amended – Only The DCO Can Provide The Commission With The Data It Needs**

The Commission must amend its current reporting rules to account for the STP guidance and the significant processing differences between cleared and uncleared swaps.<sup>19</sup> The best approach is to amend the current rules such that the act of submitting an ITBC Swap for clearing to a DCO completely

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<sup>17</sup> See Question 33 in Request for Comment.

<sup>18</sup> The counterparties to an ITBC Swap may not even know the identity of one another. See November 14, 2013 Division of Clearing and Risk, Division of Market Oversight and Division of Swap Dealer and Intermediary Oversight Guidance on Application of Certain Commission Regulations to Swap Execution Facilities.

<sup>19</sup> There can be no doubt on the need to amend the current reporting rules to account for STP and clearing processing. In fact, the Commission itself has already implicitly acknowledged the failure of the current rule set and begun making changes in this direction. For example, the Commission recently amended Part 45 to limit counterparty access to the other side of the trade's legal entity identifier for STP swaps. See 79 Fed. Reg. 16672 (Mar. 26, 2014). In this rulemaking, the Commission stated: "When a swap is executed anonymously on a swap execution facility ("SEF") or designated contract market ("DCM") and then cleared in accordance with the Commission's straight-through processing requirements – such that the counterparties to the swap would not otherwise be known to one another – the identity of each counterparty to the swap and its clearing member for the swap, as well as the legal entity identifier ("LEI") of such counterparty and its clearing member, is information that is private vis-à-vis the other counterparty to the swap....the Commission is amending §49.17(f)(2) by adding language providing that the data and information maintained by the registered swap data repository that may be accessed by either counterparty to a particular swap shall not include the identity or the legal entity identifier....of the other counterparty to the swap, or the other counterparty's clearing member for the swap, if the swap is executed anonymously on a swap execution facility or designated contract market, and cleared in accordance with Commission regulations 1.74, 23.610 and 37.12(b)(7)."

discharges any reporting obligations that a market participant might otherwise have for that particular swap. The rule adjustments should also clearly appoint the DCO as the sole reporter of any data required to be reported regarding ITBC Swaps and all cleared swaps resulting from each ITBC Swap.

These amendments would also help ensure that the Commission gets data directly from the source. Leaving aside the need to amend the current reporting rules in light of STP guidance, the Commission needs to amend the rules simply to avoid useless data on ITBC Swaps in certain SDRs that is confusing and provides no regulatory value. Director Ananda Radhakrishnan noted during February's TAC Meeting that the data provided by certain SDRs today does not enable staff to determine whether a swap subject to the clearing mandate has been cleared.<sup>20</sup> These problems can be traced back to unnecessary linking processes when the SDR of record for an initial "alpha" swap is not the same as the SDR utilized by the DCO for the resulting cleared swaps.

By way of example, under current reporting flows, any SEF matching an ITBC Swap is required to send immediately (for reporting purposes) the pertinent details of a match on its platform to an SDR chosen by the SEF. If the SEF sends this data to SDR A, which is not affiliated with a DCO, SDR A will disseminate swap transaction and pricing data on this swap to the public upon receiving the SEF's report pursuant to Part 43. SDR A will then maintain confirmation data on the alpha swap for regulatory purposes, despite the fact that the alpha will be terminated seconds later if accepted for clearing or be deemed void *ab initio* if rejected. Simultaneously with making a report to SDR A, the SEF also sends essentially the same set of data to a clearinghouse for the purpose of clearing (but not for the purpose of reporting, because the alpha was already reported to SDR A). If and when the clearinghouse accepts that swap for clearing, the clearinghouse will subsequently submit data regarding the two newly created cleared swaps to an SDR selected by the DCO, SDR B. It is also a common clearinghouse practice to send messages to SDR A to indicate that the alpha was accepted for clearing and terminated (the current rules do not squarely address this practice; the rules generally require reporting counterparties report termination events). In the end, the DCO and its selected SDR B have the most complete set of data regarding these transactions. SDR A only possesses records regarding an expired set of alpha swaps completely divorced from the context of the resulting cleared swaps.

As highlighted at February's TAC meeting, Commission staff is not able to determine whether an alpha swap has been cleared or not where an SDR is not capable of consuming the termination messages sent by a DCO upon acceptance from clearing. Further, a DCO is not able to generate a termination message for any alpha accepted to the extent the incoming clearing submission it received did not indicate the identity of the SDR that received the initial alpha report. The current CFTC rules governing clearing submissions do not require this data to be included on the inbound clearing submissions.

The Commission could choose to devote time and energy trying to perfect the syncing process between DCOs and non-DCO SDRs by, for example, ensuring that non-DCO SDRs develop the capacity to consume and store termination messages sent by a DCO on a real time basis and, separately, by passing

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<sup>20</sup> Transcript at 51-53.


new rules to ensure DCOs receive all necessary reporting elements on incoming clearing submissions. But, to what end? Even if these specific problems are corrected, the expired alphas in the redundant warehouses have no regulatory value and, in the case of swaps which are void ab initio, are misleading. The DCO possesses the most complete set of data regarding these transactions.

The CFTC should access information regarding ITBC Swaps and resulting cleared swaps directly from the DCO. To the extent the Commission elects to require regulatory reporting on cleared swaps to an SDR, the Commission should amend the current reporting rules to make the DCO the sole reporter of information regarding ITBC Swaps submitted to the DCO for clearing and all cleared swaps resulting from the ITBC Swaps. The Commission must amend its rules to make the DCO the sole reporter of information regarding ITBC Swaps for real-time public reporting purposes. These actions will require amendments to Part 45, 43 and 39.

The clearing submissions currently received by DCOs already contain most of the relevant reporting data. The DCO already houses the related “beta” and “gamma” cleared swaps. The DCO is the only entity that is in position to report the acceptance of an ITBC Swap for clearing simultaneously with such acceptance. As far as valuation and position data for cleared swaps is concerned, the DCO’s data is the only relevant data. As explained in detail in response to the Commission’s specific questions, CME Group’s recommend approach would also solve a number of other miscellaneous reporting issues that have surfaced because the current rule set does not adequately account for clearing processes. The Commission should choose to take this approach and begin receiving the best access to the best data on cleared swaps and relieve the industry from maintaining a costly and completely redundant set of reporting connectivity.<sup>21</sup>

We commend the Commission for initiating this important process and thank it for the opportunity to comment. Our responses to the Commission’s specific questions are included in the attached Exhibit.

Sincerely,



Jonathan Thursby  
President, CME SDR

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<sup>21</sup> It is worth noting that the futures markets, which have an STP market structure, do not feature third party data warehouses that contain a fractional set of solitary alpha futures records.

## EXHIBIT

The questions from the CFTC's Request for Comment on Part 45 and Related Provisions of Commission's Swap Data Reporting Rules are copied below in bold text. CME Group's responses follow.

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- 1. What information should be reported to an SDR as confirmation data? Please include specific data elements and any necessary definitions of such elements.**
- 2. Should the confirmation data reported to an SDR regarding cleared swaps be different from the confirmation data reported to an SDR regarding uncleared swaps? If so, how?**

### CME Group Response to Questions 1-2:

As explained in detail above, CME Group believes there should be differences in the reporting treatment for swaps that are executed on a trading platform like a SEF or DCM and intended to be cleared ("ITBC Swaps") and those swaps that are not intended to be cleared when entered into ("Bilateral Swaps"). ITBC Swaps are fundamentally different than Bilateral Swaps. The original counterparties to ITBC swaps may or may not be aware of the other's identity. For ITBC swaps, including separate confirmation data elements as part of the reporting submission to the SDR is redundant and unnecessary. DCO rules already require the generation of a confirmation.

With respect to Bilateral Swaps, the current confirmation data requirements are not clear and overly broad. Further, the current requirement for a reporting party to submit a swap to an SDR in real-time conflicts with the separate requirement for the reporting counterparty to submit data which has been consummated by a legally binding documentation memorializing all of the terms of the swap which have been matched and agreed upon by the counterparties. The confirmation process in practice takes time; market convention for most bilateral swaps is to generate a confirmation by the end of the business day. But depending on the complexity of the swap, the method of transacting and the sophistication of the counterparties to the trade, generation of a confirmation may occur within a longer timeframe. CFTC Regulation 23.501(a)(1) acknowledges this market convention and while the language of the rule indicates the confirmation should be executed as soon as technologically practicable it permits up to the end of the first business day following the day of execution for the most sophisticated market participants and a longer time period for less sophisticated market participants. For these reasons the confirmation data should not be required as part of SDR reporting.

- 6. Swaps should be linked when new swaps result from the assignment, netting, compression, clearing, novation, allocation, or option exercise of existing swaps (or other events wherein new swaps result from existing swaps).**
  - a. What is the most effective and efficient method for achieving this link (including information regarding the time of the relevant event)?**



- b. How should reporting entities identify the reason why two swaps are linked (e.g., identify that swap A is linked to swaps B and C in an SDR or across multiple SDRs because swaps B and C arose from the clearing and novation of swap A)?
  - c. Aside from those events set forth in part 45, are there other events that require linkage between related swap transactions?
  - d. How should related swaps reported to different SDRs be linked?
8. How can valuation data most effectively be reported to SDRs to facilitate Commission oversight? How can valuation data most effectively be reported to SDRs (including specific data elements), and how can it be made available to the Commission by SDRs?
- a. Should SDs and MSPs continue to be required by the swap data reporting rules to provide their own valuation data for cleared swaps to SDRs? If so, what are the benefits and challenges associated with this valuation reporting?

**CME Group Response to Questions 6 & 8a:**

As explained above, CME Group believes the reporting treatment for ITBC Swaps should differ from Bilateral Swaps because the processing flows for the two categories of swaps are entirely different. These differences are significant regarding continuation data reporting. First, after an ITBC Swap is accepted for clearing it is immediately extinguished. There would be no continuation reporting obligations that would apply to an extinguished swap. Further, in the circumstance where an ITBC Swap is not accepted by the DCO, then it is *void ab initio*. There would obviously be no continuing obligations that would apply in those circumstances either.

With respect to the cleared swaps resulting from an ITBC Swap that is accepted from clearing, there also can be no doubt that the DCO is the only party that can be relied upon to provide reliable information for the existence of a cleared swap. Every applicable post-clearing event would occur through operation of clearinghouse rules or other DCO processing.

Valuation reporting requirements provide a specific set of challenges that must be addressed by the Commission as part of this process. The valuation of a cleared swap is unquestionably governed by the relevant DCO pricing rules. A DCO collects margin based on its valuations. There can be no valuation of a cleared swap other than the DCO-provided valuation. However, CFTC Regulation 45.4(b)(2) separately requires a swap dealer to make separate reports to an SDR regarding its ongoing valuation of cleared swap. This result is an anachronism. Regulation 45.4 should be amended to specify that swap dealers are required to provide ongoing valuation reports to an SDR only with respect to Bilateral Swaps. The Commission staff has already recognized this issue - it issued temporary no-action relief that currently alleviates the need for dealer reporting on cleared swaps. This temporary relief should be extended immediately to prevent unnecessary build-outs and avoid confusion, and appropriate changes should be made permanently in the rule set to make clear that only the DCO is required to make valuation reports with respect to swaps that have been accepted for clearing.

The most effective and efficient method for achieving linkage for all such events that have a one-to-one relationship (i.e., assignment or exercise) or a one-to-many relationship (i.e., clearing, novation, allocation) is by the inclusion of a prior USI(s). However, as described in further detail in question 18, for those events which involve a many-to-one relationship, such as netting and compression, mandating linkage would result in substantial cost and challenge for both reporting counterparties and SDRs without providing additional benefit sufficient enough to warrant such modifications. The best method to identify the reason for the linkage is for the SDRs to set forth, as part of its technical specifications, a defined list of life cycle events that may be submitted and restrict counterparty submissions to those defined events. To the degree that registered SDRs choose to implement the data fields differently the fields can be harmonized downstream so the display to the Commission is consistent amongst the SDRs.

**9. Please: (i) Identify and (ii) describe the complete range of events that can occur in the life of a swap. Please also address whether, and if so how, reporting entities should report each such event.**

**a. How should events in the life of a swap be represented in SDR data? For example, should an “event type” identifier, as well as a description of the specific event, be required?**

**CME Group Response:**

CME Group believes the best approach for lifecycle reporting is for the Commission to set forth a general obligation to make reports on swaps that are sufficient to develop an audit trail that minimally identifies the existence of any of the following events that amends the terms of the initially reported swap: Cleared; Novation (Full and Partial); Exercise/Assignment; Allocation; Netting (Full and Partial); Compression; Termination (Full and Partial); Credit Event; Transfer; Corporate Action affecting a security or securities on which the swap is based (e.g., a merger, dividend, stock split, or bankruptcy); Void; Transfer or Modification to any of the Primary Economic Trades of the Swap (i.e., maturity date, notional, rates, cash flows, etc.). However, CME Group believes the determination as to how a reporting counterparty provides such information should be left to the discretion of each SDR. To the degree that an SDR implements the data fields differently, these fields can be harmonized downstream so the display to the Commission is consistent amongst the SDRs.

**10. Can swap data reporting be enhanced so that the current state of a swap in an SDR (e.g., open, cancelled, terminated, or reached maturity) can be determined more efficiently and, if so, how?**

**a. What role should SDRs play in auditing swaps data to help identify the current state of a swap?**

**b. Should reporting entities and/or SDRs be required to take any actions upon the termination or maturity of a swap so that the swap’s status is readily ascertainable and, if so what should those requirements be?**

c. **Should swaps that are executed on or pursuant to the rules of a DCM or SEF, but which are not accepted for clearing and are therefore void *ab initio*, continue to be reported to and identified in SDR data? Why or why not? If so, how?**

i. **Should the swap data reporting rules be enhanced or further clarified to address void *ab initio* swaps?**

**CME Group Response:**

As discussed in detail above, CME Group believes the current reporting rules have resulted in a situation where the data on ITBC Swaps that is housed in certain SDRs is not the best data available and, in some cases, contributes more confusion than value. These problems can be traced back to unnecessary reconciliation processes between the SDR of record for an initial “alpha” swap and the records maintained by the DCO that subsequently cleared the alpha swap. Although the SDRs selected by DCOs are in a position to maintain a complete set of data regarding all incoming alpha swap and associated cleared swaps, third party SDRs that maintain only an expired set of alpha swaps completely divorced from the context of the resulting cleared swaps do not provide regulatory data to the Commission that is valuable.

CME Group recommends amending the current reporting rules such that the act of submitting an intended to be cleared swap for clearing to a DCO completely discharges any reporting obligation of each reporting counterparty, SEF or DCM, as applicable, for that particular swap. The DCO already receives clearing submissions which contain a nearly complete set of data regarding ITBC Swaps and the DCO is obviously in the best position to understand whether or not an incoming submission is ultimately accepted or rejected. The DCO’s information is the best information available regarding ITBC Swaps and resulting cleared swaps.

The SDR should not play a role in auditing swap data to help identify the current state of the swap. The reporting counterparties are the only ones in a position to be able to identify instances where the current state of the swap is inaccurate. The SDRs can assist in identifying gross errors in trade submissions (e.g., a required field not being populated, inconsistencies in the data set). But the SDR's role should not and cannot be to ensure accuracy of the data contained in the SDR.

Trades that are void *ab initio* should not continue to be reported to an SDR. The STP guidance clearly states that clearing is a material term and that a ITBC swap is not legally binding unless and until it is accepted for clearing. The existing rules should be amended to clarify that void *ab initio* swaps should not be reported to an SDR.

**11. Should the Commission require periodic reconciliation between the data sets held by SDRs and those held by reporting entities?**

**CME Group Response:**

CME Group does not believe there is any need to require additional reconciliation requirements between SDRs and reporting entities.

**12. Commission regulation 45.8 establishes a process for determining which counterparty to a swap shall be the reporting counterparty. Taking into account statutory requirements, including the reporting hierarchy in CEA section 4r(a)(3), what challenges arise upon the occurrence of a change in a reporting counterparty's status, such as a change in the counterparty's registration status? In such circumstances, what regulatory approach best promotes uninterrupted and accurate reporting to an SDR?**

**CME Group Response:**

New CEA 4r(a)(3) established a reporting hierarchy that specifically applies only to the reporting of uncleared swaps. In a single-sided reporting system like Part 45, it is necessary to establish rules to determine which side of each trade must make reports. The Commission adopted Regulation 45.8 to implement this statutory provision.

As discussed in detail above, CME Group believes the current rules should be amended to make clear that the reporting hierarchy does not apply to ITBC swaps and that the DCO that accepts a swap for clearing will be the only party responsible for making reports. These amendments would not conflict with CEA 4r(a), which only applies to uncleared swaps. Because there can be no issue of a change in a DCO's status during the life of a swap, we believe the issue of a change in counterparty status is moot in the ITBC/cleared swap context.

With respect to pure bilateral swaps, to the extent there are changes in counterparty status after initial reports are made by a reporting counterparty, the best policy is to allow the initial reporting statuses to persist or, if the parties agree, a transfer of reporting obligations to the other side. The only regulatory policy at stake is the need to ensure accurate reporting over the life of the swap regardless of which party makes such reports.

**13. Please describe all data transmission processes arising from the execution, confirmation, clearing, and termination of a swap, both cleared and uncleared. Please include in your response any processes arising from all relevant platforms and methods of execution.**

**CME Group Response:**

The operation of a clearinghouse is an exceedingly complex system. Depicting the complete transmission processes involved with the operation of a clearinghouse is not easy to do in a brief narrative format. That said, under CME Group's recommended approach, the current reporting rules would be amended such that the act of submitting an ITBC swap for clearing to a DCO completely discharges any reporting obligation of each reporting counterparty, SEF or DCM, as applicable, for that particular swap. Under this approach, it is only the DCO with reporting responsibilities with respect to ITBC Swaps and Bilateral Swaps and its current operational processes could be leveraged for efficient reporting and accurate information to be made available to the Commission for regulatory purposes.

**14. Please identify any Commission rules outside of part 45 that impact swap data reporting pursuant to part 45. How do such other rules impact part 45 reporting?**

**CME Group Response:**

As discussed above in detail, the Part 43 and Part 45 rules were designed to work in tandem, but to achieve separate purposes. Part 43 reporting was designed to facilitate a system of real time, anonymous last sale reporting to the public. Part 45 reporting was designed to ensure an accurate and complete audit trail of all swap records for regulatory consumption by the CFTC on a confidential basis. Despite these differing purposes, the Commission has contemplated that market participants would send one single data report immediately after execution to satisfy both reporting requirements.

Because the two rule sets are so intertwined, it is necessary to amend Part 43 in addition to Part 45. Further, the Commission's Part 43 rules also currently require reporting by a facility immediately after execution which, as described above, conflicts with more recent Commission STP guidance relating to ITBC swaps.

CME Group also believes it will also be necessary to adopt changes to the current Part 39 rule set to implement its recommended approach. The DCO needs to receive a complete set of information on the incoming clearing submissions that market participants send to the DCO for clearing purposes. Simple amendments to Part 39 that require all required reporting elements be included on incoming clearing submissions would accomplish this need.

**15. What are the challenges presented to reporting entities and other submitters of data when transmitting large data submissions to an SDR? Please include the submission methods utilized and the technological and timing challenges presented.**

**CME Group Response:**

Submitting large amounts of data at fast speeds requires an API connection, which is very expensive to establish and maintain. Swap dealer firms have made investments in their reporting infrastructures that make API connections feasible, but these types of investments are more challenging for the non-dealer end user community. For ITBC Swaps, CME Group believes the current reporting rules should be amended such that the act of clearing completely discharges a market participant's reporting obligations with respect to such swaps. These amendments would reduce burdens on the end user community.

**16. Market participants have indicated that they face challenges electronically representing all required data elements for swap transactions because those elements have not yet been incorporated into standard industry representations (e.g., FpML, FIXML). In particular, various market participants have indicated that these challenges impact reporting to SDRs. What is the most efficient methodology or process to standardize the data elements of a bespoke, exotic or complex swap, to ensure that all required creation data is electronically represented when reported to the SDR? Do these challenges vary depending on the asset class? If so, how?**

**CME Group Response:**

By their very nature, bespoke products do not easily lend themselves to standardization. Mandating discrete fields in an attempt to represent all material economic terms of bespoke swaps

comprehensively could be counterproductive; the exercise could be costly, lead to reporting time lags and stifle new product innovation.

As noted in the question, the addition of new products requires the relevant industry groups (e.g., FpML, FIXML) to agree to product attributes and data interchange standards. This can be a long process and requires not only that the industry group agrees to standards but that the SDRs make any modifications necessary to accommodate the product in its systems. Further, requiring counterparties and SDRs to continually modify their specifications to accommodate new products is extremely costly and introduces unnecessary operational risk.

We believe that efforts to mandate electronic representation of bespoke transactions will not increase price transparency, but will impose a substantial cost on the counterparties and the SDRs alike. Because of the wide variety and rapid change in the products that are traded, it has typically been viewed as not cost effective to build standard electronic mechanisms for interchanging details of transactions. Therefore we strongly recommend that counterparties continue to report the material economic terms of bespoke transactions via the alternate methods currently utilized by the industry (e.g., appending a document to the trade record).

**17. Please describe any challenges associated with the reporting of allocations. How should allocation data elements (i.e., indications of whether swaps will be allocated, as well as the identities of entities to which portions of executed swaps are allocated) be reported to SDRs?**

**CME Group Response:**

Allocations have presented reporting challenges. In the allocation context, it may be possible that the ultimate counterparty to each swap is not known at the point of execution. However, the current reporting rules require reporting immediately after execution including all relevant counterparty information. By way of example, a swap dealer that has negotiated a large trade with an asset manager has an obligation to make a report to an SDR immediately after execution under current rules. However, it may be the case that the funds that will ultimately be allocated pieces of the transaction on behalf of the manager are identified at some point after execution. Further, relevant reporting guidance also suggests that it is necessary for a swap between a swap dealer and an agent to be reported and also for each individual swap between the SD and each of the agent's clients to be reported. However, where allocation occurs post clearing (as is expressly contemplated under the CFTC's clearing rules), the swap dealer would never actually become a counterparty to the agent's clients. The clients would only become counterparties to the DCO that accepts the swap for clearing.

DCOs have clear operational processes in place to handle allocations from an operational perspective. The DCO that receives allocation instructions after receiving the initial bunched transaction clearing submission already maintains complete records regarding allocated transactions. To the extent the reporting rules were amended in accordance with CME Group's recommended approach, the current operational flows on the clearing side could be leveraged from a reporting standpoint by the DCO to ensure the most accurate audit trail possible for allocated transactions.

**18. How should swaps resulting from compression exercises and risk mitigation services be reported to, and identified in, an SDR so that the Commission is able to effectively review these exercises and determine what swaps result from a specific exercise?**

- a. **Please describe any technological, operational, or logistical challenges associated with reporting of such swap transactions.**

**CME Group Response:**

Unlike allocations, which are a one-to-many exercise, compression exercises and risk mitigation services are many-to-one. This many-to-one relationship creates challenges in linking the swaps compressed to the resulting swap. Specifically, instead of a single USI promulgated on multiple swaps as is the case for allocations, multiple USIs are related to a single swap. SDR systems are predicated on bilateral relationships and do not easily accommodate the many-to-one processing involved with compression as the concept is implemented in the clearing context.

Further, in the case of multilateral portfolio compression exercises involving multiple counterparties there is added complexity related to the development of linkages given that the SDRs systems are predicated on bilateral relationships. Adding functionality to permit multiple counterparties would create further complexity particularly in light of the fact that the trades may be spread across more than one SDR. CME Group does not believe there is any regulatory interest served by building out new functionality to ensure comprehensive linkages to describe which swaps were compressed to create resulting swaps post-clearing.

**19. Please describe any challenges associated with the reporting of prime brokerage swap transactions (e.g., challenges related to transactions executed either bilaterally or on a platform and/or involving different asset classes)?**

**CME Group Response:**

The current Part 43 and 45 regulations do not address Prime Brokerage (“PB”) transactions. Due to the pervasiveness of these types of arrangements in the Foreign Exchange (“FX”) markets the failure of the regulation to address PB relationships has been particularly debilitating to market participants as evidenced by the number of requests for no-action relief. Given the absence of guidance regarding the reporting treatment for these relationships, there is an open question as to whether both the swap between the Executing Dealer and the Prime Broker as well as the mirror swap entered into between the PB and its client need to be reported to an SDR and publicly disseminated in real-time. Public reporting of both transactions degrades the quality of the information that is being disseminated to the market thereby resulting in a potentially distorted view of liquidity. Given the Commission’s goal of transparency and a desire for dissemination to the public to occur as soon as technologically practicable, it is our recommendation that the Commission require only the trade between the Executing Dealer and the Prime Broker to be RT reported.

**21. Are there instances in which requirements of CFTC regulations or reliance on exemptive or staff no-action relief result in more than one party reporting data to an SDR regarding a particular swap? If so, how should such duplicative reporting be addressed? What should be the role of the reporting entities, as well as other submitters of data, and SDRs in identifying and deleting duplicative reports? What solutions should be implemented to prevent such duplicative reporting?**

**CME Group Response:**

CME Group understands that Commission staff has directed certain FBOTs to make swap data reports to a US SDR regarding trades effected on the FBOT involving US persons. But under a technical reading of the current US reporting rules, the US counterparty would be required to report these swaps to a US SDR because the FBOT is not a DCM. The simple fact is that the current Part 43 and 45 rules do currently provide for the possibility of FBOT reporting. In addition, FBOT swaps are in most cases cleared by a foreign clearinghouse that is not subject to the Commission's jurisdiction. Because of this, the need for duplicative FBOT "alpha" reporting is even more suspect given that the resulting cleared swaps will be housed in a separate foreign clearinghouse outside of the jurisdiction of the Commission.

**22. In addition to those entities numerated in Commission regulation 45.5, should other entities involved in swap transactions also be permitted to create unique swap identifiers ("USIs")? If so, please describe those situations and the particular rationale for any such expansion of the USI-creation authority.**

**CME Group Response:**

For ITBC swaps submitted for clearing to a DCO, the DCO is in the best position to append USIs to the relevant transactions and carry out any subsequent required reporting. Any current issues regarding which party is best suited to assign a USI would become moot under CME Group's recommended approach for ITBC reporting. Under this approach, all other market participants would have no reporting responsibilities for any ITBC Swaps submitted for clearing at a DCO.

**23. How should data reported to SDRs identify trading venues such as SEFs, DCMs, QMTFs, FBOTs, and any other venue?**

**CME Group Response:**

The simplest approach to this issue is to require a legal entity identifier ("LEI") in the execution venue field.

***vii. Reliance on No-Action Relief in General***

**25. To the extent that a reporting entity is, in reliance on effective no-action relief issued by Commission staff, reporting to an SDR in a time and/or manner that does not fully comply with the swap data reporting rules (e.g., outside reporting rules' timeframe, required data elements**



missing), how can the reporting entity most effectively indicate its reliance upon such no-action relief for each affected data element?

- a. Are there any other challenges associated with the reliance on staff no-action relief with respect to compliance with part 45? If so, please describe them and explain how the swap data reporting rules should address those challenges.

**CME Group Response:**

There is a clear need for the use of no-action relief in connection with the creation of an entirely new system of swap data reporting. Issuing relief in appropriate circumstances is good regulatory policy. This is particularly true in the area of swap reporting, which is a very complex and entirely new requirement. That said, no-action relief should never be a substitute for rulemaking when rulemaking is necessary.

Where the Commission has issued relief to market participants on reporting issues, CME Group does not believe it is necessary to attempt to capture this information on a report by report basis through incorporation of a new data field. No-action relief is simply an indication that the Commission staff does not believe enforcement action would be warranted in the particular circumstances highlighted; it is not a data element of the trade. The data set that is recorded in the audit trail should simply reflect what is required by rule to be reported. The fact that a market participant had received no-action relief for some aspect of reporting should be addressed simply by staff declining to take enforcement action to the extent what was reported (or in most cases, was not reported at all) is not in technical compliance with the rules.

**27. Please describe how swap transactions such as strategies and packages should be represented in swap data reporting such that it enables the Commission to effectively understand timing and the economics of the strategy or package and the component swap transactions?**

**CME Group Response:**

One basic challenge that applies to reporting complex swap transactions is that strategies or multi-leg packages of transactions frequently involve product components that cross jurisdictional lines. Swap data reporting to an SDR is limited to products that are swaps. It will therefore never be possible to represent in a comprehensive manner any package trade in an SDR that includes, for example, cash, securities and/or futures components. With respect to complex package transactions entirely comprised of swaps, there are already ongoing industry discussions regarding the regulatory treatment in general for these complex trades. Until these deliberations are complete, CME Group believes the appropriate regulatory policy is to maintain a no-action position on the reporting issues.

**28. Please describe any challenges (including technological, logistical or operational) associated with the reporting of required data fields, including, but not limited to:**

- a. Cleared status;

- b. Collateralization;
- c. Execution timestamp;
- d. Notional value;
- e. U.S. person status; and
- f. Registration status or categorization under the CEA (e.g., SD, MSP, financial entity).

**CME Group Response:**

Currently Appendix 1 of Part 45 includes a “Clearing Indicator” field which the comments in the regulation state should be populated with Yes or No. This field as currently defined does not capture an indication of whether a swap is ITBC, but could be modified to do so. The field should allow either ITBC, cleared or uncleared as permissible values.

In addition, the current reporting rules require various time stamps, including execution time stamp, to be provided in the UTC convention. As the Commission is aware, many firms have legacy systems that record transaction times in local time. Converting these systems to UTC is a costly investment that we do not believe is necessary, particularly for smaller firms. CME Group recommends the Commission not dictate the format in which the time must be provided but rather permit any format as long as it is consistently applied by the counterparty and as long as an indication of the format being used is clearly denoted.

CME Group also suggests that the Commission amend its requirements such that reporting counterparty entity status (e.g., SD, MSP, FE) and US person status is not required to be entered on a trade-by-trade basis. This information is relatively static. Instead, this information should be allowed to be captured as part of the account opening process and reporting counterparties should be under an obligation to update their status promptly if and when it changes. This type of static registration data lends itself to being appended to the swaps processed by a DCO at the clearing level.

**29. What additional data elements beyond the enumerated fields in Appendix 1 of part 45, if any, are needed to ensure full, complete, and accurate representation of swaps (both cleared and uncleared)? For example, other fields could include additional timestamps (for each lifecycle event, including clearing-related timestamps); clearing-related information (identity of futures commission merchant, clearing member, house vs. customer origin indication, mandatory clearing indicator, or indication of exception or exemption from clearing); and/or execution-specific terms (order type or executing broker). Responses should consider the full range of oversight functions performed by the Commission, including, but not limited to, financial surveillance; market surveillance; risk monitoring; and trade practice surveillance.**

- a. Should the Commission require reporting of the identities, registration status, and roles of all parties involved in a swap transaction (e.g., special entity (as defined in Commission regulation 23.401(c)); executing broker; or voice/electronic systems)?

- b. What, if any, additional fields would assist the Commission in obtaining a more complete picture of swaps executed on SEFs or DCMs (e.g., order entry time; request for quote (“RFQ”), or central limit order book (“CLOB”), or order book; request for cross, blocks, and other execution method indicators or broker identification)?
- c. Are there additional data elements that could help the Commission fulfill its oversight obligations, as described above?
- d. Should the fact that a swap is guaranteed be a required data element for SDR reporting? If so, what information regarding the guarantee should be reported to the SDR? What will be the challenges presented to the reporting party in capturing this information?

**CME Group Response:**

Appendix 1 to Part 45 and Appendix A to Part should include each data field identified in the regulations that is required to be captured by an SDR. Certain required data fields (e.g., International Swaps, Voluntary Submission, Initial SDR, etc.) have not yet been explicitly set forth in the Appendices.

Part 39 should be amended to require the complete set of data fields to be included in each clearing submission sent to a DCO for clearing to enable a DCO to make complete reports on all ITBC swaps and resulting cleared swaps.

Requiring the addition of information regarding identities and roles of all parties involved in a swap transaction would provide minimal benefit to the Commission in fulfilling its oversight responsibilities. As the swap market structure continues to evolve and mature, it will invariably lead to increased volumes on central limit order books (“CLOBs”). This shift will further lessen the value of collecting information on the parties involved in a swap transaction.

With respect to whether it is useful to include a field regarding whether a swap is guaranteed, we believe that including this information as a required data element on submissions to an SDR would be overly burdensome. The validity of adding these data elements is further undermined given the static nature of the data and the fact that it is only truly relevant for large entities that could have an effect on systemic risk. CME Group comments on systemic risk monitoring issues in its response to Question 62 below.

**33. Part 45 requires the reporting of all swaps to SDRs. The Commission requests comment on how cleared swaps should be reported. Specifically:**

- a. For swaps that are subject to the trade execution requirement in CEA section 2(h)(8), and *ipso facto* the clearing requirement, do commenters believe that the part 45 reporting requirements with respect to original swaps (alpha) should be modified or waived, given that the two new resulting swaps (beta and gamma) will also be reported?
- b. For swaps that are subject to the clearing requirement, but not the trade execution requirement, do commenters believe that the part 45 reporting requirements with respect

**to alpha swaps should be modified or waived, given that the beta and gamma swaps will also be reported?**

- c. For swaps that are not subject to the clearing requirement, but are intended for clearing at the time of execution, do commenters believe that the part 45 reporting requirements with respect to alpha swaps should be modified or waived, given that the beta and gamma swaps will also be reported?**
- d. Please discuss whether in each of the circumstances described above there actually is an alpha swap.**

**CME Group Response:**

CME Group's comments regarding the existing cleared swap reporting framework are set out in detail at the beginning of this comment letter. In summary, CME Group believes the current reporting rules should be amended such that the act of submitting an ITBC Swap for clearing to a DCO completely discharges any reporting obligation of each reporting counterparty, SEF or DCM, as applicable, for that particular swap. The DCO should act as sole reporter for data related to ITBC Swaps and resulting cleared swaps. These adjustments would be consistent with Congressional intent and would help ensure the Commission gets access to the best possible swap information for regulatory purposes without imposing unnecessary costs on the CFTC or market participants. It would also bring the Commission's reporting rules in line with other Commission rules and staff guidance calling for STP of many swaps.

**34. In addressing the questions posed in items 33 (a)–(d), commenters are also requested to address how any modifications to the reporting of cleared swaps would be consistent with the swap reporting requirement in CEA section 2(a)(13)(G) and the restrictions on CFTC exemptive authority in CEA section 4(c)(1)(A)(i)(I).**

**CME Group Response:**

CME Group's recommended approach is entirely consistent with the CEA and Congressional intent. Under this approach, the DCO would be solely responsible for reporting any required information regarding ITBC swaps and resulting cleared swaps. Congress contemplated that DCOs would play this role.

CEA Section 4r(a) provides:

*(a) Required reporting of swaps not accepted by any derivatives clearing organization*

*(1) In general — Each swap that is not accepted for clearing by any derivatives clearing organization shall be reported to—*

*(A) a swap data repository described in section 24a of this title; or*

*(B) in the case in which there is no swap data repository that would accept the swap, to the Commission pursuant to this section within such time period as the Commission may by rule or regulation prescribe.*

This provision governs the reporting and recordkeeping requirements for *uncleared* swaps. It shows a clear Congressional intent to allow ITBC swaps that are accepted for clearing by a DCO to be reported by a DCO for regulatory purposes. In fact, the provision suggests that Congress did not expect that ITBC Swaps would be reported to an SDR at all for regulatory purposes. CME Group's recommended approach of DCO reporting for all ITBC Swaps and resulting cleared swaps is entirely in accordance with Section 4r(a).

There are also no conflicts with this approach and the separate statutory direction in CEA 2(a)(13), which calls for the reporting of swap transaction and pricing data on *uncleared and* cleared swaps to the public for the purpose of enhancing price discovery. Under CME Group's recommended approach, the DCO that accepts an ITBC swap for clearing will be responsible for making any required reports to an SDR. This approach is clearly in line with Section 2(a)(13).

Finally, to the extent the Commission exercised its rulemaking authority to amend the current rules in line with the approach outlined above, there would be no need for the Commission to rely on exemptive authority to address these issues.

**35. Can the existing rules be improved to more clearly represent how the clearing process impacts reporting obligations with respect to both the original swap (alpha) and the two new resulting swaps (beta and gamma)? If so, please explain.**

**a. Responses should address:**

- i. The reporting obligations applicable to alpha swaps;**
- ii. The reporting obligations applicable to beta and gamma swaps;**
- iii. Who holds the reporting obligation(s) for each swap;**
- iv. The reporting of the linkage of alpha, beta, and gamma swaps; and**
- v. Who has the legal right to determine the SDR to which data is reported?**

**CME Group Response:**

As discussed above, CME Group believes the current reporting rules should be amended such that the act of submitting an ITBC swap for clearing to a DCO completely discharges the reporting obligations of each reporting counterparty, SEF or DCM, as applicable, for that particular swap.

Under this framework, the DCO that accepts a swap for clearing handles any applicable reporting chores for both the incoming alpha swap and for the resulting beta and gamma cleared swaps. The DCO will therefore be responsible for appending an USIs in a way that logically links the three transactions

together. The DCO will be responsible for ensuring that incoming alphas that are accepted for clearing are reported in accordance with applicable Part 43 requirements.

Implementing this scheme from an operational standpoint requires zero lead time. All current DCOs have current capacity to make reports to a functional SDR. The key difference is that under the rule changes described above, the first report on any ITBC swap would be sent by the DCO rather than the execution venue. Because the DCO will send the first report, the other difference between today's processing is the timing of the first report - the first report would be sent immediately after STP rather than immediately before, a negligible difference measured in seconds.

**36. What steps should reporting entities and/or SDRs undertake to verify the absence of duplicate records across multiple SDRs for a single cleared swap transaction?**

**CME Group Response:**

If the DCO was the only responsible reporter for ITBC Swaps and related cleared swaps, there would be no duplicative reports.

**37. How should cleared swap data be represented in the SDR to facilitate the Commission's oversight of compliance with clearing-related rules, including the clearing requirement (Commission regulations 50.2 and 50.4) and straight through processing requirements (Commission regulations 1.74, 23.506, 37.702(b), 38.601, and 39.12(b)(7))?**

**CME Group Response:**

Today, CME DCO reports cleared swap data to CME SDR regarding all of the swaps that it clears. The CME database clearly depicts whether any particular swap has been cleared or not and the cleared swap records also includes certain "alpha" details received as part of incoming ITBC Swap submissions sent to CME DCO for clearing purposes. This infrastructure is in place today and it provides the Commission with the best access to accurate swap data. Amendments that would discontinue unnecessary and redundant "alpha" reporting to third party SDRs would be the best approach to address these concerns.

Further, under CME Group's recommended approach, Part 39 would also be amended to require complete reporting details to be included in incoming clearing submissions. Under this approach, the Commission could be afforded access to the best data possible to enable it to exercise its oversight responsibilities.

**38. What reporting technique, term, or flag is recommended to identify a cleared swap?**

**CME Group Response:**

Currently Appendix 1 of Part 45 includes a "Clearing Indicator" field which the comments in the regulation state should be populated with Yes or No. This field as currently defined does not capture an indication of whether a swap is ITBC, but could be modified to do so. The field should allow either ITBC, cleared or uncleared as permissible values.

**39. Swaps created by operation of a DCO's rules related to determining the end-of-day settlement prices for cleared credit default swaps ("CDS") are also known as "firm trades" or "clearing related swaps" (see NAL 13–86). How should these swaps be reported pursuant to the swap data reporting rules?**

**CME Group Response:**

Like all cleared swaps, the best approach for reporting these swaps is to appoint the DCO that cleared the swap as the sole reporting counterparty for these swaps. Market participants that are parties to these swaps should not have any reporting obligations with respect to them.

**40. Aside from "firm trades," some swaps may be created from "open offer," meaning there is no original swap between two counterparties, but only equal and opposite swaps between each of the counterparties and the clearinghouse. How should the swap data reporting rules address such swaps?**

**CME Group Response:**

The DCO should be the sole reporting counterparty for each swap that it clears. For the many reasons outlined above, CME also believes the DCO should be the only reporter for incoming ITBC Swaps. These principles are equally applicable to swaps cleared under either an "open offer" or "novation" model.

The current reporting rules should be amended such that the act of submitting an ITBC Swap for clearing to a DCO completely discharges any reporting obligation of each reporting counterparty, SEF or DCM, as applicable, for that particular swap.

**41. As described above, DCOs provide position data to the Commission pursuant to part 39 and report transactions to SDRs pursuant to Part 45. The Commission is aware of potential overlap in these data sets. With respect to such overlap, how can reporting of swaps data be made more efficient, while ensuring that the Commission continues to receive all data necessary to fulfill its regulatory responsibilities?**

**CME Group Response:**

SDR systems are predicated on bilateral relationships and do not easily accommodate the many-to-one processing involved with positional recordkeeping in the clearing context. The primary issues relate to linking transactions entered into the system with the counterparty position established by the individual transactions. CME Group does not believe there is any significant regulatory interest served by building out new functionality to ensure comprehensive linkages to describe which swaps were compressed to create resulting swaps post-clearing.

**42. For cleared swaps, how can the netting and compression of swaps and positions by DCOs be most effectively represented?**

- a. **Please provide recommendations regarding the reporting of netting and compression, and describe any relevant differences in reporting of netting and of compression.**
- b. **Are netting and compression different concepts in the uncleared swaps markets versus the cleared swap market? If so, how?**

**CME Group Response:**

The back office processing of cleared swaps is entirely different than the processing of bilateral contracts. A clearinghouse may offer differing operational processing choices to users for cleared swaps and these offerings may vary by product class. These offerings may include netting (whether automatic or elective) and/or compression services. In addition, although bilateral contracts between counterparties can be netted or compressed via bilateral agreement, it is important to note that DCOs also maintain positions at the clearinghouse. Positional record keeping system is very different from maintaining transaction by transaction line items.

As the central counterparty to every swap cleared, the DCO is the only entity with the perspective to make reports regarding the swaps cleared by it and the positions maintained by it. DCOs should be allowed to make reports on ITBC Swaps accepted for clearing and resulting cleared swaps in a manner that is in accordance with its current operational processes. The existing infrastructure in the DCO will provide the Commission with the best possible access to cleared data. Only DCO reporting can provide the Commission with an accurate picture of the swaps it has cleared.

**43. The Commission requests comment that addresses whether reporting entities face challenges with respect to complete and accurate swap data reporting.**

**CME Group Response:**

Under current Regulation 49.11(b)(1), an SDR that receives a bilateral swap report is required to notify both counterparties that it has received the data and to obtain acknowledgement from both that the data is accurate. (There are different requirements set out in paragraph (b)(2) that apply in the case where the report was sent to the SDR from a “trusted source”.) The Regulation 49.11(b)(1) requirement is not practical and in many cases impossible for an SDR to satisfy.

The current reporting rules call for single-sided reporting, that is, one side of the trade is appointed reporting responsibility and the non-reporting side is not required to report. An SDR has necessarily established a relationship with each firm that has elected to submit data to it as a reporting counterparty. These firms sign user agreements and establish the technical means to make reports to the SDR before reporting. But this is not always the case with non-reporting counterparties who may or may not be known to an SDR. A reporting counterparty may have multiple non-reporting counterparties, none of which are required to sign a user agreement or otherwise be known to the SDR that the reporting counterparty chooses to make reports to – non-reporting counterparties that wish to access their data in the SDR will sign user agreements with the SDR selected by the reporting counterparty, but are not required to do so.



When a non-reporting counterparty is not known to an SDR, there is no way for the SDR to satisfy the obligations in Regulation 49.11(b)(1). In a single-sided reporting system, CME Group believes it is reasonable to rely on the reports submitted by the reporting counterparty without the need for separate direct acknowledgement requirements.

**44. The Commission also requests comment regarding whether clarifications or enhancements to swap data reporting requirements, including requirements relating to the reporting of errors and omissions and requirements for data reconciliation across reporting entities, could facilitate accurate and complete reporting of data to the SDRs, as well as data maintained in the SDRs.**

**CME Group Response:**

CME Group does not believe there is a need to adopt additional data reconciliation requirements to enhance reporting quality. Amending the rule set to distinguish reporting treatment between ITBC Swaps and Bilateral Swaps would eliminate many of the unnecessary current reconciliation processes that are the source of many current problems. These amendments are the best course of action to enhance data quality for these transactions.

**45. Should third-party service providers that report part 45 data to SDRs on behalf of reporting entities be required to register with the Commission?**

**CME Group Response:**

CME Group does not believe registration of third party service providers is necessary. The best regulatory policy is to set out the reporting obligations of market participants clearly and to allow entities with reporting obligations to engage third parties to assist them with any reporting obligations. When third parties are engaged, the actual reporting entities should retain regulatory responsibility for making accurate reports.

**46. Commission regulation 49.11(b) requires SDRs to verify with both counterparties the accuracy of swaps data reported to an SDR to verify with both counterparties the accuracy of swaps data reported to an SDR pursuant to part 45. What specific, affirmative steps should SDRs take to verify the accuracy of data submitted? Please include in your response steps that SDRs should take regarding data submitted by reporting counterparties on behalf of non-reporting counterparties who are not participants or users of the SDR.**

**CME Group Response:**

As discussed above in Question 43, an SDR that has received a Bilateral Swap report is required to notify both counterparties that it has received data and also to obtain acknowledgement from both that such data is accurate. However, this requirement is not practical because non-reporting counterparties may or may not be known to an SDR at the time the SDR receives the report. SDRs cannot be required to make contact with unknown counterparties on a trade by trade basis.

It is not necessary to adopt new requirements for reporting counterparties to provide contact information on each reporting submission to address this flaw. Rather, CME Group believes it would be better to amend the rules to simply remove this obligation and instead rely on the accuracy of the reports submitted by the reporting counterparty without the need for separate direct acknowledgement requirements.

**47. In what situations should an SDR reject part 45 data from entities due to errors or omissions in the data? How should the Commission balance legal requirements for reporting as soon as technologically practicable and the need for complete and accurate data?**

**CME Group Response:**

As a general matter, CME Group is of the view that the Commission's purposes of establishing an effective regulatory audit trail of swap transactions are better served when an SDR accepts data rather than rejects data. Imperfect data can be followed up on, and corrected. Rejected data results in no audit trail, thus staff is no better off than if data was not reported at all.

On the issue of timing, CME Group does not believe there is a need to sacrifice data quality for the sake of immediate reporting. When electronic processing provides for immediate reporting, there is value in creating immediate reporting. However, the swap markets are not characterized by the same trading patterns that can be found in, for example, the most liquid futures markets. Prompt and complete reporting of swap data is the correct principle and policy to pursue.

**48. All data in an SDR must be current and accurate, and the Commission expects SDRs, counterparties, and registered entities to take proactive steps to ensure data accuracy. Are there challenges that a reporting entity faces in confirming data accuracy? If so, how can those challenges most effectively be addressed?**

**CME Group Response:**

SDRs are simply takers of information and therefore necessarily depend on the quality of incoming data from reporters. An SDR's ability to ensure data quality is limited to ensuring that the data that is submitted conforms to required standards, not that it is correct. For example, where a reporting counterparty erroneously reports the buyer of a swap as the seller and the seller as the buyer, the SDR will only be able to confirm that the report came in with a buyer and seller identified. An SDR can only check to make certain that incoming data meets required standards; an SDR cannot be expected to ensure its absolute accuracy.

**50. In addition to data harmonization, how can reporting entities and SDRs improve data quality and standardization across all data elements and asset classes within an SDR? Please provide examples of how the presentation of data may be standardized, utilizing specific data elements.**

**CME Group Response:**

CME Group remains fully supportive of the Commission's efforts to harmonize data elements. However, while it is necessary to establish and implement harmonized data content standard, it is arguably not prudent or necessary to establish strictly harmonized standards relating to the format for the initial collection of data. Flexibility as to the format of the data submitted to TRs is necessary in order to cater to the different technology solutions in place and available in different markets and jurisdictions.

Amending the current reporting rules such that the DCO is the only reporter of data on ITBC Swaps can be equally as important in improving data quality. These changes, if adopted, would limit the reporting counterparties to a handful of sophisticated CCPs who have the systems in place and the experience to provide the Commission with quality data.

**59. Should the Commission require SDRs to calculate market participants' positions in cleared and uncleared swaps?**

**a. Given the definition of "position" in part 49 of the Commission's regulations, and the transactional nature of swap data reporting, how should an SDR calculate the positions of market participants whose swaps are reported to it?**

**i. Please explain whether these calculations should differ by underlying instrument, index or reference entity, counterparty, asset class, long risk of underlying instrument, index, or reference entity, or short risk of the underlying instrument, index or reference entity, or any other attribute.**

**b. How should SDR positions or position calculation methods relate, if at all, to positions calculated by DCOs and DCOs' position calculation methods?**

**60. Are there data elements that should be reported on a transaction basis to identify the linkage between a swap transaction and a reporting counterparty's other positions in products regulated by the Commission?**

**61. How can swap data reporting be enhanced to facilitate the calculation of positions within SDRs?**

**a. How should position information within an individual SDR be aggregated across multiple SDRs so that the Commission has a complete view of a market participant's risk profile for swaps reportable under Dodd-Frank?**

**b. How can the Commission efficiently aggregate information by product and by market participant in order to understand positions across cleared and uncleared markets?**

**62. How can the Commission best aggregate data across multiple trade repositories (including registered SDRs)?**

**CME Group Responses to Questions 59-62:**

A market participant's total swap position includes all of its swap activity across all markets. Trades that contribute to a position can occur across markets and often across jurisdictions. The U.S. system is a

multi-clearinghouse, multi-SDR system. Any particular SDR will only be able to aggregate a particular user's swap position with respect to the activity that has been reported to it. It will never include the user's offsetting swaps reported to other SDRs or futures positions or other relevant offsetting positions in other jurisdictions.

Because of this, it is not possible to measure the systemic risk posed by an enterprise with significant open contractual commitments simply by aggregating what is reported to an SDR within an SDR. It would be necessary for the Commission to aggregate across SDRs under the current system and to cooperate with other global regulatory authorities to aggregate positions across jurisdictions as well. The current SDR system cannot by itself solve this basic problem.

The most obvious direct way of monitoring positions for systemic risk is to collect the necessary information from the enterprise that has the exposure (and the information). There are a limited number of systemically important enterprises that are important for systemic risk monitoring and requiring them to model their total risk and open contracts and report these results to a single agency would be a straightforward way to address this fundamental problem.

The systemic risk posed by an enterprise can only be assessed by reporting all of the relevant information to an authority that is equipped with the competence and powers to require the necessary risk assessment information from these institutions. The Board of Governors of the Federal Reserve has statutory authority with respect to SIFIs and SIFMUs. This authority could be extended to the largest global institutions with a real potential to affect the global system. Any reporting system that is designed to monitor systemic risk should include risk modelling requirements that would facilitate an evaluation of comprehensive risks including counterparty credit risks, positional risks, operational risks and non-economic risks.

**63. What international regulatory coordination would be necessary to facilitate such data aggregation?**

**CME Group Response:**

CME Group has commented on what it believes are the necessary predicates for effective global aggregation. See [http://www.financialstabilityboard.org/publications/c\\_140416d.pdf](http://www.financialstabilityboard.org/publications/c_140416d.pdf). In summary, CME Group recommended the following steps:

- First, create and adopt global harmonized data content standards. CME Group believes that widely accepted standards for data content must be globally agreed and implemented before global aggregation can occur. This step is necessary in order to ensure that the data stored in local repositories is extracted into a standardized presentation so as to facilitate meaningful cross-jurisdictional aggregation. CME Group notes, however, that it will be important to preserve flexible standards for the format in which data is submitted to the trade repositories.

- Second, create and adopt harmonized regulatory access standards. This step will require authorities to work together to agree on the precise categories of data to be accessed from trade repositories.
- In view of the significant global coordination and negotiation which will be required to complete the above two steps, CME Group is further of the view that the timing for the implementation of a program for aggregating trade repository data must allow sufficient, and considerable, time for the satisfaction of this pre-conditional stage. It is only when the above two steps have been completed that regulators will be in a position to share and aggregate the data they collect from local repositories.

**68. An ancillary issue relating to commercialization of data and legal property rights relates to the “portability” of SDR data. This issue relates to the operation of Commission regulation 45.10 (Reporting to a single SDR), which requires that all swap data for a given swap must be reported to a single SDR, specifically, the SDR to which creation data is first reported. The Commission did not, however, directly address whether the data in one SDR may be moved, transferred or “ported” to another SDR. The Commission seeks comment on whether § 45.10 should be re-evaluated and whether a viable alternative exists. Should portability of data be permitted? If so, should there be agreement by the counterparties to a swap prior to the data being ported?**

**CME Group Response:**

CME Group believes that Regulation 45.10 can be interpreted to permit “portability” today. Our understanding of the purpose of Regulation 45.10 is to ensure that all relevant details regarding a given swap are housed at a single SDR to ensure the Commission has accurate information for regulatory purposes. If the complete records for a given swap were transferred from one SDR to another SDR, this purpose would be served. We do not believe that the language in Rule 45.10 which specifies that “all data for a given swap must be reported to a single swap data repository, which shall be the swap data repository to which the first report of required swap creation data is made” should be read to prevent this type of transfer. For example, it seems obvious that if an SDR wound down it would backload its records to another registered SDR so the Commission would have appropriate access to the data, and that the language in 45.10 should not be interpreted so as to preclude the transfer of SDR data in those circumstances either.

***A. Additional Comment***

**69. To the extent not addressed by any of the questions above, please identify any challenges regarding: (i) The accurate reporting of swap transaction data; (ii) efficient access to swap transaction data; and (iii) effective analysis of swap transaction data. Please address each issue and challenge as it pertains to reporting entities, SDRs, and others. Please also discuss how such challenges can be resolved.**

- a. What challenges do Commission registrants (SDs, MSPs, SEFs, DCMs, and DCOs) face as reporting entities and reporting counterparties under the swap data reporting rules?**

**What enhancements or clarifications to the Commission's rules, if any, would help address these challenges?**

- b. What challenges do financial entities face as reporting counterparties and non-reporting counterparties under the swap data reporting rules? What enhancements or clarifications to the Commission's rules, if any, would help address these challenges?**
- c. What challenges do non-financial entities, including natural persons, face as reporting counterparties and non-reporting counterparties under the swap data reporting rules? What enhancements or clarifications to the Commission's rules, if any, would help address these challenges?**

**CME Group Response:**

CME Group's comments regarding the existing cleared swap reporting framework are set out in detail at the beginning of this comment letter. In summary, CME Group believes that it is necessary to amend the current reporting rules such to make clear that the act of submitting an ITBC Swap to a DCO for clearing completely discharges a market participant's obligation for that particular swap. This approach would alleviate current reporting burdens for a large segment of the marketplace. Firms transacting ITBC swaps would not be required to report them.

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