



Katherine Delp | *DTCC Data Repository (U.S.) LLC*
General Manager | 55 Water Street
New York, NY 10041-0099
Tel: (212) 855-4760
kdelp@dtcc.com

May 22, 2020

Via Electronic Submission

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

Re: Proposed Amendments to the Commission’s Real-Time Public Reporting Requirements (RIN: 3038-AE60)

Dear Secretary Kirkpatrick,

DTCC Data Repository (U.S.) LLC (“DDR”), a wholly-owned subsidiary of The Depository Trust & Clearing Corporation (“DTCC”), appreciates the opportunity to provide comments to the Commodity Futures Trading Commission (“CFTC” or the “Commission”) on its proposed regulations related to real-time public reporting and dissemination requirements for swap data repositories (“SDRs”), derivatives clearing organizations (“DCOs”), swap execution facilities (“SEFs”), designated contract markets (“DCMs”), swap dealers (“SDs”), major swap participants (“MSPs”), and swap counterparties that are neither SDs nor MSPs.¹

DDR commends the Commission for its continued focus on making the derivatives markets safer and more transparent. In particular, DDR appreciates the multi-year effort undertaken by Commission staff to revise the swap data elements set forth in the Proposing Release, as well as efforts to produce technical specifications for each such field.² Our comments on the Proposed Tech Specs are included in Appendix A below.³

As highlighted below, DDR supports many of the Commission’s proposed revisions and believes that, if finalized, they would increase swaps markets transparency in support of the Commission’s objective to enhance price discovery in the swaps market. Where DDR believes a proposed rule can be improved or clarified, it has set forth its recommended amendments or requests for clarification. Thank you for consideration of these comments and we look forward to further discussion on these important proposals.⁴

¹ Real-Time Public Reporting Requirements, 85 FR 21516 (April 17, 2020) (“Proposing Release”).

² Draft Technical Specifications for Public Comment - Parts 43 and 45 swap reporting and public dissemination requirements (February 20, 2020), available at https://www.cftc.gov/media/3496/DMO_Part43_45TechnicalSpecification022020/download (“Proposed Tech Specs”).

³ Please be advised that for the sake of clarity and completeness the comments to the Proposed Tech Specs contained herein are identical to the Proposed Tech Spec comments included in Appendix A in DDR’s comment letter on the Commission’s proposed rule on Swap Data Recordkeeping and Reporting Requirements, 85 FR 21578 (April 17, 2020) (“Part 45 Proposal”).

⁴ Please note that DDR submitted separate comment letters to the Part 45 Proposal and to the Commission’s proposed rule on Certain Swap Data Repository and Data Reporting Requirements, 84 FR 21044 at 21055 (May 13, 2019) (“Part 49 Proposal”). In addition, DDR submitted a joint comment letter on the Part 49 Proposal with ICE Trade Vault, LLC, and Chicago Mercantile Exchange Inc. (the “Joint SDR Letter”). This comment letter should be read together with the Joint SDR Letter and DDR’s responses to the Part 45 Proposal and the Part 49 Proposal.

Definitions

DDR offers the following comments to proposed section 43.2 for the Commission's consideration.

- *"Business Day"*

In the Proposing Release, the Commission seeks to remove the definition of "business day" from section 43.2 because such term is defined in section 1.3 of the Commission's regulations. DDR notes, however, that there appears to be a discrepancy between the definition of "business day" in section 43.2 and the definition of "business day" in section 1.3. Specifically, current section 43.2 defines "business day" as "the twenty-four hour day, on all days except Saturdays, Sundays and legal holidays, in the location of the reporting party or registered entity reporting data for the swap."⁵ In contrast, section 1.3 states that the term "business day" means "any day other than a Sunday or holiday,"⁶ which would include "Saturday" as a business day. If the "Business day" definition in section 1.3 is adopted for Part 43, the inclusion of Saturday as a business day could impact SDR operations as well as the currency conversion requirements in proposed section 43.6(g)(4). Furthermore, it is unclear whether the term "holiday" as used in the "business day" definition in section 1.3 has the same meaning as is currently in effect in Section 43.2. Specifically, it is unclear whether the term holiday continues to exclude legal holidays in the location of the reporting party or registered entity reporting data for the swap or, alternatively, federal holidays in the United States.⁷ As a related matter, DDR notes that the Part 45 Proposal does not propose to remove the definition of "business day" from section 45.1. DDR recommends that the Commission revisit the business day definition and, to the extent practicable, establish a consistent definition across its rules, which should work to reduce regulatory complexity and improve data quality.⁸

§43.3(a)(4)

The Proposing Release requests comment on whether a reporting counterparty "should be required to submit [post-priced swaps] [as soon as technologically practicable] after execution using the post-priced swap indicator (59), leaving the price empty and then be required to update that entry after the price is determined."⁹ As discussed in the Part 45 response, DDR believes that a globally consistent framework for data standardization and governance would maximize the usefulness of data and would allow regulators to turn collected data into meaningful analytical information. To this end, DDR cautions against adding exceptions unless strictly necessary to avoid deviating from such standardization and creating additional complexities. Accordingly, DDR recommends minimizing carve-outs for strict validation rules wherever possible.

⁵ 17 CFR 43.2.

⁶ Section 1.3 further states that "In all notices required by the Act or by the rules and regulations in this chapter to be given in terms of business days the rule for computing time shall be to exclude the day on which notice is given and include the day on which shall take place the act of which notice is given." 17 CFR 1.3.

⁷ See *generally* 5 U.S.C. § 6103, which establishes the following federal holidays: New Year's Day, January 1; Birthday of Martin Luther King, Jr., the third Monday in January; Washington's Birthday, the third Monday in February; Memorial Day, the last Monday in May; Independence Day, July 4; Labor Day, the first Monday in September; Columbus Day, the second Monday in October; Veterans Day, November 11; Thanksgiving Day, the fourth Thursday in November; and Christmas Day, December 25.

⁸ Other definitions of "business day" in the Commission's regulations include, for example, section 23.501(a)(5)(ii) ("Business day" means any day other than a Saturday, Sunday, or legal holiday"); section 39.2 ("Business day means the intraday period of time starting at the business hour of 8:15 a.m. and ending at the business hour of 4:45 p.m., on all days except Saturdays, Sundays, and any holiday on which a derivatives clearing organization and its domestic financial markets are closed, including a Federal holiday in the United States, as established under 5 U.S.C. § 6103"); and section 40.1 (providing, in pertinent part, that "[b]usiness day and business hour are Eastern Standard Time or Eastern Daylight Savings Time, whichever is currently in effect in Washington, DC, on all days except Saturdays, Sundays, and Federal holidays in Washington, DC").

⁹ Proposing Release at 21529.

§43.3(b)(5) – Annual independent review

DDR believes that the annual independent review requirements for SDRs in proposed section 43.3(b)(5) should be deleted. Section 43.3(b)(5) requires an independent review of an SDR's operations, security, and other system controls for the purpose of ensuring compliance with the requirements in Part 43. However, SDRs are subject to the system safeguard requirement set forth in section 49.24 of the Commission's regulations, which includes, among other things, enterprise risk management and governance,¹⁰ control environment monitoring, comprehensive testing requirements, and mandates the use of independent contractors for specified purposes.¹¹ Thus, the requirements in section 43.3(b)(5) are subsumed by section 49.24 and create unnecessary compliance costs and burdens for SDRs.

§43.3(c) – Availability of swap transaction and pricing data to the public

- §43.3(c)(1)

DDR fully supports the clarification in proposed section 43.3(c)(1), which requires SDRs to publicly disseminate swaps transaction and pricing data for a period of at least one year after the initial public dissemination of such data. Current section 43.3(d) is silent on the length of time SDRs must maintain and provide the public access to swaps transaction and pricing data, and this revision would provide clarity to SDRs in this regard. In addition, by establishing a consistent requirement across SDRs, this revision would increase the transparency of swap data to the public by harmonizing the availability across all SDRs.

- §43.3(c)(2)

DDR requests clarification regarding the fee requirements set forth in proposed section 43.3(c)(2). This section states that swap transaction and pricing data that is publicly disseminated pursuant to Part 43 must be made available free of charge. Although the Proposing Release implies that this section operates together with proposed section 43.3(c)(1),¹² DDR recommends amending these requirements to more clearly align the fee requirement in proposed section 43.3(c)(2) to the one-year period set forth in section 43.3(c)(1). Clarifying the alignment of sections 43.3(c)(1) and (2) could be accomplished, for example, by either (i) combining the requirements in a single paragraph or (ii) making readily apparent the interconnection between the requirements by changing the language under section 43.3(c)(2) from "pursuant to this part" to "pursuant to this paragraph (c)." This clarification is necessary because interpreting section 43.3(c)(2)'s fee requirement without any time limitation would mean any such previously publicly disseminated data held by an SDR must be offered free of charge in perpetuity, which could unnecessarily limit the services SDRs could provide to market participants. DDR believes that this clarification would be consistent with the 2012 adopting release to the Part 43 final rules, which states that "nothing in these rules would prohibit SDRs responsible for the public dissemination of real-time swap data from making commercial use of such data subsequent to public dissemination of those data."¹³

¹⁰ Under section 49.24(b)(1), enterprise risk management and governance "includes, but is not limited to: Assessment, mitigation, and monitoring of security and technology risk; security and technology capital planning and investment; board of directors and management oversight of technology and security; information technology audit and controls assessments; remediation of deficiencies; and any other elements of enterprise risk management and governance included in generally accepted best practices." 17 CFR 49.24(b)(1).

¹¹ For example, section 49.24(j)(3)(ii) requires SDRs to conduct the annual external penetration tests using independent contractors.

¹² See Proposing Release at 21527 ("[P]roposed § 43.3(c) would state that SDRs shall make: [swap transaction and pricing data] available on their websites for a period of time that is at least one year after the initial public dissemination thereof; instructions freely available on their websites on how to download, save, and search such [swap transaction and pricing data]; and [swap transaction and pricing data] that is publicly disseminated pursuant to part 43 available free of charge.") (Emphasis added).

¹³ Real-Time Public Reporting of Swap Transaction Data, 77 FR 1182, 1207 (January 9, 2012).

§43.3(d) – Data Reported to SDRs

Proposed section 43.3(d) sets out a separate regulatory requirement for reporting counterparties in part 43 for real-time public reporting by requiring alignment with technical specifications to be published by the CFTC. DDR supports this proposed change and agrees that the revisions would benefit market participants by having publicly disseminated swap transaction and pricing data standardized across SDRs via the requirements of the technical specifications.¹⁴

§43.3(f)(1)

Proposed section 43.3(f)(1) states that an SDR may satisfy the section's validation requirements by transmitting data validation acceptance messages as required by proposed section 49.10. Use of the word "transmitting" implies an obligation on SDRs to actively send information to their members.¹⁵ Proposed section 43.3(f)(1) is silent regarding other means by which an SDR can satisfy the validation requirements. In this light, DDR is concerned that the proposed language unnecessarily limits the means by which SDRs and their members may arrange for access to such information. To provide market participants with flexibility in using the best available means to achieve proposed section 43.3(f)(1)'s purpose, DDR believes the word "transmitting" should be replaced with the words "making available."

§43.4(h)—Cap Size Removal

The Proposing Release requests comment on whether the Commission should reveal the true notional amount of capped trades by requiring that caps applied pursuant to section 43.4 be removed after six months. DDR defers to market participants regarding the potential public benefit of revealing the true notional amount of a trade following a specified period of time. DDR notes, however, that since any such requirement would deviate from current market practice, it would likely lead to significant operational complexity in terms of technological implementation. Accordingly, DDR suggests that the Commission carefully consider the potential costs and burdens associated with removing cap sizes.

§43.6(f)(2)

Proposed section 43.6(f)(2) states that the parties to an off-facility swap that is a reportable swap transaction with "a notional amount at or above the appropriate minimum block size may elect to have the publicly reportable swap transaction treated as a block trade."¹⁶ In addition, if the parties elect to report the trade as a block trade, the obligation to notify the Commission of such election falls on the reporting counterparty. The data element definition for "Block trade election indicator" in the Proposed Tech Spec, however, states that it is an indicator of an election to report a swap as a block swap by the reporting counterparty or "as calculated by the swap data repository acting as a third party for the reporting counterparty".¹⁷ We agree that the notification obligation should rest with the reporting counterparty and believe that there may be instances where the SDR facilitates this notification obligation. There may also be instances where a third party performs the block calculation on behalf of the parties. However, DDR believes that the use of the term "third party" in reference

¹⁴ While DDR supports the proposed changes in this section, including those in proposed section 43.3(d)(2) regarding data validation, DDR's comments and concerns regarding the validation requirements set forth in Part 49 remain.

¹⁵ Merriam-Webster defines "transmit" to mean "to send or convey from one person or place to another." Merriam-Webster.com Dictionary, Merriam-Webster, available at <https://www.merriam-webster.com/dictionary/transmit> (last visited on April 29, 2020). Certain other sections of the Commission's regulations use the word "transmitting" in this manner, such as by mandating affirmative action to satisfy applicable reporting obligations. See, e.g., 17 C.F.R. 43.3(b)(1) ("A registered swap execution facility or designated contract market shall satisfy the requirements of this subparagraph by transmitting swap transaction and pricing data to a registered swap data repository, as soon as technologically practicable after the publicly reportable swap transaction has been executed on or pursuant to the rules of such trading platform or facility.").

¹⁶ Proposing Release at 21563.

¹⁷ Proposed Tech Specs at 25.

to the SDR in the Proposed Tech Specs could inadvertently introduce confusion regarding the SDR's status with the Commission as a registered entity. Accordingly, we recommend that the Proposed Tech Spec be clarified by revising the data element definition for "Block trade election indicator" to read as follows: "Indicator of whether an election has been made to report the swap as a block swap by the reporting counterparty or as calculated by either the swap data repository acting on behalf of the reporting counterparty or by using a third party".

Compliance Periods

The Proposing Release imposes several compliance obligations under Part 43 that are subject to change based on information specified, or revised, by the Commission at a future date. These include changes to the Proposed Technical Specifications,¹⁸ cap sizes,¹⁹ and minimum block sizes²⁰ (collectively, the "Cited Sections"). In addition, DDR notes that under proposed section 43.7, the authority to change the Cited Sections would be delegated to the Director of the Division of Market Oversight ("Director") or the Director's designee. DDR appreciates and supports the delegations set forth in proposed section 43.7, and recognizes the ability of the Commission to exercise any of the delegated authorities at its election. DDR requests clarification, however, regarding the public notice process for any proposed changes to a Cited Section. For example, the Proposing Release states that following review of any comments and once final, DMO "will publish the technical specifications in the Federal Register pursuant to the delegation of authority proposed in § 43.7(a)(1)."²¹ If the technical specifications are published in the Federal Register, would all subsequent revisions also be published therein? And, if not, how will market participants be notified of changes to the technical specifications?

The Proposing Release also is unclear whether and to what extent there would be an implementation period for a change to a Cited Section. Given the highly technical nature of swaps data reporting, DDR believes that a minimum effective date of not less than 90 days following publication should be included in the regulatory text. This 90 day period should provide a reasonable period of time for SDRs and market participants to implement and test operational changes necessary to implement less complex changes such as changes to cap sizes. DDR recognizes that not all modifications will require the full 90 days to implement and that there may be modifications that require a longer implementation period.²² However, DDR believes that including a minimum implementation period for changes to existing requirements, particularly changes to the technical specifications document, will provide market transparency and clarity around Commission expectations. In the event a change can be implemented within a shorter period or where market participants need more time is necessary, DDR expects that market participants would work with DMO on a reasonable implementation time frame.

Similarly, section 43.4(g)(10) states that "unless otherwise indicated on the Commission's website, any revised cap size published by the Commission shall be effective on the first day of the second month following the date of publication of the revised cap size."²³ This timing structure may be problematic for market participants under a range of circumstances, such as when the Commission's publication is made late in the first month of the

¹⁸ Proposed section 43.4(a) includes public dissemination requirements for the swap transaction and pricing data elements in appendix C "in the form and manner provided in the technical specifications published by the Commission pursuant to § 43.7." Proposing Release at 21560.

¹⁹ Proposed section 43.4(g)(9) states that the Commission will publish any cap sizes determined pursuant to 43.4(g) "from time to time on its website at <https://www.cftc.gov>." Proposing Release at 21562.

²⁰ Proposed section 43.6(e)(5), which states that the Commission will publish the appropriate minimum block sizes determined in accordance with the regulations on its website. *See also* proposed section 43.6(a), which states that the Commission will establish minimum block sizes for publicly reportable swap transactions in accordance with the section and "at such times the Commission determines necessary." *Id.*

²¹ Proposing Release at 21542.

²² A longer period of time may be necessary, for example, if a change is made to one of the Cited Sections during the market wide build freeze in December or if a change is made to a validation requirement that impacts a larger group of market participants necessitating broader testing to implement.

²³ Proposing Release at 21562.

relevant period. As an alternative approach, DDR recommends that section 43.4(g)(10) include a minimum effective date of not less than 90 days following publication on the Commission's website. In addition, DDR requests clarification regarding how market participants will be notified of revisions to the cap size.

We appreciate the CFTC's willingness to consider our views and maintain an open dialogue moving forward. Should the Commission or staff wish to discuss this correspondence further, please contact me at (212) 855-4760 or kdelp@dtcc.com.

Sincerely,



Katherine Delp
General Manager
DTCC Data Repository (U.S.) LLC

APPENDIX A

DDR welcomes the opportunity to provide the following preliminary comments on the Proposed Tech Specs. In preparing these comments, DDR considered existing systems and platforms, market practices, and regulatory requirements and technical specifications in other relevant jurisdictions. DDR may have additional comments as systems and platforms are updated, as market practices evolve, and following changes to regulations or technical specifications in other relevant jurisdictions.

CFTC Proposed Tech Specs Data Element Information	Discussion
<p>General comments applicable to various data elements.</p>	<p>DDR is concerned that certain data types defined by the CFTC are not globally consistent. For example, value restrictions (e.g., “Num(25,5)” for notional amounts and quantities) will impact cross-jurisdictional submissions and lead to fragmentation in global reporting. DDR recommends global coordination and alignment in establishing new “data type” standards.</p> <p>Additionally, DDR is concerned about individual data fields that allow for multiple data types. For example, the “Price” (#60) and “Spread” (#64) data elements allow for “Num(18,13)” and “Num(11,10).” DDR believes multiple data types should not be included in the same data element. DDR recommends splitting the data fields to accommodate different data types or applying only the largest data type in each instance. .</p>
<p>#: 11 Name: Clearing exceptions and exemptions – Counterparty 1 Source: CFTC</p> <p>#: 12 Name: Clearing exceptions and exemptions – Counterparty 2 Source: CFTC</p>	<p>For both data elements, the “Definition for Data Element” column indicates that “[t]he values may be repeated as applicable.”</p> <p>DDR believes this approach may impact how SDRs provide separate exception and exemption reporting and may cause processing issues.</p> <p>DDR requests clarification as to whether multiple values are expected to be reported by reporting parties and how exception and exemption reporting by SDRs will be expected.</p>

<p>#: 83 Name: Block trade election indicator Source: CFTC</p>	<p>DDR notes that, currently, block trade calculations by SDRs are performed and reported on Part 43 messages. DDR believes that requiring the same data element to be carried over and applied to Part 45 messages, as proposed, would be complex and costly for SDRs with separate Part 43 and Part 45 systems, such as DDR.</p> <p>Because block trade information is only applicable to Part 43 reporting, DDR requests removal of this requirement with respect to Part 45 messages.</p>
<p>#: 87 Name: Reporting timestamp Source: CDE</p>	<p>As proposed, the reporting timestamp is a mandatory field for both Part 43 and Part 45 messages.</p> <p>DDR believes requiring this data element for Part 43 messages does not comport with current industry standards. Furthermore, updating current industry standards to allow such reporting on Part 43 messages would be costly for the industry and SDRs. DDR recommends allowing the SDRs' "Message Received Timestamp" to be used for Part 43 messages.</p>
<p>#: 95 Name: Jurisdiction indicator Source: CFTC</p>	<p>Although the Commission is proposing to remove "international swap" from sections 45.1 and 45.3(i) of its regulations, the "jurisdiction indicator" in the Proposed Tech Specs seems to require reporting of the same data. Additionally, the allowable values for this data element appear to be limited to a select list of regulatory organizations.</p> <p>DDR requests clarification on whether the "jurisdiction indicator" is still expected to be reported since "international swap" is being removed from section 45.1. DDR also would like clarification on whether the list of allowable values under "jurisdictional indicator" will be updated on a regular basis. If so, DDR recommends allowing free format text instead of requiring SDRs to update system validations.</p>