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May 27, 2014

Ms. Melissa D. Jurgens
Secretary of the Commission
U.S. Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, N.W.
Washington, D.C. 20581

Re: CFTC Request for Comment on Part 45 and Related Provisions of the Commission's Swap Data Reporting Rules [RIN 3038-AE12]

Dear Ms. Jurgens:

The Depository Trust & Clearing Corporation ("DTCC"),[1] in conjunction with its provisionally registered swap data repository ("SDR"), DTCC Data Repository (U.S.) LLC ("DDR"), submits this letter to the Commodity Futures Trading Commission ("CFTC" or "Commission") in response to the request for public comment on Part 45 and related provisions of the Commission's swap data reporting rules, which were promulgated pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act").[2]

DTCC appreciates the efforts of the CFTC interdivisional working group to review the swap data reporting rules and related provisions. Given the questions and issues that have been raised with respect to those rules, DTCC believes that the activities of the working group, including the request for public comment, are vital to developing a clear understanding of the issues attendant to the implementation of the current rules, the underlying statutory requirements, and whether specific changes should be made to the Commission's regulations. DTCC welcomes the opportunity to provide comments regarding the Commission's swap data reporting regulations and looks forward to continuing to work with the Commission and engaging its customers in efforts to improve the Commission's swap data reporting regime.

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[1] The Depository Trust & Clearing Corporation ("DTCC") provides critical infrastructure to serve all participants in the financial industry, including investors, commercial end-users, broker-dealers, banks, insurance carriers, and mutual funds. DTCC operates as a cooperative that is owned collectively by its users and governed by a diverse Board of Directors. DTCC's governance structure includes 344 shareholders.

[2] Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, 124 Stat. 1376 (2010).

In addition to providing responses to the Commission's specific questions contained in the request for public comment, which are set forth in the attached Appendix, DTCC has identified several broad themes that we believe the Commission should take into account in its reassessment of the existing reporting rules. DTCC welcomes the opportunity to further discuss any of these comments and to provide additional recommendations related to the swap data reporting rules.

Swap transaction data—for both cleared and uncleared swaps—must be reported to SDRs to fulfill the statutory requirements under the Dodd-Frank Act

Several questions in the request for public comment appear to suggest that the Dodd-Frank Act reporting mandates can be satisfied by reporting position data or that SDR reporting does not apply to all types of swap transactions. As the CFTC considers whether to implement changes to its swap data reporting requirements, DTCC emphasizes that it would be contrary to the Commodity Exchange Act not to require the reporting of swap transaction data for all swaps—whether cleared or uncleared—to SDRs.[3] SDR reporting provides the public and regulators with the information they need regarding swap prices and the trading activities of swap counterparties. Further, the Commission and other regulators, through comprehensive reporting to SDRs of all transaction-level activity, have the ability to assess market trends and monitor and analyze activity between counterparties to further their regulatory oversight goals, including market abuse prevention, market surveillance, and risk monitoring.

The execution of an alpha trade triggers reporting obligations, and all creation and continuation should be reported to a single SDR to prevent data fragmentation

In addition, DTCC urges the Commission to address the fragmented nature of current swap data reporting to SDRs. Pursuant to the Parts 43 and 45 rules, reporting counterparties and entities are required to submit various swap data to SDRs, including primary economic terms of a trade, confirmation data, and valuation data. However, DTCC has observed that swap data related to a particular transaction may not be consistently reported to a single SDR, but rather divided across multiple SDRs. As a result, SDRs would be hampered in their ability to perform effective data aggregation should the Commission provide such instruction. In addition, SDRs are limited in their ability to provide reporting counterparties with a complete inventory of swap data reports related to a particular unique swap identifier ("USI") to assist with their reconciliation efforts.

Accordingly, it is imperative that the Commission reiterate and enforce the "single SDR" rule to ensure that a single SDR has the "cradle-to-grave" view of a swap from inception to expiration. In other words, after swap data is reported to an SDR with a USI, every required swap data report thereafter—whether pursuant to the Part 43 or Part 45 rules—should be reported to the same SDR that received the initial report. For example, with respect to cleared swaps, DTCC notes the importance of requiring that the alpha swap be reported to an SDR, which should also receive the

[3] *See* Commodity Exchange Act § 2(a)(13)(G).

resulting beta and gamma swap data, in order to preserve a complete audit trail of all transaction-level activity and maintain the "cradle-to-grave" view of the swap in a single SDR.

In terms of suggestions regarding the sufficiency of reporting position data versus swap transaction data to an SDR, Part 39 swap position reporting is simply not a substitute for the detailed transaction-level reports required under the Dodd-Frank Act and the Part 45 rules. The purpose of SDR reporting is not limited to monitoring and assessing the risk profiles of derivatives clearing organizations. Rather, only Part 45 reporting provides a complete audit trail of all transaction-level activity enabling regulators to reconstruct swap activity to fulfill their oversight obligations.

Before requiring any additional data fields to be reported, the Commission should focus on addressing the data quality issues related to existing key data fields and the current fragmentation of reporting process flows

Given the reported difficulties that the CFTC has encountered in evaluating and utilizing the vast amount of data it currently receives from SDRs, DTCC suggests that the Commission reassess its reporting requirements and required data fields to ensure that they address specific oversight goals, such as systemic risk mitigation, market monitoring, and market abuse prevention. Rather than considering whether market participants should report additional data elements, DTCC suggests the Commission should instead consider whether fewer data elements, which are focused more pointedly on specific regulatory objectives, would better position the CFTC and other regulators to fulfill their regulatory obligations. Focusing the reporting requirements on specific oversight goals will improve data quality by narrowing the scope of data elements that must be reported and subsequently maintained.

Further, as discussed above, in order to improve the quality of the data available to the Commission, DTCC urges the Commission to address the fragmentation of reporting process flows, such that a single SDR has the "cradle-to-grave" view of a swap from inception to expiration. Provided that it receives all of the data related to a particular transaction, DDR has developed mechanisms to facilitate reporting entities' efforts to ensure that swap data is current and accurate, such as providing certain routine reports regarding swap data submissions. DTCC notes, however, that counterparties to a swap have the primary obligation to ensure the accuracy of the data that is reported to and maintained at an SDR.

DTCC is committed to continuing to work with the Commission through the regular meetings with the Office of Data and Technology ("ODT") staff, as well as through any other means that would assist the Commission in addressing data quality issues.

Any changes in the Commission's swap reporting requirements should be adopted through a rulemaking with notice and comment, and entities must be given adequate time to implement any adopted changes

To the extent that Commission staff issues additional no-action relief related to swap data reporting, DTCC recommends that the Commission notify SDRs sufficiently in advance of any changes that impact the reporting requirements, as SDRs will have devoted considerable time and resources to develop their systems to comply with the final rules as promulgated. In particular, the Commission should establish a process through which it would consult with SDRs regarding how to accommodate circumstances related to no-action relief.

In terms of any contemplated changes to the final swap data reporting rules, DTCC stresses that the Commission must conduct a notice and comment rulemaking under the Administrative Procedure Act and the Commodity Exchange Act that includes a thorough cost-benefit analysis of any changes. Such cost-benefit analysis should take into consideration the extensive investment of time and resources by market participants to implement the current swap data reporting rules. Lastly, DTCC requests that the Commission provide an appropriate implementation period for any new requirements or revisions to the swap reporting requirements so that the industry and SDRs have adequate time to appropriately accommodate such changes within the specified timeframe.

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DTCC welcomes the opportunity to discuss these comments and specific responses with the Commission. Please contact me at 212-855-3240 or lthompson@dtcc.com, or Marisol Collazo at 212-855-2670 or mcollazo@dtcc.com.

Sincerely yours,

Larry E. Thompson
General Counsel

Enclosure: Appendix

Appendix:
CFTC Request for Comment
Review of Swap Data Recordkeeping and Reporting Requirements

The following provides responses to select questions within the Commodity Futures Trading Commission's ("CFTC" or "Commission") request for comment, which involve issues that DTCC, as a global provider of trade repository services, and DDR, as a swap data repository ("SDR"), believe may impact the efficiency and effectiveness of the provision of trade reporting services in the United States and globally. Where there is no response, DTCC and DDR have deferred to the industry or the relevant party to whom the question is addressed.

1. What information should be reported to an SDR as confirmation data? Please include specific data elements and any necessary definitions of such elements.

For "vanilla" swaps, DTCC believes that the information currently being reported to SDRs as confirmation data is adequate and requiring additional information to be reported would not further the Commission's or other regulators' oversight objectives. In particular, DDR currently receives the minimum primary economic terms ("PET") data fields as prescribed in Appendix 1 to the Part 45 rules,[1] as well as the "Confirmation Timestamp" and "Confirmation Type" (*i.e.,* method of confirmation—whether electronic or non-electronic) data fields.[2]

For more complex and bespoke swaps, however, it is challenging and costly for market participants and SDRs to implement processes to electronically represent all of the data elements of such transactions—through the Financial products Markup Language ("FpML") or otherwise. While DTCC believes that the minimum PET data fields should continue to be reported for complex and bespoke swaps, it is unclear what value the Commission would derive by requiring additional confirmation terms to be reported. DTCC recommends that the Commission work with relevant industry participants to comprehensively examine the issues related to reporting complex and bespoke swaps and develop a practicable solution.

a. For confirmations that incorporate terms by reference (*e.g.,* ISDA Master Agreement; terms of an Emerging Markets Trade Association ("EMTA")), which of these terms should be reported to an SDR as confirmation data?

The Commission's regulations contemplate that confirmations may incorporate by reference the terms of freestanding agreements.[3] As such, DDR does not believe that particular terms within such freestanding master agreements should be reported to an SDR as confirmation data. Further, as a practical matter, DDR notes that many of the terms in freestanding master agreements cannot be easily represented electronically in swap data reports to an SDR. Rather than requiring particular terms from such agreements to be reported to an SDR, DDR recommends that the Commission consider harmonizing its requirements with European Market Infrastructure Regulation ("EMIR"),

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[1] 17 C.F.R. § 45, App. 1 (2013).

[2] As the DDR is based on FpML, market participants can submit other confirmation data in their reporting of these standardized products as well.

[3] *See, e.g.,* Core Principles and Other Requirements for Swap Execution Facilities ("Part 37 rules"), 78 Fed. Reg. 33,476, 33,491, n. 195 (June 4, 2013).

which specifies "Master Agreement Type" and "Master Agreement Version" data fields.[4] Such data fields would provide the Commission with more detail regarding the master agreements that cover a particular swap and the Commission could request directly from a particular counterparty any further information.

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?

DTCC believes there should be no difference in reporting confirmation data for cleared versus uncleared swaps. DTCC notes that, although more standardized swaps are generally eligible for clearing, the confirmation data should be the same for cleared and uncleared swaps. Any differentiation between confirmation data reporting requirements for cleared and uncleared swaps would unnecessarily bifurcate reporting and potentially inhibit the Commission's oversight objectives.

3. Should the confirmation data reported to an SDR regarding swaps that are subject to the trade execution requirement in CEA section 2(h)(8) be different from the confirmation data reported to an SDR regarding: (a) Swaps that are required to be cleared but not subject to the trade execution requirement; (b) swaps that are not subject to the clearing requirement but that are intended to be cleared at the time of execution; (c) swaps that are voluntarily submitted to clearing at some point after execution (*e.g.*, backloaded trades); and (d) uncleared swaps? If so, how?

DTCC believes there should be no difference in the confirmation data required to be reported in the scenarios noted in this question. DTCC submits that a standardized set of reporting data would be more useful in achieving regulators' oversight objectives.

5. What processes and tools should reporting entities implement to ensure that required swap continuation data remains current and accurate?

While this question is directed toward reporting counterparties, DTCC notes that it has developed mechanisms to assist reporting entities in their efforts to ensure that required swap continuation data remains current and accurate. In particular, DDR provides every entity that has onboarded with DDR, including non-reporting counterparties, with daily reports regarding swap data submissions, as well as daily position and exception reports, which enable entities to reconcile and confirm that their records are consistent with the data maintained in DDR.

[4] *See* Commission Implementing Regulation 1247/2012, 2012 O.J. (L 352) (EU), *available at* http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri= OJ:L:2012:352:0020:0029:EN:PDF.

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)?

DTCC firmly believes in the importance of "cradle to grave" continuity of information with respect to each executed swap in order for regulators to have the most complete view of a swap and fulfill their oversight obligations. In circumstances in which new swaps result from existing swaps, DTCC generally believes that a new swap can be linked to existing swaps through the use of the "prior USI" data field.[5] With respect to new swaps that result from the clearing process, the data records for post-execution transactions that result from clearing (*i.e.* beta and gamma swaps) should include the "prior USI" field that corresponds to the alpha trade. Similar to swaps resulting from the clearing process, in order to link a prior swap to the resulting swaps following novation[6] or an option to the resulting swaps following an option exercise, DTCC recommends that the Commission require the inclusion of the "prior USI" field on the data records for resulting swaps.[7]

DTCC notes that swaps involving allocation require a means for linkage between these related transactions. According to the Part 45 rules, the SDR to which the initial swap transaction and the post-allocation swaps are reported must map together the unique swap identifiers ("USIs") of the original swap transaction and each of the post-allocation swaps.[8] Currently, DDR creates a link between the pre-allocation and post-allocation swaps by including the "prior USI" field on the data records for each of the post-allocation swaps.

Lastly, in terms of compression events, USIs should be linked upon the occurrence of a compression event. An SDR should receive the list of USIs that have been subject to a compression event and the newly created resultant USIs. This message would allow the SDR to provide the appropriate audit trial for a compression event regardless of whether multiple USIs have been compressed into other USIs.

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)?

DTCC recommends that the Commission proceed with caution in terms of requesting "reason codes" for why swaps are linked. Before requiring such a data element to be reported, the Commission should work with the industry and SDRs to first determine a data taxonomy and pre-defined list of reason codes. Further, the Commission should consider other reporting challenges,

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[5] DTCC notes that the concept of netting relates to the treatment of payment obligations and cash flows and, therefore, does not specifically relate to swap transaction reporting under the Part 45 rules.

[6] In terms of novations, DTCC notes that an industry best practice regarding how to link swaps that result from novation has not yet been developed.

[7] DTCC notes that potential challenges may arise with respect to linking subsequent swaps to the prior swap following a novation if the reporting counterparty changes on the subsequent swaps because the reporting counterparty may not be aware of the details of the prior swap.

[8] *See* 17 C.F.R. § 45.3 (2013).

such as the fragmentation of data flows for transactions across multiple SDRs, as addressing such other issues may provide sufficient transparency without imposing further reporting burdens on market participants. Lastly, DTCC urges the Commission to weigh the relative costs and benefits before requiring such a data field.

c. Aside from those events set forth in part 45, are there other events that require linkage between related swap transactions?

Pursuant to the enumerated conditions in CFTC no-action letter 13-66, in order for a swap execution facility ("SEF") to avail itself of no-action relief with respect to trades that are void *ab initio*, a SEF is required to report the following swap transaction data to an SDR: (1) a Part 43 cancellation of the original trade; (2) a Part 45 termination indicating that the original trade is void *ab initio*; and (3) swap transaction data pursuant to Parts 43 and 45 for the newly executed trade, which "must reference the original cancelled trade" and "link the original trade to the new trade for both Parts 43 and 45 reporting to the relevant SDR."[9]

DTCC supports CFTC staff's conditions related to swap data reporting with respect to all trades that are void *ab initio* and believes that, through the "prior USI" field, the original cancelled trade should be linked to the subsequent swap data reported for the newly executed trade. DTCC believes, however, that the Commission should clarify the swap data reporting process with respect to void *ab initio* swaps following the expiration of such no-action relief.

d. How should related swaps reported to different SDRs be linked?

In terms of post-execution transactions that result from an alpha swap that is cleared (*i.e.* beta and gamma swaps), DTCC believes that the creation data of the alpha swap, as well as the subsequent continuation data involving the beta and gamma swaps, should be reported to a single SDR, as this would mitigate any concerns about linking swaps reported to different SDRs.[10] Specifically, reporting related swaps to the single SDR where the creation data for the alpha trade was first reported would ensure that there is a continuous audit trail in one location, which in turn would facilitate the Commission's ability to efficiently access and examine related swaps.[11] The "prior USI" data field would serve as the term that is used to link together the alpha, beta, and gamma swaps.

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[9] *See* CFTC Letter No. 13-66 (Oct. 25, 2013).

[10] *See* 17 C.F.R. § 45.10 (2013).

[11] In terms of related swaps generally, under rule 45.12, a counterparty to a swap may make a voluntary, supplemental report to an SDR other than the SDR which received all required swap creation and continuation data pursuant to rules 45.3 and 45.10. *See* 17 C.F.R. § 45.12 (2013). DTCC notes that such voluntary, supplemental reports could be linked to the mandatory swap data reports in another SDR through the USI data field, which can be tracked across SDRs.

7. What are the benefits and/or disadvantages of reporting continuation data using: (i) The lifecycle reporting method; and (ii) the snapshot reporting method?

a. Are there events or information that can be represented more effectively using one of the reporting methods rather than the other?

b. Should all SDRs be required to accept both the snapshot and lifecycle methods for reporting continuation data?

DTCC believes that the Commission should continue to permit market participants to select either reporting method—whether life cycle or snapshot—for continuation data reporting,[12] and not require one method over the other, as significant market infrastructure costs would be incurred across the industry if the Commission were to mandate one method over another at this point in the implementation process. Further, SDRs should be required to accommodate both methods.

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?

The range of events that can occur during the life of a swap are best described by the market participants that trade swaps.

As discussed in the response to Question 7, DTCC believes that the Commission should continue to permit market participants to select either reporting method—whether life cycle or snapshot—for continuation data reporting,[13] and all SDRs should be required to accommodate both methods. DTCC also recommends that data fields that (1) identify a particular event (*e.g.* "event ID"), and (2) describe a type of event (*e.g.* "event type" or, in DDR, this is equivalent to the "transaction type"), should be required data elements for market participants that select the life cycle event reporting method.

10.

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

DTCC believes that SDRs should facilitate counterparties' efforts to fulfill their obligations to ensure the accuracy and current state of a swap. However, counterparties to a swap have the primary obligation to ensure the accuracy of the data that is reported to and maintained at an SDR. The counterparties to a swap can verify the details of the swap and can attest to the accuracy of the creation and continuation data that has been submitted to an SDR. In the preamble to the Part 45 rules, the Commission recognizes that "[i]t is the reporting party's responsibility to report data

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[12] *See* Swap Data Recordkeeping and Reporting Requirements ("Part 45 rules"), 77 Fed. Reg. 2,136, 2,153 (Jan. 12, 2012) (stating that "[t]he final rule will leave to the SDR and registered entity and reporting counterparty marketplace the choice of the method, whether life cycle or snapshot, for reporting continuation data . . . .").

[13] *See id.*

accurately and develop processes to achieve this goal."[14] To that end, under rule 45.14, the Commission requires swap counterparties that are required to report swap data to SDRs to "report any errors and omissions in the data so reported."[15] Separately, registered entities with certain reporting obligations, such as SEFs, designated contract markets ("DCMs"), and derivatives clearing organizations ("DCOs"), must also report any errors or omissions to the SDR.[16]

Under the Dodd-Frank Act, an SDR's primary duties include: (1) accepting swap data; (2) confirming with counterparties to the swap the accuracy of submitted swap data; and (3) maintaining the swap data received.[17] Pursuant to these statutory requirements, the Commission promulgated rule 49.11(b), which requires, among other things, an SDR to confirm the accuracy of swap creation data submitted directly by a counterparty by notifying both counterparties of the submitted data and receiving from both counterparties acknowledgment of the accuracy of the swap data and corrections of any errors.[18]

In order to fulfill its obligation to confirm with swap counterparties the accuracy of submitted swap data, DDR has established a robust mechanism for reporting counterparties—who have the primary obligation to ensure the accuracy of the data that is reported to and maintained at an SDR—to indicate the current state of the swap and DDR's records reflect when a swap has terminated or matured. Likewise, DDR has an explicit transaction type data field to cancel a swap that was reported in error; all non-canceled swaps are reflected as open.

In terms of auditing swap data, DTCC respectfully submits that neither the Commission's existing regulations nor the Dodd-Frank Act requires an SDR to ensure the substantive accuracy of the data it maintains. In other words, an SDR should not be required to verify, via audits or otherwise, the bona fides of the reported information against the counterparties' records.[19] Rather, DTCC believes that the role of an SDR in terms of ensuring data accuracy is to: (1) confirm with the counterparties to a swap that the submitted data accurately reflects what the counterparties intended to report; and (2) maintain and safeguard the data as reported.

Nevertheless, if the Commission believes that it is in the public interest to impose an audit requirement on SDRs, the Commission should undertake a formal rulemaking, including an evaluation of the costs and benefits of any such proposal, and provide the public with notice and an opportunity to comment. DTCC notes preliminarily that imposing an audit requirement on SDRs would result in significant additional costs for SDRs and, ultimately, other market participants. To defray such additional costs, SDRs would be forced to raise their fees to reporting counterparties and other market participants utilizing the SDR.

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[14] *Id.* at 2,170.

[15] 17 C.F.R. § 45.14(a) (2013).

[16] *See id.*

[17] *See* Commodity Exchange Act ("CEA") 21(c)(1)-(3), 7 U.S.C. § 24a(c)(1)-(3) (2012).

[18] *See* 17 C.F.R. § 49.11(b) (2013). In terms of DDR's data confirmation procedures, if a counterparty objects to a swap data report, it may file a protest with DDR, which causes the swap data report to be placed in a disputed status.

[19] For further discussion regarding SDR data verification issues, please see the response to Question 46.

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?

DDR has established a process to recognize swaps that naturally mature on the scheduled maturity date, and we do not believe that any additional requirements are needed in this regard. A swap may terminate due to a variety of reasons, including due to novation in the clearing process, as well as in advance of the contractual maturity date due to, for example, the occurrence of a termination event or a default. The current state of such swaps will reflect any such termination.

With respect to swaps terminated before the scheduled maturity date, DDR has a mechanism in place that permits reporting counterparties to update the swap's state in the SDR; thus, we also do not believe that any additional requirements are needed for early terminated swaps.

DTCC recommends that the Commission explicitly provide in the Part 45 rules that, in all instances, the SDR which maintains data related to the terminated or novated swap must be notified of a novated swap or termination either through a discrete life cycle message or a snapshot update of the open trades.

Specifically, when an alpha swap is novated in the clearing process, the Commission should require a DCO to submit information about the resulting beta and gamma swaps *in addition* to the termination notice for the alpha swap[20] to the SDR that maintains the creation data for the alpha swap and such report should be filed in accordance with that SDR's reporting and transmission protocols. If a DCO fails to report data for the beta and gamma swaps to the SDR that maintains data for the alpha swap, an SDR should not accept a termination notice for the alpha swap from the DCO because the DCO is not a party to the alpha swap. Absent the associated beta and gamma swaps information, an SDR would not be able to determine whether a termination notice from a DCO is a proper report. In addition, the SDR with the alpha swap data must receive the resulting beta and gamma swaps information in order to preserve a complete audit trail of all transaction-level activity and maintain the "cradle-to-grave" view of the swap. DTCC believes such a complete view of the swap best serves all of the regulatory interests of the CFTC, including financial surveillance, market surveillance, risk monitoring, and trade practice surveillance.

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?

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,* should be reported to and identified in SDR data. If the swap has been reported to the SDR under Parts 43 and 45, and subsequently it becomes known that the swap is not accepted for clearing and therefore void *ab initio*, then the swap report should be

[20] This requirement would be consistent with rules 45.4 and 45.10 as promulgated, which requires a DCO to report life cycle event data, including data related to a novation, to the SDR where the alpha swap was reported. *See* 17 C.F.R. § 45.4 (2013) (requiring a DCO to report life cycle event data); *id.* at § 45.1 (noting novation as an example of a life cycle event); *id.* at § 45.10.

cancelled and no further continuation data should be reported on the swap. We believe the reporting of the swap data should continue in the absence of any known rejection from clearing.

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

As discussed previously in the response to Question 10a, DTCC believes that counterparties to a swap have the primary obligation to ensure the accuracy of the data reported to and maintained at an SDR.[21] In contrast, the role of an SDR is to confirm with the counterparties to the swap that the submitted data accurately reflects what the counterparties intended to report and to maintain the data as reported. DTCC has developed mechanisms to allow counterparties to confirm the accuracy of data submitted to DDR. DTCC believes that, as counterparties and SDRs are expected to carry out their respective regulatory responsibilities related to data reporting and verification, the data maintained in an SDR should be accurate and, therefore, it is unnecessary to impose an additional requirement related to periodic reconciliations. Absent a demonstrable need for periodic reconciliations, the costs associated with such a new requirement would likely outweigh any perceived benefits.

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?

DTCC recommends that the reporting rules should require the new reporting party to promptly submit a new record to the SDR specifying that it is the new reporting party. This would ensure that the SDR has the latest and most accurate details about the swap, including the entity with the reporting obligation.

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?

DTCC believes that several Commission rules outside of Part 45 impact swap data reporting, as discussed below.

Position Reporting under Part 39

DTCC believes that the position reporting requirements under the Part 39 rules should not impact Part 45 reporting, but notes that there is confusion regarding the seeming overlap in the reporting requirements. As discussed more fully in the response to Question 41, DTCC believes the distinct purposes of the reporting under the Part 39 rules and the Part 45 rules, respectively, should be recognized, and the Commission should make clear that Part 39 reporting is not a substitute for Part 45 reporting.

[21] DTCC notes that counterparties are best positioned to perform this function, as the counterparties can verify the details of the swap and can attest to the accuracy of the creation and continuation data that is submitted to the SDR.

Block Trade Indicator in Part 43

DTCC notes that a data field related to block trade indicators is required to be reported as part of both Part 45 and Part 43 reporting. Requiring the same information to be reported to an SDR in two separate reports increases the possibility for filing errors by the submitting counterparty, which in turn necessitates additional, costly data checks by the SDR. DTCC continues to consider the merits of a potential alternative reporting regime that would eliminate such duplicative reporting, streamline the reporting process, eliminate data duplications, and reduce the possibility of errors and other data quality issues.

SDRs' Data Verification Obligations under Part 49

Part 49 requires SDRs to verify the accuracy of swap transaction data submitted to the SDR pursuant to Part 45. As discussed in further detail in the responses to Questions 10 and 46, DTCC believes the Commission must address the issues related to such SDR obligations. In particular, the Commission should revise its data verification rules or, alternatively, develop a workable solution under the existing Part 49 rules to address those instances where a counterparty to a swap fails to verify the accuracy of the data regarding its swaps and does not take advantage of mechanisms offered by an SDR to accomplish such data verification.

Inter-affiliate Exemption in Part 50

Under Commission rules 50.50 to 50.52, an SDR is required to provide to counterparties both swap-by-swap reporting and form-based reporting of "additional information" in support of a claimed exception or exemption. DTCC believes either method should be acceptable to satisfy the requirements of Part 50, as opposed to both. Such a simplification would increase flexibility and reduce costs to reporting parties without sacrificing any value to the CFTC.

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.

As discussed in the response to Question 6, DTCC believes there is a viable solution to the linking issues raised by compression exercises' creation of "many to one" and "many to many" resultant swaps.

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?

DTCC notes that rule 45.12 permits a counterparty to submit a voluntary, supplemental report to an SDR, thereby allowing for the possibility that more than one party may report data to an SDR regarding the same swap. Provided that a voluntary report contains a USI as well as an indication

that it is a voluntary report, DTCC does not anticipate issues related to duplication even if duplicative data is provided by one of the counterparties. Absent such an indication, duplication issues could occur.

DTCC also notes that the reporting counterparty may not be readily identified in certain swap transactions in asset classes such as interest rates and foreign exchange. This occurs, for example, when entities of equal standing (*e.g.* swap dealer ("SD") and swap dealer) face each other as counterparties on a swap transaction such as a basis swap. The industry conventions do not always provide the necessary clarity for determining which party is the reporting counterparty. Accordingly, in order to reduce the potential for duplicative reporting, the Commission should clarify in the Parts 45 and 43 rules the reporting hierarchy for such products.

If an SDR receives multiple, apparently duplicative records reflecting the same USI, it is not in a position to identify which record is the duplicate and, therefore, cannot be required to correct the records. Rather, in terms of duplicative reporting issues, DTCC believes an SDR should be responsible for (1) notifying the reporting counterparties of such duplications, and (2) accepting the reporting counterparty's report which corrects the errors and omissions that resulted in the duplicative report.

Finally, DTCC notes that the expiration of a no-action letter may impact swap data reporting if it causes ambiguity regarding which party has the reporting obligation, which could in turn result in duplicative reporting. The Commission should ensure that no-action letters provide clarity regarding reporting obligations and provide for an implementation period that enables the industry and SDRs to make any necessary business or technology changes. For further discussion regarding the impact of no-action letters on SDRs, please see the response to Question 25.

22. In addition to those entities enumerated 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.

In addition to those entities enumerated in Commission rule 45.5, other entities should be permitted to create USIs. The Commission's current provisions related to the creation of USIs, as set forth in rule 45.5, do not recognize instances where an entity that is not identified in the Commission's rules as a USI creator may be in the best position to create the USI for a swap transaction.

According to the Commission's "first-touch approach" under rule 45.5, for swaps executed on a trading platform, the USIs are created and assigned by the SEF or DCM where the swap is executed.[22] For a swap executed bilaterally, the USI is created and assigned by the SD or major swap participant ("MSP") that is the reporting counterparty.[23] In the case of a swap between non-SD/MSP counterparties, the USI is created by the SDR to which the swap is reported.[24]

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[22] *See* 17 C.F.R. § 45.5(a) (2013).

[23] *See id.* at § 45.5(b).

[24] *See id.* at § 45.5(c).

DTCC concurs with the Commission's first-touch approach. Consistent with that approach, the Commission should modify its rules to permit additional trading platforms where reportable swaps are executed to create USIs. For example, swaps required to be reported to an SDR may be executed on Qualified Multilateral Trade Execution Facilities or on a Foreign Board of Trade. In addition, reportable foreign exchange swaps are executed on electronic communication networks, which are not required to register as SEFs. The Commission should permit such types of swap execution platforms—as well as other trading platforms in the United States and abroad where the Commission is contemplating allowing reportable swaps to be executed—to create USIs for swaps reporting purposes.[25]

The basis for DTCC's recommendation is similar to the rationale set forth by the Commission in designating DCMs and SEFs as USI creators, as these entities are similarly situated to DCMs and SEFs as swap execution venues. The Commission has observed that USI creation should occur when the swap is executed, as this "will best ensure that all market participants involved with the swap, from counterparties to platforms to clearinghouses to SDRS, will have the same USI for the swap, and have it as soon as possible. This will avoid confusion and potential errors. It will avoid delays in submitting an executed swap for clearing while waiting for receipt of a USI from creation at a later time, and will minimize to the extent possible the need to alter pre-existing records concerning the swap in various automated systems to add the USI."[26]

In addition, recognizing that the swap market will continue to evolve and new types of trading venues and techniques will emerge, DTCC further recommends that the Commission adopt standards and set forth a process whereby the Commission or the National Futures Association ("NFA") could, in the future, issue namespaces for USI creation to other types of entities as warranted. Such modifications to the Commission's regulations would enable flexibility and facilitate the timely adoption of any changes deemed appropriate with respect to USI creation.

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

DTCC recommends that trading venues where reportable swaps are executed should be required to obtain a legal entity identifier ("LEI") and such LEI should be reported as part of the "execution venue" field in data submissions to an SDR. Requiring trading venues to obtain and report LEIs to SDRs would help to ensure that SDRs and the CFTC have the necessary information to identify the execution venues of swap transactions.

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[25] DTCC notes that, as a condition to obtaining no-action relief from the SEF registration requirement, a multilateral trading facility ("MTF") is required to report Part 45 creation data and the initial Part 43 data associated with swap transactions to a CFTC registered SDR. Specifically, Commission staff provided that an MTF seeking no-action relief is required to "certify that once it begins reporting all transactions to a Commission-registered or provisionally-registered SDR, as if it were a SEF, it will use the Acknowledgment ID ("AID") . . . in lieu of a CFTC-assigned name space for creation of unique swap identifiers . . . ." *See* CFTC Letter No. 14-46 (Apr. 9, 2014).

[26] Part 45 rules, 77 Fed. Reg. at 2,158.

24. In order to understand affiliate relationships and the combined positions of an affiliated group of companies, should reporting counterparties report and identify (and SDRs maintain) information regarding inter-affiliate relationships? Should that reporting be separate from, or in addition to, Level 2 reference data set forth in Commission regulation 45.6? If so, how?

As the global LEI system begins to gain momentum, level two data is a natural progression of the LEI initiative. Level one data, or data used to singularly and uniquely identify a legal entity, has been the focus of the Regulatory Oversight Council to date and must be firmly established before expanding to level two data. The global LEI system ("GLEIS") has progressed significantly over the last year but remains in its infancy, especially without the establishment of a Central Operating Unit. As a result, movement towards level two data should wait until the GLEIS is more mature with an established Central Operating Unit and governance structure.

25.

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.

To the extent that Commission staff issues additional no-action relief related to swap data reporting, DTCC recommends that the Commission notify SDRs sufficiently in advance of any changes that will impact the reporting requirements, as SDRs will have devoted considerable time and resources to develop their systems to comply with the original requirements. For example, the development of DDR's systems required the creation of functional and technical specifications, actual development, regression testing, and user acceptance testing, all of which involved significant time, technology, and human resources. To accommodate any changes to the reporting requirements in connection with staff no-action relief, DDR must undertake additional programming, development, regression testing, user acceptance testing, and education and coordination of reporting parties.

DTCC recommends that the Commission establish a process through which it would consult with SDRs regarding how to accommodate circumstances related to no-action relief. Thus far, SDRs have not been notified far enough in advance of many of the no-action relief letters issued by Commission staff.[27] SDRs have also not been made aware of any tailored or custom no-action relief provided to individual entities. Many staff no-action relief letters are provided to entities without SDRs' knowledge and, as a result, an SDR may not know whether a data field missing from a report is due to no-action relief or an error. Further, SDRs do not have appropriate mechanisms to validate or enforce conditions to no-action relief. Accordingly, the Commission should not require SDRs to determine which entities are subject to staff no-action relief, or validate or enforce the provisions or conditions contained in such no-action relief letters. DTCC believes a more

[27] During a February 10, 2014, Technology Advisory Committee ("TAC") meeting, Mr. John Rogers, Chief Information Officer, Office of Data and Technology, indicated that CFTC staff has been informed that the no-action relief letters have created certain challenges for SDRs because they ultimately require additional validations and modifications under expedited timeframes in order for swap data to be reported to and recorded properly in the SDRs. DDR confirms that, to date, the Commission has not systematically consulted with DDR or provided sufficient advance notice to enable DDR to efficiently accommodate new procedures or obligations with respect to the staff's no-action letters. Consequently, DDR has faced significant implementation challenges due to the last minute nature of the numerous no-action relief letters.

formalized process that provides for advance notice is vital to ensuring that SDRs have sufficient time to develop procedures and implement technology changes in response to no-action relief provided by Commission staff.

Lastly, DTCC notes that no-action relief may impact swap data reporting if it designates a reporting counterparty other than the entity specified in the rules. The Commission should consider such impacts when issuing no-action letters and provide for an appropriate implementation period upon the expiration of such no-action relief so that the industry and SDRs have adequate time to accommodate any changes in reporting within the specified timeframe.

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).

DTCC has experienced certain challenges related to the reporting of several required data fields. In particular, with respect to the cleared status of a swap, DTCC believes that the current "clearing indicator" data field could be clarified, or an additional data field established, to indicate the cleared status of a swap. Currently, the "clearing indicator" field indicates whether a swap "will be cleared," rather than whether a swap has, in fact, been cleared.[28] DTCC recommends that the Commission consider whether it would be appropriate to: (1) modify this data field to indicate the actual cleared status of a swap; or (2) require additional information about a swap's cleared status.

In terms of the "indication of collateralization" data field,[29] DTCC notes that reporting counterparties have different interpretations of the meaning of the term collateralization and how to classify a particular swap. Accordingly, DTCC recommends that the CFTC work with the industry and regulators in other jurisdictions to further develop consistent, clear, and harmonized classifications of the acceptable values for this data field. DTCC suggests that the Commission examine the standards adopted by EMIR and other jurisdictions regarding collateralization.

With respect to the "execution timestamp" field under the Part 45 rules,[30] DTCC has observed that reporting counterparties may use different forms of time stamping which may create certain challenges for SDRs in terms of processing the reported date and time. To provide uniformity and greater clarity, DTCC recommends that the Commission specify the particular format for the data field in Appendix 1 to Part 45.[31] In addition, DTCC notes that, under the Part 43 rules, the "execution timestamp" field is updated in reports for certain price-forming events following

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[28] *See* 17 C.F.R. § 45, App. 1 (2013).

[29] *See id.*

[30] *See id.*

[31] *See id.*

execution,[32] whereas under the Part 45 rules, the "execution timestamp" field remains static and reflects the original timestamp of the trade.[33] Given such requirements under the Parts 43 and 45 rules, DTCC believes that the CFTC should clarify whether SDRs should maintain as a static data field the original timestamp of the trade and how the timestamp data fields associated with subsequent life cycle events should be treated.

With respect to the notional value field, DTCC has observed that the industry does not have a standardized method for calculating the notional amount for certain products and, therefore, reporting counterparties may report similar trades with different notional values. In terms of equity swaps, while SDs generally followed a best practice for reporting the notional value in prior OTC Derivatives Regulator Forum ("ODRF") voluntary reporting, it is not mandatory that market participants follow the method. To eliminate such inconsistencies, DTCC recommends that the CFTC work with the industry to develop standardized methods of notional amount calculation for each asset class and require all reporting counterparties to utilize these methods.

With respect to the U.S. person status field, DTCC has observed that, at the time of execution for some swap trades, the reporting counterparty may not know the U.S. person status of the non-reporting counterparty. If the reporting counterparty were to delay the transmission of a swap data report to an SDR to ascertain such information, however, it may violate the requirement to report PET data as soon as technologically practicable after execution.[34] Accordingly, DTCC recommends that the Commission consider amending the Part 45 rules or providing appropriately tailored relief to permit the filing of information related to the U.S. person status of non-reporting counterparties via a supplemental report after the submission of a creation data report.

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[32] *See* 17 C.F.R. § 43, App. A (2013).

[33] *See* 17 C.F.R. § 45, App. 1 (2013).

[34] *See* 17 C.F.R. § 45.3 (2013).

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?

DTCC recognizes the importance of complete and accurate swap data reporting, which is intended to provide regulatory agencies with "comprehensive data" that is "available in a unified format, greatly enhancing the ability of regulators in their oversight and enforcement functions."[35] In promulgating the Part 45 rules, the Commission created a series of tables containing minimum PET data for swaps in each of the asset classes.[36] These tables provide regulators with a wide range of data elements and include a "catch-all" category to ensure that any data not specifically noted in the tables would be reported as well.[37] In practice, DDR already accepts more data fields than are mandated by the minimum PET data tables. In fact, DTCC has implemented message templates that all fulfill the FpML representation of products.

DTCC suggests the Commission review its needs for more data, balancing its objectives, the value of such data, and the burden on the industry and the SDRs. Given the Commission's reported difficulties related to evaluating and utilizing the vast amount of data it currently receives,[38] DTCC respectfully submits that the Commission should consider whether fewer, not additional, data

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[35] *See* Part 45 rules, 77 Fed. Reg. at 2,188.

[36] *See* 17 C.F.R. 45, App. 1 (2013).

[37] *See id.*

[38] Commissioner O'Malia recently stated that "CFTC still cannot crunch the data in SDRs to identify and measure risk exposures in the market." Commissioner Scott O'Malia, Commodity Futures Trading Commission, Keynote Address at the SWIFT Institute's Future of Financial Standards Forum: Disruptive Data: Transforming Regulatory Oversight through Technological Innovation (Mar. 25, 2014).

elements, focusing more pointedly on specific regulatory objectives, would better enable the Commission and other regulators to fulfill their regulatory obligations.[39] In addition, if there is to be any progress made on global data aggregation as discussed by the Financial Stability Board ("FSB"), the Commission may need to consider aligning with the more limited data sets currently required in other jurisdictions as opposed to increasing the data set required to be reported.

Any additional data reporting requirements should be carefully assessed and designed to meet a specific regulatory need or objective, such as systemic risk mitigation, market monitoring, and market abuse prevention. Requiring market participants to report data that has little or no identifiable regulatory purpose would cause the reporting process to be less reliable and more prone to errors. Counterparties, SDRs, and regulators would be forced to dedicate additional resources to report, filter, consolidate, and evaluate the swap data.

Finally, before the Commission determines to require additional data elements to be reported, it should conduct a cost-benefit analysis. The Commission should assess whether identifiable benefits related to an additional data element would outweigh the significant costs imposed on market participants and SDRs. Accommodating additional data elements in swap data reporting is very costly for SDRs, and such costs would ultimately be passed onto swap counterparties. If the Commission determines that an additional data element is necessary to fulfill its regulatory obligations, DTCC urges the Commission to provide an appropriate implementation period that provides SDRs and reporting entities with sufficient time to complete necessary systems and business changes.

31. Could the part 45 reporting requirements be modified to render a fuller and more complete schedule of the underlying exchange of payment flows reflected in a swap as agreed upon at the time of execution? If so, how could the requirements be modified to capture such a schedule?

DTCC does not believe that the Commission should modify the Part 45 regulations to include a complete schedule of underlying payments as such information can be derived from the data elements already being reported. Further, any change that mandates the reporting of payments would require reporting counterparties to submit new reports, which is a time-consuming and costly endeavor when weighed against the benefits and other means for gathering such information. As discussed further in the response to Question 29, DTCC respectfully recommends that the Commission evaluate its data needs based on identifiable oversight goals before requiring market participants to report additional data elements. In terms of payment flow reporting, DTCC does not believe such data would materially further the Commission's ability to fulfill its regulatory obligations. Requiring market participants to report data that has little or no demonstrated regulatory purpose would cause the reporting process to be less reliable and more prone to errors. Regulators would ultimately be forced to dedicate additional resources to filter, consolidate, and evaluate the swap data. DTCC notes that it is unclear whether the Commission needs additional data elements beyond those already reported, as the Commission has not discussed any particular regulatory benefit that would result from requiring this additional data to be reported.

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[39] DTCC also notes the importance of harmonizing and standardizing data elements on a cross-jurisdictional basis to assist regulators globally in analyzing data.

32. Taking into account the European Union's reporting rules and Commission regulation 39.19, should the Commission require additional reporting of collateral information? If so, how should collateral be represented and reported? Should there be any differences between how collateral is reported for cleared and uncleared swaps?

Should the Commission choose to require the reporting of collateral information at this time, it should harmonize its collateral representation and reporting requirements with the standards recently adopted by other regulators such as the European Union, as stated in the response to Question 28. This would ensure consistent reporting across jurisdictions, which would facilitate regulators' ability to aggregate data and monitor market participants' collateral. In addition, such an approach would minimize the cost of compliance for market participants as they would not be required to implement different collateral calculation or reporting standards. Lastly, if the Commission adopts collateral reporting requirements, it should provide for an appropriate implementation period to enable SDRs and reporting counterparties to: (1) make any necessary systems changes, including the addition of the new electronic fields related to collateral; (2) conduct user testing; and (3) complete any other arrangements or modifications necessary to comply with these requirements.

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.

DTCC does not believe the provisions of the Part 45 rules requiring the reporting of information related to the actual execution of a swap transaction, commonly called the alpha swap, should be waived under any circumstance including those enumerated by the Commission above. As the CEA states that "[e]ach swap (whether cleared or uncleared) shall be reported to a registered swap data repository,"[40] DTCC believes that any changes to the Commission's reporting requirements that would not require the reporting of swap transaction data to SDRs for all swaps, including alpha swaps, would be inconsistent with the CEA.

[40] CEA § 2(a)(13)(G), 7 U.S.C. § 2(a)(13)(G) (2012).

Though the process of clearing results in the transformation of the risk relationship between the original counterparties to the alpha trade and the insertion of the DCO as the central counterparty in the resulting beta and gamma swaps following novation, it cannot be disputed that a material, price-forming event occurs upon the execution of an alpha swap. Indeed, the Commission has recognized the importance of the alpha swap by requiring reporting parties to report the details of such trades as "publicly reportable swap transaction" under the Part 43 rules. Given the Part 43 requirements related to alpha swaps, we are concerned and uncertain about how failure to report an alpha swap for Part 45 purposes would impact the integrity of the overall swap data in SDRs. Irrespective of the novation, regulators should continue to require the reporting of alpha swap data, including information related to its linkage to beta and gamma swaps, in order to maintain a complete audit trail of all transaction-level activity related to a swap trade and thereby enable all regulators to fulfill all of their oversight responsibilities. In order to understand the origins of cleared swaps, regulators must have the ability to access and examine the connections between the alpha, beta, and gamma swaps. If the Commission's oversight were limited to cleared swap data, it would not be able to develop a detailed and comprehensive understanding of a swap transaction, the trading activities of market participants, or the detection of any violations.

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).

DTCC understands that there have been suggestions that the Commission's regulatory swap data reporting regime could be limited solely to the reporting of uncleared swaps or that position-level reporting could replace transaction-level reporting.[41] DTCC believes that any changes to the Commission's reporting requirements that would not require the reporting of swap transaction data to SDRs for all swaps, regardless of whether a swap is cleared or uncleared, would be inconsistent with the CEA, as amended by the Dodd-Frank Act. In particular, the CEA states that "[e]ach swap (whether cleared or uncleared) shall be reported to a registered swap data repository."[42] Accordingly, DTCC does not believe that the Commission may, by rule, waive the statutory mandate

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[41] DTCC notes that Chicago Mercantile Exchange ("CME") has previously suggested that the statutory requirement to report both cleared and uncleared swaps to SDRs "applies to the required price and volume reports that are to be distributed to the public for price transparency purposes." Further, CME has stated: "[t]his type of reporting is separate from the Section 729 reporting that is intended to facilitate effective regulatory access to comprehensive swaps data. Section 729 only requires uncleared swaps to be reported to an SDR for regulatory purposes." Letter from Craig Donohue, CME, to David Stawick, CFTC, RIN3038-AD19, RIN3038-AD08 (Feb. 7, 2011), *available at* http://comments.cftc.gov/PublicComments/CommentList.aspx?id=920.

CME's interpretation of CEA section 2(a)(13)(G) is flawed. First, the plain language of the statute unambiguously states that each swap, both cleared and uncleared, must be reported to a registered SDR. Further, the requirement within CEA section 2(a)(13)(G)—that each cleared swap be reported to a registered SDR—would be rendered meaningless if CEA section 2(a)(13)(G) was limited to real-time reporting because the clearing process does not result in a price-forming event. As the Commission has recognized in the preamble to the Part 43 rules, publicly reportable swap transactions should be limited to "the execution of a swap and certain price-affecting events that occur over the life of a swap." *See* Part 45 rules, 77 Fed. Reg. at 1,195. In other words, for purposes of real-time reporting, cleared swap data related to beta and gamma swaps are not reported to an SDR because the clearing process does not "change[] the pricing of the swap." *See* 17 C.F.R. § 43.2 (2013). Accordingly, as CME's interpretation would render this aspect of CEA section 2(a)(13)(G) meaningless, the Commission should reject such an interpretation.

[42] CEA § 2(a)(13)(G), 7 U.S.C. § 2(a)(13)(G) (2012).

for full and complete transaction-level reporting of all swaps to SDRs, as this would be contrary to the statutory mandate added by the Dodd-Frank Act.

Further, the CFTC may not rely on the exemptive authority in CEA section 4(c)(1)(A)(i)(I) to modify the statutory requirement to report all swap transaction data (whether cleared or uncleared) to an SDR. Before the enactment of the Dodd-Frank Act, the Commission held broad exemptive authority under section 4(c) of the CEA. However, the Dodd-Frank Act not only amended CEA section 2(a) to include the swap data reporting requirement discussed above, but it also added a restriction to the Commission's broad exemptive authority under section 4(c)(1)(A) of the CEA.[43] Specifically, the Commission's authority to grant exemptions under section 4(c) cannot be exercised with respect to the section 2(a) reporting requirements.[44] Accordingly, any modifications to the Commission's rules which would remove the requirement to report all swap transaction data (whether cleared or uncleared) to an SDR would be inconsistent with the CEA.

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?

Yes. DTCC believes that the Part 45 rules should be clarified to address any confusion regarding how the clearing process impacts the reporting of alpha, beta, and gamma swaps. In particular, the

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[43] The Commission has acknowledged the restrictions to its exemptive authority under CEA section 4(c). *See* Clearing Exemption for Swaps Between Certain Affiliated Entities, 77 Fed. Reg. 50,425, 50,427 (Aug. 21, 2012) (stating that "Section 4(c)(1) of the CEA provides that . . . the Commission . . . may exempt any agreement, contract, or transaction, or class thereof . . . from the contract market designation requirement of Section 4(a) of the CEA, or any other provision of the CEA *other than certain enumerated provisions*") (emphasis added).

The legislative history of CEA section 4(c)(1)(A) also demonstrates that Congress intended to restrict the Commission's section 4(c) authority with respect to certain enumerated sections. *See, e.g.*, Financial Services Oversight Council Act of 2009 § 711(d): "EXEMPTIONS.—Section 4(c) of the Commodity Exchange Act (7 U.S.C. 4(c)) is amended by adding at the end the following: 'The Commission shall not have the authority to grant exemptions from the swap-related provisions of the Over-the-Counter Derivatives Market Act of 2009, except as expressly authorized under the provisions of that Act.'.";

H.R. 4173, 111th Cong. § 3013(c) (2010), as passed by the House: "EXEMPTIONS.—Section 4(c) of the Commodity Exchange Act (7 U.S.C. 4(c)) is amended by adding at the end the following: "The Commission shall not have the authority to grant exemptions from the provisions of sections 3101(a), 3101(c), 3104, 3105, 3106, 3107, 3109, 3110, 3113, 3115, 3120, and 3121 of the Derivative Markets Transparency and Accountability Act of 2009, except as expressly authorized under the provisions of that Act.";

S. 3217, 111th Cong. § 711(d) (2010), as introduced and reported: "EXEMPTIONS.—Section 4(c)(1) of the Commodity Exchange Act (7 U.S.C. 6(c)(1)) is amended by adding at the end the following: "The Commission shall not have the authority to grant exemptions from the swap-related provisions of the Over-the-Counter Derivatives Markets Act of 2010, except as expressly authorized under the pro-visions of that Act."."

[44] *See* CEA § 4(c)(1)(A), 7 U.S.C. § 6(c)(1)(A) (2012).

Commission should reiterate the requirement that the SDR with the alpha swap data must receive the resulting beta and gamma swaps information in order to preserve a complete audit trail of all transaction-level activity and maintain the "cradle-to-grave" view of the swap.

In terms of regulatory swap data reporting, pursuant to the reporting counterparty hierarchy outlined in CEA section 4r(a)(3), the Commission promulgated rule 45.8, which sets forth the "waterfall" process for determining the reporting counterparty based on the status of the counterparties involved.[45] In addition, the Commission required under rule 45.10 that "[a]ll swap data for a given swap must be reported to a single [SDR], which shall be [SDR] to which the first report of required swap creation data is made pursuant to this part."[46]

DTCC supports the following approach to effectuate the purpose and intent of rules 45.8 and 45.10.

(1) The Commission should specify that creation data commences at the time of execution, *i.e.* the reporting of the Part 43 real-time "alpha" trade.

(2) According to rule 45.8, potential reporting counterparties include SDs, MSPs, and non-SD/MSP counterparties;[47] SEFs, DCMs, or DCOs are not reporting counterparties under this rule. Consistent with the regulations of other jurisdictions, reporting counterparties have the obligation to ensure that data submitted to an SDR is complete and accurate.

(3) While SEFs, DCMs, DCOs, or another third party may submit data to the SDR, such entities should do so solely *on behalf of the reporting counterparty*. It is imperative that the Commission clarify this key point as data should be reported to the SDR as directed by the reporting counterparty in order to promote data reconciliation and aggregation, which in turn facilitates data quality and accuracy.

In terms of continuation data, DTCC believes the Part 45 rules appropriately tasked DCOs with reporting continuation data for cleared swaps on behalf of reporting counterparties, including beta and gamma swaps data with a linkage to the alpha swap. DCOs should not, however, be permitted to disregard rule 45.10 as promulgated by selecting the SDR to which cleared swap data is reported. As the Commission recognized in the promulgation of the Part 45 rules, "important regulatory purposes of the Dodd-Frank Act would be frustrated, and . . . regulators' ability to see necessary information concerning swaps could be impeded, if data concerning a given swap was spread over multiple SDRs."[48] Accordingly, the Commission should clarify that DCOs are required to report such data to the SDR that received the data for the alpha swap in order for the Commission to be able to access all data related to an initial swap transaction in a single SDR.

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[45] *See* 17 C.F.R. § 45.8 (2013); *see also* CEA § 4r(a)(3), 7 U.S.C. § 6r(a)(3) (2012). For example, if only one counterparty is an SD, the SD is required to report the swap. If one counterparty is an MSP, and the other counterparty is neither an SD nor an MSP, the MSP must report. In instances where the counterparties have the same status, the counterparties must select the counterparty to report the swap.

[46] 17 C.F.R. § 45.10 (2013).

[47] *Id.* at § 45.8.

[48] *See* Part 45 rules, 77 Fed. Reg. at 2,168.

In particular, with respect to cleared swaps, the Commission should require DCOs to report the following data to the SDR that received the creation data report for an alpha swap: (1) all data related to an alpha swap, including cleared swap data for the resulting beta and gamma swaps following novation in the clearing process; (2) the linkage of the alpha, beta, and gamma swaps;[49] and (3) all subsequent continuation data related to the beta and gamma swaps. Such clarification would enable the Commission to access a complete audit trail of all transaction-level data related to an alpha swap transaction in a single SDR, including resulting beta and gamma swaps data. DTCC believes that the concerns that have been raised regarding duplication of records for cleared swaps across SDRs results from the Commission's decision to allow DCOs to report cleared swap data to their captive SDRs. Rather than requiring reporting counterparties and SDRs to adopt potentially costly and elaborate mechanisms to verify the absence of duplicates, the Commission should adopt rules that eliminate the possibility of duplicate reporting for cleared swaps.

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?

DTCC believes that the Commission should require reporting entities to report beta and gamma swaps to the same SDR that received the creation data report for the initial alpha swap. By doing so, the Commission would ensure that all swap data is stored in a single SDR, which would in turn mitigate the need for SDRs to verify the absence of duplicate records reported in error to multiple SDRs for a single cleared swap transaction. Further, requiring reporting counterparties and registered entities to report related alpha, beta, and gamma swaps to a single SDR will avoid data fragmentation and ensure the creation of a complete audit trail, which is consistent with the goals of the Dodd-Frank Act and the Part 45 reporting framework.[50]

DTCC notes, however, that under rule 45.12(c), "a voluntary, supplemental report may be made either to the [SDR] to which all required swap creation data and all required swap continuation data is reported for the swap pursuant to §§ 45.3 and 45.10, or to a different [SDR]."[51] While the Commission's rules contemplate that voluntary, supplemental reports may be reported to multiple SDRs, DTCC notes that rule 45.12(d) also requires such supplemental reports to contain, in part: (1) an indication that the report is a voluntary, supplemental report; and (2) "the identity of the [SDR] to which all required swap creation data and all required swap continuation data is reported for the swap . . . if the voluntary supplemental report is made to a different [SDR]."[52] The Commission could, therefore, differentiate between swap data reports that are reported to multiple SDRs in error versus those reports that are purposefully reported to another SDR.

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[49] In particular, the Commission should require a DCO to include the "prior USI" data field related to the alpha swap as part of its report of the cleared swap data.

[50] *See* Part 45 rules, 77 Fed. Reg. at 2,159 (noting the importance of the Commission and other regulators' ability "to follow the entire history and audit trail of each affected swap").

[51] 17 C.F.R. § 45.12(c) (2013).

[52] *Id.* at § 45.12(d).

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))?

DDR has developed a seamless process to accommodate the reporting of swap data related to both bilateral, uncleared trades and cleared trades. In particular, reporting counterparties and registered entities are able to submit pre-cleared trades (*i.e.,* alpha swaps) with USIs and, following the clearing process, DCOs are able to submit the cleared swap data related to the beta and gamma trades, including the USI of the alpha swap in the "prior USI" field and the identification of the clearing broker.[53] DTCC believes that the creation of an audit trail of transaction level activity through the reporting of alpha, beta, and gamma swaps data is vitally important to the Commission's ability to appropriately fulfill its oversight obligations.

DDR welcomes the opportunity to further discuss with the Commission additional ways in which cleared swap data can be represented in SDRs to facilitate the Commission's oversight of compliance with clearing-related rules.

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

As stated in the response to Question 28, DTCC believes that the Commission should redefine the "clearing indicator" field to ensure that it identifies whether a swap has actually been cleared. Currently, the "clearing indicator" field is used to indicate whether there is an intention to clear, rather than to identify whether a swap has actually been cleared. As such, DTCC recommends that the Commission clarify how the "clearing indicator" field should be interpreted. If the purpose of this data field is to identify whether a swap has actually been cleared, then DTCC recommends that the Commission specify that the acceptable values for this field are a simple "yes" or "no" indicator to signify the swap's cleared status.

In the alternative, if the Commission wishes to preserve this field as an indication of whether there is an intention to clear, DTCC believes that the Commission could utilize the presence of the LEI of a DCO on the beta and gamma swaps as an indication that a swap has been cleared.

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?

DTCC notes that there are significant differences in the purposes and scope of the Commission's Part 39 and Part 45 reporting requirements. Given the distinct purposes and scope of these Commission reporting regimes, Part 39 swap position reporting is not a substitute for the detailed transaction-level reports required under Part 45.

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[53] Currently, LCH has been submitting data related to alpha, beta, and gamma swaps to DDR, creating a seamless audit trail of transaction level activity.

Part 39 reporting is position-based, applies solely to the DCOs,[54] and its purpose is to monitor DCOs and systemic risk related to DCOs. According to the Commission's Part 39 rules, a DCO is required to provide the Commission with all information regarding positions that is necessary to conduct oversight of DCOs.[55] As the Commission noted, this reporting regime assists the Commission "in monitoring the financial strength and operational capabilities of a DCO and in evaluating whether a DCO's risk management practices are effective. The required reports also . . . assist the Commission in taking prompt action as necessary to identify incipient problems and address them at an early stage. A self-reporting program of this type enhances the Commission's ability to conduct oversight given its limited resources which do not permit routine on-site surveillance of DCOs."[56]

Part 45 reporting, on the other hand, is transaction-based and applies to all swap trades, whether cleared or uncleared. The purpose of Part 45 reporting is to ensure that all data concerning swaps subject to the Commission's jurisdiction is maintained in SDRs, where it is available to the Commission and other financial regulators for fulfillment of their various regulatory mandates.[57] Such regulatory mandates include systemic risk mitigation, market monitoring, surveillance for market manipulation, trade practice surveillance, and analysis of swap dealer and major swap participant activities.[58] Part 45 reporting provides a complete audit trail of all transaction-level activity enabling regulators to reconstruct swap dealing activity to fulfill such oversight functions and prosecute violators. As a result, all regulators, not solely regulators with responsibilities for overseeing DCOs, have a better view into the full scope of activity in the marketplace of cleared and uncleared swaps. In addition, the Part 45 transaction-level reports enable the Commission and other regulatory agencies to study the behavior of the swap market to track changes in the market and ensure that the Commission's regulatory requirements remain consistent with evolving market trends.

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[54] Commission rule 39.19(c) states:

"*Reporting requirements.* Each registered derivatives clearing organization shall provide to the Commission or other person as may be required or permitted by this paragraph the information specified below:
(1) *Daily reporting.* (i) A report containing the information specified by this paragraph (c)(1), which shall be compiled as of the end of each trading day and shall be submitted to the Commission by 10 a.m. on the following business day:
(A) Initial margin requirements and initial margin on deposit for each clearing member, by house origin and by each customer origin;
(B) Daily variation margin, separately listing the mark-to-market amount collected from or paid to each clearing member, by house origin and by each customer origin;
(C) All other daily cash flows relating to clearing and settlement including, but not limited to, option premiums and payments related to swaps such as coupon amounts, collected from or paid to each clearing member, by house origin and by each customer origin; and
(D) End-of-day positions for each clearing member, by house origin and by each customer origin.
(ii) The report shall contain the information required by paragraph (c)(1)(i) of this section for:
(A) All futures positions, and options positions, as applicable;
(B) All swaps positions; and
(C) All securities positions that are held in a customer account subject to section 4d of the Act or are subject to a cross-margining agreement." 17 C.F.R. § 39.19(c) (2013).

[55] *See* Derivatives Clearing Organization General Provisions and Core Principles ("Part 39 rules"), 76 Fed. Reg. 69,334, 69,426 (Nov. 8, 2011).

[56] *Id.*

[57] *See* Part 45 rules, 77 Fed. Reg. at 2,138.

[58] *See id.*

DTCC will continue to consider whether and how certain changes to the Commission's swap transaction-level reporting regime (embodied in Parts 43 and 45) would make the reporting of swap transaction data more efficient, while ensuring that the Commission continues to receive all data necessary to fulfill its regulatory responsibilities. DTCC does not have recommendations related to the position reporting requirements of Part 39. DTCC would welcome the opportunity to work with the Commission to streamline the swap reporting regime and improve the data available to the Commission. SDRs are uniquely positioned to serve as a single source of reporting given the rich data set that is already reported to the SDRs for swap transactions.

DTCC notes that certain entities have suggested that the Commission not require the reporting of certain transaction-level information for swaps, such as a report associated with the initial execution of a swap (*i.e.,* the "alpha swap"). As further discussed in the responses to Questions 33 and 34, DTCC reminds the Commission that it may not disregard the statutory dictates under the Dodd-Frank Act, which require transaction reporting to an SDR for all swaps—both cleared and uncleared.[59]

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?

As discussed in the response to Question 6, DTCC notes that the concept of netting relates to the treatment of payment obligations and cash flows and does not result in the change of positions or notional amounts; therefore, it does not specifically relate to swap transaction reporting under the Part 45 rules. In terms of compression events, DTCC recommends and welcomes the opportunity to work with the Commission and industry participants to review the compression process in order to determine how the compression of swaps can be most effectively represented.

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.

According to Commission rule 49.11(b), an SDR is required to confirm the accuracy of swap creation data submitted directly by a counterparty by notifying both counterparties of the submitted data and receiving from both counterparties acknowledgment of the accuracy of the swap data and corrections of any errors.[60] As discussed further in response to Question 46 below, however, DDR has encountered certain difficulties in terms of receiving acknowledgement of the accuracy of data reported for swaps reported directly by a counterparty where at least one counterparty is not an SD

[59] *See* CEA § 2(a)(13)(G), 7 U.S.C. § 2(a)(13)(G) (2012).

[60] *See* 17 C.F.R. § 49.11 (2013).

or MSP. Despite an SDR's obligation to establish policies and procedures to ensure data accuracy under rule 49.11, an SDR has no legal or business-related enforcement mechanism to compel a counterparty to respond to its verification requests and, further, the Commission's rules do not impose a penalty on counterparties that fail to verify the accuracy of swap data in the SDR.

Accordingly, given the practical limits of an SDR in such circumstances, DTCC believes the Commission should modify its rules to incorporate a workable procedure that SDRs can effectuate for data verification.

46. Commission regulation 49.11(b) requires SDRs 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.

Parts 45 and 49 of the Commission's rules set forth certain swap data verification obligations. In particular, Part 45 includes requirements related to the accuracy of swap data reported to SDRs by registered entities with reporting obligations, reporting counterparties, and non-reporting counterparties, whereas Part 49 details the obligations of SDRs related to data verification.

Counterparties to a swap have the primary obligation to ensure the accuracy of the data related to such swap in the SDR, as only the counterparties to the transaction have the complete details related to such swap and can attest to the accuracy of the creation and continuation data that is provided to an SDR. Recognizing this, in the preamble to the final Part 45 rules, the Commission states that "[i]t is the reporting party's responsibility to report data accurately and develop processes to achieve this goal."[61] Accordingly, under rule 45.14, the Commission requires swap counterparties that are required to report swap data to SDRs to "report any errors and omissions in the data so reported."[62] Similarly, registered entities, such as SEFs, DCMs, and DCOs, which are required to report swap data to SDRs, must also report any errors or omissions to the SDR.[63]

Section 21(c)(2) of the CEA states that an SDR must "confirm with both counterparties to the swap the accuracy of the data that was submitted."[64] Pursuant to this statutory requirement, Commission rule 49.11 requires an SDR to establish policies and procedures to ensure the accuracy of swap data reported to it and to "confirm the accuracy of all swap data that is submitted pursuant to part 45."[65] The Commission, however, does not require an SDR to affirmatively communicate with both counterparties in all circumstances. For example, with respect to creation data, when data is received from a SEF, DCM, DCO, or third-party service provider, rule 49.11(b)(1)(ii) provides that the SDR "has confirmed the accuracy of swap creation data" if: (1) the SDR has formed a reasonable belief that the data is accurate; (2) the swap data or accompanying information evidences that both counterparties agreed to the data; and (3) the SDR has provided both counterparties with a

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[61] Part 45 rules, 77 Fed. Reg. at 2,170.

[62] 17 C.F.R. § 45.14(a) (2013).

[63] *See id.*

[64] CEA § 21(c)(2), 7 U.S.C. § 24a(c)(2) (2012).

[65] 17 C.F.R. § 49.11(b) (2013).

48-hour correction period.[66] With respect to such swaps, the Commission concluded that it may not be necessary to affirmatively communicate with both counterparties.[67] The Commission did not include such a carve out for: (1) swap creation data submitted directly by a counterparty, as rule 49.11(b)(1)(i) provides that the SDR must affirmatively communicate with both counterparties and receive acknowledgement of the accuracy of the data and corrections for any errors; or (2) swap continuation data submitted directly by a counterparty, as rule 49.11(b)(2)(i) provides that the SDR must notify both counterparties of submitted data.[68]

DTCC urges the Commission to recognize existing market realities where certain counterparties fail to see the benefit of verifying the accuracy of data reported to the SDR for their swaps and, therefore, do not utilize the SDR's procedures for data verification.[69] DTCC notes that, despite an SDR's obligation to establish policies and procedures to ensure data accuracy under rule 49.11, an SDR has no mechanism to compel a counterparty to respond to its verification requests and, further, the SDR may not have the necessary contact information to perform such outreach. While DTCC has sought to simplify its procedures for data verification and has streamlined its onboarding process for counterparties with the goal of minimizing the costs and complexities associated with data verification, issues still persist. Under existing Commission rules, there is no practicable mechanism for an SDR to verify the accuracy of data with counterparties that are unresponsive to the SDR's efforts.

Given the practical limits of an SDR's ability to ensure data accuracy, DTCC submits that the Commission should recognize existing market realities and, accordingly, modify its rules to incorporate a workable procedure that SDRs can effectuate for data verification, *e.g.* having the reporting counterparty notify the non-reporting counterparty of the SDR to which the trade has been reported at the time of execution.

Such guidance or rule amendment could further stipulate that an SDR should offer non-reporting counterparties the ability to verify the details of a reported transaction for which they have been named as a counterparty to the swap. A non-reporting counterparty could then verify the accuracy of its swap activity and positions and correct any errors as long as it has onboarded to the SDR. Provided that an SDR implements these procedures, DTCC believes that an SDR should be deemed to be in compliance with the verification requirements under rule 49.11 with respect to non-responsive counterparties.

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?

DTCC recognizes the difficulty of balancing the requirement for reporting swap transactions as soon as technologically practicable with the need for SDRs to maintain complete and accurate data.

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[66] *See id.* at § 49.11(b)(1)(ii).

[67] *See id.*

[68] *See id.* at § 49.11(b).

[69] DTCC has observed that such situations typically arise in connection with end users that do not regularly enter into swap transactions.

If SDRs' validation processes are excessively strict, then swap data reports may be rejected frequently, which would, in turn, prevent reporting counterparties' from fulfilling their obligations to report swap data in a timely manner and cause regulators to question why swap data has not been reported. On the other hand, DTCC recognizes that liberally relaxing validation processes may lead to the collection of incomplete and inaccurate data. Accordingly, while excessively strict validations should not be applied to data upon initial submission to an SDR, SDRs should subject incoming swap data records to basic data validation standards.

DTCC believes that SDRs should reject solely those submissions that do not meet certain basic validation processes, designed to ensure that key swap data fields are properly populated. DDR recommends that the Commission work with the SDRs to define the minimum standard of data to allow a report to be accepted into an SDR. The focus of such work should be on the quality of data for a limited number of fields at first, growing as data reporting matures.

DTCC believes that every effort should be made to accept the data record and, therefore, DDR provides reporting counterparties and registered entities with an opportunity to correct any other errors or omissions. DTCC notes that, if DDR receives an incomplete data submission from a reporting counterparty, it could delay transmitting such information to the Commission until all necessary PET data has been provided to DDR. While this would preclude the transmission of incomplete submissions to the Commission, DTCC notes that delaying the transmission of incomplete submissions may also result in CFTC processing bottlenecks as the Commission would receive intermittent transmissions of data.

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?

As stated previously in the responses to Questions 10 and 46, counterparties to a swap have the primary obligation to ensure the accuracy of swap data in an SDR, as only the counterparties to a transaction have the complete details related to such swap and can attest to the accuracy of the creation and continuation data that is provided to an SDR.

DDR has proactively implemented validation processes with respect to the data it receives. DDR has implemented a cross-asset solution that follows the FpML standard, which requires that data reports include a minimum set of required data field elements. DDR has also implemented logical and business validation processes to ensure that data submissions are accurate and can be submitted in a timely fashion. Provided that a data submission satisfies DDR's validation processes, DDR will accept the submission. If a data submission does not meet DDR's basic business and logical validations, DDR will reject the submission and send a message informing the reporting entity of the rejection. For further discussion regarding DDR's basis validation processes, please see the response to Question 47.

Lastly, DTCC notes that DDR has developed reports that are regularly provided to reporting counterparties to facilitate their verification of data accuracy. Specifically, DDR provides participants with a set of daily reports, including reports regarding the prior day's submissions and end of day positions, a warning report, and a real-time report that indicates if a message is accepted or rejected.

49. If an error or omission is discovered in the data reported to an SDR, what remedies and systems should be in place to correct the data? Within what time frame should a reporting entity be required to identify an error in previously reported data and submit corrected information to an SDR?

As discussed in the response to Question 10a, DTCC believes that counterparties to a swap have the primary obligation to ensure the accuracy of the data that is reported to and maintained at an SDR. As an SDR, DDR assists reporting counterparties in verifying data accuracy by, for example, regularly providing reconciliation reports to reporting counterparties. DTCC believes that reporting counterparties continuously reconcile their internal records data using such reconciliation reports. If a reporting counterparty discovers a discrepancy as part of a reconciliation effort, it should submit an updated data record to correct any error or omission in a timely manner.

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.

DTCC believes that standardizing data elements within asset classes improves overall data quality and, therefore, DDR has implemented several validation procedures to verify the accuracy and proper format of reported data, which should result in submissions becoming more standard over time.

However, DTCC believes that the Commission should provide clarifications to improve data standardization and data quality, starting with a focus on those data fields the Commission believes are the most important to meet its regulatory obligations. DTCC welcomes the opportunity to work with the Commission and the industry to identify the most critical data elements within each asset-class that could be standardized in the short term to quickly improve reported data quality.

51. How should SDRs leverage the results of data elements harmonization to help ensure regulatory reporting is more accurate and consistent?

DDR is leveraging the results of the CFTC data harmonization effort to ensure data reported to the CFTC is provided according to the requested data standards. In addition, DDR is enhancing its validation business rules to promote consistency with respect to the values that populate the key data fields identified by the Commission.

It is important to note, that while the results of this data harmonization exercise will improve the accuracy and consistency of these particular data fields, DTCC believes that the data harmonization effort is one of many steps towards improving data quality. Further steps should be taken to address the data content and values provided and, where inconsistencies exist, clarification regarding how data should be populated would help to ensure that reporting entities submit quality data to SDRs.

In addition, the Commission should address the fragmented nature of current swap data reporting to SDRs. Pursuant to the Parts 43 and 45 rules, reporting counterparties and entities are required to submit various swap data to SDRs, including PET data, confirmation data, and valuation data.

However, DTCC has observed that such swap data related to a particular transaction may not be consistently reported to a single SDR, but rather divided across multiple SDRs. As a result of the current fragmented approach, SDRs would be hindered in their ability to perform effective data aggregation should the Commission provide such instruction. Additionally, SDRs are limited in their ability to provide reporting counterparties with a complete inventory of swap data reports related to a particular USI to assist with their reconciliation efforts. Accordingly, it is imperative that the Commission reiterate and enforce the "single SDR" rule to ensure that, after swap data is reported to an SDR with a USI, every required swap data report thereafter related to such transaction—whether pursuant to the Part 43 or Part 45 rules—is reported to the same SDR that received the initial report.

Ultimately, the enforcement of the single SDR rule in this regard would enable SDRs to run various processes to improve data quality, which would in turn enhance the Commission's ability to effectively utilize swap data that is reported to SDRs. For example, well-functioning process flows would enable SDRs to: (1) run validation checks to ensure that all required reports are received for a particular transaction; (2) provide the necessary exception reports to reporting entities for any gaps; and (3) effectively perform aggregation and analysis functions on swap data at the desired level of detail.

52. Are there additional existing swaps data standards (other than the legal entity identifier ("LEI"), unique product identifier ("UPI") and USI) that the Commission should consider requiring as part of any effort to harmonize SDR data with both domestic and foreign regulators?

DTCC does not have any specific recommendations at this time regarding data fields (other than LEI, UPI, and USI) that the Commission should consider for further harmonization.

However, as part of any such harmonization efforts, DTCC suggests that the Commission examine the standards adopted by EMIR and other jurisdictions to consider permitting, where appropriate, the use of the unique trade identifier ("UTI") when reporting to SDRs, as the UTI is comparable to the USI and serves the purpose of identifying a particular swap transaction. Adoption of a universal trade identification methodology would further advance the consistency and cross-border utility of global data.

53. Please explain your experiences and any challenges associated with obtaining and maintaining an LEI.

a. What additional steps can market participants and SDRs take to help ensure counterparties have valid LEIs?

DTCC agrees with the CFTC that it is important that entities register for an LEI and maintain their records by providing acknowledgement and any updated reference data at least on an annual basis. It is important that both reporting parties and non-reporting counterparties do so in order to enable LEIs to be effectively used in systemic risk analysis. DTCC recommends that the regulators provide clarity regarding the need for entities to not only obtain but also maintain their LEI records on an ongoing basis for utilization in regulatory reporting.

54. What principles should the Commission consider when designating a UPI and product classification system pursuant to § 45.7?

a. Are there any commonly used taxonomies that the Commission should consider in connection with the designation process? Please respond by asset class.

DTCC submits that SDRs should not be responsible for developing UPIs or product classification systems. Defining taxonomy levels with practical utility is a substantial undertaking that requires ongoing maintenance as products evolve and emphasis as to the attributes of primary interest changes. Rather, DTCC recommends that the Commission utilize the extensive work that has already been conducted on this issue by adopting the International Swaps and Derivatives Association ("ISDA") Taxonomy as a valid UPI.[70] This taxonomy is commonly used by SDs and MSPs, is fully represented in FpML, and has been approved for use in reporting in Japan, Australia, Hong Kong, Singapore, and Canada.[71]

56. Should the Commission require an SDR to aggregate the number of transactions by an entity, and the aggregate notional value of those transactions, to reflect the entity's total swap position and its total swap activity during a given period (*e.g.*, for purposes of monitoring the SD de minimis calculation)?

DDR welcomes the opportunity to explore potential aggregation mechanisms. However, as discussed in the response to Question 51, it is imperative that the Commission reiterate and enforce the "single SDR" rule to ensure that, after swap data is reported to an SDR with a USI, every required swap data report thereafter related to such transaction—whether pursuant to the Part 43 or Part 45 rules—is reported to the same SDR that received the initial report. Otherwise, the fragmentation of data across multiple SDRs will cause SDR aggregation efforts to be futile as the calculations related to transactions for a particular entity would be incomplete within a particular SDR. Further, the Commission could not simply take the sum of the aggregated data of each SDR as this would be misleading.

For further discussion regarding the aggregation of data across multiple SDRs, please see the response to Question 62.

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[70] *See ISDA OTC Derivatives Taxonomies,* ISDA (Oct. 22, 2012), *available at* http://www2.isda.org/attachment/NTQzOQ==/ISDA%20OTC%20Derivatives%20Taxonomies%20-%20version%202012-10-22.xls.

[71] Moreover, this taxonomy is currently being considered for EMIR reporting.

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?

As noted in the response to Question 56, as long as a market participant reports various transactions to multiple SDRs, no single SDR can calculate a full comprehensive, market-wide position for such market participant. An SDR may, however, calculate the position of a market participant that is limited to and based on the swap data maintained by the SDR.

Currently, DDR provides the Commission with position reports per asset class based on the data transmitted by reporting counterparties through either the snapshot or life cycle reporting methods. If additional detail is necessary in such reports, DTCC welcomes further discussions with the Commission to determine the level of detail that would be useful in such enhanced reporting.[72] For example, in order to ascertain market participants' positions in cleared and uncleared swaps by asset class, DDR would need to develop an additional metric. DTCC respectfully requests, however, that the Commission also consider the relevant costs and benefits of requiring SDRs to produce position reports containing more granular detail.

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?

DTCC suggests that the CFTC consider adopting a common product taxonomy to efficiently aggregate information by product and by market participant. As discussed in the response to Question 54, DTCC recognizes that defining taxonomy levels with practical utility is a substantial undertaking that requires ongoing maintenance as products evolve and emphasis as to the attributes of primary interest changes. DTCC respectfully recommends that the Commission standardize the use of the taxonomy developed by ISDA, which is commonly used by SDs and MSPs.[73] Further, as

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[72] DTCC notes the voluntary reporting to the ODRF for credit, interest rates, and equities asset classes may yield helpful information for the Commission as it considers potential position reporting requirements.

[73] *See ISDA OTC Derivatives Taxonomies,* ISDA (Oct. 22, 2012), *available at* http://www2.isda.org/attachment/NTQzOQ==/ISDA%20OTC%20Derivatives%20Taxonomies%20-%20version%202012-10-22.xls.

discussed in the response to Question 28, DTCC believes that the current "clearing indicator" data field could be clarified, or an additional data field established, to indicate the cleared status of a swap. Lastly, DTCC respectfully requests that, as systems and taxonomies are developed, the Commission provide for an appropriate implementation period for SDRs and counterparties to develop their systems and conduct user testing in accordance with any required changes.

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

As discussed in the responses to Questions 54 and 61, before any aggregation can begin, common standards and protocols must be established by the Commission in consultation with the industry. DTCC suggests the standards begin with common identifiers, such as UPIs, and extend to data elements. Aggregation cannot take place unless data sets across SDRs are harmonized and data standards are established for all.

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

DTCC believes that the goal of global swap data aggregation can only be accomplished through effective international coordination. An integrated global data set is necessary for effective market and systemic risk supervision, as no single SDR or jurisdiction has comprehensive market-wide, global data on swap activity and positions.

To accomplish this goal, DTCC believes that the Commission and other global regulators must work together to form a comprehensive strategy regarding the legal, technical, and other challenges that currently impede the global aggregation of over-the-counter ("OTC") derivatives data. Identifying the nature of the analysis to be performed on the aggregated global data set and the necessary data set are prerequisites to determining the most appropriate aggregation solution.

Data harmonization is also a key consideration and must be enacted on a global scale, as complex and varied reporting rules permit reporting parties to submit information to trade repositories in various ways, depending on the jurisdiction. Regulators should consider adopting a global data dictionary of commonly used and defined elements. Thereafter, each jurisdiction should harmonize the elements of this narrowly defined global data set to enhance data quality and increase the likelihood of successful aggregation.

Given the above considerations, DTCC suggests that regulators focus their near-term efforts on: (1) developing an international consensus regarding the specific goals to be achieved; (2) determining what elements should constitute the global data set; (3) developing standardized definitions of such data elements; and (4) adopting such data elements in local regulatory requirements. Following these near-term efforts, regulators should determine the necessary technical solutions for data aggregation. Lastly, DTCC notes that data sharing, privacy, and other legal issues must be examined in connection with a global data aggregation effort.

64. The Commission seeks input from market participants regarding the ownership of the transactional data resulting from a swap transaction. Is the swap transaction data from a particular swap transaction owned by the counterparties to the transaction?

> **a. If cleared, should a DCO have preferential ownership or intellectual property rights to the data?**
> **b. Should ownership or intellectual property rights change based on whether the particular swap transaction is executed on a SEF or DCM?**
> **c. What would be the basis for property rights in the data for each of these scenarios?**
> **d. What ownership interests, if any, are held by third-party service providers?**
> **e. What are the ownership interests of non-users/non-participants of an SDR whose information is reported to the SDR by a reporting counterparty or other reporting entity?**

As a preliminary matter, DTCC notes that market participants are accustomed to addressing questions related to the use of data through contractual agreements (including, where applicable, the rules of self-regulatory organizations and other regulated entities) without the involvement of the Commission or any other governmental authority. We are not aware of any provision in the CEA or the Commission's regulations, which would suggest that this practice should be restrained. DTCC, therefore, urges the Commission to proceed with caution, given that Commission determinations regarding the ownership of swap transaction data may give rise to unintended consequences with respect to the Part 43 and Part 45 rules.

Fundamentally, DTCC believes that the Commission should abstain from making any determinations regarding the competing interests of market participants in swap data. DTCC notes that the Securities and Exchange Commission ("SEC") has previously declined to resolve property right claims among market participants.[74] Further, any attempt by the Commission to adjudicate such questions is likely to be futile in light of case law indicating that there is no protectable interest in factual information.[75]

DTCC respectfully submits that the Commission does not need to address these questions related to the ownership of the transactional data resulting from a swap transaction in order to address the far more important considerations regarding the commercialization of swap data, as discussed in the responses to Questions 65-67. Given the Commission's vital interest in "ensur[ing] that swap data reporting and SDR rules are effective, efficient, and provide the necessary regulatory information,"[76] DTCC recommends that the Commission abstain from addressing these questions.

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[74] *See* Order Approving Proposed Rule Changes Relating to the Listing and Trading of Index Participations, Exchange Act Release No. 34-26709, 54 Fed. Reg. 15,280 (April 11, 1989) (declining to resolve market participant's claim that it held a protectable property interest in offering "index participations" because Congress did not intend the SEC "to resolve intellectual property right claims that can be pursued elsewhere"), *vacated on other grounds, Chicago Mercantile Exchange v. Securities and Exchange Comm'n,* 883 F.2d 537 (7th Cir. 1989).

[75] *See New York Mercantile Exchange, Inc. v. IntercontinentalExchange, Inc.*, 497 F.3d 109, 114 (2d Cir. 2007).

[76] Review of Swap Data Recordkeeping and Reporting Requirements ("Request for Comment"), 79 Fed. Reg. 16,689, 16,690 (Mar. 26, 2014).

65. Is commercialization of swap transaction data consistent with the regulatory objective of transparency?

a. In what circumstances should an SDR be permitted to commercialize the data required to be reported to it?
b. Does commercialization of swap data increase potential data fragmentation?
c. Is commercialization of swap data reported to an SDR, DCM or SEF necessary for any such entity to be economically viable? If so, what restraints or controls should be imposed on such commercialization?

As a preliminary matter, DTCC notes that, under the Part 43 rules, SDRs are permitted to commercialize swap data that has been publicly disseminated.[77] The Commission states in the request for comment that rule 49.17(g) "permits an SDR to disclose, consistent with Section 8 of the CEA, aggregated data information if such disclosure is not for a commercial purpose."[78] However, if this construction is intended to limit commercialization of aggregated real-time swap data after it has been publicly disseminated, it is at odds with rule 49.17(g) and with the Commission's previously articulated position.[79] In particular, Commission rule 49.17(g)(3) states that "[s]wap data repositories responsible for the public dissemination of real-time swap data shall not make commercial use of such data *prior to* its public dissemination."[80] The Commission clarified in the preamble to the Part 49 rules that, after swap data has been publicly reported, an SDR may commercialize that data by: (1) rejecting a suggestion "that the commercial use of real-time data by SDRs requires the consent of the data owners"; and (2) noting that rule 49.17(g)(3) "prohibit[s] SDRs from making commercial use of real-time data before disseminating such data publicly."[81]

If the Commission is considering whether to permit the commercialization of "core" regulatory data,[82] DTCC urges the Commission to circumscribe such commercialization with appropriate safeguards. For example, the Commission should limit an SDR's ability to commercialize swap data by requiring that all revenues generated by commercial activities be applied to defray the costs of operating the SDR—an approach consistent with EMIR regulations.[83] In this regard,

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[77] *See* 17 C.F.R. § 49.17(g)(3) (2013).

[78] Request for Comment, 79 Fed. Reg. at 16,697.

[79] The Commission's Regulations distinguish between information that has been publicly reported in accordance with the Commission's Part 43 Regulations and information that is subject to confidential treatment under the CEA. As the Commission noted in the preamble to the Part 49 rules, SDRs receive "two separate 'streams' of data: (i) Data related to real-time public reporting which by its nature is publicly available; and (ii) "core" regulatory data that is intended for use by the Commission and other regulators which is subject to statutory confidential treatment ('Core Data')." Swap Data Repositories: Registration Standards, Duties and Core Principles ("Part 49 rules"), 76 Fed. Reg. 54,538, 54,555 (Sept. 1, 2011); *see also* 17 C.F.R. § 49.2(a)(13) (2013) (defining "SDR Information" to mean "any information that the swap data repository receives or maintains"); Request for Comment, 79 Fed. Reg. at 16,697 n.51 (request for comments).

[80] 17 C.F.R. § 49.17(g)(3) (2013) (emphasis added).

[81] *See* Part 49 rules, 76 Fed. Reg. at 54,555.

[82] *Id.*

[83] *See* Commission Regulation 648/2012, of the European Parliament and of the Council on OTC Derivatives, Central Counterparties, and Trade Repositories, 2012 O.J. (L 201) (EU) (providing that "[t]he prices and fees charged by a trade repository shall be cost-related), *available at* http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:201:0001:0059:EN:PDF.

such a requirement would decrease the overall costs of swap data reporting for market participants, as revenues generated could not be used to benefit other affiliated entities or services.

To the extent that the purpose of commercializing "core" regulatory data is to recover the costs of operating an SDR and thereby reduce the costs of reporting for reporting counterparties and reporting entities, there are potential public benefits to allowing an SDR to commercialize anonymized or aggregated data. An SDR that is permitted to do so would likely be better equipped to bear the costs associated with operating a Commission-registered SDR. However, as discussed above, DTCC emphasizes that commercialization of "core" regulatory data should be subject to appropriate safeguards to prevent any unintended consequences.

66. Does the regulatory reporting of a swap transaction to an SDR implicitly or explicitly provide "consent" to further distribution or use of swap transaction data for commercial purpose by the SDR?

In terms of swap data reporting to an SDR pursuant to the Part 45 rules, DTCC requests that the Commission provide guidance, clarifying that the requirement related to express consent under rule 49.17(g) would be satisfied, provided that: (1) swap data pursuant to the Part 45 rules is transmitted to an SDR; and (2) an SDR's rulebook contains a provision, providing that a Part 45 submission to such SDR constitutes express consent.

DTCC does not believe that the consent of the parties to a swap should be required before the data underlying that swap is commercialized with respect to aggregated or anonymized data.[84] As a preliminary matter, it would be impracticable for SDRs to obtain the consent of every party to all of the swaps that have been and will in the future be reported, as well as identify and extract from their respective databases and operating systems any swaps associated with a counterparty that did not provide specific consent. Further, such a requirement would allow DCOs, which are counterparties (but not reporting counterparties) to the post-execution transactions that result from clearing (*i.e.* beta and gamma swaps), to withhold their consent to any commercialization of data that competes with their own sales of the same data.

67. Even though swap data reported to an SDR must be available for public real-time reporting, should any use of such real-time data or commercialization of such data occur only with the specific consent of the counterparties to the swap?

As discussed in the response to Question 65, Commission rule 49.17(g)(3) states that "[s]wap data repositories responsible for the public dissemination of real-time swap data shall not make commercial use of such data *prior to* its public dissemination."[85] The Commission clarified that, after swap data has been publicly reported, an SDR may commercialize that data by: (1) rejecting a suggestion "that the commercial use of real-time data by SDRs requires the consent of the data owners"; and (2) noting that rule 49.17(g)(3) "prohibit[s] SDRs from making commercial use of real-

[84] Currently, the customers of DTCC's Trade Information Warehouse provide consent to the use of such data through the operating procedures of its rulebook.

[85] 17 C.F.R. § 49.17(g)(3) (2013) (emphasis added).

time data *before* disseminating such data publicly."[86] DTCC believes, therefore, that real-time swap data reporting to an SDR implicitly provides consent for the use of such data for commercial purposes.

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?

DTCC believes that the "single SDR" requirements under rule 45.10 are vitally important to the Commission's ability to fulfill its regulatory obligations. With respect to cleared swaps, DTCC believes that the creation data of the alpha swap, as well as the subsequent continuation data involving the beta and gamma swaps, should be reported to a single SDR, as is currently required by the Part 45 rules.[87] Reporting related data to the single SDR where the creation data for the alpha trade was first reported would ensure that there is a continuous audit trail in one location, which in turn would facilitate the Commission's ability to efficiently access and examine related swaps. In order for the Commission, reporting counterparties, and non-reporting counterparties to have full transparency into swap data information reported to SDRs, it is imperative that the Commission address the current fragmentation of reporting process flows.

In terms of whether to permit data to be ported from one SDR to another, DTCC generally supports the portability of data, but believes that the Commission should engage market participants in further discussion and careful consideration, as there may be significant challenges associated with a porting requirement that merit a comprehensive review. For example, one critical prerequisite to a porting requirement would be the development of a uniform set of technical standards across SDRs. In addition, the Commission should consider any impacts to market participants' reconciliation efforts to ensure that all applicable data is fully transferred from one SDR to another.

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[86] *See* Part 49 rules, 76 Fed. Reg. at 54,555 (emphasis added).

[87] *See* 17 C.F.R. § 45.10 (2013). This process reflects the commonly held understanding of the Commission's regulations, including rule 45.10, when the final Part 45 rules were promulgated. It is only through the Commission's approval of CME Rule 1001 and its progeny that the Commission made several de facto changes to its regulations governing swap data reporting.

In the pending litigation, *DTCC and DDR v. CFTC*, Civ. Action No. 1:13-cv-00624-ABJ (D.D.C.), DTCC and DDR contend those changes were made in violation of law, and expressly preserve those allegations and arguments. Further, in responding to the Commission's Request, DTCC and DDR do so without prejudice to the allegations and arguments they have made and may make in the pending litigation.

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 nonreporting counterparties under the swap data reporting rules? What enhancements or clarifications to the Commission's rules, if any, would help address these challenges?

DTCC encourages the Commission to conduct a comprehensive review of the various requirements related to swap data reporting, including requirements under Parts 43, 45, and 49, in order to identify areas in which the various requirements may be streamlined. With respect to the Parts 43 and 45 rules, DTCC notes that the Commission has previously stated that, "a reporting regime that, to the extent possible and practicable, permits reporting entities and counterparties to comply with the regulatory data reporting requirements of part 45 and the real time reporting requirements of part 43 by making a single report can reduce reporting burdens while still ensuring fulfillment of the purposes for which the Dodd-Frank Act requires such reporting."[88] Based on DTCC's experience since the onset of swap data reporting, DTCC believes that a streamlined reporting regime would benefit market participants by removing any redundancies in the reporting requirements, as well as improve the overall quality of swap data available to the Commission.

DTCC respectfully requests that, before imposing any additional requirements related to swap data reporting, the Commission carefully consider the attendant costs that would be imposed on market participants and SDRs.

[88] Part 45 rules, 77 Fed. Reg. at 2,150.