



FINANCIAL
SERVICES
ROUNDTABLE

By Electronic Mail

October 30, 2015

Christopher Kirkpatrick
Secretary of the Commission
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street NW
Washington, DC 20581
RIN 3038—AE12

RE: Proposed Amendments to Swap Data Recordkeeping and Reporting Requirements for Cleared Swaps

Ladies and Gentlemen:

The Financial Services Roundtable¹ ("FSR") respectfully submits these comments in response to the proposal (the "Proposal")² by the U.S. Commodity Futures Trading Commission (the "Commission") of certain amendments to the existing swap data reporting requirements in Part 45 of the Commission's regulations (the "Regulations") in connection with cleared swaps.

I. Introduction

We have commented on a large number of Commission proposals relating to the implementation of Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act, including the Commission's 2010 proposal of swap data recordkeeping and reporting rules under

¹ As advocates for a strong financial futureTM, FSR represents 100 of the largest integrated financial services companies providing banking, insurance, and investment products and services to the American consumer. Member companies participate through the Chief Executive Officer and other senior executives nominated by the CEO. FSR member companies provide fuel for America's economic engine, accounting directly for \$78.3 trillion in managed assets, \$980 billion in revenue, and 2.1 million jobs.

² See Amendments to Swap Data Recordkeeping and Reporting Requirements for Cleared Swaps, 80 Fed. Reg. 52544 (August 31, 2015).

Part 45³ and the Commission’s 2014 review of such rules⁴. We appreciate the opportunity to offer further perspective on these important matters.

Many of our members, by virtue of being swap dealers (“SDs”) or financial entities, qualify routinely as the reporting counterparty under Part 45, including with respect to their swaps that are intended to be submitted to a derivatives clearing organization (“DCO”) for clearing at the time of execution. As such, our members have been involved in many industry discussions surrounding the Commission’s reporting requirements. While many aspects of the reporting regime have functioned well, there are certain areas that could be further streamlined, and we therefore appreciate the Commission’s efforts to improve its reporting regime.

II. Proposal Appropriately Allocates Reporting Duties for Cleared Swaps

We strongly support the Commission’s approach in the Proposal to clarifying the reporting requirements applicable to each component of a cleared swap transaction. We agree with the Commission that the existing Part 45 regulations do not clearly delineate the swap data reporting requirements associated with each of the component swaps in a cleared swap transaction, and we support the Proposal’s division of such transactions into “original swaps” and “clearing swaps” and the distinct treatment of each such component.

In addition, we strongly support the Proposal’s allocation of reporting duties and related obligations with respect to both components of a cleared swap transaction. In particular, we support the Proposal’s establishment of DCOs as the reporting counterparty for clearing swaps, and agree with the Commission that the DCO is in the best position to report all data for clearing swaps as it is the entity with the “easiest and quickest access” to the relevant data.

We also support the requirement in the Proposal that the same entity required to report swap creation data also be responsible for choosing the swap data repository (“SDR”) to which such data is reported, since this approach allows that entity to select an SDR of which it is an existing user and to which it has established connectivity and developed the necessary technological protocols and procedures for reporting such data.

III. Proposal Appropriately Removes Certain Part 45 Requirements

We strongly support the proposed elimination of certain duties imposed on SDs and other swap counterparties under the current Part 45. Specifically, we support the Proposal’s removal of

³ See Letter from The Financial Services Roundtable to David A. Stawick, CFTC Secretary, and Elizabeth M. Murphy, the Secretary of the Securities and Exchange Commission, *Title VII Implementation Challenges*, May 12, 2011. Available at [DOCUMENT PRODUCTION: INSERT CLICKABLE LINK: <http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=50491&SearchText=>]

⁴ See Letter from The Financial Services Roundtable to Melissa Jurgens, CFTC Secretary, *Review of Swap Data Recordkeeping and Reporting Requirements*, May 27, 2014. Available at [DOCUMENT PRODUCTION: INSERT CLICKABLE LINK: <http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=59870&SearchText=financial%20services%20roundtable>]

the existing confirmation data reporting requirements applicable to swap execution facilities (“SEFs”), designated contract markets (“DCMs”) and reporting counterparties (other than DCOs) for swaps that are intended to be cleared at the time of execution. As the Commission notes in the Proposal, the DCO’s reporting of confirmation data for clearing swaps under the Proposal should provide the Commission with sufficient confirmation data for a cleared swap transaction, while requiring an additional set of confirmation data reporting for a terminated original swap would be redundant.

Similarly, we support the Proposal’s codification of existing no-action letters issued by Commission staff to eliminate the existing requirement that an SD or major swap participant (“MSP”) reporting counterparty report daily valuation data for cleared swaps. We agree with the Commission that the DCO’s reporting of valuation data under the current Part 45 should provide sufficient information for the Commission to understand cleared swap valuations. Furthermore, as we noted in a previous comment letter,⁵ DCOs already undergo a process of validating valuation data (through input from their clearing members) that is likely to be more comprehensive than any process supporting valuation data for a single SD or MSP. Finally, since a DCO’s valuation is the one that is used for purposes of issuing margin calls and ultimately settling cleared swaps, an SD’s or MSP’s independent valuation is of little, if any, relevance and could result in confusion if such reporting were required.

IV. Additional Part 45 Amendments and Clarifications

While we strongly support the Proposal, we urge the Commission to adopt certain additional amendments to its Part 45 regulations in order to resolve certain remaining ambiguities in, and to make other improvements to, the existing regulatory framework. These additional proposals, some of which we have raised in a prior comment letter, are intended to promote cross-border harmonization of U.S. and non-U.S. swap reporting frameworks, foster uniform reporting standards across SDRs, streamline the reporting process and further clarify regulatory requirements, including by codifying certain existing no-action relief.

A. Cross-Border Harmonization

To enable the Commission and non-U.S. regulators to avoid “double-counting” of “international swaps” (*i.e.*, swaps that are required to be reported under U.S. law and the law of another jurisdiction), Regulation 45.3(h) requires the reporting counterparty for such a swap to report to the relevant U.S.-registered SDR the identity of the non-U.S. trade repository to which the swap is reported and the swap identifier used by the non-U.S. trade repository to identify the swap. However, as we noted in a prior comment letter,⁶ to our knowledge, no other jurisdiction has required reporting parties to international swaps to identify this information, and where one counterparty is subject to the U.S. reporting requirement and either one or both counterparties are required to report in the non-U.S. jurisdiction, the U.S. reporting counterparty may not have ready

⁵ See Letter from The Financial Services Roundtable to Melissa Jurgens, CFTC Secretary, *Review of Swap Data Recordkeeping and Reporting Requirements*, May 27, 2014.

⁶ *Id.*

access to the data that is reported by the other party in the non-U.S. jurisdiction and may not be able to obtain such data in a timely manner.

We therefore urge the Commission to adopt the best practices published by The International Swaps and Derivatives Association, Inc. (“ISDA”) for identifying international swaps, titled *Unique Trade Identifiers (UTI): Generation, Communication and Matching*.⁷ One of the “key principles” of this ISDA paper is that “[i]f a trade requires a Unique Swap Identifier (USI), this should be used as the UTI.” Therefore, adopting ISDA’s best practices would address the Commission’s goals behind Regulation 45.3(h) by requiring counterparties to an international swap to use the same identifier to report such swap to the two different SDRs, thereby avoiding double-counting by the relevant regulators. We note that if the Commission adopts the ISDA best practices, there would be no risk of double-counting and therefore no need for the reporting requirements set forth in Regulation 45.3(h).

B. Uniform Reporting Standards

As we noted in a prior comment letter,⁸ we have found that some SDRs permit certain data fields to be completed in any number of different ways, which causes difficulty for market participants using automated portfolio reconciliation systems.⁹ We therefore encourage the Commission to promulgate rules (whether as amendments to Part 45 or Part 49 or otherwise) or to issue interpretations standardizing the data elements used for reporting purposes, or to work with SDRs to ensure that they establish prescriptive and uniform standards for data reporting.

Additionally, as we have found that SDRs do not have a consistent approach to allowing counterparties to review and verify reported information (and that some SDRs lack any effective method for such review and verification), we encourage the Commission to prescribe a manner by which SDRs permit swap counterparties to review and verify swap data.

C. Streamlining the Reporting Process

As we noted in a prior comment letter,¹⁰ we urge the Commission to consider streamlining the Part 45 reporting process in at least two ways:

- Under the Commission’s current regulations, a reporting counterparty for an amortizing swap that uses a life-cycle method for continuation data reporting must submit a report each time the notional value changes (even though such changes were agreed to at the time of execution). We encourage the Commission to amend its Part 45 regulations to allow that these changes be reported as part of the initial primary economic terms report so that reporting counterparties using the life cycle method for continuation data reporting would only be

⁷ See *Unique Trade Identifiers (UTI): Generation Communication and Matching* (July 20, 2015).

⁸ See Letter from The Financial Services Roundtable to Melissa Jurgens, CFTC Secretary, *Review of Swap Data Recordkeeping and Reporting Requirements*, May 27, 2014.

⁹ For examples of such lack of uniformity across SDRs, see *Id.*, at 5.

¹⁰ *Id.*

required to report as life cycle events changes to the initial amortization schedule. However, we note that reporting counterparties using the state data reporting method should continue to be allowed to report amortizations of a swap's notional amount as part of the state data (when such amortizations occur) and should not be required to report the amortizations as part of the primary economic terms data for the swap.

- As a report for a plain vanilla swap only requires a small number of data fields to be completed (since many of the fields under Part 45 are not relevant), we encourage the Commission to create a streamlined process for reporting such swaps, with a reduced number of data fields. We believe this would reduce the burden on and costs incurred by many smaller banks that are required to report under the Commission's regulations.

D. Codification of Existing No-Action Relief

As noted above, we support the Proposal's codification of existing no-action letters issued by Commission staff to eliminate the existing requirement that an SD or MSP reporting counterparty report daily valuation data for cleared swaps. We also encourage the Commission to codify other existing no-action relief granted with respect to Part 45 obligations to provide legal certainty as to the reporting regulatory framework with which SDs, MSPs and other reporting counterparties must comply.

For instance, we encourage the Commission to consider codifying the no-action relief issued by the Division of Clearing and Risk in April 2013 for swaps between affiliated counterparties that are neither SDs nor MSPs from certain swap data reporting requirements under Parts 45 and 46 and Regulation 50.50(b).¹¹

The rulemaking process also will allow market participants the opportunity to comment on any proposed change or addition to the Part 45 regulatory framework so that any concerns can be raised with the CFTC before such change or addition becomes final.

E. Swaps Cleared by Foreign Central Counterparty under Principal Clearing Model

The Commission's request for comments in connection with the Proposal asks whether the proposed amendments and additions to Part 45 adequately address the reporting of swap transaction data for both the principal and agency clearing models. Due to the contractual and other differences between clearing a swap under the agency model and the principal model, we believe the current Proposal may not adequately address reporting obligations with respect to the swaps that are cleared under the principal model.

For instance, as the current Proposal would apply only to DCOs registered with the Commission,¹² the Commission should provide additional guidance with respect to the application

¹¹ See CFTC Letter No. 13-09 (Apr. 5, 2013).

¹² The Proposal would revise the current definition of "derivatives clearing organization" in Regulation 45.1 (for purposes of Part 45) to make explicit that it includes only DCOs registered with the CFTC.

of Part 45 to clearing swaps that are reportable under the U.S. reporting rules and are the product of clearing an original swap at a central counterparty (“CCP”) that is exempt from registration as a DCO (or is relying on no-action relief from the DCO registration requirement), since such swaps may be cleared under the principal model. In light of the Order of Exemption from Registration granted to ASX Clear (Futures) Pty Limited¹³ and the no-action relief from DCO registration granted to other non-U.S. CCPs,¹⁴ and to apply the U.S. reporting rules consistently with respect to registered DCOs and unregistered non-U.S. CCPs, we encourage the Commission to promulgate rules clarifying that the reporting obligation for such clearing swaps is on the CCP without regard to its DCO registration status. Addressing Part 45 reporting obligations on a case-by-case basis in CFTC orders or no-action letters issued to individual CCPs does not amend or discharge the reporting obligations of non-CCP reporting counterparties under Part 45. Such reporting requirements should be addressed by amending Part 45 itself through the CFTC’s rulemaking process.

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FSR appreciates the opportunity to comment on the Proposal. As the Commission progresses in its on-going effort to refine and finalize the Proposals, we would welcome the opportunity to assist in the process. Please feel free to contact me at Richard.Foster@FSRoundtable.org or [\(202\) 589-2424](tel:(202)589-2424).

Sincerely yours,



Rich Foster

Senior Vice President & Senior Counsel for
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¹³ Order of Exemption from Registration, “In the Matter of the Petition of ASX Clear (Futures) Pty Limited for Exemption from Registration as a Derivatives Clearing Organization,” (Apr. 18, 2015).

¹⁴ See CFTC Letter No. 14-150 (Dec. 18, 2014) (relief for Korea Exchange, Inc.); CFTC Letter No. 14-155 (Dec. 22, 2014) (relief for Japan Securities Clearing Corporation); CFTC Letter No. 14-156 (Dec. 23, 2014) (relief for Eurex Clearing AG).