



Filed March 7, 2016 via <http://comments.cftc.gov>

To:

Srinivas Bangarbale, Deputy Director
CFTC Office of Data and Technology

Daniel Bucsa, Deputy Director
CFTC Division of Market Oversight

c/o

Christopher Kirkpatrick, Secretary
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, N.W.
Washington, DC 20581

Re: Policy Considerations regarding Swap Data Harmonization and Impacts on Commercial Market Participants

Dear Mr. Kirkpatrick,

The Electric Power Supply Association (“EPSA”)¹ appreciates the opportunity to review the Commodity Futures Trading Commission (“CFTC” or “Commission”) Staff Request regarding Draft Technical Specifications for Certain Swap Data Elements.² The Data Request provides helpful and informative insights into the type of information that the Commission seeks from market participants that report swaps and those that are non-reporting counterparties to swaps reported on their behalf by a CFTC registrant or by a non-registered entity that contractually elects to serve as the reporting party.

¹ EPSA is the national trade association representing leading competitive power suppliers, including generators and marketers. Competitive suppliers, which, collectively, account for 40 percent of the installed generating capacity in the United States, provide reliable and competitively priced electricity from environmentally responsible facilities. EPSA seeks to bring the benefits of competition to all power customers. EPSA represents the interests of non-financial, commercial end-users that use swaps to hedge and mitigate commercial risk and as such are subject to the reporting and recordkeeping obligations under the Commission’s rules and regulations. Therefore, EPSA and its members have an interest in this proceeding.

² Request for Comment, Draft Technical Specifications for Certain Swap Data Elements (Dec. 22, 2015) at <http://www.cftc.gov/idc/groups/public/@newsroom/documents/file/specificationsswapdata122215.pdf> [hereinafter, “Data Request”].

Based on EPSA's understanding that the Data Request is focused on enhanced reporting for swaps in the interest rates, credit, and foreign exchange asset classes, EPSA's attached comments discuss the technical and practical compliance issues that our members have preliminarily identified should certain proposed technical specifications be applied moving forward to the commodity swaps asset class.

Additionally, though the Data Request states that it does not propose to modify current reporting requirements in any respect, many of the draft data element modifications and additions would certainly change the scope and extent of market participants' compliance obligations if adopted through a subsequent rulemaking. Though the Data Request solicits comments on the technical viability of implementing 120 data element changes without addressing specific compliance obligations, it is unlikely that market participants can meaningfully assess and comment on these ideas without considering policy and compliance issues: *e.g.*, how reporting compliance timelines and costs would change for different swaps asset classes if new fields must be captured and tracked, how non-reporting counterparties would be affected if required to reconcile SDR data, how costly trade capture system upgrades would be for reporting and non-reporting entities capturing new data elements, and whether the added regulatory burdens would be justifiable in light of benefits the Commission may identify in requesting this new data.

Given that a rulemaking proceeding is the more appropriate venue to discuss compliance policies and costs, EPSA believes that the CFTC's first step in pursuing a purely technical approach to data standardization should be to draw on the technical experts themselves, namely the SDRs and other CFTC registrants which have experience, responsibilities, and resources to facilitate the transmittal of reported information to the agency in a form and manner that is useful to the agency's regulatory and surveillance mission. This approach is supported by the SDRs' joint filing in this proceeding, which urges that the CFTC undertake a collaborative, proactive approach to working with SDRs prior to developing new Part 45 reporting obligations that will directly increase compliance burdens for market participants.³

Finally, EPSA notes that commercial end-users have struggled to understand why the CFTC has released a draft proposal to market participants that requires them to address the feasibility of over one hundred technical specifications that apply without particular distinction across multiple swaps asset classes – without first consulting the technical expertise of SDRs as to which changes are actually workable for specific swaps asset classes and which would be impractical. Further, the Data Request does not clearly state which of the proposed items might apply to commodity swaps. The request also does not acknowledge that even if a specific data element is amenable to being reported as a general matter for one or more swaps asset classes, the efficacy and practicability of doing so also depends on whether the reporting counterparty is a CFTC registrant or a commercial end-user that has limited resources and technological capabilities to quickly upgrade systems and capture more granular data.

³ CME Group; DTCC; ICE Trade Vault, Joint Comments on Draft Technical Specifications for Certain Swap Data Elements, at p. 2 (filed March 3, 2016) (stating that “we encourage the Commission to re-engage with the Repositories on efforts to leverage existing market conventions and data elements which have proven to be reliable in order to enhance the value of data reported to the Commission. This type of approach would build on the existing reporting regime without introducing new complexities that will translate to additional costs for market participants as described below.”).



As the Staff Request is ultimately a nuanced exercise in understanding how data fields can be enhanced from a technical feasibility perspective— without considering costs, benefits, or specific Part 45 rule changes and their impacts on market participants – EPSA believes the most efficient path forward is to first proceed with data standardization efforts as between the SDRs and the CFTC, with opportunities for technical meetings with other CFTC registrants who serve as reporting counterparties, and also with commercial market participants that have elected to serve as reporting entities for swaps executed between two non-CFTC registered entities.

In the comments below, EPSA offers recommendations for the Commission’s consideration as to the technical and practical challenges associated with applying the modified or enhanced reporting specifications in the Data Request to commodity swaps, focusing on uncleared, bespoke commodity swaps transactions entered into by commercial energy companies such as the competitive power suppliers in EPSA’s membership. EPSA’s comments also briefly discuss some important policy considerations that we believe should be squarely addressed in any rulemaking that would propose to modify reporting entities’ Part 43 or Part 45 compliance obligations.

Please do not hesitate to contact the undersigned for more information. Thank you for the opportunity to comment on the interdivisional staff working group’s draft technical specifications proposal.

Respectfully Submitted,

By: _____/s/_____

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The Honorable Sharon Y. Bowen
The Honorable J. Christopher Giancarlo



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Washington, DC 20581

Re: Comments of the Electric Power Supply Association on CFTC Staff Request regarding Draft Technical Specifications for Certain Swap Data Elements

Dear Mr. Kirkpatrick:

The Electric Power Supply Association (“EPSA”)⁴ is pleased to provide comments in response to the Commodity Futures Trading Commission (“CFTC” or “Commission”) Staff Request regarding Draft Technical Specifications for Certain Swap Data Elements (“Data Request”).⁵ EPSA greatly appreciates that the staff has put forth a draft proposal prior to the Commission’s issuance of a formal rulemaking; we believe this is a very valuable opportunity for the public to understand the difficulties and challenges of data standardization from the CFTC’s perspective and provide the perspective of commercial end-users as both reporting parties and non-reporting parties subject to CFTC reporting and recordkeeping rules.

EPSA emphasizes that the Data Request poses the possibility of increased granularity and new data reporting obligations on commercial entities, and if adopted by the CFTC, would add new compliance costs and increase preexisting reporting and recordkeeping obligations for commercial entities subject to the Part 45 rules. Certain allowable values proposed in the Data Request could also increase regulatory exposure of a reporting entity for its non-reporting counterparty’s inadvertent errors or non-compliance, which would increase already stringent Part 45 requirements on reporting entities such as the personal liability of the reporting party’s designated chief information officer for errors in reported information. Additionally, EPSA believes that the recent meetings of the CFTC Technology

⁴ EPSA is the national trade association representing leading competitive power suppliers, including generators and marketers. Competitive suppliers, which, collectively, account for 40 percent of the installed generating capacity in the United States, provide reliable and competitively priced electricity from environmentally responsible facilities. EPSA seeks to bring the benefits of competition to all power customers. The comments contained in this filing represent the position of EPSA as an organization, but not necessarily the views of any particular member with respect to any issue.

⁵ Request for Comment, Draft Technical Specifications for Certain Swap Data Elements (Dec. 22, 2015) at <http://www.cftc.gov/idc/groups/public/@newsroom/documents/file/specificationsswapdata122215.pdf> [hereinafter, “Data Request”].



Advisory Committee (TAC), CFTC Energy and Environmental Markets Advisory Committee (EEMAC), and CFTC and industry testimony presented to the House Committee on Agriculture Subcommittee on Commodities, Exchanges, and Energy⁶ provided important recommendations toward the CFTC's next steps in swaps data standardization. EPSA supports many of these recommendations in the comments below.

COMMENTS

As EPSA understands from the discussion in the Data Request and from recent CFTC staff remarks⁷ on data harmonization, the Commission is looking for better ways to address how the same data is reported from different counterparties and from different SDRs, so that the data is ultimately more useable by staff when aggregated for analytical review toward achieving the systemic risk surveillance and market oversight goals of the G-20 and Dodd-Frank. It is notable that in these discussions there has been a unanimous call from CFTC registrants, SDRs, and reporting market participants for the Commission staff to work directly with SDRs to improve individual repositories' output and streamline the form, manner and content of the reported data across all SDRs. EPSA strongly supports and encourages this approach as the best path forward to achieve the CFTC's data quality goals and better fulfill its regulatory and enforcement mission. Primarily, the technical expertise of SDRs should be leveraged to achieve better data quality, and this effort must commence prior to any formal proposals from the Commission that would change market participants' Part 45 compliance obligations.

A. Concerns about Diluting Data Quality Should Be Weighed Against Achieving Further Granularity in Data Reporting Fields.

A key takeaway from the recent CFTC TAC meeting, aside from the potential cost and burdens of future modifications of Part 45 rules, is the concern unanimously voiced by SDRs that the granularity and scope of changes proposed in the Data Request could actually compromise the CFTC's collective effort to improve the accuracy, reliability and completeness of Part 45 data. Representatives at the TAC meeting from the cleared swaps and futures industries also broadly agree that an expansion of data fields and an increase in granularity across elements, and across asset classes, will not be helpful to the Commission's risk monitoring efforts.

⁶ Committee on Agriculture, Subcommittee on Commodity Exchanges, Energy, and Credit – Public Hearing Re: To review the G-20 swap data reporting goals, Thursday February 25, 2016; 1300 Longworth, Washington, DC, at <http://agriculture.house.gov/calendar/eventsingle.aspx?EventID=3162>. ["Subcommittee Hearing"].

⁷ *Id.*; see also Written Testimony of Mr. John Rogers, Chief Information Officer, Commodity Futures Trading Commission, at http://agriculture.house.gov/uploadedfiles/rogers_testimony.pdf; Opening Statement, Mr. John Rogers, Chief Information Officer, Commodity Futures Trading Commission at 25:33, https://www.youtube.com/watch?v=Bfq-H_M42nc&feature=player_detailpage#t=1533.

Of equal concern for EPSA members is that the Staff Request discussion assumes that augmentation of certain elements and addition of other elements not currently reportable are together the right path forward to enhance data clarity and utility across all asset classes. And yet, CFTC registrants and SDRs stated in the TAC record and at the Subcommittee Hearing that data clarity and utility will be enhanced by *scaling back* existing data elements – on an asset class-specific basis in many cases – to focus on a priority group of about fifty (50) fields. These entities further emphasized that the CFTC should not take the lone path of adding more customized fields and granularity to its Part 45 reporting program ahead of the global harmonization effort because those changes could be later unwound or overridden by global standardization of the same data elements. Taken together, the staff perspectives in the Data Request and feedback from industry representatives suggest two points of serious concern: first, that there could be a wide disconnect on the right approach to data standardization among technical experts in the industry and the CFTC, and second, that market participants’ meaningful attempts to comment on extensive information requests from CFTC staff may be an ultimately unhelpful exercise if the real solutions reside not in the *first* step of data submission between market participants to SDRs, but at the *last* step of data transmittal between each SDR and the CFTC.

B. A Deliberative Data Standardization Process with Swap Data Repositories, Other Commission Registrants, and Non-Registered Entities is the Most Efficient Path Forward and Minimally Burdensome for Market Participants.

EPSA believes the instant Data Request and other data projects under consideration should be first reviewed by the SDRs prior to being issued to market participants for further comment because the SDRs are best positioned to quickly and efficiently implement solutions that directly affect data reported to the CFTC, without having to change market participants’ compliance obligations on the front end and without creating confusion among market participants about which swaps asset classes will be affected by certain data element changes. The SDRs also control how the data is reflected (form and manner) in reports to the CFTC, whereas market participants have no control or knowledge about how that data will appear when aggregated or messaged by an SDR for ultimate transmittal to the agency. Further, it is unlikely that market participants would be able to provide purely technical feedback on data reporting enhancements without considering practical costs and resource challenges, new regulatory compliance obligations, and added regulatory exposure – all which seem to be beyond the scope of the instant Data Request or other informal issuances from staff.

EPSA echoes the remarks of CFTC panel participants at the TAC meeting that reporting requirements should be streamlined in consultation with industry experts who have the experience, mandate, and resources to address the multi-year challenge of data standardization. EPSA supports the recommendations noted by SDRs that the CFTC should reconvene a data standardization subcommittee that proactively engages SDRs and other CFTC registrants to determine how data across all outputs can

be standardized and better utilized by the agency. EPSA adds that the Commission staff should also reach out to utilities, energy marketers, independent producers, and other non-CFTC-registered commercial firms in the energy sector that have elected to serve as reporting entities, so that the staff can develop a better understanding of the specific limitations and issues involved for end-users that are on both the reporting and non-reporting side of an uncleared commodity swap.

C. The CFTC Should Pursue a Separate Work Stream and Standardization Process for Commodity Swaps and Clarify that the Instant Data Request Does Not Impact Commodity Swaps Reporting.

EPSA notes that it is very unclear⁸ from the Data Request whether certain generically applicable elements proposed in the Data Request that *could* apply to Other Commodity swaps are actually being considered for application to this asset class. This distinction is of critical importance for understanding the scope and impact of the Data Request and its practical and technical implications for commercial end-users that have limited swaps activities, primarily in commodity swaps. Importantly the granularity and breadth of information sought in the Data Request is not currently captured nor amenable to being captured in commercial end-users' and their reporting counterparties' internal-facing trade capture and reporting infrastructure for commodity swaps, because these transactions are non-standard transactions that still need to be manually entered into trade capture systems on a per-trade basis.

Additionally, given that the CFTC staff's consistent observations that commodity swaps present singular challenges for transactional linking and developing audit trails, EPSA believes it is reasonable, helpful and practical for the CFTC staff to work with key SDRs that have experience with commodity swaps reporting to develop recommendations that specifically apply to the Other Commodity asset class. The resulting work product of this collaboration and any recommended enhancements to data collection should then be considered by the Commission and proposed for public comment. Relatedly, the instant Data Request should be narrowed to exclude potential changes to the Other Commodity asset class, as it is has been broadly represented by the Commission and staff that the focus of the request is on rates, credit, and foreign exchange swaps.⁹

As has been discussed at recent CFTC meetings of the TAC and EEMAC, not only does each swaps asset class has a different market structure and unique attributes, the Other Commodity asset class is non-standardized even where other asset classes share commonalities due to the greater structure and

⁸ Note: As stated in the EPSA, EEI, and AGA Joint Associations' Request for Extension of Time, there is no clarity in the Data Request as to which of the 120 elements may now or in the future impact their reporting of OTC commodity swaps although the request notes that it prioritizes changes to the interest, rates and credit default swaps asset classes.

⁹ See Statement of Dan Bucsa, CFTC Division of Market Oversight, Feb. 23 TAC Meeting, archived transcript to be made available on the CFTC website.

standardization of products in these other classes. As stated by CFTC staff at the EEMAC meeting,¹⁰ commodity swaps are single-sided trades, executed on an OTC basis and highly customized – providing by example that a single “economic trade” in the Other Commodity class may actually be represented by up to five (5) different swaps, each tagged with different USIs (“unique swap identifiers”). Added to these facts, staff noted that commercial market transactions in these swaps are about one percent (1%) of the OTC swaps markets and that commercial firms are not the presenters of systemic risk.¹¹ Given these differences, common data fields and values that may still make sense across other swaps asset classes are unlikely to be workable for commodity swaps reporting.

Moving forward, EPSA requests that the CFTC and SDRs work together on an iterative basis to develop clear recommendations that are asset class-specific and offer those recommendations for public comment in a rulemaking proceeding focused on discrete changes that the CFTC clearly intends to apply to one or more specific asset classes. Although there will understandably be many efficiencies that could accrue from addressing reforms for reporting across multiple asset classes, EPSA believes that it is logical, practical, and resource-efficient for the Commission to prioritize improvements in the credit, rates, and foreign exchange asset classes first, before turning to the OTC commodity markets that are predominantly utilized by commercial entities for long-term risk management and which represent a mere fraction of the swaps markets that are important to the Commission’s and the G-20 community’s systemic risk surveillance efforts. Further, any changes proposed to commodity swaps reporting fields should consider the relative costs on the end-user marketplace and the relative benefits to the CFTC’s oversight and enforcement mission from achieving more granularity around the smallest component of the global swaps market.

D. Changes to the Part 49 Rules Should be Discussed Contemporaneously with Any Proposed Changes to Market Participants’ Compliance Obligations under the Part 43 and Part 45 Rules.

To the extent the Commission adopts any of the draft technical specifications in a future CFTC rulemaking, EPSA recommends that the CFTC first ascertain whether those changes are technically and statutorily within the scope of the Part 49 rules governing obligations and compliance of SDRs. Although market participants can be expected to diligently review and respond to proposals regarding their own compliance, they cannot anticipate or predict the legal or technical nuances of SDR compliance with CFTC rules. Therefore, if SDRs are not consulted prior to public comment requests, there is no way to guarantee that market participants’ time and resources will be well spent nor that the

¹⁰ See Remarks of Mr. Sayee Srinivasan, Chief Economist, Office of the Chief Economist, Panel II: CFTC Staff Swap Dealer De Minimis Exception Preliminary Report (Feb. 26, 2016). Transcript available via http://www.cftc.gov/PressRoom/Events/opaevent_eemac022516.

¹¹ *Id.*

comments received will be ultimately useful to the Commission if the proposed solutions from market participants cannot actually be implemented due to limitations in the Part 49 framework.

For example, the CFTC appears to already be considering changes to the Part 49 rules that would give SDRs new authorities to manage data received from market participants, such as potential new authority to reject incomplete information submissions. CFTC staff testified at the Subcommittee Hearing that “[s]ome required fields are not reported by participants, and SDRs don’t believe they have the authority to reject data if it is incomplete. Though we have seen an improvement across a number of data fields, there is additional work to do. In the past, the CFTC Chairman Massad has underscored his belief that the CFTC should change its rules so that SDRs have a greater ability to improve the quality of data before it arrives at the CFTC. Staff is looking closely at this possibility.”¹² Indeed, if such changes to SDR rules are proposed, they should happen well before market participants are expected to comment on their own potential compliance obligations as a result of those changes. By working with the SDRs on the back-end of the reporting chain (between SDRs and the CFTC) and proposing rule changes for SDRs contemporaneously, market participants will have a more meaningful opportunity to comment on the complete regulatory landscape that impacts their compliance – the Commission’s rules as well as changes to SDRs’ administration of those rules.¹³

E. Certain Technical Specifications in the Staff Data Request Could Create New Compliance Challenges for Commercial End-Users that are Reporting and Non-Reporting Counterparties to Commodity Swaps.

EPSA members on both the reporting side and non-reporting side of bilateral swaps reported to SDRs have preliminarily identified two areas of the proposed technical specifications that may be a significant challenge from both a technical and practical perspective as to commodity swaps reporting. In general, the series of data elements around Swap Data Reconciliation (Data Accuracy Confirmation by Counterparty), Ultimate Parent and Guarantor, Counterparty Dealing Activity Exclusion Type, Third Party Reporter ID, Package Transactions may disrupt settled expectations about the Part 45 reporting hierarchy and Commission policy about how much information the reporting and non-reporting party to a swap is responsible for retaining and verifying over the life of a swap reported to an SDR. Additionally, some information requested through these data fields is not likely to be information that counterparties can access or verify on behalf of their non-reporting counterparties, nor does the Part 45 rule contemplate that they bear a regulatory obligation to verify or confirm a non-reporting counterparty’s business dealings related to a specific swap transaction. The following are some specific observations on this point.

¹² Written Testimony of John Rogers, Before the U.S. House Committee on Agriculture, Subcommittee on Commodity Exchange, Energy and Credit (February 25, 2016), at p. 3.

¹³ *See id.* Testimony of John Rogers, Subcommittee Hearing, Feb. 25, 2016.

First, many of the proposed fields and concepts demand detailed, discrete, and ongoing knowledge by a reporting counterparty as to its non-reporting counterparty's business purposes for entering into the specific swaps transaction. EPSA members note that it is unlikely that reporting entities will have the right to timely obtain and confirm the accuracy of this information, and that even if they do obtain the information, they have no control over a counterparty's ultimate business purposes for entering into a specific swap. Further, the Part 43 and 45 rules do not require a reporting counterparty to validate on a transaction-by-transaction basis the precise reasoning or regulatory exclusion that may drive its non-reporting counterparty's business purposes or ongoing use of a swap to qualify and distinguish its "hedging" or "dealing" activities.

In lieu of creating a new regulatory obligation on reporting entities, EPSA preliminarily recommends that the CFTC rules continue to only require confirmation, validation, and reconciliation of swap data that is germane to the terms of the reported swap between the two parties as is available through contractual documentation of the parties' agreement regarding the economic terms of the swap transaction. Beyond this data, the CFTC should explore whether it is workable for counterparties to independently agree and represent that certain swaps are not dealing activities as to the non-reporting end-user counterparty, such that the reporting entity need only describe that swap as an "Exclusion" or a "No Exclusion" swap on a transaction-by-transaction basis.

Second, the new field proposed in the Data Request regarding "Data Accuracy Confirmation by Counterparty" would impose a new compliance obligation on non-reporting counterparties that is well beyond the scope of the Part 45 rule. The field would require an indication of "whether or not each counterparty to a trade has actively affirmed, actively disputed, or failed to affirm that the SDR's record of its trade is correct." It further states that the "value FailedtoRespond means no active affirmation or dispute has been received within 48 hours of the trade."¹⁴ In essence, the required field values would state whether or not the non-reporting entity has taken action to validate the SDR's record of swap data, even though the non-reporting entity has already reconciled the terms of a bilateral swap execution with its reporting counterparty. It does not appear that these data fields would contemplate that a non-reporting can achieve the required affirmation of SDR records without specifically on-boarding to the SDR as an active user of the SDR system. As such, this proposed field is a categorical expansion of a non-reporting entity's current obligation under CFTC Rule § 45.14(b) to only report errors and omissions it discovers with respect to any swap data reported to an SDR for that swap. The Part 45 rule does not state that non-reporting entities are required to confirm within 48 hours of a trade the reported data as reflected by a specific SDR to which the reporting counterparty has chosen to report the trade data. To the extent this field is *not* interpreted by a given non-reporting entity as a regulatory obligation to on-board with an SDR to confirm the accuracy of data, the mere fact that the reporting entity may

¹⁴ Data Request, at pp. 30.

highlight that non-response as a regulatory “failure to respond” creates regulatory exposure and concern for the non-reporting entity regardless. Further, if the reporting entity mistakenly reports its counterparty as having “failed to respond,” unless the non-reporting entity on-boards with the SDR to review the SDR’s records, it would have no way of knowing whether the reporting party has misstated the former’s compliance efforts in a regulatory filing.

Further, this field change directly contravenes the Commission’s well-settled policy and Congress’¹⁵ intent to assign the primary responsibility for the reporting of accurate data for a swaps transaction to the counterparty that is better situated to provide timely, complete data at minimal cost or burden. The Part 45 rule intentionally defaults to requiring a SD or MSP counterparty to report swaps when possible, limiting “reporting by non-SD/MSP counterparties to situations where there is no SD or MSP counterparty,” and where “both counterparties have the same hierarchical status... they may agree as one of the terms of their swap which of them is to report in order to avoid reporting delays.”¹⁶ Although end-users in some cases are finding themselves on the reporting side of a commodity swap, in general the Commission has chosen to place narrower recordkeeping obligations on non-SD/MSP counterparties subject to the Commission’s jurisdiction, requiring them to keep “full, complete, and systematic records, including all pertinent data and memoranda, with respect to each swap to which they are a counterparty, rather than with respect to their entire business relating to swaps.” Additionally, “[t]his narrower requirement was designed to effectuate a policy choice made by the Commission to place lesser burdens on non-SD/MSP counterparties to swaps, where this can be done without damage to the fundamental systemic risk mitigation, transparency, standardization, and market integrity purposes of the legislation.” (emphasis added).

EPSA does not believe it is desirable or advisable to change this policy, given that the bulk of the Commission’s regulatory and enforcement interests in the global and domestic swaps market are negligibly influenced by U.S. OTC uncleared commodity swaps market participants. However, should the Commission believe that this policy choice should be changed in any respect, EPSA requests that the Commission open a rulemaking proceeding to solicit comments on whether or not a change in this policy choice will provide a measurable benefit to systemic risk mitigation, transparency,

¹⁵ The Part 45 rulemaking relating to swap data recordkeeping and reporting requirements implements sections 2(a)(13)(G), 4r, and 21(b) of the Commodity Exchange Act (“CEA” or “Act”) These sections of the CEA were added by sections 727, 729, and 728, respectively, of Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”).

¹⁶ Part 45 Final Rule, at pp. 13, available at <http://www.cftc.gov/idc/groups/public/@newsroom/documents/file/federalregister122011b.pdf>.

standardization, and market integrity goals, that exceeds the burdens which would be created for commercial market participants required to comply with the CFTC’s recordkeeping and reporting rules. Given the substantial compliance burdens end-users already incur as Part 45 reporters, or as non-reporting counterparties to reported OTC commodity swaps, EPSA requests that any changes impacting Other Commodity swaps reporting and commercial end-users’ compliance obligations be deferred for a separate proceeding that (i) explicitly and exclusively focuses on a narrow set of data quality enhancements that will have a limited cost and burden impact on commercial firms, and (ii) recognizes the realistic benefits that this data will actually provide toward the CFTC’s systemic risk mitigation, registrant compliance oversight, and market monitoring and abuse prevention efforts.

Finally, the Part 45 rules should continue to provide a clear line dividing the responsibilities of entities that have contractually assumed reporting obligations (including reporting end-users) and non-reporting end-users that have less resources and technological ability than their counterparties. EPSA recommends that as to all swaps involving an end-user counterparty, the Part 45 rules should explicitly provide that non-reporting entities’ due diligence obligations – whether confirmation or monitoring for errors and omissions in reported data – do not require that the non-reporting entity undertake the same level of data reconciliation processes or duties that are already fulfilled by a reporting entity. EPSA preliminarily recommends that the CFTC consider certain swaps-related data fields to be purely conditional or even optional where the swap counterparties are end-users entering into uncleared commodity swaps, or that any new or added granularity to certain data fields would nevertheless permit a reporting entity to report that its counterparty is an “End User” or “Special Entity”, rather than having to identify the purpose and characterization of each transaction with its end-user or special entity counterparty.

To conclude, EPSA offers the following recommendations, and hopes that the Commission will provide further opportunities for commercial end-users to ascertain the scope and practical implications of swap data standardization efforts on their compliance obligations:

- Reconvene the CFTC Data Standardization Subcommittee to bring together all SDRs and relevant technology experts with the CFTC Office of Data and Technology to identify key problems in the data that the Commission is trying to solve for, and develop asset class-specific approaches to swaps data harmonization accordingly.
- Optimize the data harmonization goals of the Commission by first focusing on improving the accuracy, completeness and reliability of data that is already reported via SDRs, and abstain from requesting additional information directly from market participants until it is clear that the new information requested is feasible for collection and reporting by SDRs consistent with legal and technical guidelines governing SDRs’ compliance with CFTC rules, and within scope of the IOSCO’s standardization efforts.

- Eliminate all ambiguity as to whether the “other commodity” asset class will be impacted by the specific changes that are proposed for individual asset classes in the instant Staff Request, and clarify that the changes proposed herein will not impact swaps in the “other commodity” class.
- Per the observations made by Office of Data and Technology Staff at the CFTC TAC Meeting and at the CFTC EEMAC meeting, the CFTC should first attempt standardization *only* as to the more structured asset classes, i.e. interest rate, credit and foreign exchange swaps, well before considering any modifications to the “other commodity” asset class.
- To the extent the CFTC staff believes that all asset class specifications should be changed together for efficiency purposes, the CFTC staff should issue a separate draft request specifying the proposed technical data element changes, that applies directly and specifically to the Other Commodity asset class. The CFTC should provide end-users a minimum of 60 days to comment on a proposal that is targeted specifically and exclusively at changes proposed to harmonize data reported regarding Other Commodity swaps.

Please contact the undersigned if you have any questions about these comments. EPSA appreciates the opportunity to comment and looks forward to providing the Commission with further information as needed.

Respectfully Submitted,

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