



clear to trade

Eurex Clearing AG

Comment Paper on 17 CFR Part 45 “Amendments to Swap Data Recordkeeping and Reporting Requirements for Cleared Swaps; Proposed Rule”

Agenda

- A. Introductory remarks**
- B. General observations**
- C. Answers to the questions**

A. Introductory remarks

Eurex Clearing (ECAG), Europe's leading clearing house, offers fully-automated, straight-through post-trade services for derivatives, equities, bonds and secured funding & financing. As a globally leading central counterparty (CCP), Eurex Clearing assures the safety and integrity of markets while providing innovation in risk management, clearing technology and client asset protection. Eurex Clearing provides fully-automated, straight-through post-trade services for derivatives, equities, bonds and secured funding & financing, as well as industry-leading risk management technologies.

As part of Eurex Group, Eurex Clearing acts as the CCP for Eurex, Eurex Bonds, Eurex Repo, the FWB® Frankfurter Wertpapierbörse (the Frankfurt Stock Exchange) - both Xetra® and floor - and the Irish Stock Exchange. Eurex Clearing serves more than 190 clearing members in 16 countries. On April 10, 2014 Eurex Clearing's national competent authority BaFin (Federal Financial Supervisory Authority) approved its application as a clearing house in accordance with the European Market Infrastructure Regulation (EMIR). The authorization as EMIR compliant CCP also determines Eurex Clearing as qualifying CCP (QCCP) under the Capital Requirement Directive IV (CRD IV).

Additionally, Eurex Clearing is recognised as a German credit institution and separately received permission to act as a Central Counterparty from the German Federal Financial Supervisory Authority (BaFin) according to § 1 (1) Nr. 12 German Banking Act (Kreditwesengesetz, KWG) December 12, 2006 and as of 1 November 2007, the permission to conduct proprietary trading (Eigengeschäft) according to § 32 (1a) KWG (formerly § 1 (1a) Sentence 3 KWG).

In 2014 Eurex Clearing performed a self-assessment of its compliance with the Principles for Financial Market Infrastructures (PFMIs) issued by the Committee on Payment and Settlement Systems (CPSS) and the Technical Committee of the International Organisation of Securities Organisation (IOSCO). The assessment was conducted in accordance with the CPSS-IOSCO report, setting out the Disclosure framework for financial market infrastructures and the assessment methodology for the principles for FMIs and the responsibilities of authorities. Eurex Clearing's self-assessment was reviewed and validated by KPMG as an independent outside auditor also concluding that Eurex Clearing fully observes the CPSS-IOSCO PFMIs.

B. General observations

Eurex Clearing supports the Commission's efforts to improve parts of the original legislation in order to provide legal clarity and, thus, avoid the possibility of misunderstanding due to the use of similar terminology for differing situations (e.g. the clarification of the clearing swap definition).

In the case that a swap dealer (SD)/ major swap participant (MSP) submits a swap to ECAG for clearing, the original swap is extinguished upon submission and this life-cycle event is reported to the original swap data repository ("original SDR") chosen by the SD/MSP in question. Two clearing swaps are subsequently created and their creation data is reported to the SDR chosen by the derivatives clearing organization (DCO), whilst the unique swap identifiers (USIs) of these clearing swaps would be reported to the original SDR. If these clearing swaps must be extinguished due to the default of one of the counterparties to the transaction, this would result in an attempt to find a new counterparty via auction. If a new counterparty is indeed found, the clearing swaps will be extinguished and two new clearing swaps created. This is as per ECAG's policy. However, in such a scenario, it is not clear, whether the extinguishing of the initial clearing swaps and the USIs of the two new clearing swaps must be reported to the original SDR.

As the proposed amendments require DCOs to report swaps continuation data also to the original SDRs, to which the original swaps were reported, a serious concern of ECAG is the requirement of having an infrastructural connection to every SDR chosen by SDs or MSPs, for which the DCO clears. Given the distinctive physical nature of such a connection and numerous potential SDRs, the costs of implementing such infrastructure would be significant in terms of time and financial resources.

ECAG also believes that the reporting of life-cycle data of the original swap (e.g. swap termination) to the original SDR is not necessarily a responsibility of the DCO as this could also be performed by the SD/MSP that initially reported the creation data of the swap submitted for clearing, especially as said SD/MSP already has a data link to the original SDR. Besides, the party that submitted the swap for clearing is informed of the acceptance of the swap at the time of its acceptance, and thus could also inform the original SDR of the termination life-cycle event of the original swap in a reasonably timeous manner.

C. Answers to the questions

II. Proposed Regulations

A. Definitions – Proposed Amendments to § 45.1

Question 1

Is the Commission's proposed definition of "original swap" sufficiently clear and complete? If not, please provide detail about aspects of the definition that you believe are insufficiently clear or inadequately addressed.

Answer:

Eurex Clearing is of the opinion that the proposed definitions are sufficiently clear.

B. Swap Data Reporting: Creation Data – Proposed Amendments to § 45.3

Question 6

At the time that a swap is accepted for clearing, are there entities other than the DCO that would have complete information about the clearing swaps and that would be better suited to report required creation data for clearing swaps?

Answer:

For clearing swaps the DCO has complete information available and reports this information to the involved counterparties and/or the trading venue, i.e. designated contract market (DCM)/swap execution facility (SEF), on which the transaction was executed. Thus, DCO, initial counterparties as well as trading venues do have creation data for clearing swaps available.

Question 7

Are there circumstances where the DCO would have complete information about the swap that becomes an original swap and would be better suited than the SEF/DCM or reporting counterparty to report creation data for such swap in a timely manner? If so, are there any reasons why the DCO should not be required to report creation data for the original swap that would become the original swap?

Answer:

The DCO would not be better suited to report creation data of an original swap than the SEF/DCM. Depending on the time the DCO will receive information necessary to report creation data for an original swap, the bilateral swap might already have existed for some time. Timeliness would therefore be an issue. Given this fact, SEF/DCMs would be better suited to report creation data of the swap that becomes an original swap.

C. Swap Data Reporting: Continuation Data – Proposed Amendments to § 45.4

Question 14

Would market participants other than DCOs be better placed to more efficiently incur the duty to report continuation data for original swaps? If so, how would placing

continuation data reporting requirements on such other market participants further the goal of ensuring that swap data for original swaps remains "current and accurate"?

Answer:

The only continuation data relevant for original swaps are the termination, the moment a swap submitted for clearing becomes an original swap, i.e. is accepted for clearing, and any potential corrections of initial creation data.

Corrective actions should be undertaken by the party that reported them, because only this party knows what has been reported. It would make sense to rely on the party that reported the creation data for the swap submitted for clearing to also report the termination of the original swap, as these data are required to be reported to the same SDR. This party is informed of the acceptance of the original swap for clearing with an acceptance or novation information, and has all necessary data to report a termination, including the USIs of the resulting clearing swaps¹. Thus, it would not be necessary for the counterparties of the original swap to forward the information about the original SDR, to which the swap submitted for clearing was reported, to the DCO. A DCO should only be held responsible for the swaps that are established through the novation process.

Furthermore, implementation of the requirement for DCOs to report continuation data, including terminations of original swaps, to the original SDR would cost DCOs extensive effort and time. This information would need to be collected by the DCO from the source systems of the counterparties to the swap or of the respective trading venues (SEF/DCM), relying on its timely and accurate provision. Moreover, connections to every SDR would need to be established on a business (contracts) and infrastructural (secure connections and file transfer procedures) basis, as the original swap basically could have been reported to any of the existing SDRs.

Therefore, the party that reported the original swap should be responsible for reporting continuation (termination) data of the original swap as well. This would provide a comprehensive reporting picture to regulators, without causing large efforts on any site, because this party is already connected to the SDR in question and receives termination notices from DCOs regarding the original swap. DCOs could easily extend this reporting to also include the identity of the SDR, to which the clearing swaps are reported and which is normally just one and the same SDR. While the other way around, if the DCO would be the receiver of this field, the value range would sum up to the number of SDRs available. It can be every acknowledged SDR. And the DCO would need to implement processing logic and connect to every SDR accordingly.

Question 15

Should the Commission consider alternative approaches to reporting requirements for original swap terminations? If so, please describe such an approach.

Answer:

Please see above. Another alternative could be to forgo reporting requirement for terminations for original swaps. According to its definition, an original swap is a swap that has been accepted for clearing. With its novation, it automatically ceases to exist. Highlighting its termination would be superfluous, especially considering the fact that for every clearing swap the prior USI is mandatory, clearly referencing the original swap.

Another alternative could be that the DCO reports continuation data for original swaps (terminations) to the SDR, to which it has already established a link, including the Legal Entity Identifier (LEI) of the SDR, to which the creation data for the original swap has been reported. Having the combination of the SDR identifier and the USI, SDRs should be able to link up and handle the terminations of original swaps between themselves (i.e. with other SDRs), thus minimising efforts for all market participants.

¹ The USI of each clearing swap is sent to the matching platform/SEF as well as to the counterparties (trade notification from Eurex Clearing's system after novation). The same applies for the prior USI, which would be the USI of the original swap. Thus all parties involved have all USIs.

Question 16

Please describe whether there might be any life-cycle events for an original swap other than termination. Does § 45.4(c) adequately address any such life-cycle events?

Answer:

From Eurex Clearing's perspective there are no lifecycle events for an original swap other than terminations, given the definition as being a swap that has been accepted for clearing.

Question 17

Would the valuation data that DCOs must currently report to SDRs pursuant to § 45.4(b)(2)(i) present sufficient information for the Commission to understand clearing swap valuations? Explain why this is or is not the case?

Answer:

Yes. Currently the date and time of the valuation as well as the corresponding MtM (mark-to-market) value per USI are reported. From Eurex Clearing's perspective, these data would suffice for the Commission to understand clearing swap valuations, especially because the valuation method of the CCP is an industry standard.

Another measure that could be provided is collateral, however as collateral is posted by the initial counterparties, said counterparties are more suited to report it than the clearing house. The DCO could only provide margin requirements in addition to valuation data. But this would require more effort and is more risk-related.

Question 18

What value, if any, would the Commission gain by receiving clearing swap valuation data from SD/MSP reporting counterparties?

Answer:

As stated before, from Eurex Clearing's perspective, it would make sense that DCOs remain responsible for reporting clearing swaps. SD/MSP would not have more information at hand about clearing swaps than the DCO. See also the answer to question 17.

Question 19

Do the continuation data reporting requirements and existing definition of life-cycle event found in § 45.1 adequately address the possible range of events that could occur during the life of a clearing swap.

Answer:

Yes, the continuation data reporting requirements and existing definition of life-cycle event found in § 45.1 adequately address the possible range of events that could occur during the life of a clearing swap.

Question 23

For a swap executed on or pursuant to the rules of a SEF or DCM, as well as for off-facility swaps, would the DCO to which the swap is submitted for clearing have the information necessary, at the time of submission for clearing, to report the required continuation data, including a notice of termination of the swap, to the SDR to which the SEF or DCM reported the swap?

Answer:

The necessary information would need to be provided by the SEF/DCM at the time of submission of the swap for clearing. However, the mere availability of information would

not enable DCOs to report respective data. First of all, connectivity to the respective SDR, to which the data were initially submitted, would need to be established. As mentioned before, that would be very resource and time intensive. Therefore, it would be more feasible, if the DCOs would report continuation/termination data of the original swap to the SEF/DCM, including the information to which SDR the clearing swaps will be reported and to require the SEF/DCM to report this data to the initial SDR.

D. Unique Swap Identifiers – Proposed Amendments to § 45.5

Question 26

Should an entity other than the DCO be required to create and transmit USIs for clearing swaps?

Answer:

As the party reporting the original swap is informed of the USI of the clearing swap, it may well use this information and its established link to the target SDR to report the termination of the original swap, as proposed above (14/15) and the USIs of the clearing swap/s to the initial SDR. The DCO would report the USIs to its chosen SDR.

Question 27

Do the proposed requirements of § 45(d)(2) ensure that all relevant entities will receive the USI for a particular clearing swap?

Answer:

Yes, the proposed requirements of § 45(d)(2) ensure that all relevant entities will receive the USI for a particular clearing swap.

Question 28

Should the proposed USI creation and transmission requirements for DCOs differ from those of other registered entities such as SEFs, DCMs, and SDRs? If so, please explain how and why the requirements should differ.

Answer:

No, the proposed USI creation and transmission requirements for DCOs should not differ from those of other registered entities such as SEFs, DCMs, and SDRs.

E. Determination of Which Counterparty Must Report – Proposed Amendments to § 45.8

Question 29

Are the proposed additions of §§ 45.8(i) and 45.3(j), along with existing § 45.8, sufficiently clear with respect to the determination of the reporting counterparty and the choice of SDR? Please explain any scenarios for which the determination of the reporting counterparty or choice of SDR would not be sufficiently clear.

Answer:

It would be appreciated, if the Commission could clarify who would be the responsible reporting party in a scenario where a market participant subject to the part 45 reporting obligation clears through a CCP that is not registered as DCO (i.e. Non-U.S. banks which do have a part 45 reporting obligation and clear through non-U.S. CCPs which do not have a DCO status).

F. Reporting to a Single Swap Data Repository – Proposed Amendments to § 45.10

Question 30

Are the obligations assigned in the newly proposed and amended provisions of § 45.10 sufficiently clear? If not, please explain how you believe they should be clarified.

Answer:

The obligations assigned are sufficiently clear. However, in Eurex Clearing's opinion, their definition would not represent the most efficient solution. Requiring DCOs to report continuation data of original swaps to the SDR, to which the original swap was initially been reported, will result in large efforts for DCOs. Therefore, it would be more reasonable to give the responsibility to the initial counterparties of a transaction for reasons described in Eurex Clearing's response to question 14.

H. Primary Economic Terms Data – Proposed Amendments to Appendix 1 to Part 45 – Tables of Minimum Primary Economic Terms

Question 31

Are there additional data categories and fields for clearing swaps which are necessary to understand a clearing swap and/or the mechanics of the clearing process? If so, please describe such additional data categories and fields.

Answer:

No, there are no additional data categories and fields for clearing swaps which are necessary to understand a clearing swap and/or the mechanics of the clearing process.

Question 32

Will reporting any of the new or revised data categories and fields result in any operational or technological challenges? If so, please explain.

Answer:

The identities of clients of Clearing Members are not always known to the CCP in the principle model, but are, in the agency model, where the clients are direct contractual counterparties of the CCP. Thus, it needs to be ensured that globally all parties, trading in swaps that are reportable under Dodd-Frank, do possess a Legal Entity Identifier (LEI) and the CCP will always receive the LEI of clients, if this information is required to be reported to SDRs.

III. Request for Comments (concerning all aspects of the proposed regulations)

Question 39

Please describe the nature of any changes necessary, *i.e.*, operational, technological, administrative, etc., for SEFs, DCMs, and reporting counterparties to comply with the rules proposed in the release, and the length of time needed

to implement each type of change.

Answer:

The proposed rules would require DCOs to connect to every SDR, resulting in large operational efforts to develop and implement connectivity. This would also be very time consuming and does not represent the most efficient solution. Counterparties or SEFs/DCMs should be responsible for reporting continuation data of original swaps as well as USI of the clearing swaps and the LEI of the SDR, to which the clearing swaps were reported, to a SDR of their choice. DCOs should be responsible to report clearing swap creation and continuation data as well as the information, to which SDR the original swap was reported, to a SDR of their choice. This solution would provide comprehensive transparency to regulatory authorities.

Question 40

Do the proposed amendments and additions to Part 45 adequately address the reporting of swap transaction data for both the principal and agency clearing models? If not, please explain.

Answer:

It is not clear who in the principal model has to be reported as the counterparty to the DCO with regard to a clearing swap. In the agency model the counterparty to the DCO would be the client of a Clearing Member, if it is a client trade. In the principal model it would be the Clearing Member irrespective of whether it is a client trade or not, given the different legal structure of both models. It would be appreciated, if the Commission could provide guidance on this matter.