May 27, 2014

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

Via agency website

Re: Review of Swap Data Recordkeeping and Reporting Requirements / RIN 3038-AE12

The Coalition for Derivatives End-Users (the "Coalition") is pleased to respond to the request for comment from the Commodity Futures Trading Commission (the "Commission" or the "CFTC") regarding swap data recordkeeping and reporting requirements (the "Request for Comment").[1] The Coalition represents end-user companies that use derivatives primarily to manage risks. Hundreds of companies have been active in the Coalition, both with respect to legislative and regulatory matters, and our message is straightforward: financial regulatory reform measures should promote economic stability and transparency without imposing undue burdens on derivatives end-users. Imposing unnecessary regulation on derivatives end-users, who did not contribute to the financial crisis, would create more economic instability, restrict job growth, decrease productive business investment, and hamper U.S. competitiveness in the global economy.

The Coalition supports the robust recordkeeping and reporting requirements of Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act and the Commission's regulations; however, as end-user companies have been working to comply with the Commission's reporting regulations, certain challenges have arisen with respect to implementation and there are certain areas that could use further revision or clarification. Accordingly, we were encouraged to hear of the Commission's announcement of the formation of an inter-divisional staff working group to review its swap data reporting rules. We are also pleased to respond to the questions posed by the Commission in its Request for Comment.

The Coalition has provided responses to several of the questions posed in the Request for Comment immediately below.

I. General Comment

The Coalition supports clarifications and improvements to the CFTC's existing reporting rules; however, if the Commission wishes to make changes to the way in which end-users report

---

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

swap data or the data fields that end-users are required to report, such changes could present significant and costly challenges to end-user entities. End-users have worked vigorously to comply with the existing Parts 43, 45 and 46 of the CFTC's regulations and have faced and continue to face challenges in doing so. Changes to the CFTC's swap data reporting rules could present substantial costs and operational burdens. Something as simple as the addition of a data field could lead an end-user to have to rebuild some or all of its internal systems to capture such information (i.e., it is not as simple as an on/off switch to report such data). Accordingly, we urge the Commission to carefully consider the effects that any such changes to its reporting rules might have on derivatives end-users and ensure that end-users have an opportunity to provide comments and feedback on any such clarifications and changes. We also urge the Commission to ensure that any changes to the reporting rules are not applied retroactively.

II. Confirmation Data

Question 1: *What information should be reported to a swap data repository ("SDR") as confirmation data? Please include specific data elements and any necessary definitions of such elements.*

After reporting the primary economic terms ("PET") data of a swap, a non-swap dealer/non-major swap participant ("non-SD/non-MSP") reporting counterparty must, pursuant to Part 45 of the CFTC's regulations, subsequently report the time at which that swap was confirmed by providing a date and time stamp, among all of the other "matched and agreed" terms of the confirmation.[2] The additional reporting obligation to report confirmation data, which often includes duplicative data fields, places an operational burden on end-users when they are reporting counterparties because it requires them to manually update trading records upon receipt of final confirmation documentation. The Coalition believes that, for end-user reporting counterparties, PET data and confirmation data should be consolidated into a single file report without duplicative data fields.

Question 1(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?*

As the Coalition has commented in the past, "any potential benefits would come at the cost of a labor-intensive and tedious process" for derivatives end-users.[3] We therefore request the CFTC maintain its approach of not requiring such specific data elements to be subject to reporting requirements. If the Commission were to require the reporting of terms incorporated by reference, the Coalition believes that the name and version of the standard industry document incorporated by

---

[2] See CFTC regulation 45.3(d)(3).

[3] See Coalition for Derivatives End-Users Comment Letter (Feb. 25, 2010), available at file:///C:/Users/17026/Downloads/30949UnknownUnknown%20(1).pdf.

reference could be reported (e.g., Document incorporated by reference: 2002 ISDA Master Agreement, etc.); however, individual terms of such documents should not be reported to an SDR as confirmation data. Moreover, because the retroactive application of such a requirement would present a significant burden to end-users, which do not generally track such information in electronic form and would thus need to manually review ISDA agreements to obtain such information, any such requirement should only apply when new transactions are executed under an existing or new ISDA agreement.

III. Continuation Data

A. General

How can the Commission ensure that timely, complete and accurate continuation data is reported to SDRs, and that such data tracks all relevant events in the life of a swap?

Daily snapshot reporting is especially challenging for non-SDs/non-MSPs due to the volume and size of the files, making lifecycle reporting the only viable option for many end-users. Lifecycle events should be clearly defined. For example, the Coalition believes that the Commission should confirm that an amortizing swap should only be reported once at the time of execution, unless a change occurs with respect to the previously reported data rendering the notional schedule inaccurate.

Further, the proliferation of SDRs has made obtaining information from SDRs more challenging, as there is no single central repository of swap data. Market participants would need to obtain access to each SDR from which they may need to obtain reports. We believe that a consolidated SDR reporting service, either through the Commission or a regulated third-party entity, would help to ameliorate this issue.

B. Snapshot/State/Lifecycle Methods

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

Both continuation data reporting methods are burdensome for end-users as both methods require substantial investment and resources for non-SDs/non-MSPs to report such data. Lifecycle reporting, while less frequent, requires more back-end systems investment in internal systems to capture and report irregular lifecycle events. The snapshot method requires less investment in back-end systems, but is more bandwidth-heavy since it involves reporting large amounts of data more frequently. As discussed in Section III.A immediately above, due to the size of the files involved in snapshot reporting, it is not a viable continuation data reporting method for many end-users.

Question 7(b): *Should all SDRs be required to accept both the snapshot and lifecycle methods for reporting continuation data?*

Yes, SDRs should be required to accept both methods, as reporting counterparties should not be required to choose an SDR based on which method of continuation data reporting it accepts.

C. Valuation Data Reporting

Question 8(b): *What challenges and benefits are associated with unregistered swap counterparties (both financial entities and non-financial entities) reporting valuation data for uncleared swaps to SDRs on a quarterly basis?*

There are numerous challenges associated with non-SDs/non-MSPs reporting valuation data for uncleared swaps to SDRs on a quarterly basis. First, only larger reporting counterparties can justify investment in a system that regularly values swaps. Thus, requiring valuation reporting would dictate investment in such a system, even if the benefits of such a system are not outweighed by the costs. Further, because valuations change, it may require a reporting counterparty to submit reports with much greater frequency than would otherwise be required by someone that entered into a swap and did not alter the terms of the swap thereafter. It is also difficult for non-SDs/non-MSPs to incorporate valuation data into their back-end reporting systems. While the benefit of such a requirement is greater transparency for unregistered parties relating their valuations, the costs of reporting such information may not justify such benefits for many end-users.

D. Events in the Life of a Swap (CFTC regulation 45.4)

Question 10(c): *Should swaps 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?*

No. Swaps which are deemed void *ab initio* should not be reported to an SDR (unless the voided swap is successfully re-submitted) since there is no valid swap contract between the counterparties.

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

No. The Commission has already defined, via its portfolio reconciliation requirements for swap dealers and major swap participants, circumstances in which it is necessary and valuable to reconcile portfolio data. Notably, the subset of data that must be reconciled is limited and the parties that must reconcile are also limited. Requiring periodic reconciliation under reporting rules would undermine the value of these limitations for end-users who are not directly subject to portfolio reconciliation requirements. The limitations reflected in the portfolio reconciliation requirements in Part 23 of the CFTC's regulations reflect the limited benefits such requirements would provide to the Commission in comparison to the costs they would impose on end-users.

E. Change in Status of Reporting Party

Question 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?

The hierarchy described in CFTC regulation 45.8 has led to significant issues for derivatives end-users that are "U.S. persons" entering into swaps to hedge their risks with non-U.S. persons that are not registered with the Commission as swap dealers or major swap participants. In such situations, U.S. end-users are required to serve as the reporting counterparty under CFTC regulations 45.8(e) and 45.8(g)(3) and to report PET data, confirmation data and continuation data for such swaps. Such a requirement is extremely burdensome to derivatives end-users, and often the delegation to a third-party service provider is not a great option because public companies are hesitant to delegate regulatory requirements to third parties and because the terms of delegation agreements are often unfavorable to the delegating party.[4]

Examples of the issues with CFTC regulations 45.8(e) and 45.8(g)(3) are put on display when the status of the U.S. end-user's non-U.S., non-registered counterparty changes during the life of the swap (e.g., the non-U.S. counterparty decides to register with the CFTC as a swap dealer or major swap participant or the non-U.S. counterparty novates or assigns its obligations to a registered swap dealer or major swap participant). As a result, end-users have been facing, and continue to face, the following situations:

- Situation 1: A U.S. non-SD/non-MSP (Party A) is currently in a transaction with a non-U.S. swap dealing entity that is not registered with the CFTC because it is below the *de minimis* threshold for registration as a swap dealer (Party B). Party A is currently the reporting party pursuant to CFTC regulation 45.8(e). Party B then exceeds the *de minimis* threshold and registers with the CFTC.
    - While Party B would likely report new swaps with Party A pursuant to CFTC regulation 45.8, Party A is still required to report continuation data on all existing swaps. The result is a situation where an end-user (Party A), is reporting continuation swap data for the transactions with the more sophisticated swap dealer counterparty (Party B).

- Situation 2: Similar to Situation 1, a U.S. non-SD/non-MSP (Party A) is currently in a transaction with a non-U.S. swap dealing entity that is not registered with the CFTC because it is below the *de minimis* threshold for registration as a swap dealer (Party B). Party A is currently the reporting party pursuant to CFTC regulation 45.8(e). Party B decides to novate its position to a registered swap dealer (Party C). The result is a swap between Party A and Party C.

---

[4] We note that any such delegation to a third-party service provider would still require such end-user to ensure that the data is reported in a timely or accurate manner. As the Commission notes, "the use of such third-party facilitators … should not allow the registered entity or counterparty with the obligation to report to avoid its responsibility to report swap data in a timely and accurate manner." 77 Fed. Reg. 2136, 2167 (Jan. 13, 2012).

- While Party C would likely report new swaps with Party A, it is not clear which counterparty would report continuation data for existing swaps. It appears that a situation may arise where an end-user (Party A) is reporting continuation swap transaction data for transactions with the more sophisticated swap dealer counterparty (Party C). It is also unclear which counterparty would be required to report that the novation had occurred.

The Coalition believes that in all circumstances where a counterparty to a swap is registered with the Commission as a swap dealer or a major swap participant and the other party is not registered with the Commission, the registered counterparty should always be the reporting counterparty for all swap data – even for continuation data on existing swaps that were existing prior to such registrant being a party to the transaction (or via a status change). Such an approach is consistent with the Commission's position in the final Part 45 release in which it explained the statutory preference for swap dealer and major swap participant reporting parties.[5]

Further, and perhaps more importantly, the requirements in CFTC regulations 45.8(e) and 45.8(g)(3) requiring the non-SD/non-MSP U.S. person in a transaction to be the reporting counterparty when trading with another non-SD/non-MSP should be revised to permit the two counterparties to agree which party will report the swap data to the SDR pursuant to Part 45. This requirement, as written in Part 45, unnecessarily burdens end-users that transact with non-U.S. entities that are not registered with the Commission (which they may be required to do for a number of reasons). Such a revision would be consistent with the reporting hierarchy described in the Commission's Part 43 regulations relating to real-time public reporting, which explains that if "neither party is a swap dealer or a major swap participant, then the parties shall designate which party (or its agent) shall be the reporting party."[6]

IV. Transaction Types, Entities, and Workflows

A. General

Question 13: *Please describe all data transmission processes arising from the execution, confirmation, clearing, and termination of a swap, both cleared and uncleared.*

End-users use multiple internal and external applications and interfaces to manage the entire lifecycle of a swap, resulting in various touchpoints for data transmission and linkages. For certain end-users, data transmission starts from an internal swap request system, is transmitted to an

---

[5] The Commission explained that "[i]n light of the various comments calling for clear direction from the Commission regarding determination of the reporting counterparty, and calling for the statutory preference for SD or MSP reporting counterparties where this is possible …." 77 Fed. Reg. at 2167

[6] CFTC regulation 43.3(a)(3)(v).

electronic trading platform (where applicable), to a swap recording system, to a matching/confirmation platform, to interfaces for clearing (where applicable), and finally to an internal reporting system.

B. Swaps Executed or Cleared on or by FBOTs, No-Action CCPs, QMTFs, and Other Non-Registrants/Exempt Entities

Question 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?*

Yes. Currently, non-registered entities must rely on an SDR for the creation of USI for inter-affiliate trades or other trades in which they might be the reporting counterparty. In such cases, the non-registered entity that is the reporting counterparty should be permitted to create USIs for those swaps for which it is the reporting counterparty.

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

Trading venues should be identified in reporting by use of a Legal Entity Identifier ("LEI") or equivalent identifier.

C. Inter-affiliate Swaps

Question 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?*

One of the significant actions taken by the CFTC to address end-user concerns relating to reporting was a no-action letter to address the reporting of inter-affiliate trades.[7] While the Coalition is thankful for this relief and certain of its member companies can use this relief, certain of the conditions to take advantage of the relief have proven difficult for some end-users. Among those conditions is a requirement that all swaps entered into between either one of the affiliates and an unaffiliated counterparty, regardless of the location of the affiliates or the unaffiliated counterparty, must be reported to an SDR that is registered with the CFTC. This condition limits the applicability of the relief and places significant burdens and costs upon end-user companies that might otherwise not be subject to the reporting requirement.

---

[7] See CFTC Letter No. 13-09 (Apr. 5, 2013), available at http://www.cftc.gov/ucm/groups/public/@lrlettergeneral/documents/letter/13-09.pdf.

By way of example, an end-user company may execute its external swaps through a centralized treasury unit ("CTU") that is located in Europe and also enter into one or more back-to-back inter-affiliate trades with its affiliates. While the European CTU's external swaps with U.S. counterparties, registered swap dealers, or major swap participants are required to be reported to an SDR pursuant to Part 45, external swaps between the European CTU and non-U.S., non-SD/non-MSP counterparties may not be required to be reported to an SDR under Parts 43, 45, or 46. CFTC Letter No. 13-09 goes beyond the requirements in the CFTC's regulations by requiring entities that wish to take advantage of the reporting relief for their inter-affiliate swaps to report all external swaps to an SDR registered with the Commission "pursuant to, *or as if pursuant to*, parts 43, 45, and 46 of the Commission's regulations" (emphasis added).[8] Accordingly, certain end-users would actually end up being burdened by more onerous reporting requirements by complying with the condition to take advantage of the inter-affiliate reporting relief than they would otherwise have if they did not take advantage of such relief. That is, an end-user would be required to report swap data for the external swaps "as if pursuant to" Parts 43, 45, and 46 even though they are not required by Commission regulation to do so.[9] Further, end-users do not have the robust systems in place to report such information in the same way as swap dealers or major swap participants.

We would also note that under the European Market Infrastructure Regulation ("EMIR"), a European CTU of a U.S. end-user (and its counterparty if such counterparty is located in a European Economic Area member state) would be required to report swap data to a trade repository appropriately registered pursuant to EMIR. Accordingly, a condition to require an end-user wishing to take advantage of the relief in CFTC Letter No. 13-09 to report an external swap to an SDR, in addition to the requirements to report to a trade repository under EMIR, are duplicative, costly, and unnecessary.

We therefore request that the CFTC eliminate CFTC Letter No. 13-09's condition associated with reporting external trades, or otherwise, accept that the condition is met when an external trade has been reported to a trade repository that is appropriately registered pursuant to EMIR. We would also recommend the Commission adopt the no-action relief provided in CFTC Letter No. 13-09, as modified pursuant to the discussion herein, as a Commission regulation to ensure that end-users are not later required to engage in the costly reporting of inter-affiliate swap data that has no benefit to regulators. Further, end-users are required to comply with Part 45's recordkeeping requirements for their inter-affiliate trades, and the Commission and other regulators can request such inter-affiliate trade data from end-users.

The Coalition also notes that the addition of new information regarding inter-affiliate relationships would be burdensome on non-SD/non-MSP counterparties without any demonstrable benefit to market participants. Since parent company information is already available as level two

---

[8] CFTC Letter 13-09, at 5.

[9] For example, an end-user would be required to report information regarding their counterparties, which may be difficult or impossible for a number of reasons.

data at the Global Markets Entity Identifier utility (GMEI), a new requirement to report similar information to an SDR would be duplicative and costly.

Finally, and more generally, the Coalition notes that data fields which are required to be reported for external trades may not be relevant or necessary in the context of inter-affiliate trades and requests that the Commission consider tailoring the fields required to be reported for inter-affiliate trades accordingly.

D. Reliance on No-Action Relief in General

Question 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.*

Yes. No-action relief can be problematic because corporate boards are sometimes hesitant to approve decisions (e.g., not to report, not to clear) that violate the law based only on an assurance that the Division staff of the regulatory agency will not recommend enforcement action. The general disclaimers in the no-action relief that the relief represents the views of the Division only and not necessarily those of the Commission and that the Division retains the authority to, in its discretion, modify, suspend, terminate or restrict the terms of the no-action relief, do not provide much comfort to corporate boards who are already cautious about the no-action concept.[10]

In addition, planning for compliance with no-action relief must be done months in advance and any changes in reporting requirements can lead to substantial compliance costs. Monitoring expiration dates of no-action relief is also burdensome for derivatives end-users.

Further, in certain circumstances, such as the relief in CFTC Letter No. 13-09, the Coalition believes that such relief would be more effective as a Commission regulation.

V. PET Data and Appendix 1 (CFTC regulation 45.3 and Appendix 1): Monitoring the Primary Economic Terms of a Swap

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

(c) *Execution timestamp*: Timestamps may differ between counterparties due to time lag.

---

[10] Similarly, we would also note that the reliance on staff no-action relief could cause further issues for multi-national commercial end-users hoping for equivalency determinations from foreign jurisdictions, as the CFTC's regulations themselves do not reflect the policy decisions included in Division staff no-action relief.

(e) *U.S. person status*: Many end-users do not currently capture U.S. person status (as defined in the Commission's final cross-border guidance) in their internal systems.[11] An additional field on U.S. person status would require system implementation to capture and store, and operational resources to maintain, this information. This is especially challenging in light of the complexity of the definition of "U.S. person" in the final cross-border guidance.[12]

Question 29: *What additional data elements, if any, are needed to ensure full, complete, and accurate representation of swaps?*

The Coalition believes that it might be useful to regulators and to market participants to know whether a swap executed on or subject to the rules of a SEF was executed using a request for quote (RFQ) or central limit order book (CLOB) method. Such information could help to better understand pricing and liquidity of various products.

Question 31: *Could the part 45 reporting requirements be modified to render a fuller and more complete schedule of the underlying exchange of payment flows?*

Such a modification is unnecessary because payment and settlement dates are already reported as a part of the PET data report.

Question 32: *Should the Commission require additional reporting of collateral information?*

No. Collateral information would be extremely costly and burdensome for end-users to report since they would likely not have existing systems to report such information. Many end-users do not currently capture the collateralization of a trade in their internal systems. End-users' collateral data may be separate from their swap information systems, and integrating multiple systems would require substantial investment to implement additional collateralization fields. Further, collateral is typically exchanged on a net portfolio basis rather than trade-by-trade.

VI. Other SDR and Counterparty Obligations (CFTC regulations 45.9, 45.13, 45.14): How Should SDRs and Reporting Entities Ensure That Complete and Accurate Information is Reported to, and Maintained by, SDRs

A. General

Question 43: *Comment on challenges faced by reporting entities with respect to complete and accurate swap reporting.*

---

[11] See Interpretive Guidance and Policy Statement Regarding Compliance With Certain Swap Regulations, 78 Fed. Reg. 45292 (July 26, 2013).

[12] 78 Fed. Reg. at 45317-18.

CFTC regulation 49.11 requires SDRs to "notify" both counterparties of data submitted by a reporting counterparty to the SDR. CFTC regulation 49.11(b)(2) provides, in relevant part, that:

> (i) A registered swap data repository has confirmed the accuracy of the swap continuation data that was submitted directly by a counterparty ***if the swap data repository has notified both counterparties of the data that was submitted and provided both with a 48 hour correction period after which a counterparty is assumed to have acknowledged the accuracy of the data***.
>
> (ii) A registered swap data repository has confirmed the accuracy of swap continuation data that was submitted by a swap execution facility, designated contract market, derivatives clearing organization, or third-party service provider who is acting on behalf of a counterparty, if the swap data repository has complied with each of the following:
>
> (A) The swap data repository has formed a reasonable belief that the swap data is accurate; and
>
> (B) ***The swap data repository has provided both counterparties with a 48 hour correction period after which a counterparty is assumed to have acknowledged the accuracy of the swap data***. (emphasis added)

This regulation imposes on the SDR the duty to provide both counterparties with the data submitted by the reporting counterparty so that each counterparty can review and correct such data and provide an "acknowledgment" to the SDR of the accuracy of the data. We note that at this time SDRs are not sending submitted trade information to counterparties or "notifying" non-reporting counterparties of the data that was submitted to such SDR. As a result, end-users are unable to verify the accuracy of submitted trade information by a reporting counterparty unless they independently access the SDR's systems in an attempt to decipher their counterparty's reported information.

End-users are finding it difficult, if not impossible, to obtain accurate information from SDRs which can then be processed by non-manual means (which many end-users require since they do not have internal systems in place for reporting such data). While an end-user that is a non-reporting counterparty does not have a legal obligation to do so, such end-user cannot be reasonably expected to discover an error in submitted data unless their reporting counterparty or the SDR provides the reported information to them in a means that can be processed.

Accordingly, given the limitations and the questionable utility of such review in light of other existing CFTC regulations, the Coalition recommends that end-users that are non-reporting counterparties not be required to review information reported to an SDR by a reporting counterparty nor should they be "assumed" to have "acknowledged the accuracy" of such reported information. The CFTC could instead require reporting counterparties to exercise heightened diligence in reporting information and correcting errors that are discovered. We further note that a swap dealer's portfolio reconciliation requirements will provide end-users with an opportunity to review such data.

More generally, it is operationally difficult to ensure data completeness and control when such data is coming from a number of different sources. The high number of reportable data fields is extremely burdensome to end-users who must account for each reportable field even if not applicable to the swaps that are reported. (Please see Section I "General Comment" above.) We note that any new required data fields or changes to existing reporting requirements require substantial investment in IT infrastructure, particularly for entities which previously did not have any requirements to report. Accordingly, the CFTC should reduce the number of data fields required to be reported by non-SDs/non-MSPs wherever possible.

B. Confirmation of Data Accuracy and Errors and Omissions

Question 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?*

An SDR should not reject submissions with errors or omissions, but instead should be required to highlight data that is missing or incorrect and notify the reporting counterparty per CFTC regulation 45.14. Such a result will ensure that data is reported in a timely manner and a mechanism is in place to correct any deficiencies in such data.

Question 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?*

We note that CFTC regulation 45.14(b) provides that "[e]ach counterparty to a swap that is not the reporting counterparty as determined pursuant to § 45.8, and that discovers any error or omission with respect to any swap data reported to a swap data repository for that swap, shall promptly notify the reporting counterparty of each such error or omission." We note that in the preamble to the Part 45 rules, the Commission explains that it "intends § 45.14 to work together in a complementary fashion with the provisions of part 49 directing SDRs to obtain acknowledgment from counterparties of the accuracy of reported data within a short time after it is submitted."[13] The CFTC also explains that "[t]he final rule requires a non-reporting swap counterparty that discovers any error or omission with respect to any swap data reported to an SDR for its swaps to notify the reporting counterparty promptly of each such error or omission, and requires the reporting counterparty, upon receiving such notice, to report a correction of each such error or omission to the SDR, as soon as technologically practicable after receiving notice of it from the non-reporting counterparty. The Commission believes that this provision is an appropriate measure to ensure data accuracy."[14]

---

[13] 77 Fed. Reg. at 2170.

[14] Id.

As noted above, we do not believe that non-reporting counterparties should have an obligation to identify errors, as that obligation should be placed on the reporting counterparty. If an SDR provides the non-reporting counterparty with the submitted data pursuant to CFTC regulation 49.11, a non-reporting counterparty should still maintain the ability to identify and promptly report errors or omissions in the data pursuant to CFTC regulation 45.14. Further, the Coalition believes that the "as soon as technologically practicable after discovery" timeframe set forth in CFTC regulation 45.14, is reasonable to submit corrected information to an SDR. There should not be a time limitation on identifying or discovering errors in such data.

C. Identifiers

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

End-users have faced many challenges in obtaining and maintaining LEIs. For example, end-users that have hundreds of affiliates must build infrastructure required to store and maintain such data. Additional resources are required to maintain and manage a new data field. Further, the requirements to track and maintain the LEI are burdensome to end-users. End-users must pay ongoing maintenance fees and must monitor the registration renewal schedule for all affiliates. The requirement to pay a fee to maintain their LEIs has been a surprise to many end-user companies and adds to the operational burden, for both corporate end-users with many affiliates, as well as those end-users that enter into very few swaps.

Consider the particular burden on an entity that enters into a single five-year swap. Real estate entities are among those entities that might enter into a single interest rate swap to hedge a financing used to partially fund the purchase of a building. Such an entity would pay $200 at inception of the hedge to purchase an LEI. It would need to take action annually to renew the LEI at a cost of $100 per year. It would then need to maintain that LEI for five years following the maturity of the swap, even if that swap were not replaced at maturity. In aggregate, this entity will pay $1,200 to obtain and maintain its LEI. The value to the Commission of having the LEI renewed annually in such cases is tenuous, and the value once the swap has matured is even more so. The Coalition therefore urges the Commission to limit the need for renewal/maintenance of an LEI, especially in circumstances in which an entity undertakes no additional swap transaction activity following the initial execution of a swap.

Question 54: *What principles should the Commission consider when designating a unique product identifier ("UPI") and product classification system pursuant to rule 45.7?*

The Commission should ensure the UPI and product classification systems are consistent with those used in other jurisdictions.

Question 54(a): *Are there any commonly used taxonomies that the Commission should consider in connection with the designation process? Please respond by asset class.*

We recommend that the Commission designate the ISDA OTC Taxonomies as the designated UPI and product classification system.

VII. Cross-Border Recognition

The Coalition urges the Commission to continue to work with international regulators, particularly those in Europe, to ensure that substituted compliance/equivalency is found between jurisdictions with respect to swap data reporting. Inconsistencies in global reporting requirements increase costs, lead to duplication, and create operational challenges for multi-national end-user companies with affiliates located throughout the world.

Further, as discussed above, the reporting of a swap to a trade repository registered with European Securities and Markets Authority (ESMA) pursuant to EMIR should be deemed equivalent to satisfy requirements to report such data to an SDR under the CFTC's rules (and vice versa). The lack of mutual recognition on the part of Europe and the CFTC has created duplicative reporting requirements for end-users and other reporting counterparties that are required to report under both regimes.

VIII. Conclusion

We appreciate the Commission's efforts in working to improve swap data reporting, and we thank the Commission for the opportunity to comment on these important issues relating to swap data reporting. We are available to meet with the Commission to discuss these issues in more detail.

Sincerely,

Coalition for Derivatives End-Users