

May 21, 2020

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

RE: RIN Number 3038-AE31

Dear Mr. Kirkpatrick,

Chatham Financial (“Chatham”) is pleased to provide comments in response to the notice of proposed rulemaking published on April 17, 2020, on “Swap Data Recordkeeping and Reporting Requirements, 17 CFR Parts 45, 46 and 49.” Chatham supports the overall objectives of the U.S. Commodity Futures Trading Commission (the “Commission”) as it seeks to streamline swap reporting requirements and improve the quality of swap data for better systemic risk mitigation and market transparency. Chatham is separately providing comments on selected aspects of each proposed rulemaking related to swap reporting; thus, in addition to the present comments, previously submitted comments regarding proposed changes to Part 49 on July 26, 2019.

As a global financial advisory services and technology solutions firm, Chatham specializes in the debt and derivatives markets. Advising and providing services to more than 3,000 clients annually on interest rate, currency, and commodity hedging, Chatham is a global firm with operations in the United States, Europe, Australia, and Asia. Chatham is currently engaged as a third-party reporter for over 240 clients who have Dodd-Frank reporting obligations. In addition to reporting transactions on behalf of our clients, Chatham has also assisted globally active swap dealers in assessing and improving their compliance with swap data reporting requirements. Our comments below reflect our comprehensive expertise supporting both buy- and sell-side market participants with their swap data reporting obligations.

Question 1. Does the Commission’s proposed definition of “execution date” present problems for SEFs, DCMs, SDRs, or reporting counterparties? Should the Commission instead adopt a definition that aligns with other regulations, including, for instance, the definition of “day of execution” in § 23.501(a)(5)(i)?

Yes. Chatham believes that the execution date should be based off of the current standard, Coordinated Universal Time (UTC), instead of Eastern Time. Reporting counterparties have built systems to track when trades were executed measured in UTC instead of Eastern Time and would incur time and expense converting systems to track in Eastern Time instead. Additionally, this would create a divergence between CFTC Part 45 Reporting and other regulatory reporting frameworks, which are frequently reported using UTC. To the extent that the CFTC requires the execution date to be delivered in Eastern Time, Chatham believes that a more efficient approach would be to have the SDRs convert UTC to Eastern Time when submitting to the CFTC.

Question 3: Does the Commission’s proposed T+1 deadline create any problems for SEFs, DCMs, SDRs, or reporting counterparties by referencing eastern time? Should the Commission instead adopt a definition that aligns with other regulations, including, for instance, the definition of “day of execution” in § 23.501(a)(5)(i)?

As described above, Chatham believes that all time references should be to UTC rather than Eastern Time. Referencing UTC time is harmonious with the way that Reporting Counterparties currently capture trade execution time and would not require any changes to how the execution time is currently captured.

Question 4: Do any of the Commission’s proposed changes to the timing deadlines for reporting required swap creation data in § 45.3 raise issues with the sequencing of messages for SDRs that could compromise data quality? For instance, could a T+1 deadline for reporting original swaps and clearing swaps create problems for SDRs in processing swap terminations? Could the 8-hour delay for the allocation agent notifying the reporting counterparty of the actual counterparty’s identity create timing message sequencing issues for allocation reporting?

Chatham supports the revisions made in proposed Sections 45.3 and 45.4, whereby timelines for reporting swap creation and continuation data swap reporting under Part 45 would move from “as soon as technologically practicable” to a more clearly defined T+1/T+2 framework. In particular under the proposal, Chatham supports provisions whereby reporting counterparties that are not swap dealers, major swap participants or derivatives clearing organizations would have to report creation and continuation data by the end of the second business day following the execution date or event (T+2). Chatham believes this deadline is more appropriately calibrated to the respective capabilities of the different types of reporting counterparties and suspects that this framework will lead to improved data quality submitted to the Commission.

Question 5: Are the Commission’s proposed T+1 and T+2 deadlines for reporting required swap continuation data appropriately harmonized with the deadlines set by other regulators and jurisdictions to benefit market participants? Do the Commission’s proposed T+1 and T+2 deadlines for reporting required swap continuation data create any operational issues for reporting counterparties that the Commission has not considered?

As described above, Chatham supports the Commission’s proposal to implement T+1 and T+2 deadlines for reporting required swap continuation data. Chatham believes that this framework is more appropriately tailored to the reporting systems available to reporting counterparties and will lead to more accurate data submitted to the Commission.

Additionally, Chatham supports the Commission’s proposed elimination of the option to report state data under Section 45.4’s continuation data reporting requirements. Chatham agrees that lifecycle data reporting provides the same critical information as state data reporting, while significantly reducing the number of reports which must be transmitted by reporting counterparties, maintained by swap data repositories, and analyzed thereafter by the Commission. The proposal to remove the option for state data reporting makes practical sense from a system-wide perspective and from an end-user perspective.

Question 7: Does the Commission’s proposal to no longer require non-SD/MSP/DCO reporting counterparties to report valuation data raise any concerns about the Commission’s ability to monitor systemic risk in the U.S. swaps market?

Chatham supports the Commission's proposal to no longer require non-SD/MSP/DCO reporting counterparties to report valuation data. Chatham believes that providing valuation data for non-SD/MSP/DCO reporting counterparties is of limited value to the Commission's market surveillance and believes that the burden associated with submitting quarterly valuations likely exceeds the benefit associated with this data.

Question [unnumbered]: The Commission requests comment on all aspects of the proposed changes to § 45.5.

Chatham sees the value of aligning the practice of creating and identifying transactions by a Unique Transaction Identifier ("UTI") with the global standards set forth in the UTI Technical Guidance. Non-SD/MSP/DCO reporting counterparties have built out systems that request that the SDR generate the USI for a trade. Because SDRs have already built out the technical capacity to generate USIs/UTIs, Chatham believes that all non-SD/MSP/DCO reporting counterparties should have the option to have the SDR continue to generate the UTI for all non-SD/MSP/DCO reporting counterparties as this is the most efficient method and requires the fewest operational changes to existing reporting frameworks.

Question 8: Should the Commission expand requiring LEIs to be renewed annually beyond SDs, MSPs, SEFs, DCMs, DCOs, and SDRs? Please explain why or why not, including specification of any material costs or benefits.

Chatham does not believe that the Commission should expand the requirement to renew LEIs annually beyond SDs, MSPs, SEFs, DCMs, DCOs and SDRs. In Chatham's experience, the information submitted generally remains consistent from the original application. Moreover, some LOUs have imposed onerous documentation requirements before an LEI can be obtained / renewed. So, while the absolute cost in time is generally not significant, many LEI applicants often experience significant difficulty and frustration in satisfying the documentation requirements that are beginning to be imposed before an LEI can be obtained or renewed.

With respect to proposed Section 45.6(d) in particular, Chatham would like to suggest that the proposed text may result in some uncertainty among end users as to whether there is an obligation for counterparties to go back and obtain a legal entity identifier to report for trades which have already been reported using a substitute identifier. Further clarification on this point is suggested.

Question 9: Are there other ways to ensure that an LEI is obtained and reported for a counterparty without an LEI, but is eligible for an LEI, other than each DCO and each financial entity reporting counterparty potentially being required to obtain an LEI on behalf of the counterparty through third-party registration?

To the extent that the Commission will now require an LEI for all counterparties and will not accept a temporary identifier, Chatham believes that requiring each DCO and each financial entity reporting counterparty to obtain an LEI on behalf of the counterparty through third-party registration is the most logical method to implement this requirement.

Question 13: Even with technical standards published by the Commission, there is a risk of inconsistent data across SDRs if the Commission allows the SDRs to specify the facilities, methods or data standards for reporting. In order to ensure data quality, should the Commission mandate a certain standard for reporting to the SDRs? If so, what standard would you propose and what would be the benefits? If not, why not?

As Chatham has previously asserted, Chatham strongly supports any and all efforts of the Commission to mandate as specific standards as possible for reporting to SDRs. Because of the ability to customize derivatives, there can be a level of ambiguity and interpretation around how to complete the applicable fields associated with the product. Chatham believes that the more specificity that the Commission can provide around data standards and fields will help to remove ambiguity and should reduce the likelihood of inconsistent data across SDRs.

Question 15: The Commission is considering including a data element called “Mandatory clearing indicator” to indicate whether a swap is subject to the clearing requirement in part 50 of the Commission’s regulations. The Commission requests specific comment on whether commenters believe this data element could be reported to SDRs.

Chatham does not believe that the Commission should expand the data elements to include a Mandatory Clearing Indicator. Reporting counterparties have spent time and resources mapping the reporting fields to their systems in order to efficiently populate their reporting templates. Because the products that are subject to mandatory clearing continues to evolve, reporting counterparties would need to potentially regularly update their reporting templates to capture this field as new products became subject to mandatory clearing. Chatham believes that the Commission is able to ascertain whether a product is subject to mandatory clearing by the current fields that are submitted in trade reports.

Question 16: The CFTC needs the ability to link swap counterparties to their parent entities to aggregate swap data to be able to monitor risk. Given the complicated nature of how some entities are structured within a larger legal entity, the CFTC also needs information related to the ultimate parent entity. The Commission believes this information is necessary to collect for both swap counterparties. The Commission requests specific comment on whether commenters believe this data could be reported as part of swap data reporting. Given the static nature of these relationships, the Commission requests comment on whether reporting counterparties should report parent and ultimate parent information for each swap trade or in a regularly updated (e.g., monthly or quarterly) reference file maintained by SDRs.

Chatham does not believe that this information could be efficiently reported. The only way that reporting counterparties could report this information is if they regularly requested and received it from their counterparties. This would impose a significant ongoing burden on counterparties to review and affirm the information provided. Additionally, in Chatham’s experience, there are many situations when a parent and/or ultimate parent does not have an LEI because those entities have never entered into a derivative transaction or otherwise have had a need to obtain one. This requirement would likely impose an additional requirement to obtain LEIs for these entities as the most efficient way to report the parent/ultimate parent information.

Question 19: The Commission is considering requiring reporting counterparties to provide a USD equivalent notional amount that represents the entire overall transaction for tracking notional volume (in addition to leg-by-leg notional data reported pursuant to other proposed data elements). The Commission believes that this additional data element could allow staff to more effectively assess compliance with CFTC regulations, including but not limited to SD registration and uncleared margin requirements, and help staff more efficiently monitor swap market risk. The Commission specifically requests comment on the frequency with which reporting counterparties should report USD equivalent notional.

Chatham does not believe that the Commission should require USD equivalent notional to be reported. Chatham believes that this field could lead to many interpretive issues. For example, where USD is not one of the legs to the trade, at what moment would you convert into USD? Which leg of the trade would be converted into USD? To the extent there was a life cycle event, would you be required to update the USD equivalent, etc. Because of how subjective and open to interpretation some of these points are, there would likely be a lot of noise in the data provided to the CFTC and would mean that the data could be of limited value to the Commission.

Question 25: Should the Commission include the additional swap data elements related to transactions included in the CDE Technical Guidance?

Chatham would like to request that the Commission clarify one point around data element (83) Block trade election indicator. Specifically, certain SDRs have built a functionality to determine whether a trade meets the large size trade threshold. However, this functionality only applies to Part 43 submissions; the functionality does not apply for Part 45 submissions. Therefore, reporting counterparties are unable to fully rely on the SDR's existing block trade capability, because it does not work for Part 45 messages. Chatham believes that the Commission already receives notice of whether the trade is subject to the large size trade / block trade requirements via the Part 43 message and requiring this field for the Part 45 submission is unnecessarily duplicative. Moreover, this requirement imposes additional costs on reporting counterparties to build out the reporting logic necessary to make these determinations, since they cannot fully rely on the SDR's existing functionality to make this determination for both their Part 43 and Part 45 submissions.

Question 26: The Commission is considering including a data element called "Trade execution requirement indicator" to indicate whether a swap is subject to the Commission's trade execution mandate. The Commission requests specific comment on whether commenters believe this data element could be reported.

Chatham does not believe that the Commission should expand the data elements to include a trade execution requirement indicator. Reporting counterparties have spent time and resources mapping the reporting fields to their systems in order to efficiently populate their reporting templates. Because the products that are subject to trade execution continues to evolve, reporting counterparties would need to potentially regularly update their reporting templates to capture this field as new products became subject to the trade execution requirement. Chatham believes that the Commission is able to ascertain whether a product is subject to the trade execution requirement by the current fields that are submitted in trade reports.

Question 34: The Commission has not proposed any specific implementation requirement to report multiple values for the same data element when applicable. The Commission thinks that it is best to leave the implementation details to market conventions and SDR requirements. Should the Commission consider a set approach to report multiple values? If so, please provide details on the suggested approach.

Chatham strongly encourages the Commission to be as prescriptive as possible. Because of the ambiguity associated with how to populate the data fields associated with certain customized, bespoke derivatives, Chatham believes that reporting counterparties would strongly appreciate as detailed, specific standards as possible. These standards would reduce the variability in how products are reported to different SDRs and would improve the Commission's overall data quality.

Question 35: The Commission is considering requiring reporting counterparties to indicate whether a specific swap: (1) Was entered into for dealing purposes (as opposed to hedging, investing, or proprietary trading); and/or (2) need not be considered in determining whether a person is a swap dealer or need not be counted towards a person’s de minimis threshold, as described in paragraph (4) of the “swap dealer” definition in § 1.3 of the Commission’s regulations, pursuant to one of the exclusions or exceptions in the swap dealer definition (e.g., the insured depository institution provision in paragraph (4)(C) or exclusion in paragraph (5) of the “swap dealer” definition in § 1.3, the interaffiliate exclusion in paragraph (6)(i) of the “swap dealer” definition, etc.). In the past, the Commission staff has identified the lack of these data elements as limiting constraints on the usefulness of SDR data to identify which swaps should be counted towards a person’s de minimis threshold, and the ability to precisely assess the current de minimis threshold or the impact of potential changes to current exclusions. Given the Commission’s ongoing surveillance for compliance with the swap dealer registration requirements, the Commission requests comment on this potential field.

While not exactly on point, Chatham would like to bring to the Commission’s attention that it appears that the proposed list of data elements provided in Appendix 1 no longer contains elements to signal whether counterparties are U.S. persons. Chatham suggests that reinserting this data field also would support the Commission’s ongoing surveillance to determine compliance with swap dealer registration requirements.

Question 39: The Commission has outlined two revised reporting frameworks, depending on the type of the reporting entity (e.g., T+1 for SDs, MSPs and DCOs). Does this division into two reporting categories make sense given the current or anticipated reporting systems of the entities? Would reporting be improved if any entity types were moved from one to the other category?

As described above, Chatham supports the Commission’s proposal to implement T+1 and T+2 deadlines for reporting required swap continuation data. Chatham believes that this framework is more appropriately tailored to the reporting systems available to reporting counterparties and will lead to more accurate data submitted to the Commission. Chatham believes that the bifurcation of entities between the T+1 and T+2 categories as currently divided makes sense and would not make any changes to the proposed division.

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Chatham thanks the Commission for considering these recommendations and is available to answer any questions it may have. Please contact Heather Fritzing, Managing Director, Global Head of Controls and Regulatory Operations (hfritzing@chathamfinancial.com, 484-731-0014) with any questions.