



COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 43, 45, and 49

RIN 3038-AE32

Certain Swap Data Repository and Data Reporting Requirements

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rule.

SUMMARY: The Commodity Futures Trading Commission (“Commission” or “CFTC”) is amending its regulations to improve the accuracy of data reported to, and maintained by, swap data repositories (“SDRs”), and to provide enhanced and streamlined oversight over SDRs and data reporting generally. Among other changes, the amendments modify existing requirements for SDRs to establish policies and procedures to confirm the accuracy of swap data with both counterparties to a swap and require reporting counterparties to verify the accuracy of swap data pursuant to those SDR procedures. The amendments also update existing requirements related to corrections for data errors and certain provisions related to SDR governance.

DATES: *Effective date:* The effective date for this final rule is January 25, 2021.

Compliance date: The compliance date for all amendments and additions under this final rule is May 25, 2022.

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I. Background

Section 727 of the Dodd-Frank Act added section 2(a)(13)(G) to the Commodity Exchange Act (“CEA” or “Act”), which requires each swap—whether cleared or uncleared—to be reported to an SDR,¹ a type of registered entity created by section 728 of the Dodd-Frank Act.² CEA section 21³ requires each SDR to register with the Commission and directs the Commission to adopt rules governing SDRs.

To register and maintain registration with the Commission, an SDR must comply with specific duties and core principles enumerated in CEA section 21 as well as other requirements that the Commission may prescribe by rule. In particular, CEA section 21(c) mandates that an SDR: (1) accept data; (2) confirm with both counterparties the accuracy of submitted data; (3) maintain data according to standards prescribed by the

¹ Section 721 of the Dodd-Frank Act amended section 1a of the CEA to add the definition of SDR. *See* Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 1376 (2010), available at <https://www.gpo.gov/fdsys/pkg/PLAW-111publ203/pdf/PLAW-111publ203.pdf>. Pursuant to CEA section 1a(48), the term SDR means any person that collects and maintains information or records with respect to transactions or positions in, or the terms and conditions of, swaps entered into by third parties for the purpose of providing a centralized recordkeeping facility for swaps. 7 U.S.C. 1a(48).

² The Commission notes that there are currently three SDRs provisionally registered with the Commission: CME Inc., DTCC Data Repository (U.S.) LLC (“DDR”), and ICE Trade Vault, LLC (“ICE”).

³ 7 U.S.C. 24a.

Commission; (4) provide direct electronic access to the Commission or any designee of the Commission (including another registered entity); (5) provide public reporting of data in the form and frequency required by the Commission; (6) establish automated systems for monitoring, screening, and analyzing data (including the use of end-user clearing exemptions) at the direction of the Commission; (7) maintain data privacy; (8) make data available to other specified regulators, on a confidential basis, pursuant to CEA section 8,⁴ upon request and after notifying the Commission; and (9) establish and maintain emergency and business continuity-disaster recovery (“BC-DR”) procedures. CEA section 21(f)(4)(C) further requires the Commission to establish additional duties for SDRs to minimize conflicts of interest, protect data, ensure compliance, and guarantee the safety and security of the SDR.⁵ CEA section 21(b) also directs the Commission to prescribe standards for data recordkeeping and reporting that apply to both registered entities and reporting counterparties.⁶

Part 49 of the Commission’s regulations implements the requirements of CEA section 21.⁷ Part 49 sets forth the specific duties an SDR must comply with to be registered and maintain registration as an SDR, including requirements under § 49.11 for an SDR to confirm the accuracy of data reported to the SDR.

Since the Commission adopted its part 49 regulations in 2011, Commission staff has led many efforts to evaluate and improve the reporting of swap data and its accuracy.

⁴ 7 U.S.C. 12(e).

⁵ Pursuant to this provision, the Commission may develop one or more additional duties applicable to SDRs. 7 U.S.C. 24a(f)(4).

⁶ See 7 U.S.C. 24a(b)(1)(B).

⁷ Swap Data Repositories: Registration Standards, Duties and Core Principles, 76 FR 54538 (Sept. 1, 2011) (“Part 49 Adopting Release”).

Commission staff leads or participates in several international regulatory working groups concentrating on harmonization of data reporting. Commission staff's efforts have also included the formation of an interdivisional staff working group to identify, and make recommendations to resolve, reporting challenges associated with certain swap data recordkeeping and reporting provisions.⁸ The Commission has also requested comments from the public on reporting issues.⁹

Based on its efforts, the Commission determined that three conditions work in concert to achieve a higher degree of data accuracy: (i) SDR processes confirming the accuracy of data submitted; (ii) data reconciliation exercises by entities that reported data; and (iii) the prompt reporting of errors and omissions when discovered.¹⁰ With the goal of advancing in these three areas to improve data accuracy, Commission staff conducted a comprehensive review of swap reporting regulations and released the Roadmap to Achieve High Quality Swap Data ("Roadmap").¹¹ The Roadmap's overall goals were to improve the quality, accuracy, and completeness of swap data reported to the Commission, streamline swap data reporting, and clarify obligations for market participants.¹² Within these overall goals, the Roadmap's SDR Operations Review aimed to assure a high degree of accuracy of swap data and swap transaction and pricing data,¹³

⁸ See Press Release, CFTC to Form an Interdivisional Working Group to Review Regulatory Reporting (Jan. 21, 2014), available at <http://www.cftc.gov/PressRoom/PressReleases/pr6837-14>.

⁹ See, e.g., Review of Swap Data Recordkeeping and Reporting Requirements, Request for Comment, 79 FR 16689 (Mar. 26, 2014).

¹⁰ See *id.* at 16695.

¹¹ See CFTC Letter 17-33, Division of Market Oversight Announces Review of Swap Reporting Rules in Parts 43, 45, and 49 of Commission Regulations (July 10, 2017), available at <https://www.cftc.gov/csl/17-33/download>; Roadmap to Achieve High Quality Swap Data, available at http://www.cftc.gov/idc/groups/public/@newsroom/documents/file/dmo_swapdataplan071017.pdf.

¹² See *id.* at 3 (describing the Commission's goals for the review of reporting regulations).

improve the clarity and consistency of regulations governing SDRs, and bolster the Commission's oversight of SDRs.

The Roadmap solicited public comment on how to improve data reporting and achieve the Commission's regulatory goals without imposing unnecessary burdens on market participants. Commission staff received numerous comments in response to the Roadmap that addressed data accuracy and confirmation of data reported to SDRs, among other subjects.¹⁴

Based in part on these public comments and the Commission staff's review of these issues, the Commission issued a notice of proposed rulemaking ("Proposal") on May 13, 2019 to address the Roadmap's SDR Operations Review goals.¹⁵ The Proposal was the first of three Roadmap rulemakings that together aim to achieve the Roadmap's overall goals.¹⁶

In the Proposal, the Commission set forth a new swap data verification regime to replace existing requirements for swap data confirmation and proposed amendments to error correction requirements in parts 43, 45, and 49 of the Commission's regulations. The primary components of the proposed verification regime included: a requirement for an SDR to regularly distribute to reporting counterparties an open swaps report containing the data maintained by the SDR for a relevant reporting counterparty's open

¹³ See Roadmap at 6 (stating the Commission's intent to "Identify the most efficient and effective solution for swap counterparty(ies) to confirm the accuracy and completeness of data held in an SDR.").

¹⁴ These comment letters are available at <https://comments.cftc.gov/PublicComments/CommentList.aspx?id=1824>.

¹⁵ Certain Swap Data Repository and Data Reporting Requirements, 84 FR 21044 (May 13, 2019).

¹⁶ The other two notices of proposed rulemakings are Amendments to the Real-Time Public Reporting Requirements, 85 FR 21516 (April 17, 2020) and Swap Data Recordkeeping and Reporting Requirements, 85 FR 21578 (April 17, 2020).

swaps; a requirement that a reporting counterparty reconcile the data in the open swaps reports with the reporting counterparty's own data; a requirement that a reporting counterparty provide the SDR with a verification of the data's accuracy or a notice of discrepancy; and a requirement that, in the event of a discrepancy, a reporting counterparty submit corrected data to the SDR within a specified time frame or, if it is unable to do so, inform Commission staff of the error, its scope, and the reporting counterparty's initial remediation plan.

In this final rulemaking, the Commission has determined to adopt the amendments as proposed, with certain exceptions. The Commission has determined, based, in part, on public comments,¹⁷ not to adopt, or to adopt with modifications, certain elements of the Proposal relating to data verification and error correction. More specifically, the final rule eliminates the proposed requirement for an SDR to distribute open swaps reports to a reporting counterparty, and the requirement for a counterparty to submit notices of verification or discrepancy in response.

Instead, under the final rules, an SDR must provide a mechanism for a reporting counterparty to access swap data maintained by the SDR for the reporting counterparty's

¹⁷ The Commission received 25 responsive comment letters addressing the Proposal from the following entities: American Public Power Association/Edison Electric Institute/National Rural Electric Cooperative Association ("Joint Associations"), Chatham Financial ("Chatham"), Chris Barnard, CME Group Inc. ("CME"), CME Group Inc./DTCC Data Repository (U.S.) LLC/ICE Trade Vault LLC ("Joint SDR"), Coalition of Physical Energy Companies ("COPE"), Commercial Energy Working Group ("CEWG"), Credit Suisse ("CS"), Data Coalition, DTCC Data Repository (U.S.) LLC ("DDR"), Eurex Clearing AG ("Eurex"), Federal Home Loan Mortgage Corporation ("Freddie Mac"), Futures Industry Association August 2019 letter ("FIA August"), Futures Industry Association May 2020 letter ("FIA May"), Global Financial Markets Association ("GFMA"), Global Legal Entity Identifier Foundation ("GLEIF"), ICE Clear Credit LLC/ICE Clear Europe Limited ("ICE Clear"), ICE Trade Vault ("ICE TV"), IHS Markit ("Markit"), Institute for Agriculture and Trade Policy ("IATP"), International Swaps and Derivatives Association, Inc./Securities Industry and Financial Markets Association ("ISDA/SIFMA"), Investment Company Institute ("ICI"), LCH Ltd/LCH SA ("LCH"), Natural Gas Supply Association ("NGSA"), and Prudential Global Funding LLC ("Prudential").

open swaps. Further, the final rules require a reporting counterparty to verify the SDR's data by using the mechanism provided by the SDR to compare the swap data for open swaps maintained by the SDR with the reporting counterparty's own books and records for the swap data, and to submit corrected swap data, if necessary, to the SDR. The reporting counterparty must perform the verification at specified intervals and maintain a verification log that sets forth any errors discovered and corrections made by the reporting counterparty. The final rule also extends the time frame within which a reporting counterparty must correct an error or notify the Commission.

The Proposal also included various amendments and new regulations aimed at eliminating unduly burdensome requirements, streamlining and consolidating the provisions of part 49 and other Commission regulations applicable to SDRs, and enhancing the Commission's ability to fulfill its oversight obligations with respect to SDRs. The Commission is generally adopting those rules as proposed, with limited modifications in some cases to address public comments. Additionally, for the reasons discussed below, the Commission has determined not to finalize at this time its proposed amendments to § 49.13 and § 49.22 and its proposed additions to part 23.

Where possible, in developing the Proposal and in adopting final rules as set forth herein, the Commission has taken into consideration certain pertinent rules adopted by other regulators, including the European Securities and Markets Authority and the U.S. Securities and Exchange Commission ("SEC"). This is particularly the case for the SEC's regulations relating to the registration requirements, duties, and core principles applicable

to security-based swap data repositories (“SBSDRs”)¹⁸ and reporting requirements for security-based swaps (“SBSs”) set forth in Regulation SBSR (“Regulation SBSR”).¹⁹ The Commission notes that there are similarities between the regulatory framework for SBSDRs and the SDR regulations that are the subject of this final rulemaking. Finally, the Commission notes that this final rulemaking incorporates lessons learned from the undertakings described above and the best practices of the international regulatory community.

II. Amendments to Part 49

A. § 49.2 – Definitions

1. General Formatting Changes

The Commission proposed a general formatting change to the definitions in § 49.2(a). The defined terms in § 49.2(a) currently are numbered and arranged in alphabetical order. The Commission proposed to remove the numbering while still arranging the terms in § 49.2(a) in alphabetical order. Eliminating the numbering of defined terms in § 49.2(a) will reduce the need for the Commission to make conforming amendments to § 49.2(a) and other regulations when it amends § 49.2(a) in future rulemaking by adding or removing defined terms.²⁰

¹⁸ See generally Security-Based Swap Data Repository Registration, Duties and Core Principles, 80 FR 11438 (Mar. 19, 2015). The SEC adopted Rules 13n-1 through 13n-12 (17 CFR 240.13n-1 through 240.13n-12) under the Securities Exchange Act of 1934 (“Exchange Act”) relating to the registration and operation of SBSDRs.

¹⁹ See generally Regulation SBSR—Reporting and Dissemination of Security-Based Swap Information, 80 FR 14740 (Mar. 19, 2015). The SEC adopted Regulation SBSR (Rules 900 through 909, 17 CFR 242.900 through 909) to create a reporting framework for SBSs. The SEC has also adopted additional regulations regarding the reporting and dissemination of certain information related to SBSs. See generally 81 FR 53546 (Aug. 12, 2016).

²⁰ The Office of the Federal Register prefers the solely alphabetical approach to definitions sections. See Office of the Federal Register, Document Drafting Handbook May 2017 Update, Revision 5, 2-31 (2017)

The Commission did not receive any comments on the proposed formatting changes to § 49.2(a). The Commission is adopting the formatting amendments to § 49.2(a) as proposed, with non-substantive editorial changes to conform the format to the current style conventions.

2. Non-Substantive Amendments to Definitions

The Commission proposed non-substantive editorial and conforming amendments to certain definitions to provide clarity and for consistency with other Commission regulations.²¹ The Commission believes the proposed amendments are non-substantive and will increase clarity and consistency across the Commission’s regulations. The comments were generally supportive of the Commission’s efforts to streamline definitions and increase consistency.²² The Commission did not receive comments opposed to the proposed amendments described above. The Commission accordingly adopts these amended definitions as proposed.

Specifically, the Commission adopts the following amendments to definitions in § 49.2(a):

- Asset class: Modify the definition to conform the wording to the definition of “asset class” used in part 43.²³

(“*Definitions.* In sections or paragraphs containing only definitions, we recommend that you do not use paragraph designations if you list the terms in alphabetical order.”).

²¹ Other than removing subsection numbering as discussed above in section II.A.1, the Commission did not propose any substantive changes to the definitions of “affiliate,” “control,” “foreign regulator,” “independent perspective,” “position,” or “section 8 material,” as those terms are defined in current § 49.2(a).

²² See, e.g., IATP at 4-5.

²³ See 17 CFR 43.2. Asset class means a broad category of commodities including, without limitation, any “excluded commodity” as defined in section 1a(19) of the Act, with common characteristics underlying a swap. The asset classes include interest rate, foreign exchange, credit, equity, other commodity and such other asset classes as may be determined by the Commission.

- Commercial use: Modify the definition to use active instead of passive voice, and to change “use of swap data for regulatory purposes and/or responsibilities” to “use of SDR data for regulatory purposes and/or to perform its regulatory responsibilities.”
- Market participant: Change the term “swaps execution facilities” to “swap execution facilities,” to conform to CEA section 5h and other Commission regulations, and make the word “counterparties” singular.
- Non-affiliated third party: Clarify paragraph (3) to identify “a person jointly employed” by an SDR and any affiliate.
- Person associated with a swap data repository: Clarify that paragraph (3) includes a “jointly employed person.”
- Swap data: Modify the definition to more closely match the related definitions of “SDR data” and “swap transaction and pricing data” that are being added to § 49.2(a) and to incorporate the requirements to provide swap data to the Commission pursuant to part 49.

The Commission also is removing the word “capitalized” from § 49.2(b), to reflect that most defined terms used in part 49 are not capitalized in the text of part 49.

The Commission is also removing the term “registered swap data repository” from the definitions in § 49.2. In the Proposal, the Commission explained that the term “registered swap data repository” is not needed in part 49 because the defined term “swap data repository” already exists in § 1.3.²⁴ The definition of “swap data repository” in §

²⁴ See 17 CFR 1.3. Swap data repository is defined as any person that collects and maintains information or records with respect to transactions or positions in, or the terms and conditions of, swaps entered into by third parties for the purpose of providing a centralized recordkeeping facility for swaps.

1.3 is identical to the definition contained in CEA section 1a(48).²⁵ This definition of “swap data repository” therefore already applies, and would continue to apply, to part 49 and all other Commission regulations and, when combined with § 49.1,²⁶ removes the need for a separate defined term for “registered swap data repository.”

The Commission further explained that the inclusion of the word “registered” in “registered swap data repository” and the definition of the term²⁷ also may create doubt whether the requirements of part 49 apply to entities that are in the process of registering as SDRs or are provisionally registered as SDRs under the requirements of § 49.3(b).²⁸ The requirements of part 49 apply to provisionally-registered SDRs and any entity seeking to become an SDR must comply with the same requirements in order to become a provisionally-registered or fully-registered SDR. Finally, the removal of the term “registered swap data repository” would increase consistency in terms within part 49 and would also increase consistency between part 49 and other Commission regulations, which overwhelmingly use the term “swap data repository.” The Commission emphasized that removing the defined term “registered swap data repository” is a non-substantive amendment that would not in any way modify the requirements applicable to current or future SDRs.

3. Additions and Substantive Amendments

²⁵ See 7 U.S.C. 1a(48). Swap data repository means any person that collects and maintains information or records with respect to transactions or positions in, or the terms and conditions of, swaps entered into by third parties for the purpose of providing a centralized recordkeeping facility for swaps.

²⁶ See 17 CFR 49.1 The provisions of part 49 apply to any swap data repository as defined under section 1a(48) of the CEA which is registered or is required to register as such with the Commission pursuant to Section 21(a) of the CEA.

²⁷ See 17 CFR 49.2(a)(11). Registered swap data repository means a swap data repository that is registered under section 21 of the CEA.

²⁸ See 17 CFR 49.3(b) (creating standards for granting provisional registration to an SDR).

a. Definition of As Soon as Technologically Practicable

The Commission proposed to add the term “as soon as technologically practicable” as a defined term in § 49.2. The Proposal defined the term to mean “as soon as possible, taking into consideration the prevalence, implementation, and use of technology by comparable market participants.” This addition would standardize the meaning and use of this term across the Commission’s swap reporting regulations and is intended to be identical to the term as it is used in parts 43 and 45 of the Commission’s regulations.²⁹

The Commission received several comments on the proposed definition. One comment generally supported standardizing definitions across the Commission’s regulations.³⁰ One comment recommended that the definition should be expanded to clarify what are considered comparable market participants.³¹ The Commission declines to adopt this recommendation. The Commission proposed to add the term “as soon as technologically practicable” merely to create consistency in defined terms across the swap reporting regulations, not to modify or interpret the term. The Commission also does not believe this final rulemaking is the appropriate venue to provide guidance on the parameters of comparable market participants, as any guidance would need to evaluate and impose standards for many different market participants and scenarios, without the opportunity for the affected market participants to comment on the guidance. The Commission also notes that the defined term has been in use through the application of

²⁹ See 17 CFR 43.2 (defining of as soon as technologically practicable). Part 45 of the Commission’s regulations also uses the term “as soon as technologically practicable” in the same way as part 43 and as defined in proposed § 49.2.

³⁰ ISDA/SIFMA at 38.

³¹ IATP at 4.

the Commission's swap reporting regulations since the inception of swap reporting, without the need for additional guidance.

The Commission is adopting the addition of "as soon as technologically practicable" as a defined term as proposed. The Commission notes that concomitant with adopting these final rules, the Commission is adopting final rules for § 43.2 and § 45.1, which both include the identical definition for this term.

b. Definition of Non-Swap Dealer/Major Swap Participant/Derivatives Clearing Organization Reporting Counterparty

The Commission proposed to add the term "non-swap dealer/major swap participant/derivatives clearing organization reporting counterparty" as a defined term in § 49.2. The Commission is not adopting this proposed definition.³² This defined term was intended to clarify the meaning of the term in part 49, specifically in proposed § 49.11(b)(3). As discussed below in section II.G, the Commission is not finalizing proposed § 49.11(b)(3) and this term does not otherwise appear in part 49. Accordingly, the inclusion of the defined term is not necessary and Commission is not adopting this proposed definition.

c. Definition of Open Swap

The Commission proposed to add the term "open swap" as a defined term in § 49.2. The Proposal defined the term to mean an executed swap transaction that has not reached maturity or the final contractual settlement date, and has not been exercised, closed out, or terminated. Under this definition, the term "open swap" refers to swaps that

³² The Proposal defined the term to mean a reporting counterparty that is not a swap dealer ("SD"), major swap participant ("MSP"), derivatives clearing organization ("DCO"), or exempt derivatives clearing organization.

are often colloquially called “alive.” The Commission noted in the Proposal that the definition is intended to have the same function as the definitions of “open swap”³³ and “closed swap”³⁴ in part 20.

The Commission received several comments on the proposed definition. One comment supported standardizing definitions across the Commission’s rules, and supported the proposed definition for “open swap.”³⁵ One comment noted that there is no market practice of reporting a “final contractual settlement date.”³⁶ Instead, the comment stated, market practice is to report expiration, maturity date, or termination date. The comment further recommended that the definition be amended to allow for events to affect parts of a trade. The commenter recommended that the Commission define “open swap” to mean “an executed swap transaction that has not reached maturity or expiration date, and has not been fully exercised, closed out, or terminated.”³⁷ The Commission agrees with this comment and is adopting the recommended changes to the definition, with a slight modification for grammar. Accordingly, final § 49.2 includes the term “open swap” as a defined term, which means an executed swap transaction that has not reached maturity or expiration, and has not been fully exercised, closed out, or terminated.³⁸ The Commission notes that, as with the definition in the Proposal, the final definition of

³³ See 17 CFR 20.1. An open swap or swaption means a swap or swaption that has not been closed.

³⁴ See 17 CFR 20.1. A closed swap or closed swaption means a swap or swaption that has been settled, exercised, closed out, or terminated.

³⁵ DDR at 2.

³⁶ ISDA/SIFMA at 38.

³⁷ *Id.*

³⁸ As discussed below in section III.A, the Commission is also adding an identical definition for “open swap” to part 45 of this chapter, in order to create consistency between parts 45 and 49 of the Commission’s regulations and to accommodate the use of the term “open swap” in part 45.

“open swap” is intended to mean swaps, or the remaining portion of a swap, that would be commonly thought of as “alive.”

d. Definition of Reporting Counterparty and the removal of Reporting Entity

The Commission proposed to add the term “reporting counterparty” as a defined term to § 49.2. This term would mean the counterparty responsible for reporting SDR data to an SDR pursuant to part 43, 45, or 46 of the Commission’s regulations. The Proposal explained that this would standardize its meaning and use across the Commission’s swap reporting regulations. The Commission also proposed to remove the term “reporting entity” from the definitions in § 49.2 because it is no longer necessary with the addition of “reporting counterparty” as a defined term.³⁹

Concomitant with the adoption of these final rules, the Commission also is adopting final rules amending § 43.2 and § 45.1. Those final rules both include a definition for the term “reporting counterparty” specific to part 43 and part 45, respectively. Current § 46.1 also includes a definition for the term.⁴⁰ The definitions of the term “reporting counterparty” in §§ 43.2, 45.1, and 46.1 are more narrow than the proposed definition in § 49.2. While the definitions do not have identical wording, the defined terms have a standardized meaning that follows a consistent format and is appropriate for each context.

The Commission notes that the reporting counterparty may not always be the entity reporting SDR data to the SDR, particularly for transactions executed on a swap

³⁹ See 17 CFR 49.2(a)(12) (defining reporting entity as entities that are required to report swap data to a registered swap data repository, which includes derivatives clearing organizations, swap dealers, major swap participants and certain non-swap dealer/non-major swap participant counterparties).

⁴⁰ 17 CFR 46.1.

execution facility (“SEF”) or designated contract market (“DCM”), but it is the counterparty responsible for the initial and/or subsequent SDR data reporting, pursuant to part 43, 45, or 46 of the Commission’s regulations, as applicable to a particular swap. SEFs and DCMs are the only entities not included in the proposed definition of “reporting counterparty” that may have a responsibility to report data.

The Commission did not receive any comments on the proposed definition of the term “reporting counterparty” and the related removal of the defined term “reporting entity.” The Commission is adopting these amendments as proposed, with minor, non-substantive editorial changes to conform the definition of “reporting counterparty” in § 49.2 to the definitions in §§ 43.2, 45.1, and 46.1, as discussed above. Accordingly, final § 49.2 includes the term “reporting counterparty” as a defined term, which means the counterparty required to report SDR data pursuant to part 43, 45, or 46 of 17 CFR chapter I. Final § 49.2 no longer includes the term “reporting entity” as a defined term.

e. Definition of SDR Data

The Commission proposed to add the term “SDR data” as a defined term in § 49.2. The Proposal defined the term to mean the specific data elements and information required to be reported to an SDR or disseminated by an SDR, pursuant to two or more of parts 43, 45, 46, and/or 49, as applicable in the context. The Commission noted that in this context, “disseminated” would include an SDR making swap data available to the Commission as required by part 49.

In the Proposal, the Commission noted that the proposed definition of “SDR data” would include multiple sources of data reported to the SDR or disseminated by the SDR. For example, “SDR data” could refer to all data reported or disseminated pursuant to

parts 43, 45, and 46. It may also refer to data reported or disseminated pursuant to parts 45 and 46, depending on the context in which the term is used. This is in contrast with the proposed term “swap transaction and pricing data,” which, as defined in the Proposal, would only refer to data reported to an SDR or publicly disseminated by an SDR pursuant to part 43. It is also in contrast with the term “swap data,” which, as defined in the Proposal, would only refer to data reported to an SDR or made available to the Commission pursuant to part 45. In the Proposal, the Commission explained that consolidating references to the different types of data that must be reported to an SDR or disseminated by an SDR to the public or to the Commission into a single term would provide clarity throughout part 49.

The Commission received several comments on the proposed addition of the defined term “SDR data” and the proposed definition in § 49.2. One comment generally supported the proposed amendment.⁴¹ One comment stated that the proposed definition limited “SDR Data” to information that is required to be reported or disseminated pursuant to “two or more of parts 43, 45, 46 and/or 49,” which would exclude information that is required to be reported or disseminated pursuant to one of those parts. The Commenter recommended that the Commission define the term “SDR Data” to include information that is required to be reported or disseminated by *one* or more of parts 43, 45, 46, and/or 49. The Commission disagrees with this comment and its interpretation of the term “SDR data.” By definition, “SDR data” will always include at least two sets of data or information that is required reported to an SDR or disseminated by an SDR. The definition is inclusive of all data being referenced, based on the context

⁴¹ ISDA/SIFMA at 41.

of the use of the term. When the Commission intends to refer to data that is reported or disseminated pursuant to only one of part 43, 45, 46, or 49, it uses the term or reference that corresponds to that specific set of data, for example “swap transaction and pricing data” for part 43-related data and “swap data” for part 45-related data.

The Commission is adopting the addition of the defined term “SDR data” to final § 49.2, as proposed. Accordingly, final § 49.2 includes the defined term “SDR data,” which is defined to mean the specific data elements and information required to be reported to a swap data repository or disseminated by a swap data repository pursuant to two or more of parts 43, 45, 46, and/or 49 of 17 CFR chapter I, as applicable in the context.

f. Definition of SDR Information

The Commission proposed to amend the existing definition of “SDR information” in § 49.2 to add the clause “related to the business of the swap data repository that is not SDR data” to the end of the definition. This change clarifies that the scope of SDR information is limited to information that the SDR receives or maintains related to its business that is not the SDR data reported to or disseminated by the SDR. SDR information would include, for example, SDR policies and procedures created pursuant to part 49.⁴² The Commission did not receive comments on the proposed amendment and the Commission adopts the amendment as proposed.

g. Definition of Swap Transaction and Pricing Data

⁴² This clarification is particularly relevant for the SDR recordkeeping obligations in the proposed amendments to § 49.12, discussed below in section II.H.

The Commission proposed to add “swap transaction and pricing data” as a defined term in § 49.2 to increase consistency in terminology used in the Commission’s swap reporting regulations. The Proposal defined the term to mean the specific data elements and information required to be reported to a swap data repository or publicly disseminated by a swap data repository pursuant to part 43 of this chapter, as applicable. Concomitant with adopting these final rules, the Commission is adopting final rules in § 43.2 that add “swap transaction and pricing data” as a defined term. As defined in final § 43.2, the term means all data elements for a swap in appendix A of this part that are required to be reported or publicly disseminated pursuant to this part. In order to increase consistency throughout its rules, the Commission adopts the addition of the defined term “swap transaction and pricing data” and the definition in § 49.2 as proposed.

One commenter stated that the definition of the term in § 49.2 should not include the clause “or publicly disseminated by a swap data repository.”⁴³ The Commission does not agree with this comment because dissemination is included in the definition of the same term in final § 43.2, and the term is being included in final § 49.2 to increase consistency between Commission regulations. Moreover, to not include the public dissemination requirements would frustrate the purpose of adding the defined term by not allowing the term to be used in reference to an SDR’s public dissemination responsibilities. The Commission believes that the specific context in which the term is used will make clear whether the Commission is referring to the requirements to report the data to an SDR, for an SDR to disseminate the data to the public, or both. Accordingly, final § 49.2 includes “swap transaction and pricing data” as a defined term

⁴³ DDR at 2.

that means the specific data elements and information required to be reported to a swap data repository or publicly disseminated by a swap data repository pursuant to part 43 of 17 CFR chapter I, as applicable.

B. § 49.3 – Procedures for Registration

Section 49.3 sets forth the procedures and standard of approval for registration as an SDR.⁴⁴ Current § 49.3(a)(1) requires a person seeking SDR registration to file an application on Form SDR.⁴⁵ Form SDR consists of instructions, general questions and a list of exhibits required by the Commission in order to determine whether an applicant for SDR registration is able to comply with the SDR core principles and Commission regulations thereunder.⁴⁶

Existing § 49.3(a)(5) requires an SDR to promptly file an amended Form SDR to update any information that becomes inaccurate before or after the SDR's application for registration is granted. In addition, the regulation requires an SDR to annually file an amendment on Form SDR within 60 days after the end of its fiscal year.⁴⁷

The Commission proposed to amend § 49.3(a)(5) to eliminate the requirements for an SDR that has been granted registration under § 49.3(a) to: (i) file an amended Form SDR if any of the information therein becomes inaccurate, and (ii) annually file an amended Form SDR.⁴⁸ Thus, proposed § 49.3(a)(5) would only require an SDR to file an amended Form SDR to update information before the Commission grants it registration

⁴⁴ 17 CFR 49.3. Form SDR is set forth in Appendix A to part 49.

⁴⁵ 17 CFR 49.3(a)(1).

⁴⁶ 17 CFR 49.3(a)(2).

⁴⁷ 17 CFR 49.3(a)(5).

⁴⁸ Proposal at 84 FR 21048 (May 13, 2019).

under § 49.3(a). The Commission also proposed to make conforming amendments to the Form SDR and § 49.22(f)(2)⁴⁹ to eliminate references to the annual filing of Form SDR.⁵⁰

The Commission is adopting the amendments to § 49.3(a)(5) and the conforming amendments to Form SDR and § 49.22(f)(2) as proposed in part and not adopting the amendments as proposed in part. The Commission is adopting the removal of the requirement to file an annual amendment to Form SDR because the Commission believes the annual Form SDR filing requirement is unnecessary and is duplicative of the requirement to file an amended Form SDR if any of the information in the Form SDR becomes inaccurate.

The Commission has, however, reconsidered the proposed removal of the requirement to file an amended Form SDR if any of the information in the Form SDR (including the Form SDR exhibits) becomes inaccurate and has determined not to finalize the proposed removal of this requirement. SDRs will continue to be required to file amendments to Form SDR as necessary after being granted registration under § 49.3(a). While the Commission stated in the Proposal that the Commission would have access to the information that would be updated in an amended Form SDR because an SDR would be required to file updates for some of the information with the Commission as a rule change under part 40 of the Commission's regulations and that, under proposed § 49.29, the Commission could require an SDR to file information demonstrating the SDR's compliance with its obligations under the CEA and Commission regulations,⁵¹ the

⁴⁹ 17 CFR 49.22(f)(2).

⁵⁰ Proposal at 84 FR 21048 (May 13, 2019).

⁵¹ *Id.*

Commission no longer believes these methods of obtaining access to updated Form SDR information are the most efficient or practicable methods.

Instead, the Commission believes that Commission staff would be more effectively alerted to changes to the information in Form SDR for compliance monitoring purposes by maintaining the existing requirement for SDRs to update any Form SDR information that is or that becomes inaccurate. The Commission also believes it would be more efficient for SDRs to continue to send the updated Form SDR information to the Commission as currently required, as opposed to the Commission requesting the SDRs to demonstrate compliance whenever the Commission needs to check whether the Form SDR information remains current. Under the proposed approach, for example, the Commission may need to require SDRs to provide an all-encompassing demonstration of compliance for all of the Form SDR information under § 49.29, as opposed to the SDRs only updating Form SDR information that has changed, as the SDRs regularly do under the existing requirement, because the Commission will not be aware of what information may or may not have changed. The Commission is therefore not adopting the proposed removal of the requirement for an SDR that is registered under § 49.3(a) to file an updated Form SDR when the information in its Form SDR is inaccurate or becomes inaccurate, and this existing requirement in § 49.3(a)(5) remains in effect.

The Commission requested comment on all aspects of the proposed changes to § 49.3(a)(5). Two comments supported the proposed amendments to § 49.3(a)(5).⁵² One comment also suggested the Commission further amend the text of proposed § 49.3(a)(5)

⁵² CME at 2 (“[T]he addition of Part 49.29 is a much more effective and efficient approach for the Commission to ensure it has the information it needs to ensure an SDR’s compliance with the regulations”); DDR at 3.

to clarify that the requirement to file an amended Form SDR to update inaccurate information does not apply to an SDR provisionally registered under § 49.3(b).⁵³ Existing § 49.3(b)⁵⁴ provides that, upon request, the Commission may grant an applicant provisional registration as an SDR if, among other things, the applicant is in “substantial compliance” with the standard for approval for full SDR registration set forth in § 49.3(a)(4). If granted, provisional registration expires on the earlier of: (i) the date the Commission grants or denies full registration of the SDR; or (ii) the date the Commission rescinds the SDR’s provisional registration.⁵⁵

One comment suggested that the Commission add the legal entity identifier (“LEI”) of the applicant into the Form SDR, stating that incorporating an applicant’s LEI record in the form would make various information fields unnecessary, while making the information provided more standardized and accurate.⁵⁶

As explained above, the Commission agrees with the comments that supported the removal of the annual Form SDR update requirement and the Commission disagrees with the comments supporting the removal of the requirement to update Form SDR when the information is inaccurate. The Commission also disagrees with the suggestion regarding provisionally-registered SDRs. Final § 49.3(a)(5), as adopted, requires a provisionally-registered SDR to file an amended Form SDR if information in the form becomes inaccurate. The Commission notes that provisional registration is an interim status for applicants for registration, and the accuracy of information in the Form SDR of a

⁵³ DDR at 3.

⁵⁴ 17 CFR 49.3(b).

⁵⁵ *Id.*

⁵⁶ GLEIF at 1.

provisionally-registered SDR is necessary for the Commission to make a determination regarding the SDR's application for full registration.

The Commission is also declining to adopt the suggestion to use the LEI of the applicant instead of various data fields in the Form SDR. While there may be benefits to doing so, the Commission believes the current format is more useful to Commission staff in reviewing applications for registration by providing the relevant entity names directly, without the need to reference the information underlying an LEI.

C. § 49.5 – Equity Interest Transfers

Section 49.5 sets forth requirements for an SDR that enters into an agreement involving the transfer of an equity interest of ten percent or more in the SDR.⁵⁷ The Commission proposed various amendments to § 49.5 to simplify and streamline the requirements of the regulation. The Commission is adopting the amendments to § 49.5 as proposed. The Commission continues to believe, as stated in the Proposal, that the amendments to § 49.5 will simplify and streamline the requirements of the regulation, and remove unnecessary burdens on SDRs while preserving the Commission's ability to obtain information regarding transfers of SDR equity interests.

Current § 49.5(a) requires an SDR to (i) notify the Commission of the agreement no later than the business day following the date of the agreement and; (ii) amend any information that is no longer accurate on Form SDR.⁵⁸ Current § 49.5(b) sets forth various agreements, associated documents and information, and representations an SDR must provide the Commission in advance of the equity interest transfer.⁵⁹ Current 49.5(c)

⁵⁷ 17 CFR 49.5.

⁵⁸ 17 CFR 49.5(a).

provides that within two business days following the equity interest transfer, an SDR must file with the Commission a certification stating that the SDR is in compliance with CEA section 21 and Commission regulations adopted thereunder, stating whether any changes were made to the SDR's operations as a result of the transfer, and, if so, identifying such changes.⁶⁰

The Commission is amending § 49.5 to specify that the regulation applies to both direct and indirect transfers of ten percent or more of an equity interest in an SDR. As the Commission explained in the Proposal, indirect transfers of equity ownership (e.g., the transfer of an equity interest in a parent company of an SDR) also require Commission oversight of the SDR to address any compliance concerns that may arise.⁶¹ The Commission is also replacing the documentation and informational requirements in current § 49.5(b) with a provision in § 49.5(a) stating that the Commission may, upon receiving an equity transfer notification, request that the SDR provide supporting documentation for the transaction. The Commission believes reserving the authority to request supporting documentation rather than compelling specific production satisfies the Commission's need for information without placing unnecessary burdens on an SDR.

In addition, the Commission is amending § 49.5 to extend the deadline by which an SDR must file an equity transfer notification and to specify that the SDR shall file the notice with the Secretary of the Commission and the Director of the Division of Market Oversight ("DMO") via email. The Commission believes an SDR may need additional time to file the necessary documents, and ten business days provides greater flexibility

⁵⁹ 17 CFR 49.5(b).

⁶⁰ 17 CFR 49.5(c).

⁶¹ Proposal at 84 FR 21048 (May 13, 2019).

without sacrificing the availability of information the Commission needs to conduct effective oversight of the SDR. The Commission also is removing the requirement for an SDR to amend information that is no longer accurate on Form SDR due to the equity interest transfer because the requirement is duplicative of other requirements.

Finally, the Commission is amending § 49.5(c) to simplify the certification and information requirements in the filing an SDR is required to make with the Commission following an equity interest transfer. The Commission believes these amendments provide the Commission with the pertinent information it needs to assess the impact of an equity interest transfer on the SDR's operations.

The Commission requested public comment on all aspects of proposed § 49.5. One comment supported the Commission's proposal to simplify § 49.5, stating that current requirements of the regulation are overly burdensome, and reserving authority for the Commission to request supporting documentation, rather than compelling specific document production, would satisfy the Commission's need for information.⁶² The Commission agrees with this comment and is finalizing § 49.5 as described.

D. § 49.6 – Request for Transfer of Registration

The Commission proposed to amend § 49.6⁶³ to clarify and streamline the process and procedures for the transfer of an SDR registration to a successor entity.⁶⁴ The amendments include re-titling the section "Request for transfer of registration," to more accurately reflect the subject of the regulation.⁶⁵ The Commission has determined to

⁶² CME at 2-3.

⁶³ 17 CFR 49.6.

⁶⁴ Proposal at 84 FR 21049 (May 13, 2019).

⁶⁵ *Id.*

adopt the amendments to § 49.6 as proposed. The Commission believes the amendments to § 49.6 will simplify the process for requesting a transfer of SDR registration by providing procedures that focus on informing the Commission of changes relevant to the Commission's oversight responsibilities, as opposed to requiring the successor entity to file a Form SDR, which would likely duplicate most of the transferor's existing Form SDR. Further, the amendments to § 49.6 provide the Commission with the information it needs in order to determine whether to approve a request for a transfer of an SDR registration.

Current § 49.6(a) provides that, in the event of a corporate transaction that creates a new entity as which an SDR operates, the SDR must request a transfer of its registration no later than 30 days after the succession.⁶⁶ Current § 49.6(a) also specifies that the SDR registration shall be deemed to remain effective as the registration of the successor if the successor, within 30 days after such succession, files a Form SDR application for registration, and the predecessor files a request for vacation. Further, the SDR registration ceases to be effective 90 days after the application for registration on Form SDR is filed by the successor SDR.

Final § 49.6(a) instead requires an SDR seeking to transfer its registration to a new legal entity as a result of a corporate change to file a request for approval of the transfer with the Secretary of the Commission in the form and manner specified by the Commission. Examples of such corporate changes may include, but are not limited to, reorganizations, mergers, acquisitions, bankruptcy, or other similar events that result in the creation of a new legal entity for the SDR.

⁶⁶ 17 CFR 49.6(a).

Final § 49.6(b) specifies that an SDR shall file a request for transfer of registration as soon as practicable prior to the anticipated corporate change.

Final § 49.6(c) sets forth the information that must be included in a request for transfer of registration, including, among other things, the underlying documentation that governs the corporate change, a description of the corporate change and its impact on the SDR and on the rights and obligations of market participants, governance documents of the transferee, and various representations by the transferee related to its ability to operate the SDR and comply with the Act and Commission regulations.

Final § 49.6(d) specifies that upon review of a request for transfer of registration, the Commission, as soon as practicable, shall issue an order either approving or denying the request for transfer of registration.

The Commission requested public comment on all aspects of proposed § 49.6. One comment opposed the proposed amendments to § 49.6, asserting that the amendments will add uncertainty into the transfer process by making a transfer contingent upon obtaining prior Commission approval without specifying a deadline by which the Commission must approve or deny a request for transfer.⁶⁷

The Commission has determined to adopt the amendments to § 49.6 as proposed. With respect to the comment, the Commission recognizes that corporation transactions and reorganizations that involve the transfer of an SDR registration may arise without significant notice, and require certainty and prompt action by regulators. The Commission similarly has an interest in facilitating such transfers in order to maintain the operation of SDRs while also ensuring compliance with the applicable statutory and

⁶⁷ CME at 3.

regulatory requirements. To that end, the Commission believes it is important to apply the information and procedural requirements set forth in § 49.6, as proposed and adopted, in order to enable the Commission and its staff to promptly address requests for transfer and to ensure that the transferee entity is fully capable of complying with the Commission's regulations for SDRs.

E. § 49.9 – Open Swaps Reports Provided to the Commission

The Commission proposed to remove the text of existing § 49.9⁶⁸ and replace it with new requirements for SDRs to provide open swaps reports to the Commission.⁶⁹ Existing § 49.9 lists and briefly summarizes the duties of SDRs, with references to where those duties are found in other sections of part 49.⁷⁰ The Commission believes existing § 49.9 is superfluous because all of the SDR duties listed in § 49.9 are also contained, in much greater detail, in the other sections of part 49. Removing existing § 49.9 is a non-substantive amendment that does not affect the requirements for SDRs.

As part of the Commission's proposed new requirements in § 49.9 for SDRs to provide open swaps reports to the Commission,⁷¹ the Commission proposed renaming § 49.9 "Open swaps reports provided to the Commission" and, as discussed above, proposed to add a new definition in § 49.2 for the term "open swap."⁷² The Commission received several comments on the proposed new requirements for open swaps reports

⁶⁸ 17 CFR 49.9.

⁶⁹ Proposal at 84 FR 21050 (May 13, 2019).

⁷⁰ 17 CFR 49.9. As discussed below in section II.Q, the Commission proposed conforming amendments to § 49.25 to remove references to current § 49.9.

⁷¹ Section 49.2, as proposed and as adopted in this final rulemaking, defines the term "open swap" to mean an executed swap transaction that has not reached maturity or expiration, and has not been fully exercised, closed out, or terminated.

⁷² See section II.A above for a discussion of the definitions in final § 49.2.

under § 49.9, as discussed below. The Commission has determined to adopt the amendments to § 49.9 as proposed.

Final § 49.9(a) requires each SDR to provide the Commission with open swaps reports that contain an accurate reflection of the swap data maintained by the SDR for every swap data field required to be reported under part 45 of the Commission's regulations for every open swap, as of the time the SDR compiles the report. Open swaps reports must be organized by the unique identifier created pursuant to § 45.5 of the Commission's regulations that is associated with each open swap.

SDRs currently send reports that are similar to the proposed open swaps reports to the Commission on a regular basis. The Commission currently uses these reports to produce a weekly swaps report that is made available to the public⁷³ and for entity-netted notional calculations.⁷⁴ The Commission also uses these reports to perform market risk and position calculations, and for additional market research projects. However, in formulating these reports, SDRs employ a variety of calculation approaches and differing formats, which reduces the utility of the data for the Commission. The Commission therefore proposed requiring each SDR to regularly provide the Commission with standardized open swaps reports containing accurate and up-to-date information. The Commission continues to believe it is necessary to require SDRs to provide open swaps reports and to require such reports to be standardized, in order to maximize their utility to

⁷³ The Commission's various public reports, including the weekly swaps reports, are available at <http://www.cftc.gov/MarketReports/index.htm>.

⁷⁴ See generally "Introducing ENNs: A Measure of the Size of Interest Rate Swaps Markets," Jan. 2018, available at https://www.cftc.gov/sites/default/files/idc/groups/public/@economicanalysis/documents/file/oce_enns0118.pdf.

the Commission and enhance the Commission's ability to perform its regulatory functions.

Final § 49.9(b) requires an SDR to transmit all open swaps reports to the Commission as instructed by the Commission. Such instructions may include, but are not limited to, the method, timing, and frequency of transmission, as well as the format of the swap data to be transmitted.⁷⁵ Retaining the flexibility to determine these requirements, and the ability to modify them over time as necessary, allows the Commission to tailor the information that is required to be in the reports to meet the Commission's needs without imposing undue burdens on SDRs. As stated in the Proposal, the Commission intends to work with SDRs in formulating instructions pursuant to final § 49.9(b) and expects to provide a reasonable amount of time for SDRs to adjust their systems before any instructions regarding open swaps reports take effect. This collaborative process will allow the Commission's current practice of working with SDRs to implement changes to swaps reports to continue, which provides SDRs time to update their systems as needed.

The Commission requested comment on all aspects of proposed § 49.9. One comment generally supported standardizing the open swaps reports.⁷⁶ Several comments addressed the Commission's discretion with respect to the transmission of open swaps reports under proposed § 49.9(b). One comment stated that any revisions the Commission makes to the requirements for transmitting open swaps reports should not require revisions to reports provided by the SDR to reporting counterparties, which would

⁷⁵ As discussed below in section II.V, proposed § 49.31 delegates to the Director of DMO the Commission's authority in proposed § 49.9, including the authority to create instructions for transmitting open swaps reports to the Commission.

⁷⁶ DDR at 3.

increase costs for reporting counterparties.⁷⁷ Likewise, the requirements should not result in reporting counterparties having to submit additional data, or to submit previously reported data in a different data format.⁷⁸ One comment stated that the Commission should modify the proposed rule to include “reasonable constraints” on the instruction process by amending the text of proposed § 49.9(b) to include “as soon as practicable, given the nature of the instructions and the swap data repository’s circumstances” at the end of the first sentence.⁷⁹

The Commission is adopting § 49.9 as proposed, with non-substantive editorial changes for clarity. With regard to the comments on open swaps reports provided by SDRs to reporting counterparties, the Commission notes that, as described in section II.G below, final § 49.11 will not require SDRs to provide open swaps reports to reporting counterparties as part of the swap data verification process, and therefore the comments are moot.

The Commission declines to adopt the suggested revisions related to constraints, which would unnecessarily restrict the Commission’s discretion to issue transmission instructions. The Commission reiterates its intent to work with the SDRs before creating or modifying any instructions pursuant to § 49.9 and to provide a reasonable amount of time for SDRs to adjust their systems before any instructions take effect. The Commission’s existing practice of collaborating with SDRs stems from the recognition that such collaboration will ultimately improve SDRs’ ability to comply with their regulatory obligations and further the Commission’s regulatory objectives.

⁷⁷ ISDA/SIFMA at 39.

⁷⁸ *Id.*

⁷⁹ DDR at 3.

F. § 49.10 – Acceptance of Data

The Commission is adopting new § 49.10(e) generally as proposed, with modifications and textual clarifications in response to the comments received. Final § 49.10(e) complements the error correction requirements in other Commission regulations, including final §§ 43.3(e) and 45.14(b), that apply to the entities that report SDR data to the SDRs. Each SEF, DCM, and reporting counterparty must correct errors in their SDR data by submitting complete and accurate SDR data to the relevant SDR.⁸⁰ Final § 49.10(e) is intended to ensure that SDRs correct errors in SDR data and disseminate corrected data as soon as possible.

As it stated in the Proposal, the Commission believes that clearly delineating an SDR's obligations to receive and make corrections to SDR data, and to disseminate the corrected SDR data to the public and the Commission, as applicable, will further the Commission's goal of more accurate and complete SDR data being made available to the public and the Commission. The Commission believes that the steps required by § 49.10(e) will also facilitate, and therefore encourage, compliance by SEFs, DCMs, and reporting counterparties with their regulatory obligation to correct SDR data. The Commission further believes proposed § 49.10(e) is consistent with the current statutory and regulatory requirements for SDRs to correct errors and omissions.

Final § 49.10(e)(1) requires an SDR to accept corrections of errors and omissions⁸¹ reported to the SDR pursuant to part 43, 45, or 46 of the Commission's

⁸⁰ See section IV below for a discussion of final § 43.3(e) (regarding swap transaction and pricing data) and section III.C below for a discussion of final § 45.14 (regarding swap data).

⁸¹ The Commission notes that, as described below, final § 45.14 and final § 43.3(e) do not use the word "omission" in the error correction requirements. The word "omission" is not included in those sections because the term "error" is defined to include all omissions in final § 45.14(c) and final § 43.3(e)(4). The

regulations. Final § 49.10(e) specifies that the requirements of § 49.10(e) apply to SDR data regardless of the state of the swap that is the subject such data, unless the record retention period for the SDR data under final § 49.12(b)(2) has expired. Thus, final § 49.10(e) requires an SDR to correct and disseminate SDR data for swaps that have matured or were otherwise terminated and are no longer open swaps, if such swaps are still within the required SDR data retention period. Final § 49.10(e)(2) requires an SDR to record corrections as soon as technologically practicable after the SDR accepts the corrections. Final § 49.10(e)(3) requires an SDR to disseminate the corrected SDR data to the public and the Commission, as applicable, as soon as technologically practicable after the SDR records the correction to the SDR data. Lastly, final § 49.10(e)(4) requires each SDR to establish, maintain, and enforce policies and procedures designed for the SDR to fulfill its responsibilities under § 49.10(e).

One comment suggested that the final rule should clarify that the only obligation on SDRs under § 49.10(e) is to accept, record, and disseminate corrections to SDR data.⁸² The Commission notes that this is the scope of proposed § 49.10(e), and is the scope of final § 49.10(e).

The comment also stated that applying the requirements of proposed § 49.10(e)(2) to SDR data “regardless of the state of the swap” will require SDRs to make SDR data available for corrections for an unlimited amount of time.⁸³ The comment suggested that

Commission is, however, using the word “omission” in final § 49.10(e), because “error” is not defined in final part 49. The Commission emphasizes that this difference between the three sections is merely semantic and does not in any way change the SDRs’ data correction requirements. All omissions of required SDR data are errors, and an SDR is required to correct, in accordance with final § 49.10(e), all errors reported to the SDR, including errors that arise from omissions in SDR data reported to an SDR or the omission of all SDR data for a swap.

⁸² Joint SDR at 9.

the Commission should instead limit the requirements in the regulation with respect to “dead swaps” to the required SDR data recordkeeping retention period.⁸⁴ The Commission agrees with this comment and final § 49.10(e)(1) provides that the rules in § 49.10(e) apply only if “the record retention period under § 49.12(b)(2) of this part has not expired as of the time the error correction is reported.”

Finally, the comment stated that the Commission should make clear that an entity submitting SDR data corrections or previously omitted SDR data must comply with the then current technical specifications of the SDR and that an SDR is not required to make accommodations for data that is unable to comport with the then current technical specifications.⁸⁵ The Commission does not agree with the recommendation that the regulation be revised to require error corrections to be made using the prevailing validations and technical specifications of the SDR. The Commission notes that final § 49.10(e) provides discretion to SDRs to establish, maintain, and enforce policies and procedures designed for the SDRs to fulfill their responsibilities under final § 49.10(e), which includes the discretion to require error corrections to use prevailing validations and the SDR’s technical specifications. Final §§ 43.3(e) and 45.14(a) contain companion requirements for market participants to conform to these SDR policies and procedures when correcting SDR data. The Commission believes that this discretion provides necessary flexibility to SDRs and market participants.

G. § 49.11 – Verification of Swap Data Accuracy

1. Background

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ *Id.* at 9-10.

Section 21(c)(2) of the CEA requires SDRs to confirm submitted swap data.⁸⁶ The Commission implemented this statutory requirement by promulgating current § 49.11.⁸⁷ Current § 49.11(a) requires an SDR to establish policies and procedures to ensure the accuracy of swap data and other regulatory information reported to the SDR. Current § 49.11(b) sets forth the general requirement that an SDR confirm the accuracy and completeness of all swap data submitted pursuant to part 45. The regulation then sets forth specific confirmation requirements for creation data in § 49.11(b)(1) and for continuation data in § 49.11(b)(2).⁸⁸

For swap creation data, if the swap data was submitted directly by a swap counterparty, such as an SD, MSP, or non-SD/MSP counterparty, an SDR is required to notify both counterparties to the swap and to receive from both counterparties acknowledgement of the accuracy of the swap data and corrections for any errors.⁸⁹ However, because counterparties do not currently have a corollary obligation to respond to an SDR's notifications, SDRs have adopted rules based on the concept of negative affirmation: reported swap data is presumed accurate and confirmed if a counterparty does not inform the SDR of errors or omissions or otherwise make modifications to a trade record for a certain period of time.⁹⁰

⁸⁶ See 7 U.S.C. 24a(c)(2) (providing that, among other duties, a swap data repository shall confirm with both counterparties to the swap the accuracy of the data that was submitted).

⁸⁷ See Part 49 Adopting Release at 54547.

⁸⁸ In both cases, the requirements vary depending on whether the SDR received the data directly from a counterparty or from a SEF, DCM, derivatives clearing organization ("DCO"), or third-party service provider acting on behalf of the swap counterparty.

⁸⁹ See § 49.11(b)(1)(i) (providing that an SDR has confirmed the accuracy of swap creation data that was submitted directly by a counterparty if the swap data repository has notified both counterparties of the data that was submitted and received from both counterparties acknowledgement of the accuracy of the swap data and corrections for any errors) and § 49.11(b)(2)(i).

⁹⁰ See DTCC Data Repository (U.S.) LLC Rule 3.3.3.3 and ICE Trade Vault Rules 4.6 and 4.7.

If the swap data was instead submitted by a SEF, DCM, DCO, or third-party service provider acting on behalf of a swap counterparty, the SDR must, among other things, provide both counterparties with a 48-hour correction period after which a counterparty is assumed to have acknowledged the accuracy of the swap data.⁹¹ For swap continuation data, an SDR may rely on a 48-hour correction period regardless of the type of entity that submitted the swap data.⁹²

These provisions in existing § 49.11 reflect the Commission's view in adopting the regulation that an SDR need not always affirmatively communicate with both counterparties to in order to confirm the accuracy of swap data.⁹³ In the Proposal, the Commission stated that, based on the its experience with swap data submitted by SEFs, DCMs, DCOs, and third-party service providers, the current requirements of § 49.11 have failed to ensure swap data accuracy and consistency, which has hampered the Commission's ability to carry out its regulatory responsibilities.⁹⁴

As noted in the Proposal, the Commission previously raised these issues in the Roadmap and received many comments in response.⁹⁵ As discussed in the Proposal, commenters generally held the view that SDRs are not able to confirm swap data with non-reporting counterparties;⁹⁶ the obligation to confirm data accuracy should generally

⁹¹ Additional requirements include the following: (i) the SDR must have formed a reasonable belief that the swap data is accurate; and the swap data that was submitted, or any accompanying information, evidences that both counterparties agreed to the data. *See* 17 CFR 49.11(b)(1)(ii).

⁹² *See* 17 CFR 49.11(b)(2)(ii).

⁹³ *See* Part 49 Adopting Release at 54547 (describing the requirements of § 49.11).

⁹⁴ *See* Proposal at 84 FR 21052 (May 13, 2019).

⁹⁵ *See id.*

⁹⁶ *Id.*

reside with the parties to the swap, not SDRs;⁹⁷ and confirmation requirements for non-reporting counterparties are generally unnecessary and will not improve data accuracy.⁹⁸

Based on its experience with swap data reporting and the comments it received in response to the Roadmap, the Proposal set forth a new swap verification scheme for swap data.

2. Summary of the Final Rule

The Commission is modifying its approach to verification in final § 49.11, based on comments received on proposed § 49.11. The Commission believes the verification process required by final § 49.11 is less burdensome and more flexible than the verification process set forth in the proposed regulation. As described in detail below, in order for SDRs to verify the accuracy and completeness of swap data, final § 49.11 requires each SDR to provide reporting counterparties that are users of the SDR with a mechanism that allows a reporting counterparty to access the current swap data for all open swaps for which the reporting counterparty is serving as the reporting counterparty, in such a manner that allows the reporting counterparty to fulfill its own verification obligations under final § 45.14.⁹⁹

This approach is similar to the requirements in proposed § 49.11 in many respects, particularly in that under final § 49.11, SDRs are required to facilitate verification by reporting counterparties of all swap data for all open swaps on a regular basis. However, the Commission believes final § 49.11 provides a less prescriptive and less burdensome method to achieve the Commission's goals related to swap data

⁹⁷ *Id.*

⁹⁸ *Id.*

⁹⁹ *See* section III.C below for a discussion of final § 45.14.

verification. In particular, final § 49.11 will not require the SDRs to create and send open swaps reports to reporting counterparties as proposed.¹⁰⁰ Also, in place of the requirement that SDRs establish, maintain, and enforce policies and procedures reasonably designed for the SDR to successfully receive replies to open swaps reports from reporting counterparties in the form of a verification of data accuracy or notice of discrepancy, the SDR's policies and procedures will be required to address how the SDR will fulfill all of the requirements of § 49.11, including how reporting counterparties and third-party service providers may successfully use the verification mechanism to fulfill the reporting counterparties' responsibilities under § 45.14. Final § 49.11 will also require reporting counterparties to perform verification on a less frequent basis than proposed, meaning that SDRs will likewise not be required to facilitate verification on as frequent a basis as proposed.

a. § 49.11(a)

The Commission adopts final § 49.11(a) largely as proposed, with some non-substantive rearrangement of proposed § 49.11(a) into final paragraphs § 49.11(a) and (c). The first sentence of proposed § 49.11(a) is being finalized as final § 49.11(a). Final § 49.11(a) reiterates each SDR's statutory duty to verify the accuracy of swap data pursuant to CEA section 21(c)(2). The second sentence of proposed § 49.11(a) is now included in final § 49.11(c)(1), with non-substantive rewording to more clearly articulate the requirement for SDRs to establish, maintain, and enforce policies and procedures related to verification and the content requirements for the policies and procedures.

¹⁰⁰ The Commission is requiring SDRs to create and send open swaps reports to the Commission under final § 49.9. *See* section II.E above for a discussion of final § 49.9.

b. § 49.11(b)(1)

Final § 49.11(b)(1) requires each SDR to provide a mechanism through which each reporting counterparty that is a user of the SDR can access all swap data the SDR maintains for each open swap for which the reporting counterparty serves as the reporting counterparty. The mechanism must allow sufficient access, provide sufficient information, and be in a form and manner to enable each reporting counterparty to perform swap data verification as required under § 45.14 of this chapter. The Commission believes that, together with final § 45.14(b), final § 49.11(b)(1) will create an effective verification process to help ensure that swap data maintained by SDRs is complete and accurate.

The Commission notes that, similar to the communication requirements in proposed § 49.11, it is not prescribing the form of mechanism that SDRs must provide in final § 49.11(b)(1), beyond the data access, data scope, frequency, and confidentiality requirements contained in final § 49.11(b). The Commission expects that SDRs and reporting counterparties will be able to work together to devise the most effective and efficient verification mechanism, with particular attention to accommodating non-SD/MSP/DCO reporting counterparties that may have fewer resources to perform verification than their SD/MSP/DCO counterparts. The Commission is also aware that at least one SDR already offers a mechanism that allows counterparties to access their own swap data, which may be readily modified to meet the requirements of final § 49.11(b).

c. § 49.11(b)(2)

The Commission adopts the substance of the Proposal in final § 49.11(b)(2) in regards to the scope of data that the SDRs must make available to reporting

counterparties for verification. Final § 49.11(b)(2) provides that the swap data accessible through the mechanism must accurately reflect the most current swap data maintained by the SDR, as of the time the reporting counterparty accesses the swap data using the mechanism, for each data field that the reporting counterparty was required to report under part 45 for each of the reporting counterparty's open swaps for which it is serving as the reporting counterparty. Final § 49.11(b)(2) only requires the mechanism to make available the then-current swap data for each of the data fields that the SDR maintains for the relevant open swaps. There is no requirement to include swap data contained in any particular messages from the reporting counterparty or any outdated swap data.

The Commission notes again that it is not prescribing the particular method by which the mechanism grants access to all of the swap data as required, as long as the mechanism satisfies the requirements in final § 49.11(b)(2), including the general requirement that the swap data accessible through the mechanism provides sufficient information to allow the reporting counterparties utilizing the mechanism to successfully perform their swap data verification responsibilities as required under final § 45.14. The Commission expects that SDRs will work with reporting counterparties to devise the most efficient and effective method by which the mechanism will provide access to all of the required swap data, with particular attention to accommodating non-SD/MSP/DCO reporting counterparties.

The Commission also notes that final § 49.11(b)(2) references the limits on providing access to swap data that must be kept confidential under final § 49.11(b)(3). The swap data access provided under final § 49.11(b)(2) must not allow access to data

that is required to be kept confidential, as described further below in the discussion of § 49.11(b)(3).

d. 49.11(b)(3)

Final § 49.11(b)(3) adopts the proposed limits on access to swap data as part of verification for swap data that is required to be kept confidential from reporting counterparties under the Act or other Commission regulations. Notwithstanding the other requirements of final § 49.11(b), final § 49.11(b)(3) explicitly prohibits SDRs from allowing access to swap data that a reporting counterparty is otherwise prohibited to access. The Commission notes that the same confidential swap data is also excluded from the reporting counterparties' corresponding verification requirements in final § 45.14(b).

This confidentiality requirement is particularly relevant for counterparty identity information that is required to be kept confidential under final § 49.17.¹⁰¹ Existing and final § 49.17(f) prohibit SDRs from allowing access to counterparty identifying information for certain anonymously-executed cleared swaps. Under the provisions of final § 49.11(b)(3), nothing in final § 49.11 overrides the confidentiality requirements of § 49.17, or any other confidentiality requirements of the Act or other Commission regulations. This information is also excluded from the verification requirements in the corresponding verification obligation rules in final § 45.14(b).

e. § 49.11(b)(4)

Final § 49.11(b)(4) provides that the mechanism each SDR adopts under final § 49.11(b) must allow sufficiently frequent access for reporting counterparties to perform

¹⁰¹ The Commission is finalizing a technical correction to § 49.17(f) in this rulemaking, as described below in section II.L.

the required swap data verification under § 45.14(b). This minimum frequency is necessary so that reporting counterparties are able to access all of their relevant swap data every time they are required to perform verification under § 45.14(b), in order to help ensure that reporting counterparties perform a robust verification of all swap data for their relevant open swaps. Final § 45.14(b) requires SD/MSP/DCO reporting counterparties to verify every 30 calendar days and requires non-SD/MSP/DCO reporting counterparties to verify once every calendar quarter, with at least two months between verifications.¹⁰²

The Commission notes that the frequency requirement in final § 49.11(b)(4) is a minimum frequency standard. Nothing prohibits SDRs from allowing reporting counterparties to access swap data through the mechanism more frequently than required and nothing prohibits reporting counterparties from utilizing the mechanism to access their own swap data more frequently than is required.

f. § 49.11(b)(5)

Final § 49.11(b)(5) provides requirements related to SDRs making swap data available to third-party service providers for verification purposes. As with other Commission regulations, reporting counterparties are permitted to utilize third-party service providers to perform verification, and the Commission believes that accommodating the use of diligent third-party services providers may increase the efficiency and effectiveness of the verification process.

¹⁰² See section III.C below for a discussion of the verification requirements for reporting counterparties under final § 45.14(b).

Accordingly, in order to accommodate the reporting counterparties' use of third-party service providers, final § 49.11(b)(5) provides that an SDR will satisfy its verification requirements under final § 49.11 by, after a reporting counterparty informs the SDR that the reporting counterparty will utilize a particular third-party service provider for verification purposes, providing the third-party service provider with the same access to the mechanism and the relevant swap data as the SDR is required to provide to the reporting counterparty.

As part of this third-party service provider access, final § 49.11(b)(5) also provides that the third-party service provider access is in addition to (i.e., not instead of) the access for the relevant reporting counterparty. Each SDR must still grant the same required level of access to the mechanism and the relevant swap data to the reporting counterparty, regardless of whether a reporting counterparty utilizes a third-party service provider. The third-party service provider's access under final § 49.11(b)(5) must also continue until the reporting counterparty informs the SDR that the third-party service provider should no longer have access to the mechanism and relevant swap data on the reporting counterparty's behalf. This requirement is necessary to ensure that the third-party service provider can provide services to the reporting counterparty without interruption.

Finally, § 49.11(b)(5) requires the verification policies and procedures an SDR must create pursuant to final § 49.11(c) to include instructions detailing how each reporting counterparty can successfully inform the SDR so that the SDR will grant or discontinue access for a third-party service provider at the reporting counterparty's instruction. This requirement is necessary to ensure that third-party service provider

access for verification purposes is as efficient and seamless as possible. The Commission notes that these SDR policies and procedures are required to be publicly disclosed under final § 49.26(j).¹⁰³

g. § 49.11(c)

The Commission made several non-substantive organizational and editorial modifications in final § 49.11(c), as compared to the Proposal. For example, as described above, the SDR verification policies and procedures requirement from proposed § 49.11(a) is included in final § 49.11(c). The wording in final § 49.11(c)(1) is changed slightly from proposed § 49.11(a) for clarity purposes, but similarly requires SDRs to establish, maintain, and enforce policies and procedures that address how the swap data repository will fulfill all of the applicable requirements of final § 49.11. The policies and procedures must also include instructions on how each reporting counterparty, or third-party service provider acting on behalf of a reporting counterparty, can successfully utilize the mechanism to access swap data in order to perform the reporting counterparty's verification responsibilities under final § 45.14(b). This requirement is necessary to ensure that reporting counterparties are clearly instructed on how to access the verification mechanism and their relevant swap data, in order to ensure that verification is as efficient and seamless as possible. The Commission notes that the companion verification requirements for reporting counterparties in final § 45.14(b) require reporting counterparties to follow the relevant SDR policies and procedures when performing verification.¹⁰⁴

¹⁰³ See section II.R below for a discussion of final § 49.26(j).

¹⁰⁴ See section III.C for a discussion of the verification requirements for reporting counterparties under final § 45.14(b).

Final § 49.11(c)(2) sets forth the requirements for an SDR that amends its verification policies and procedures, which were previously set forth in proposed § 49.11(d). Final § 49.11(c)(2), like proposed § 49.11(d), requires each SDR to comply with the requirements of part 40 of the Commission's regulations in adopting or amending the verification policies and procedures required under final § 49.11(c)(1). The Commission notes that SDRs would be required to comply with part 40 when adopting or amending the verification policies and procedures regardless of whether this requirement is included in § 49.11(c)(2).

3. Comments on the Proposed Rule

The Commission received many comments on the verification approach in proposed § 49.11. Many commenters did not distinguish their comments between the verification requirements proposed for SDRs under proposed § 49.11 and the verification requirements proposed for reporting counterparties under proposed § 45.14, but the Commission has organized the discussion between the two different final rules based on its best estimation of whether particular comments applied to one or both of the proposed sections. The discussion of comments relevant to final § 49.11 is contained in this section, while the discussion of comments that pertain to the verification requirements for reporting counterparties is contained in the discussion of final § 45.14(b), unless otherwise noted below.¹⁰⁵

Many comments on specific requirements of proposed § 49.11 are now moot, because the Commission is not adopting the proposed requirements. For example, some commenters addressed particular aspects and mechanics of the proposed verification of

¹⁰⁵ *Id.*

open swaps reports and the messages the Proposal would require reporting counterparties to send to SDRs related to verification results.¹⁰⁶ These comments are no longer applicable, because the Commission is not adopting the proposed requirement that SDRs provide open swaps reports to reporting counterparties or the companion requirement that reporting counterparties verify the data in such reports and send messages to SDRs related to verification results. The Commission acknowledges these comments on specific proposed requirements and thanks the commenters for submitting these comments, but these requirements are not included in the final rule.

Many comments were generally supportive of the Commission's efforts to improve the accuracy of data reported to and maintained by SDRs.¹⁰⁷ The Commission agrees with the many commenters and market participants who support the Roadmap rulemakings to improve the quality of swap data, and reiterates the importance of improved data accuracy and completeness.

Along with the comments of general support, the Commission received many comments supporting specific requirements in proposed § 49.11. Comments in particular supported limiting data verification to swap data,¹⁰⁸ and excluding non-reporting counterparties from data verification requirements.¹⁰⁹ The Commission agrees with these comments and is finalizing § 49.11 with requirements that only apply verification to swap data and only require verification for reporting counterparties.

¹⁰⁶ See, e.g., GFMA at 4; IATP at 5; ICE TV at 3-4; ISDA/SIFMA at 40, 43-44; Joint SDR at 2-7.

¹⁰⁷ See Freddie Mac at 1, 2; IATP at 1-5; Joint SDR at 1; Markit at 2.

¹⁰⁸ ISDA/SIFMA at 39-41, 44.

¹⁰⁹ GFMA at 4, ISDA/SIFMA at 39, Joint SDR at 2.

Commenters also suggested alternatives for the proposed approach to verification, including alternatives that helped form the basis of the revised verification requirements in final § 49.11. Multiple comments suggested that the Commission adopt a more “principles based” approach to verification.¹¹⁰ As part of a more principles-based approach, one comment suggested monthly verification for SDs and quarterly for non-SDs, while also recommending that SDRs or the Commission should be able to request evidence that verification was conducted as required.¹¹¹ Another comment advocated for requiring reporting counterparties to implement procedures to periodically reconcile swaps data reported to SDRs.¹¹² The Commission also received one comment related to alternatives to verification of accuracy and notice of discrepancy messaging, which recommended an obligation on reporting counterparties to maintain, and make available to the Commission upon request, evidence that verification was conducted and any necessary corrections were submitted to the SDR.¹¹³

The Commission recognizes the comments that provided robust alternatives to the proposed verification requirements that also met the Commission need for swap data to be verified in a thorough and timely manner. The Commission is finalizing § 49.11 with more principles-based requirements that incorporate each of these suggestions, including that reporting counterparties periodically reconcile the open swap data maintained by SDRs with the open swap data in their own books and records; that verification occur on a monthly basis for SD reporting counterparties (though the Commission will also require

¹¹⁰ CS at 3, FIA at 7-8, ISDA/SIFMA at 45.

¹¹¹ ISDA/SIFMA at 45.

¹¹² CS at 3.

¹¹³ Joint SDR at 6-8.

monthly verification for MSPs and DCOs) and quarterly for other reporting counterparties; and that reporting counterparties maintain and make available to the Commission evidence that verification was conducted properly and any discovered corrections submitted to the relevant SDR(s).¹¹⁴

The Commission also received other comments addressing issues that have been incorporated into the final verification requirements. Though largely included with comments related to the proposed open swaps reports, multiple comments advocated for flexibility in the form and manner that SDRs and reporting counterparties perform verification, as these entities already have established methods for communicating swap data and other information.¹¹⁵ These comments on the proposed open swaps reports also recommended that verification only be required for swap data as current at the time of verification, as opposed to verification on every data message.¹¹⁶ Another comment also requested clarification that the required distribution of open swaps reports is a minimum, not a maximum, and that SDRs are able to provide open swaps reports more frequently than the minimum.¹¹⁷

The Commission recognizes the suggestions included with these comments and agrees with the comments. The Commission originally proposed, and is also now adopting, verification requirements that provide SDRs with flexibility in implementing the verification requirements. Thus, final § 49.11(b) intentionally does not prescribe the form and manner of the verification mechanism and allows SDRs to determine the means

¹¹⁴ See section III.C for a more thorough discussion of the verification requirements for reporting counterparties under final § 45.14(b).

¹¹⁵ GFMA at 5, ISDA/SIFMA at 40, Joint SDR at 6.

¹¹⁶ ISDA/SIFMA at 40, Joint SDR at 6.

¹¹⁷ Joint SDR at 6-7.

for reporting counterparties access to their relevant swap data. The Commission expects that SDRs and reporting counterparties will work together to devise the most efficient and effective mechanism that meets the specific verification requirements in final §§ 49.11 and 45.14. The Commission also proposed, and is now adopting, requirements that only require the verification of up-to-date swap data, as opposed to verification of all messages. Final § 49.11(b)(2) only requires SDRs to make the relevant “most current” swap data available to reporting counterparties, as opposed to every message regarding swap data. Though no longer related to open swaps reports, the Commission is also adopting verification timing requirements in § 45.14(b) that serve as a minimum frequency requirement, not a maximum. As the Commission detailed above in the discussion of final § 49.11(b)(4), the SDRs must make the verification mechanism available to the reporting counterparties at least as often as needed for the reporting counterparties to perform their verification responsibilities under final § 45.14(b), but that nothing prevents the SDRs from providing proper access more frequently. The Commission anticipates that some SDRs may choose to provide access to the mechanism on a more-frequent, even potentially continuous, basis.

The Commission also received a comment related to open swaps reports that observed that SDRs would not be able perform verification with reporting counterparties or third-party service providers that are not members of the SDR. The comment suggested that the Commission modify the verification requirement to limit an SDR’s verification responsibilities to reporting counterparties and third-party service providers that are members of the SDR.¹¹⁸ The Commission agrees with this comment and notes

¹¹⁸ Joint SDR at 4-5.

that it would not be practical for an SDR to perform verification with reporting counterparties or third-party service providers that are not connected to the SDR. To address this, the Commission is adopting final § 49.11(b)(1), which specifically requires an SDR to provide a verification mechanism that grants swap data access to each “reporting counterparty that is a user of the swap data repository,” as required under final § 49.11(b). The Commission notes that final § 49.11(b)(5) contains provisions related to access for a third-party service provider working on behalf of a reporting counterparty and that final § 49.11(c) requires SDR verification policies and procedures to address how a third-party service provider can successfully utilize the SDR verification mechanism on behalf of a reporting counterparty.

The Commission also received a number of comments that made suggestions that are not being accepted. In the context of open swaps reports, one comment suggested that the Commission should specify that verification timing requirements be clarified as “business days” and “business hours,” as this would facilitate the SDRs including the date and time that an open swap report was sent.¹¹⁹ The Commission is including verification timing requirements for reporting counterparties in final § 45.14(b), but these timing requirements are stated in terms of calendar days, calendar months, and calendar quarters. The Commission notes that the comment is now moot, as there will be no open swaps reports from SDRs to the reporting counterparties that would necessitate a timestamp, but the Commission also believes that the final use of calendar timing instead of business timing will not cause any issues in regards to reporting counterparties and SDRs performing verification and will provide consistent parameters for when

¹¹⁹ ISDA/SIFMA at 40.

verification must be performed. The use of calendar time allows the reporting counterparties to choose the date most convenient for them to accomplish regular verification without the potential confusion arising from business days shifting based on weekends and holidays.

One comment suggested that the Commission should remove the requirement in proposed § 49.11(d) that SDRs make a filing under part 40 of the Commission's regulations when changing their verification policies and procedures, asserting that such a requirement is unnecessary because reporting counterparties will be required to follow SDR verification procedures.¹²⁰ The Commission disagrees and is adopting the requirement in final § 49.11(c)(2). The Commission notes that the requirements of part 40 of the Commission's regulations would apply to the SDR verification policies and procedures regardless of whether this provision is included in final § 49.11(c)(2), because the verification policies and procedures are "rules" for the purposes of part 40 of the Commission's regulations.¹²¹ The Commission also believes that requiring SDRs to comply with part 40 to update verification policies and procedures will help alert reporting counterparties and other market participants to when an SDR seeks to change its policies and procedures, which will help ensure compliance with the verification policies and procedures and help prevent errors in the verification process.

The Commission also received multiple comments suggesting changes that would narrow the data fields subject to verification. One comment recommended that verification be limited to data fields related to the "economic terms" of the trade only,

¹²⁰ Joint SDR at 7.

¹²¹ See 17 CFR 40.1(i) (defining "rule" for the purposes of part 40 of the Commission's regulations).

with the Commission identifying which fields are included in the economic terms.¹²² Comments also recommended limiting the reported information to information that would improve the Commission's market surveillance capabilities and promote price transparency, while also limiting optional fields and fields that do not apply to the relevant swaps.¹²³ One comment suggested the Commission clarify the duties relating to static data elements.¹²⁴ Other comments also suggested streamlining data fields to only those necessary for the Commission's work and to harmonize data fields with foreign regulators, if possible,¹²⁵ and clarifying the data fields.¹²⁶

As described in more detail in the discussion of verification requirements under final § 45.14(b),¹²⁷ the Commission disagrees with comments suggesting that the Commission adopt any verification requirement that would allow reporting counterparties to verify anything less than all swap data fields for all of the reporting counterparty's relevant open swaps. All swap data fields are important and are necessary for the Commission to successfully fulfill its regulatory responsibilities, which extend beyond performing robust market surveillance and promoting price transparency. The Commission is adopting verification requirements that require the reporting counterparties to verify every swap data field for all swap data for every one of a reporting counterparty's relevant open swaps, and is adopting the requirements in final §

¹²² GFMA at 10-11, 13-14.

¹²³ Joint Associations at 4-10, NGSAs at 4.

¹²⁴ Markit at 2-3.

¹²⁵ Eurex at 1-2, GFMA at 14, Joint Associations at 4-10.

¹²⁶ CEWG at 2-3.

¹²⁷ See section III.C for a more thorough discussion of the verification requirements for reporting counterparties under final § 45.14(b).

49.11(b) that will facilitate this by requiring SDRs to provide a mechanism that allows the reporting counterparties to verify every data field for all relevant swap data. This requirement includes all static data elements, as errors are still possible in swap data maintained by SDRs, even if it is intended to be static. The Commission also notes that streamlining, clarifying, and harmonizing data fields is one of the express purposes of the Roadmap rulemakings, and that this work on data fields is accomplished in a separate Roadmap rulemaking.¹²⁸

The Commission received several comments suggesting that verification is unnecessary and that the Commission can instead rely on SDR swap data validation, standardized and harmonized swap data fields, and/or the swap data error corrections requirements to improve data quality.¹²⁹

As described in more detail in the discussion of verification requirements under final § 45.14(b), the Commission disagrees with the suggestions that verification is unnecessary and that swap data validation, standardized swap data fields, and error correction would be sufficient to meet the Commission's data quality goals. While swap data validation and standardized data fields are valuable tools to prevent certain types of swap data errors, such as swap data being reported without required data, they do not address the same errors that swap data verification is intended to address. Swap data verification, which is designed to inform and trigger the swap data error correction process, is intended to address plausible but incorrect swap data that would not be identified by validation because the incorrect data meets the technical standards for the

¹²⁸ See generally 85 FR 21578, et seq. (Apr. 17, 2020).

¹²⁹ CEWG at 2-3, Chatham at 3, Eurex at 2, NGSA at 4, Joint Associations at 6-10, Joint SDR at 7-8.

standardized fields, such as a swap being reported with a notional value of \$1,000,000 instead of the correct \$10,000,000. These errors would only be found, and the error correction requirement triggered, by a party to the swap reviewing the data after it has been reported and discovering the error(s), such as through the verification process. The Commission also notes that swap data validation and standardized data fields can only prevent errors in swap data that have not yet been reported, as opposed to swap data verification, which will be useful for finding undiscovered errors in swap data for open swaps that have already been reported.

Through its experience administering the data reporting regulations, the Commission is also aware of many examples of significant swap data errors that would not have been prevented by swap data validations, and that, in the absence of an adequate verification requirement, persisted for long periods of time before being discovered and corrected. Based on this experience, the Commission determined that swap data validation, standardized data fields, and the error correction requirements are not sufficient to meet the Commission's data quality goals without the addition of swap data verification. As a result, the Commission is adopting final § 49.11, and the companion requirements in final § 45.14(b), in order to require a robust and effective verification process for SDRs and reporting counterparties that the Commission expects will help ensure significant improvements in swap data quality.

H. § 49.12 – Swap Data Repository Recordkeeping Requirements

Section 49.12 sets forth recordkeeping requirements for SDRs.¹³⁰ The

Commission proposed to amend § 49.12 to incorporate the recordkeeping requirements

¹³⁰ 17 CFR 49.12. Current § 49.12 sets forth specific recordkeeping requirements and references the public reporting requirements and recordkeeping requirements for SDRs included in parts 43 and 45.

for SDRs in current § 45.2(f) and (g)¹³¹ into final § 49.12, and to resolve ambiguities and potential inconsistencies between the regulations.¹³² The Commission has determined to adopt the amendments to §§ 49.12 and 45.2 as proposed, except for a technical change discussed below.

Current § 49.12(a) requires an SDR to maintain its books and records in accordance with the recordkeeping requirements of part 45. The Commission proposed to amend § 49.12(a) to incorporate the provisions of current § 45.2(f) and to clarify that the requirement in final § 49.12(a) that an SDR keep records applies to records of all activities relating to the business of the SDR, not just records of swap data reported to the SDR.¹³³ Accordingly, as amended, final § 49.12(a) requires an SDR to keep full, complete, and systematic records, together with all pertinent data and memoranda, of all activities relating to the business of the SDR, including, but not limited to, all SDR information and all SDR data that is reported to the SDR. The amendments to § 49.12(a) do not impose new requirements on an SDR; rather, the amendments incorporate the currently-applicable requirements of § 45.2(f).

Current § 49.12(b) requires an SDR to maintain swap data (including all historical positions) throughout the existence of the swap and for five years following the final termination of the swap, during which time the records must be readily accessible by the

¹³¹ 17 CFR 45.2(f) and (g).

¹³² Proposal at 84 FR 21055 (May, 13, 2019). Consolidating these regulations in part 49 will reduce confusion that may arise from having separate SDR recordkeeping requirements in two different rules.

¹³³ *Id.* Current § 49.12(a) applies to swap data required to be reported to the SDR, whereas § 45.2(g) applies to records of all activities relating to the business of the SDR and all swap data reported to the SDR.

SDR, and available to the Commission via real-time electronic access; and in archival storage from which the data is retrievable by the SDR within three business days.¹³⁴

The Commission is amending § 49.12(b) by incorporating the requirements of § 45.2(g) into final § 49.12(b). Thus, as amended, final § 49.12(b) will: (i) clarify that the requirements of the regulation apply to all records required to be kept by an SDR, not just swap data reported to an SDR,¹³⁵ and (ii) incorporate the additional ten-year retention period set forth in current § 45.2(g)(2).¹³⁶

Final § 49.12(b) sets forth separate recordkeeping requirements for SDR information in final § 49.12(b)(1) and SDR data reported to the SDR in final § 49.12(b)(2). Section 49.12(b)(1) requires an SDR to maintain all SDR information, including, but not limited to, all documents, policies, and procedures required to be kept by the Act and the Commission's regulations, correspondence, memoranda, papers, books, notices, accounts, and other such records made or received by the SDR in the course of its business. An SDR must maintain such information in accordance with § 1.31 of the Commission's regulations.¹³⁷

¹³⁴ 17 CFR 49.12(b).

¹³⁵ Proposal at 84 FR 21055 (May 13, 2019). Current § 49.12(b) applies to swap data, whereas § 45.2(g) applies to all records required to be kept by an SDR.

¹³⁶ Section 45.2(g)(2) provides that all records required to be kept by an SDR must be kept in archival storage for ten years after the initial 5-year retention period under § 45.2(g)(1). Current § 49.12(b) only sets forth the initial 5-year retention period.

¹³⁷ Section 1.31 of the Commission's regulations is the Commission's general recordkeeping provision, which requires, among other things, that any regulatory records that do not pertain to specific transactions and are not retained oral communications be kept for no less than five years from their creation date. *See* 17 CFR 1.31(b)(3). As noted in the Proposal, current § 49.12(b) and § 45.2 use the existence of the swap as the basis for the record retention timeframes specified therein, but this offers no guidance on how long to keep a record of SDR information, such as SDR policies and procedures. *See* Proposal at 21056. Therefore, the Commission is clarify in § 49.12(b)(1) that the record retention period for such records is the generally applicable retention period under § 1.31 of the Commission's regulations.

As amended, final § 49.12(b)(2) requires an SDR to maintain all SDR data and timestamps reported to or created by the SDR, and all messages related to such reporting, throughout the existence of the swap that is the subject of the SDR data and for five years following final termination of the swap, during which time the records must be readily accessible by the SDR and available to the Commission via real-time electronic access, and for a period of at least ten additional years in archival storage from which such records are retrievable by the SDR within three business days.¹³⁸

The amendments to § 49.12(b) are also intended to help harmonize the Commission's regulations with the SEC's regulations.¹³⁹ The SDR information listed in final § 49.12(b)(1) largely matches the SEC's requirement for SBSDR recordkeeping¹⁴⁰ and the retention provisions of § 1.31 largely match the requirement for SBSDRs.¹⁴¹ Any SDR that also registers with the SEC as an SBSDR will have to comply with both final §

¹³⁸ The retention period under § 49.12(b)(2) is the current requirement for SDR records retention under § 45.2(g).

¹³⁹ The concept of separate recordkeeping requirements for information similar to SDR information and for SDR data reported to an SDR has already been adopted by the SEC in its regulations governing SBSDRs. *See* 17 CFR 240.13n-7(b) (listing recordkeeping requirements for SBSDRs); 17 CFR 240.13n-7(d) (excluding "transaction data and positions" from the recordkeeping requirements and instead referring to 17 CFR 240.13n-5 for such recordkeeping).

¹⁴⁰ *See* 17 CFR 240.13n-7(b)(1). This rule provides that every security-based swap data repository shall keep and preserve at least one copy of all documents, including all documents and policies and procedures required by the Securities Exchange Act and the rules and regulations thereunder, correspondence, memoranda, papers, books, notices, accounts, and other such records as shall be made or received by it in the course of its business as such.

¹⁴¹ *Compare* 17 CFR 1.31(b)(3) (providing that a records entity shall keep each regulatory record for a period of not less than five years from the date on which the record was created) *and* 17 CFR 1.31(b)(4) (providing that a records entity shall keep regulatory records exclusively created and maintained on paper readily accessible for no less than two years, and shall keep electronic regulatory records readily accessible for the duration of the required record keeping period) *with* 17 CFR 240.13n-7(b)(2) (providing that every SBSDR shall keep all such documents for a period of not less than five years, the first two years in a place that is immediately available to representative of the Securities and Exchange Commission for inspection and examination).

49.12 and § 240.13n-7, and therefore consistency between the recordkeeping provisions is particularly beneficial to such SDRs.

The Commission again notes that the amendments to § 49.12(b) do not change the requirements for SDRs; they merely consolidate existing requirements set forth in current § 45.2(f) and (g) into final § 49.12.¹⁴²

The Commission is amending existing § 49.12(c) and renumbering it as § 49.12(d).¹⁴³ In place of existing § 49.12(c), final § 49.12(c) requires an SDR to create and maintain records of SDR validation errors and SDR data reporting errors and omissions. Final § 49.12(c)(1) requires an SDR to create and maintain an accurate record of all reported SDR data that fails to satisfy the SDR's data validation procedures. The records must include, but are not be limited to, records of all of the SDR data reported to the SDR that failed to satisfy the SDR data validation procedures, all SDR validation errors, and all related messages and timestamps.

Final § 49.12(c)(2) requires an SDR to create and maintain an accurate record of all SDR data errors and omissions reported to the SDR and all corrections disseminated by the SDR pursuant to parts 43, 45, 46, and 49 of the Commission's regulations. Section

¹⁴² See 17 CFR 45.2(f) and (g). Though the term "swap data" is defined in § 49.2(a) to mean the specific data elements and information set forth in 17 CFR part 45, the Commission notes that the term "swap data" is not currently defined in part 45. Current § 45.2(f) requires the SDR to keep full, complete, and systematic records, together with all pertinent data and memoranda, of all activities related to the business of the swap data repository and all swap data reported to the swap data repository, as prescribed by the Commission. This expansive requirement for all pertinent data and memoranda for all activities related to the business of the swap data repository and all swap data reported to the swap data repository reflects that § 45.2(f) requires an SDR to keep records of data from activities beyond reporting pursuant to part 45, including, for example, all of the required swap transaction and pricing data reporting pursuant to part 43. The "full, complete, and systematic records" that must be kept for "all activities related to the business" of the SDR also include all messages related to the reported data, including all messages sent from the SDR and to the SDR. This recordkeeping obligation on SDRs is analogous to recordkeeping obligations on DCMs, SEFs, and DCOs. See 17 CFR 38.950, 37.1001, and 39.20(a).

¹⁴³ As discussed below, as part of the amendments to § 49.12, the Commission is removing current § 49.12(d).

49.12(c)(2) also requires SDRs to make the records available to the Commission on request.

The Commission believes SDRs already receive the data validation information specified in final § 49.12(c) via regular interaction with SEFs, DCMs, and reporting counterparties. The Commission emphasizes that such data must be maintained in order to allow for assessments of reporting compliance, including the initial reporting and the correction of the SDR data.

The Commission notes that while final § 49.12(c) specifies recordkeeping requirements for SDR data validation errors and SDR data reporting errors, these requirements do not in any way limit the applicability of the recordkeeping requirements in final § 49.12 to these records. Thus, since the records specified in final § 49.12(c) are comprised of, or relate to, SDR data reported to an SDR, all records created and maintained by an SDR pursuant to final § 49.12(c) are subject to the requirements of final § 49.12(b)(2).

Existing § 49.12(d) requires an SDR to comply with the real time public reporting and recordkeeping requirements of existing § 49.15 and part 43. The Commission believes that existing § 49.12(d)¹⁴⁴ is redundant because its requirements that an SDR comply with the real time public reporting and recordkeeping requirements set forth in § 49.15 and part 43 are also required by final § 49.12(b)(2) and § 49.15, as well as part 43.

Accordingly, the Commission is moving the text of existing § 49.12(c) to final § 49.12(d) and amending the regulation to provide that (i) all records required to be kept

¹⁴⁴ See 17 CFR 49.12(d) (providing that a registered swap data repository shall comply with the real time public reporting and recordkeeping requirements prescribed in § 49.15 and in 17 CFR part 43).

pursuant to part 49 must be open to inspection upon request by any representative of the Commission or any representative of the U.S. Department of Justice; and (ii) an SDR must produce any record required to be kept, created, or maintained by the SDR in accordance with § 1.31 of the Commission's regulations.

Finally, the Commission proposed a technical change to move the existing requirements of § 49.12(e) to proposed § 49.13.¹⁴⁵ However, as discussed below, the Commission is not adopting the proposed amendments to § 49.13 at this time. Therefore, the Commission is not moving existing § 49.12(e) to § 49.13.

The Commission requested comment on all aspects of proposed § 49.12.¹⁴⁶

One comment supported consolidating the SDR recordkeeping requirements in part 45 into part 49.¹⁴⁷ Another comment stated that the requirement in proposed § 49.12(b)(2) for an additional ten-year retention period following a five-year period after termination of a swap is excessive.¹⁴⁸ This comment recommended that the Commission replace the proposed requirements for record retention in proposed § 49.12 with a seven-year retention period following final termination of the swap, during which time the records would be readily accessible by the SDR and available to the Commission.¹⁴⁹

¹⁴⁵ Current § 49.12(e) requires an SDR to establish policies and procedures to calculate positions for position limits and for any other purpose as required by the Commission.

¹⁴⁶ The Commission also invited specific comment on the archival storage requirements of current § 45.2(g)(2) and proposed § 49.12(b)(2). *See* Proposal at 21057.

¹⁴⁷ ISDA/SIFMA at 43.

¹⁴⁸ Joint SDR at 11.

¹⁴⁹ *Id.* Joint SDR also stated the Commission "should harmonize the SDR retention periods with that of Europe and other Commission regulated entities such as [DCMs, DCOs and SEFs]," and that a 7-year retention period "gets closer to a harmonized global standard." *Id.*

The Commission has determined to adopt the amendments to §§ 49.12 and 45.2 as proposed, except the Commission is not adopting the technical change of moving § 49.12(e) to § 49.13, as discussed below in Section II.I.

With regard to record retention period comments, the Commission notes that retention period in final § 49.12(b)(2) is the current retention period applicable to SDRs, not a new requirement, and that SDRs currently have this unique ten-year retention period because they are the source of all SDR data for the public and the CFTC. Further, the Commission believes the existing 10-year retention period has functioned well and did not propose to amend the retention period. Accordingly, the Commission declines to shorten the retention period.

I. § 49.13 – Monitoring, Screening, and Analyzing Data

Existing § 49.13 implements CEA section 21(c)(5), which requires SDRs to, at the direction of the Commission, establish automated systems for monitoring, screening, and analyzing swap data, including compliance and frequency of end-user clearing exemption claims by individuals and affiliated entities.¹⁵⁰ Existing § 49.13 requires SDRs to: (i) monitor, screen, and analyze all swap data in their possession as the Commission may require, including for the purpose of any standing swap surveillance objectives that the Commission may establish as well as ad hoc requests; and (ii) develop systems and maintain sufficient resources as necessary to execute any monitoring, screening, or analyzing functions assigned by the Commission.¹⁵¹

¹⁵⁰ 7 U.S.C. 24a(c)(5).

¹⁵¹ *See generally* 17 CFR 49.13.

The Commission proposed to amend § 49.13 to provide more detail on the monitoring, screening, and analyzing tasks that an SDR may be required to perform as directed by the Commission. The Commission also proposed to amend § 49.13 to make clear that the requirements of proposed § 49.13 apply to SDR data reported to the SDR pursuant to parts 43, 45, and 46. The Commission received a number of comments on the proposed rule, both supporting and recommending against its adoption.¹⁵²

The Commission has determined not to make any amendments to § 49.13 at this time. The Commission believes it may benefit from further consideration and experience with swap data following the implementation of the requirements of part 49, as amended in this final rule, as well as the implementation of the significantly amended rules in part 45 that the Commission is adopting as final along with this final rule. The Commission may consider the proposed amendments to § 49.13 in a future rulemaking.

As part of the Proposal, the Commission also proposed a technical change that would move existing § 49.15(c) to § 49.13.¹⁵³ The Commission also proposed to move the requirements of existing § 49.12(e) to § 49.13. While moving existing §§ 49.15(c) and 49.12(e) to § 49.13 is not a substantive amendment, the Commission has determined

¹⁵² IATP generally supported the proposed rule. IATP at 7. IATP further provided recommendations and support for adopting specific requirements for SDRs, such as a requirement to produce a report regarding “mortgage swaps risks of reporting counterparties” that would be relevant to assessing climate-related financial risks, and to calculate positions for market participants. *Id.* at 8-9. ISDA/SIFMA recommended adopting a requirement that SDRs produce rejection statistics reports. ISDA/SIFMA at 45. Joint SDR generally supported adopting rules that provide more detail about the tasks that the Commission may require an SDR to perform. Joint SDR at 12. However, Joint SDR recommended against adopting the proposed rule, stating that the requirements in the proposed rule exceed those authorized by the Act, would impermissibly require the SDRs to perform regulatory functions, and that it would be impracticable for the SDRs to fulfill the proposed requirements for lack of sufficient data. Joint SDR at 12-15.

¹⁵³ Existing § 49.15(c) provides that an SDR must notify the Commission of any swap transaction for which the real-time swap data was not received by the SDR in accordance with 17 CFR part 43. In addition to moving existing § 49.15(c) to § 49.13, the Commission proposed to amend the regulation to similarly require an SDR to notify the Commission with regard to data not received by the SDR pursuant to parts 45 and 46.

that it would be more efficient to defer these proposed amendments along with the other proposed changes to existing § 49.13, and is therefore not adopting these amendments as part of this final rulemaking. Thus, the current text of § 49.13 will remain in effect after this rulemaking.

J. § 49.15 – Real-Time Public Reporting by Swap Data Repositories

The Commission proposed to amend existing § 49.15 to conform the regulation to the proposed amended definitions in § 49.2. As discussed above, the Commission also proposed to move existing § 49.15(c) to proposed § 49.13(c). Additionally, the Commission proposed to amend existing § 49.15(a) and § 49.15(b) to remove the term “swap data,” which is defined in § 49.2 as part 45 data, and replace it with text clarifying that § 49.15 pertains to swap transaction and pricing data submitted to an SDR pursuant to part 43. These non-substantive amendments do not affect the existing requirements of § 49.15.

The Commission did not receive any comments on the proposed amendments to § 49.15(b) and is adopting the amendments as proposed, with the exception of the proposed movement of existing § 49.15(c) to proposed § 49.13(c).

K. § 49.16 – Privacy and Confidentiality Requirements of Swap Data Repositories

The Commission proposed to amend existing § 49.16 to conform the regulation to the proposed amendments to the definitions in § 49.2.¹⁵⁴ Specifically, the Commission proposed to amend § 49.16(a)(1) to clarify that the policy and procedure requirements of § 49.16 apply to SDR information and to any SDR data that is not swap transaction and pricing data disseminated under part 43.¹⁵⁵ The requirements include that an SDR have

¹⁵⁴ See section II.A above.

policies and procedures to protect the privacy and confidentiality of any and all SDR information and all SDR data (except for swap transaction and pricing data disseminated under part 43) that the SDR shares with affiliates and non-affiliated third parties. The proposed amendments also conform the text of § 49.16 with the removal of the term “reporting entity” and the amended definitions of “SDR data” and “swap data” in final § 49.2. The amendments are non-substantive and do not affect the existing requirements or applicability of § 49.16.

The Commission did not receive any comments on the proposed conforming amendments to § 49.16 and is adopting the amendments as proposed.

L. § 49.17 – Access to SDR Data

Section 49.17 sets forth the requirements and conditions for an SDR to provide access to SDR data to the Commission, foreign and domestic regulators, and swap counterparties, among others.¹⁵⁶ The Commission proposed to amend § 49.17 to clarify some of the requirements in the regulation with respect to the Commission’s access to SDR data. One commenter recommended revisions to the proposed amendments to § 49.17, as discussed below. The Commission has determined to adopt the amendments to § 49.17 as proposed.

As discussed in the Proposal, the Commission believes the amendments to the definition of “direct electronic access” in final § 49.17(b)(3) will provide additional flexibility to implement methods for data transfers from SDRs to the Commission, and may facilitate the use of advancing technology and more efficient means of direct

¹⁵⁵ Proposal at 21059.

¹⁵⁶ *See generally* 17 CFR 49.17.

electronic access for the Commission. The amendments also make clear that the Commission may decide to accept other methods of access, as long as the method is able to efficiently provide the Commission with real-time access to SDR data and scheduled SDR data transfers to the Commission.

1. Amendments to § 49.17(b) – Definition of Direct Electronic Access

Existing § 49.17(c)(1) requires an SDR to provide “direct electronic access,” a term defined in existing § 49.17(b)(3),¹⁵⁷ to the Commission or the Commission’s designee, including another registered entity, in order for the Commission to carry out its legal and statutory responsibilities under the Act.¹⁵⁸ The Commission is amending the definition of “direct electronic access” in final § 49.17(b)(3) to mean an electronic system, platform, framework, or other technology that provides internet-based or other form of access to real-time SDR data that is acceptable to the Commission and also provides scheduled data transfers to Commission electronic systems. The amended definition expands the potential means by which an SDR may provide direct electronic access to include “other technology” and “other forms of access.”¹⁵⁹ The amendments are intended to provide greater flexibility to SDRs and the Commission by making clear that the Commission may accept other technology or other forms of access that are not internet-based, as long as the access to SDR data is real-time and provides for scheduled SDR data transfers to the Commission. The Commission believes innovation and advances in technology may provide alternative, more-efficient means for data transfer,

¹⁵⁷ 17 CFR 49.17(b)(3).

¹⁵⁸ 17 CFR 49.17(c)(1).

¹⁵⁹ Current § 49.17(b)(3) defines direct electronic access as an electronic system, platform or framework that provides Internet or Web-based access to real-time swap transaction data and also provides scheduled data transfers to Commission electronic systems.

and the amended regulation is intended to facilitate the use of such technology by SDRs and the Commission.

The revised definition of direct electronic access also adds a condition that the technology or form of access be “acceptable to the Commission” in order to clarify that any form of direct electronic access, including any new technology, must be approved by the Commission. As discussed below, the Commission anticipates working with SDRs to determine acceptable forms of direct electronic access, consistent with the Commission’s current practice of coordinating and collaborating with SDRs to facilitate transfers of, and real-time access to, SDR data.

Finally, the amended definition of “direct electronic access” replaces the phrase “real-time swap transaction data”¹⁶⁰ with “real-time SDR data,” to eliminate confusion and maintain consistency with the use of the term “SDR data” in other amended provisions in part 49.¹⁶¹ This non-substantive amendment is not intended to change the existing requirements or current SDR practice for providing the Commission with direct electronic access to SDR data.

2. Amendments to § 49.17(c) – Commission Access

The Commission is amending § 49.17(c) to incorporate the requirements of current § 45.13(a),¹⁶² which relates to the requirements for an SDR to maintain and

¹⁶⁰ 17 CFR 49.17(b)(3).

¹⁶¹ The Commission notes that the phrase “real-time” is often used to reference swap transaction and pricing data that is publicly reported pursuant to part 43. In this instance, the term refers to direct electronic access requiring that SDR data be available in real time to the entity granted direct electronic access (i.e., the Commission or its designee).

¹⁶² While the amendments consolidate the requirements for Commission access to SDR data, the Commission did not propose to modify current § 45.13(a) in the Proposal. *See* Proposal at 21060, n. 132. The Commission subsequently proposed amendments to current § 45.13(a) that are consistent with final § 49.17(c) in a separate notice of proposed rulemaking related to the Roadmap. *See* 85 FR at 21633.

transmit data to the Commission, and to make additional clarifications in the regulation. The Commission is also making non-substantive edits to final § 49.17 to conform terms used in the section with the rest of the Commission’s regulations (e.g., replacing “swap data and SDR Information” with “SDR data and SDR Information”). The amendments are intended to consolidate other related requirements into final § 49.17(c) and to improve the regulation’s clarity and consistency with other Commission regulations.

Final § 49.17(c) adds introductory text that requires an SDR to provide the Commission with access to all SDR data maintained by the SDR.¹⁶³ Final § 49.17(c)(1) retains the requirements of current § 49.17(c)(1) and adds a provision to incorporate the requirements of current § 45.13(a), with modifications.¹⁶⁴ Specifically, final § 49.17(c)(1) requires an SDR to maintain all SDR data reported to the SDR in a format acceptable to the Commission, and to transmit all SDR data requested by the Commission to the Commission as instructed by the Commission. Section 49.17(c)(1) also includes a new provision not found in current § 45.13(a), stating that the Commission’s instructions may include, but are not limited to, the method, timing, and frequency of transmission, as well as the format and scope of the SDR data to be transmitted. Final § 49.17(c)(1) also revises the requirement in existing § 45.13(a) that an SDR maintain and transmit “swap data” to “SDR data,” to make clear that an SDR must maintain all SDR data reported to

¹⁶³ See 17 CFR 49.17(c)(1) (providing that a registered swap data repository shall provide direct electronic access to the Commission or the Commission’s designee, including another registered entity, in order for the Commission to carry out its legal and statutory responsibilities under the Act and related regulations).

¹⁶⁴ Section 45.13(a) provides that an SDR shall maintain all swap data reported to it in a format acceptable to the Commission, and shall transmit all swap data requested by the Commission to the Commission in an electronic file in a format acceptable to the Commission.

the SDR in a format acceptable to the Commission and transmit all SDR data requested by the Commission.¹⁶⁵

3. § 49.17(f)(2) – Technical Correction

The Commission is amending existing § 49.17 to replace an incorrect reference to “§ 37.12(b)(7)” at the end of paragraph (f)(2) with the correct reference to “§ 39.12(b)(7).”¹⁶⁶ The Commission is also making non-substantive amendments to conform the terminology in final § 49.17(f)(2) with the terms listed in final § 49.2.

4. Delegation of Authority – § 49.17(i)

The Commission is moving the delegation of authority provision in existing § 49.17(i)¹⁶⁷ to final § 49.31(a)(7). Existing § 49.17(i) delegates to the Director of DMO the authority reserved to the Commission in existing § 49.17. This includes the authority to instruct an SDR on how to transmit SDR data to the Commission. As discussed below, the Commission proposed to consolidate the delegation of authority provisions in part 49 in final new § 49.31. This amendment is not a substantive change, as all functions delegated to the Director of DMO under existing § 49.17(i) will continue to be delegated under final § 49.31.

5. Comments

The Commission requested comment on all aspects of proposed § 49.17. The Commission also requested specific comment on a whether there is a need to further clarify any of the requirements of proposed § 49.17 and whether there are any aspects of existing or proposed § 49.17 that would inhibit or prevent the development of new

¹⁶⁵ The Commission believes this revision is consistent with current SDR practice.

¹⁶⁶ There is no § 37.12(b)(7) in the Commission’s regulations. *See* 17 CFR 37.12(b).

¹⁶⁷ 17 CFR 49.17(i).

technological approaches to SDR operations or the provision of SDR data to the Commission.¹⁶⁸

The Commission received one comment on the proposed rule. The comment agreed with the Commission that flexibility as to future technological advancements and innovations is an important consideration in an SDR's provision of direct electronic access to the Commission.¹⁶⁹ This comment also, however, recommended a number of textual revisions to proposed § 49.17 that would condition or limit the Commission's authority and discretion in making determinations regarding an SDR's maintenance and transfer of data pursuant to the regulation.¹⁷⁰

Specifically, the comment asserted that the amended definition of direct electronic access in proposed § 49.17(b)(3) is too broad because the term "SDR data" includes data reported pursuant to part 46 of this chapter, and the Commission should not have a time-sensitive need for such data.¹⁷¹ The comment also recommended revising the text of the proposed definition to subject the Commission's determinations regarding methods of transmission to a reasonableness standard and require the Commission to work with SDRs in making such determinations.¹⁷²

In addition, the comment recommended the Commission remove the phrase "in a format acceptable to the Commission" from the second sentence of proposed §

¹⁶⁸ Proposal at 21061.

¹⁶⁹ DDR at 4.

¹⁷⁰ *Id.*

¹⁷¹ *Id.* (stating the Commission should replace the term "SDR data" which "swap data and swap transaction and pricing information").

¹⁷² *Id.* (recommending the Commission replace the phrase "that is acceptable to the Commission" with "that has been agreed to by the Commission, in its reasonable discretion, following consultation with the SDR").

49.17(c)(1), asserting that the phrase deprives the SDRs of the flexibility and discretion needed with respect to the storage and maintenance of data without a clear regulatory purpose.¹⁷³ Similarly, the comment recommended amending the text of the second sentence of proposed § 49.17(c)(1) to provide “reasonable limitations” on the Commission’s discretion to instruct an SDR on the transmission of SDR data to the Commission.”¹⁷⁴

6. Final Rule

The Commission has determined to adopt the amendments to 49.17 as proposed.

With regard to the comment that the definition of direct electronic access is too broad and provides the Commission with too much discretion, the Commission believes the amendments to the definition are appropriately tailored to help ensure that the Commission’s direct electronic access, and the data provided through this access, serves the Commission needs to meet its regulatory obligations, and ensures that an SDR does not change the means of direct electronic access in a manner that impairs the Commission’s regulatory functions. The Commission intends to be flexible, when possible, in regards to the methods and forms of direct electronic access an SDR may utilize, especially in the context of technological advancement, and believes that the definition ensures an appropriate level of discretion as to whether a method of direct electronic access is acceptable.

The Commission believes final § 49.17(b)(3) will not hinder or prevent an SDR from incorporating new technology for collecting or maintaining SDR data, as long as the

¹⁷³ *Id.*

¹⁷⁴ DDR at 4 (stating that the Commission should add the phrase “as soon as practicable, given the nature of the instructions and the SDR’s circumstances” at the end of the second sentence of proposed § 49.17(c)(1)).

SDR data is collected by the SDR and provided to the Commission as required. The Commission does, however, expect an SDR to provide SEFs, DCMs, and reporting counterparties with commonly-used methods for reporting SDR data and to not force SEFs, DCMs, and reporting counterparties to unnecessarily expend resources on technology upgrades by unreasonably limiting available reporting methods. The Commission also expects SDRs to be particularly accommodating of non-SD/MSP/DCO reporting counterparties that may have limited resources to devote to technology changes.

Similarly, final § 49.17(c)(1) is intended to provide clarity and certainty to SDRs regarding their responsibilities and the Commission's authority with respect to how an SDR maintains and transmits data to the Commission.¹⁷⁵ The Commission believes it is critical that it has the ability to instruct SDRs regarding all aspects of SDR data transfers to the Commission, including, but not necessarily limited to, method of transmission (e.g., electronic or non-electronic transmission and file types used for transmission), the timing of data transmission, the frequency of data transmission, the formatting of the data to be transmitted (e.g., data feeds or batch transmission), and the actual SDR data to be transmitted. As noted above, innovation and advances in technology may provide alternative and more efficient means for data transfer, so this flexibility may facilitate the use of such technology by SDRs and the Commission. Also, the format, frequency, and

¹⁷⁵ While these revisions may appear to broaden the scope of the Commission's ability to define the terms of data transfer to the Commission, existing § 45.13 provides the Commission broad discretion in instructing SDRs on how to send data to the Commission to enable the Commission to perform its regulatory functions, increase market transparency, and mitigate systemic risk. *See* Swap Data Recordkeeping and Reporting Requirements 77 FR 2136, 2169 (Jan. 13, 2012) (requiring an SDR to maintain all swap data reported to it in a format acceptable to the Commission, and to transmit all swap data requested by the Commission to the Commission in an electronic file in a format acceptable to the Commission); *see also* Part 49 Adopting Release at 54552 (stating that the Commission does not believe that SDRs should have the discretion or ability to determine the appropriate data sets that should be provided to the Commission).

related matters may well depend on the circumstances of a particular context, so an inflexible rule would not be appropriate.

With regard to the comments' suggested revisions, the Commission believes the revisions would unduly constrain the Commission's authority. The Commission notes that it currently works with SDRs to facilitate data transfers and implement technology changes.¹⁷⁶ The Commission fully expects to continue to collaborate with SDRs to ensure any Commission instructions or changes requested pursuant its authority in § 49.17(c)(1) are practical and reasonable, and provide SDRs with the requisite time for implementation. To do otherwise would be counterproductive and harmful to the Commission's ability to fulfill its regulatory functions. The Commission believes the coordination and collaboration between the Commission and SDRs is, and will be, supported and enhanced by clarity regarding the Commission's authority in this area. This, in turn, will encourage SDRs and the Commission to work together to devise the most efficient and effective ways for data transfer to the Commission, while ensuring that the Commission has the data it needs to perform its regulatory functions.

M. § 49.18 – Confidentiality Arrangement

The Commission proposed to amend existing § 49.18¹⁷⁷ to move the delegation of authority provision in § 49.18(e) to proposed § 49.31(a)(8).¹⁷⁸ Existing § 49.18(e) delegates to the Director of DMO all functions reserved to the Commission in § 49.18, including the authority to specify the form of confidentiality arrangements required prior

¹⁷⁶ Current SDR practice also reflects the Commission's wide discretion in instructing SDRs in how to send data to the Commission, as the SDRs currently send large amounts of data to the Commission on a regular basis in various formats, based on instructions provided by the Commission.

¹⁷⁷ 17 CFR 49.18.

¹⁷⁸ Proposal at 84 FR 21061 (May 13, 2019).

to disclosure of swap data by an SDR to an appropriate domestic or foreign regulator, and the authority to limit, suspend, or revoke such appropriate domestic or foreign regulator's access to swap data held by an SDR.

This non-substantive amendment does not change the functions delegated by the Commission and, as discussed further below, is intended to enable the Commission to locate most delegations of authority in proposed § 49.31. The Commission did not receive any comments on the proposed amendments to § 49.18 and is adopting amendments as proposed.

N. § 49.20 – Governance Arrangements (Core Principle 2)

The Commission proposed to amend § 49.20¹⁷⁹ to conform the regulation to the amended definitions and related numbering changes in final § 49.2. Specifically, final § 49.20 amends the citations to § 49.2(a)(14) in § 49.20(b)(2)(v) and to § 49.2(a)(1) in § 49.20(c)(1)(ii)(B) to citations to § 49.2(a). The proposed amendments also conform the provisions of § 49.20(b)(2)(vii) to reflect the amendments in final § 49.2 to the definitions of “SDR data,” “SDR information,” “registered swap data repository,” and “reporting entity.”¹⁸⁰ These non-substantive amendments to final § 49.20 do not affect the existing requirements of the regulation.

The Commission did not receive any comments on the proposed amendments to § 49.20 and is adopting the amendments as proposed.

O. § 49.22 – Chief Compliance Officer

¹⁷⁹ 17 CFR 49.20.

¹⁸⁰ *Id.*

Existing § 49.22 sets forth an SDR's requirements with respect to its chief compliance officer ("CCO").¹⁸¹ The Commission proposed to amend § 49.22 to clarify an SDR's obligations, remove unnecessary requirements, and make technical corrections and non-substantive changes. The Commission received a number of comments on the proposed amendments to § 49.22, including on the proposed amendments to existing § 49.22(d)(2) with respect to a CCO's obligation to resolve conflicts of interest.¹⁸²

The Commission has determined not to address the proposed amendments in this final rulemaking, with the exception of a number of technical changes to conform § 49.22 to other regulations amended in this final rulemaking.¹⁸³ The Commission notes that a number of the proposed amendments to § 49.22, including provisions that were the subject of public comment, mirror the Commission's proposed amendments to the CCO requirements for SEFs under § 37.1501,¹⁸⁴ which have not been adopted to date. The Commission believes it may be appropriate to address the proposed amendments to the CCO requirements for SDRs and for SEFs concurrently, in order to maintain consistency in the CCO requirements for different registered entities, to the extent appropriate. The Commission may do so in a future rulemaking.

P. § 49.24 – System Safeguards

¹⁸¹ 17 CFR 49.22.

¹⁸² See, e.g., IATP at 9-10 (asserting that the proposed amendments that limit a CCO's obligation to resolve conflicts are not consistent with statutory requirements).

¹⁸³ As discussed above, the conforming changes include the removal of the reference in § 49.22(f)(2) to the annual filing of a Form SDR, which is not required under final § 49.3(a)(5). The Commission is also making a technical correction to final § 49.22(f)(3) to correct a reference to nonexistent § 49.22(e)(67). The correct reference is to existing § 49.22(e)(6).

¹⁸⁴ 17 CFR 37.1501. See Swap Execution Facilities and Trade Execution Requirement, 83 FR 61946, 62032 (Nov. 30, 2018).

The Commission proposed to make non-substantive amendments § 49.24¹⁸⁵ to provide additional detail as to the duties and obligations of an SDR under the regulation and to make other conforming technical changes.¹⁸⁶ Existing § 49.24(d) requires an SDR's BC-DR plans, resources, and procedures to enable an SDR to resume operations and meet its regulatory duties and obligations, and sets forth a non-exhaustive list of those duties and obligations.¹⁸⁷ The amendments to existing § 49.24 expand the non-exhaustive list of duties and obligations of an SDR under part 49 that are enumerated in final § 49.24(d) to include specific reference to §§ 49.10 to 49.21, § 49.23, and §§ 49.25 to 49.27. The Commission emphasizes that the part 49 provisions listed in the amended regulation are only references intended for clarification, and the amendments to existing § 49.24(d) do not change any requirements applicable to an SDR.

The Commission also proposed to make technical amendments to § 49.24(i), to remove a reference to § 45.2. As described above, the Commission is moving the SDR recordkeeping requirements contained in current § 45.2(f) and (g) to § 49.12 for consistency and clarity purposes. This proposed technical change would conform § 49.24(i) to final §§ 45.2 and 49.12, but would not change any of the requirements applicable to SDRs.

The Commission did not receive any comments on the proposed amendments to § 49.24 and is adopting the amendments as proposed.

Q. § 49.25 – Financial Resources

¹⁸⁵ 17 CFR 49.24.

¹⁸⁶ Proposal at 21063.

¹⁸⁷ 17 CFR 49.24(d).

As discussed above, the Commission proposed conforming changes to existing § 49.25¹⁸⁸ to remove the reference to existing § 49.9 and to core principle obligations identified in existing § 49.19.¹⁸⁹ Proposed § 49.25(a) would instead refer to SDR obligations under “this chapter,” to be broadly interpreted as any regulatory or statutory obligation specified in part 49 of the Commission’s regulations. These technical amendments do not impact any existing obligations of SDRs.

The Commission also proposed to amend existing § 49.25(f)(3) to change the deadlines for an SDR to submit the financial resources report under § 49.25.¹⁹⁰ Existing § 49.25(f)(3) requires an SDR to submit the report no later than 17 business days after the end of the SDR’s fiscal quarter, or a later time that the Commission permits upon request. The proposed amendment to existing § 49.25(f)(3) provides that an SDR must submit its quarterly financial resources report to the Commission not later than 40 calendar days after the end of the SDR’s first three fiscal quarters, and not later than 90 calendar days after the end of the SDR’s fourth fiscal quarter, or such later time as the Commission may permit in its discretion. The Commission requested comment on all aspects of proposed § 49.25.

One comment supported the extension of the deadline for filings financial reports under § 49.25, stating that the amendment reduces burdens on SDRs without material detriment to the CFTC’s oversight.¹⁹¹

¹⁸⁸ 17 CFR 49.25.

¹⁸⁹ Proposal at 21063.

¹⁹⁰ *Id.*

¹⁹¹ DDR at 5.

The Commission has determined to adopt the proposed amendments to § 49.25, except for the proposed amendments to 49.25(f)(3), which would align the deadline for an SDR's fourth quarter financial resources report with the deadline for an SDR to submit its annual CCO report under proposed § 49.22(f)(2). As discussed above, the Commission has determined not to address the proposed changes to the filing deadline for the annual compliance report under § 49.22(f)(2) in this final rulemaking, and accordingly, the Commission is not adopting the related proposed amendment to § 49.25(f)(3).

R. § 49.26 – Disclosure Requirements of Swap Data Repositories

Section 49.26 requires an SDR to furnish SEFs, DCMs, and reporting counterparties with an SDR disclosure document that sets forth the risks and costs associated with using the services of the SDR, and contains the information specified in § 49.26(a) through (i).¹⁹² The Commission proposed to add a new § 49.26(j) providing that an SDR disclosure document must set forth the SDR's policies and procedures regarding the reporting of SDR data to the SDR, including the SDR's data validation procedures, swap data verification procedures, and procedures for correcting SDR data errors.¹⁹³ The Commission also proposed to amend existing § 49.26 to conform terms in the regulation to proposed § 49.2.¹⁹⁴ The Commission has determined to adopt the amendments to § 49.26 as proposed.

The addition of final § 49.26(j) is intended to provide information about an SDR's operations to market participants in order to assist them in making decisions regarding

¹⁹² 17 CFR 49.26.

¹⁹³ Proposal at 21063-64.

¹⁹⁴ *Id.* at 21063. Specifically, the proposed amendments to the introductory paragraph of § 49.26 reflect updates to the terms "SDR data," "registered swap data repository," and "reporting entity." These non-substantive amendments do not change the current requirements of § 49.26.

which SDR to use for swaps reporting.¹⁹⁵ Moreover, requiring an SDR to disclose its data reporting policies and procedures, data validation procedures, swap data verification procedures, and SDR data correction procedures should reduce the number of data errors and improve data quality by providing SEFs, DCMs, and reporting counterparties with the information needed to properly design their reporting systems before any reporting occurs.¹⁹⁶ The Commission notes that the disclosure requirements in § 49.26(j) apply for all SDR data required to be reported, as applicable.

The Commission requested comment on all aspects of proposed § 49.26. The Commission also invited specific comment on whether the Commission should require an SDR to disclose any other information under § 49.26.¹⁹⁷

Two comments supported the proposed disclosure requirements under § 49.26(j).¹⁹⁸ One of these comments also suggested requiring an SDR to disclose any revisions to the policies specified in proposed 49.26(j) at a reasonable time before implementation.¹⁹⁹ Similarly, the other comment suggested that an SDR should be required to provide any revisions to such policies and procedures promptly to a reporting counterparty.²⁰⁰

The Commission has determined to adopt the amendments to § 49.26(j) as proposed. With regard to the suggestions in the comments, the Commission notes that the requirement to make the specified disclosures in § 49.26 is an ongoing requirement that

¹⁹⁵ *See id.*

¹⁹⁶ *See id.*

¹⁹⁷ *Id.* at 21064.

¹⁹⁸ ISDA/SIFMA at 43; CS at 3.

¹⁹⁹ ISDA/SIFMA at 43.

²⁰⁰ CS at 3.

applies to an SDR “[b]efore accepting any swap data from [the relevant party] . . . ”

Accordingly, the Commission believes § 49.26(j), as proposed and adopted, requires an SDR to update the required disclosures if the SDR revises the policies or procedures specified in § 49.26(j). Moreover, under part 40, an SDR would be required to file with the Commission revisions to the policies and procedures required to be disclosed § 49.26(j).²⁰¹ Under part 40, such filings are generally required to be made publicly available.²⁰²

S. § 49.28 – Operating Hours of Swap Data Repositories

The Commission proposed to add a new § 49.28 to address an SDR’s obligations with respect to its hours of operation, which are currently set forth in existing § 43.3(f) and (g).²⁰³ The Commission proposed to (i) move the provisions in existing § 43.3(f) and (g) to proposed § 49.28 and (ii) amend the provisions so that the operating hours requirements also apply with respect to an SDR’s responsibilities under parts 45, 46, and 49.²⁰⁴ The amendments to these requirements reflect the Commission’s belief that SDRs should operate as continuously as possible while still being afforded the opportunity to perform necessary testing, maintenance, and upgrades of their systems.

²⁰¹ See 17 CFR 40.6(a).

²⁰² See, e.g., 17 CFR 40.6(a)(2) (requiring a registered entity that self-certifies a rule or rule amendment under § 40.6 to post a notice of pending certification with the Commission and a copy of the submission, concurrent with the filing of a submission with the Commission, on the registered entity's website); See also 17 CFR 40.8(c) (providing that a registered entity's filing of new rules and rule amendments for Commission review and approval or pursuant to the self-certification procedures in part 40 shall be treated as public information unless accompanied by a request for confidential treatment).

²⁰³ Proposal at 21064. The Commission believes that is beneficial to SDRs and market participants to move all SDR operating hours requirements to part 49 from part 43.

²⁰⁴ *Id.*

The Commission has determined to adopt § 49.28 as proposed. The Commission continues to believe that the continuous operation of SDRs is critical to the proper functioning of the swaps market and the SDR data reporting process. Moreover, the need for continuous operation of SDRs is not limited to the receipt and dissemination of swap transaction and pricing data pursuant to part 43. Rather, an SDR must be able to continuously perform all of its responsibilities under the Commission's regulations. To this end, proposed and final § 49.28 expands the obligations of an SDR to continuously accept, promptly record, and publicly disseminate all SDR data reported to the SDR.

While the Commission strongly encourages SDRs to adopt redundant systems to allow public reporting during closing hours, final § 49.28 continues to allow SDRs to schedule downtime to perform system maintenance. However, the Commission continues to believe that disruptions to the data reporting process due to closing hours should be as limited as possible, with advance notice of, or, if not possible, notice promptly after, closing.

The need for continuous operations of SDRs also mandates that SDRs minimize and mitigate disruptions caused by necessary downtime or unexpected disruptions, to the extent reasonably possible. Therefore, final § 49.28 requires an SDR to have the capacity to receive and hold in queue data reported to it, and to process and disseminate that data following a resumption in its operations. The Commission emphasizes that it expects SDRs to be able to accept and hold in queue SDR data that is reported during closing hours. The inability to accept and hold in queue SDR data should be a rare occurrence that results from unanticipated emergency situations, and the provisions in final § 49.28(c)(2) are intended as a last resort to prevent data loss.

As discussed below, the requirements of final § 49.28 also include many of the requirements of the SEC's operating hours regulations governing SBSDRs in order to increase consistency between the regulations for SDRs and SBSDRs.²⁰⁵

1. General Requirements – § 49.28(a)

Existing § 43.3(f) requires an SDR to have systems in place to continuously receive and publicly disseminate swap transaction and pricing data in real-time. Existing § 43.3(f) allows an SDR to declare closing hours to perform system maintenance, while requiring that the SDR must, to the extent reasonably possible, avoid scheduling closing hours when, in its estimation, the U.S. market and major foreign markets are most active.²⁰⁶

These provisions were adopted based on the Commission's belief that the global nature of the swaps market necessitates that SDRs be able to publicly disseminate swap transaction and pricing data at all times and that SDRs should generally be fully operational 24 hours a day, seven days a week.²⁰⁷

Proposed and final § 49.28(a) require an SDR to have systems in place to continuously accept and promptly record all SDR data reported to the SDR, and publicly

²⁰⁵ The SEC's operating hours regulations are contained in 17 CFR 242.904. While current § 43.3(f) allows SDRs to schedule closing hours while avoiding the times that, in an SDR's estimation, U.S. markets and major foreign markets are most active, and requires the SDRs to provide advance notice of closing hours to market participants and the public, current § 43.3(f) does not make a distinction between regular closing hours and special closing hours. The distinction is present, however, in operating hours requirements for SBSDRs, and final § 49.28(a)(1) and (2) largely adopts the SBSDR requirements. These requirements make clear that an SDR may establish both normal and special closing hours and allow an SDR that also registers with the SEC as an SBSDR to effectively follow the same operating hours requirements for both requirements.

²⁰⁶ 17 CFR 43.3(f).

²⁰⁷ See Real-Time Public Reporting of Swap Transaction Data, 77 FR 1182, 1204 (Jan. 9, 2012).

disseminate swap transaction and pricing data reported to the SDR as required under part 43.

Final § 49.28(a)(1) allows an SDR to establish normal closing hours to perform system maintenance during periods when, in the SDR's reasonable estimation, the SDR typically receives the least amount of SDR data.²⁰⁸ Under final § 49.28(a)(1), an SDR must provide reasonable advance notice of its normal closing hours to market participants and to the public.

Final § 49.28(a)(2) allows an SDR to declare, on an ad hoc basis, special closing hours to perform system maintenance that cannot wait until normal closing hours. Similar to final § 49.28(a)(1), final § 49.28(a)(2) requires an SDR to schedule special closing hours during periods when, in the SDR's reasonable estimation, the special closing hours would, to the extent possible given the circumstances prompting the special closing hours, be least disruptive to the SDR satisfying its SDR data-related responsibilities. Final § 49.28(a)(2) also requires an SDR to provide reasonable advance notice of the special closing hours to market participants and the public whenever possible, and, if advance notice is not reasonably possible, to notify market participants and the public as soon as is reasonably possible after declaring special closing hours.

2. Part 40 Requirement for Closing Hours – § 49.28(b)

Proposed and final § 49.28(b) require an SDR to comply with the requirements under part 40 of the Commission's regulations when adopting or amending normal

²⁰⁸ This reflects a minor change from the existing requirements of § 43.3(f)(2), which provides that an SDR shall, to the extent reasonably possible, avoid scheduling closing hours when, in its estimation, the U.S. market and major foreign markets are most active. The Commission believes that final § 49.28(a)(1) provides a better measure of when an SDR should schedule closing hours.

closing hours and special closing hours.²⁰⁹ This requirement is already applicable to SDRs pursuant to current § 43.3(f)(3).²¹⁰ The Commission anticipates that, due to the unexpected and emergency nature of special closing hours, rule filings related to special closing hours will likely qualify for the emergency rule certification provisions of § 40.6(a)(6).²¹¹

3. Acceptance of SDR Data During Closing Hours – § 49.28(c)

Existing § 43.3(g) addresses an SDR's obligations regarding swap transaction and pricing data sent to the SDR for publicly reportable swap transactions during closing hours. The Commission is moving existing § 43.3(g) to final § 49.28(c), and expanding the existing requirements for swap transaction and pricing data in current § 43.3(g)²¹² to all SDR data. Proposed and final § 49.28(c) require an SDR to have the capability to accept and hold in queue any and all SDR data reported to the SDR during normal closing hours and special closing hours. Final § 49.28(c) is intended to prevent the loss of any SDR data that is reported to an SDR during closing hours and to facilitate the SDR's prompt fulfillment of its data reporting responsibilities, including public dissemination of swap transaction and pricing data, as applicable, once the SDR reopens from closing

²⁰⁹ The establishment or change to closing hours constitutes a "rule" for the purposes of part 40 requirements. *See* 17 CFR 40.1, et seq.

²¹⁰ *See* 17 CFR 43.3(f)(3) (providing that a registered swap data repository must comply with the requirements under 17 CFR part 40 in setting closing hours and must provide advance notice of its closing hours to market participants and the public).

²¹¹ *See* 17 CFR 40.6(a)(6) (setting forth the requirements for implementing rules or rule amendments in response to an emergency, as defined under 17 CFR 40.1(h)).

²¹² *See* 17 CFR 43.3(g) (providing that during closing hours, a registered swap data repository must have the capability to receive and hold in queue any data regarding publicly reportable swap transactions pursuant to part 43).

hours. The requirements in § 49.28(c) mirror the requirements for an SBSDR to receive and hold in queue information regarding security-based swaps.²¹³

Final § 49.28(c)(1) requires an SDR, on reopening from normal or special closing hours, to promptly process all SDR data received during the closing hours and, pursuant to part 43, publicly disseminate swap transaction and pricing data reported to the SDR that was held in queue during the closing hours. Final § 49.28(c)(1) expands the existing requirements for an SDR to disseminate swap transaction and pricing data pursuant to § 43.3(g)(1)²¹⁴ to also include the prompt processing of all other SDR data received and held in queue during closing hours.²¹⁵

Final § 49.28(c)(2) expands existing requirements for swap transaction and pricing data that an SDR cannot receive and hold in queue during closing hours in existing § 43.3(g)(2) to all SDR data and also mirrors the requirements for an SBSDR that cannot receive and hold in queue information regarding security-based swaps during closing hours.²¹⁶ Final § 49.28(c)(2) requires an SDR to immediately issue a notice to all

²¹³ See 17 CFR 242.904(c) (providing that during normal closing hours, and to the extent reasonably practicable during special closing hours, a registered security-based swap data repository must have the capability to receive and hold in queue information regarding security-based swaps that has been reported pursuant to §§ 242.900 through 242.909).

²¹⁴ See 17 CFR 43.3(g)(1) (providing that upon reopening after closing hours, a registered swap data repository must promptly and publicly disseminate the swap transaction and pricing data of swaps held in queue, in accordance with the requirements of part 43).

²¹⁵ These requirements mirror the SBSDR requirements for disseminating transaction reports after reopening following closing hours. See 17 CFR 242.904(d) (providing that when a registered security-based swap data repository re-opens following normal closing hours or special closing hours, it must disseminate transaction reports of security-based swaps held in queue, in accordance with the requirements of § 242.902).

²¹⁶ See 17 CFR 242.904(e) (providing that if a registered security-based swap data repository could not receive and hold in queue transaction information that was required to be reported pursuant to §§ 242.900 through 242.909, it must immediately upon re-opening send a message to all participants that it has resumed normal operations. Thereafter, any participant that had an obligation to report information to the registered security-based swap data repository pursuant to §§ 242.900 through 242.909, but could not do so

SEFs, DCMs, reporting counterparties, and the public in the event that an SDR is unable to receive or hold in queue any SDR data reported during normal closing hours or special closing hours. Final § 49.28(c)(2) also requires an SDR to issue a notice to all SEFs, DCMs, reporting counterparties, and the public that the SDR has resumed normal operations immediately on reopening.²¹⁷ Lastly, final § 49.28(c)(2) requires a SEF, DCM, or reporting counterparty that was not able to report SDR data to an SDR because of the SDR's inability to receive and hold in queue any SDR data to immediately report the SDR data to the SDR after the SDR provides notice that it has resumed normal operations.

Though final § 49.28 expands the existing requirements of § 43.3(f) and (g) to apply to all SDR data, the Commission believes the regulation will not lead to significant changes in the operations of an SDR. The Commission understands that, under current practice, SDRs routinely receive and hold in queue all SDR data submitted during declared SDR closing hours, regardless of whether that data is being submitted pursuant to part 43. Additionally, because the requirements of final § 49.28 largely mirror the requirements for an SBSDR to receive and hold in queue information regarding security-based swaps, final § 49.28 will not impose additional requirements on an SDR that is also registered as an SBSDR. Therefore, the Commission believes that expanding the

because of the registered security-based swap data repository's inability to receive and hold in queue data, must promptly report the information to the registered security-based swap data repository.).

²¹⁷ Consistent with the current requirements under part 43, an SDR may issue such notices to its participants and the public by publicizing the notices that the SDR is unable to receive and hold in queue any SDR data and that the SDR has resumed normal operations in a conspicuous place on the SDR's website. *See* 77 FR at 1205, n. 208 (Jan. 9, 2012) (allowing SDRs to provide reasonable advance notice of its closing hours to participants and the public by providing notices directly to its participants or publicizing its closing hours in a conspicuous place on its website).

operating hours requirements to all SDR data would have little practical impact on current SDR operations.

The Commission requested comment on all aspects of proposed § 49.28. The Commission also invited specific comment on whether proposed § 49.28 provides SDRs sufficient flexibility to conduct necessary maintenance on their systems while facilitating the availability of SDR data for the Commission and the public.²¹⁸

One comment stated that business flow considerations should be taken into account in addition to sufficient flexibility for SDRs when considering operating hours. The comment suggested that proposed § 49.28(a)(1) be revised to employ the phrase “based on historical volume” in place of “in the reasonable estimation of the [SDR]” to describe the basis on which an SDR may determine when it typically receives the least amount of SDR data.²¹⁹

Another comment supported the proposed requirements in § 49.28(a)(2) for normal closing hours and special closing hours.²²⁰ This comment, however, also opposed the requirement in proposed § 49.28(b) that the adoption or amendment of special closing hours be subject to part 40 filing requirements. The comment asserted that “for the foreseeable future SDRs may need to frequently make use of special closing hours to accommodate changes to their systems” and that requiring an SDR to comply with part

²¹⁸ Proposal at 21065.

²¹⁹ ISDA/SIFMA at 42.

²²⁰ DDR at 6 (stating that these requirements “recognize the importance of system maintenance to the safe operation of an SDR’s systems”).

40 in each such instance would “impose an administrative burden that does not provide a corresponding benefit to impacted parties.”²²¹

This comment also opposed the requirement in proposed § 49.28(c)(2) that an SDR provide notice of its resumption of normal activities following a period of time during which it was unable to receive and hold in queue any SDR data. The comment asserted such notice is unnecessary when the downtime was planned and previously communicated to the SDR’s members and the public.²²²

In response to the business flow considerations comment, the Commission believes an SDR is best situated to make a judgement regarding when it receives the least amount of SDR data. The Commission agrees that historical volume is one factor SDRs may consider, but other considerations may factor into an SDR’s determination, so long as the estimation is reasonable.

With regard to the comment on proposed § 49.28(b), the Commission notes that the regulation, as adopted, does not impose requirements beyond what is already required under part 40. The Commission also notes that special closing hours are intended for unforeseeable, emergency situations, not planned system updates and maintenance, as described in the comment. For planned system updates or maintenance, under the normal closing hours provisions, an SDR could use a single part 40 filing for all planned updates or maintenance, to the extent that the SDR knows the schedule for such activities. The Commission would expect SDRs to plan anticipated system updates or maintenance, and

²²¹ *Id.* (recommending that, instead of a making a submission under part 40, an SDR should be required to notify the Commission along with market participants when declaring special closing hours).

²²² *Id.* (stating that in these situations, the impacted parties would be prepared for the resumption of normal operations and, therefore, a notification to that effect is unnecessary).

the related closing hours determinations, well ahead of time and for SDRs to follow the normal closing hours requirements, and their reasonable discretion on timing of such closing hours, when performing the system updates or maintenance.

With regard to the comment on proposed § 49.28(c)(2), the Commission believes that in circumstances where an SDR is unable to receive and hold in queue SDR data, keeping impacted parties informed and updated as to changes to the SDR's operations is critical to limiting potential negative impacts caused by the disruption. The Commission expects that instances where an SDR is unable to receive and hold in queue SDR will be the result of emergency situations that prompt special closing hours, as opposed to planned and scheduled SDR system outages. Such situations do not easily allow for accurate planning or estimation of when the SDR will resume normal operations. Further, even for planned outages, the scheduled outage may not finish on schedule, for myriad reasons, and it would be extremely disruptive for market participants to begin reporting SDR data to an SDR based on an outdated estimate of when the SDR would resume normal operations. Accordingly, the Commission believes an SDR should be required to inform market participants and the public that it has resumed operations following a period during which it was unable to receive and hold SDR data, regardless of whether the inability to receive and hold SDR was planned and announced ahead of time.

T. § 49.29 – Information Relating to Swap Data Repository Compliance

The Commission proposed to add a new § 49.29 to require an SDR to provide, upon the Commission's request, information necessary for the Commission to perform its

duties or to demonstrate the SDR's compliance with its obligations under the Act and Commission regulations.²²³

Proposed § 49.29(a) would require an SDR, upon request by the Commission, to file with the Commission information related to its business as an SDR and information the Commission determines to be necessary or appropriate for the Commission to perform its duties under the Act and Commission regulations thereunder. The SDR must provide the requested information in the form and manner and within the time specified by the Commission in its request.

Proposed § 49.29(b) would require an SDR, upon request by the Commission, to file with the Commission a written demonstration, containing supporting data, information, and documents, that it is in compliance with its obligations under the Act and the Commission's regulations. SDRs must provide the written demonstration in the form and manner and within the time specified by the Commission in its request. The Commission notes that the requests may include, but are not limited to, demonstrating compliance with the core principles applicable to SDRs under CEA section 21(f) and with any or all requirements in part 49 of the Commission's regulations.

The Commission requested comment on all aspects of proposed § 49.29 and received one comment in response. The comment generally supported proposed § 49.29,²²⁴ but also recommended that the Commission revise § 49.29(a) and 49.29(b) to include the phrase "as soon as practicable, given the nature of the request and the SDR's

²²³ Proposal at 21065-66.

²²⁴ DDR at 6 ("DDR supports the Commission's inclusion of a requirement to provide information on an as needed basis in place of a requirement for SDRs to file an annual Form SDR update in proposed section 49.29.")

circumstances” in order to recognize that SDRs will need a reasonable amount of time to comply with a request, and to encourage collaboration with the SDR in determining the appropriate form, manner and timing associated with the request.²²⁵ The comment also asserted that the proposed language of § 49.29 is vague and lacking detail, which would hinder an SDR in determining what is required to comply with the proposed regulation.²²⁶

The Commission has determined to adopt final § 49.29 as proposed. The Commission believes that § 49.29, as proposed and adopted, provides the Commission with the necessary flexibility to obtain information and documentation to determine whether an SDR is complying with applicable statutory and regulatory requirements, and to ensure that the Commission is able to fulfill its responsibilities in the oversight of SDRs. The Commission notes that requests under § 49.29 may be made for any Commission oversight purpose. For example, the Commission may request that an SDR provide information relating to its operations or its practices in connection with its compliance with particular regulatory duties and core principles, other conditions of its registration, or in connection with the Commission’s general oversight responsibilities under the Act. Final § 49.29 is also based on similar existing Commission requirements applicable to SEFs and DCMs, which have successfully assisted the Commission in obtaining needed information from these registered entities for many years without difficulty.²²⁷

The Commission also notes that, as discussed above, final § 49.29 facilitates the removal of the requirement in § 49.3(a)(5) that an SDR file an annual amendment to

²²⁵ DDR at 6-7.

²²⁶ DDR at 7.

²²⁷ See 17 CFR 37.5 and 38.5.

Form SDR, by allowing the Commission to request the relevant information as needed without requiring an SDR to file a full Form SDR update.

The Commission believes the comment's proposed revisions would unduly constrain the Commission's ability to obtain needed information in a timely manner and inappropriately restrict the Commission in fulfilling its oversight responsibilities. However, the Commission emphasizes that it intends to coordinate and collaborate with SDRs in formulating information requests pursuant to § 49.29 in order to ensure that such requests are reasonable, based on the facts and circumstances, as is the current practice between the Commission and the SDRs.

U. § 49.30 – Form and Manner of Reporting and Submitting Information to the Commission

The Commission proposed to add a new § 49.30 to place in one location the requirements governing the form and manner in which an SDR must provide information to the Commission.²²⁸ Final § 49.30, as adopted in this final rulemaking, requires SDRs to provide reports and other information to the Commission in “the form and manner” requested or directed by the Commission. Other regulations within part 49, such as final § 49.29, require an SDR to provide reports and certain other information to the Commission in the “form and manner” requested or directed by the Commission. The Commission has determined to adopt § 49.30 as proposed.

Final § 49.30 sets forth the broad parameters of the “form and manner” requirement. Under final § 49.30, unless otherwise instructed by the Commission, an SDR must submit SDR data reports and any other information required to be provided to

²²⁸ Proposal at 21066.

the Commission under part 49 within the time specified, using the format, coding structure, and electronic data transmission procedures approved in writing by the Commission.

The Commission requested comment on all aspects of proposed § 49.30. The Commission also invited specific comment on (i) whether the Commission should provide a single format or coding structure for each SDR to deliver reports and other information in a consistent manner; (ii) whether existing standards and formats are sufficient for providing the Commission with requested information; and (iii) whether the Commission should require specific electronic data transmission methods and/or protocols for SDRs to disseminate reports and other information to the Commission.²²⁹

One comment supported mandating messaging formats for transmission from an SDR to the Commission, but emphasized the Commission should not mandate the format for reporting from a reporting counterparty to an SDR.²³⁰

Another comment recommended that the Commission revise the text of proposed § 49.30 to include the phrase “as soon as practicable, given the nature of the request and the SDR’s circumstances” after “[u]nless otherwise instructed by the Commission.”²³¹ The comment asserted that the suggested revision recognizes an SDR will need a reasonable amount of time to implement technical changes necessary to comply with the request and will encourage collaboration between an SDR and Commission in determining the appropriate form, manner and timing associated with the request.²³²

²²⁹ *Id.*

²³⁰ ISDA/SIFMA at 42.

²³¹ DDR at 7.

²³² *Id.*

Similar to the comment on § 49.29, noted above, the comment also asserted that the proposed language of § 49.30 is vague and lacking detail as to data transmission requirements, which may be determined by the Commission at a later time.²³³

The Commission has determined to adopt § 49.30 as proposed. The Commission notes that final § 49.30 does not expand the existing substantive SDR informational requirements of part 49. Rather, the regulation authorizes the Commission to specify how information reported to an SDR under other requirements of part 49 should be formatted and delivered to the Commission.

Under final § 49.30, the format, coding structure, and electronic data transmission procedures an SDR uses for reports and submissions to the Commission pursuant to part 49 must be approved in writing by the Commission. These written specifications could include specifications similar to the “guidebooks” and other technical specifications currently published on the Commission’s website.²³⁴ Specifications may also be more limited in their application, potentially involving more specific or tailored requirements applicable to a report or information required by the Commission from a particular SDR.

The Commission believes the comment’s proposed revision may unduly constrain the Commission’s ability to adjust the process by which it obtains information. However, the Commission emphasizes that it intends to continue to coordinate and collaborate with SDRs in formulating information requests and specifications pursuant to § 49.30 in order

²³³ *Id.*

²³⁴ The Commission’s current published “guidebooks” include those published for reporting required by parts 15, 16, 17, 18, and 20 of the Commission’s regulations relating to ownership and control reports, large trader reports, and data reporting. These guidebooks are available on the Commission’s website at <http://www.cftc.gov/Forms/index.htm>.

to ensure that such requests are reasonable, based on the facts and circumstances, as is the current practice for the Commission and the SDRs.

V. § 49.31 – Delegation of Authority to the Director of the Division of Market Oversight Relating to Certain Part 49 Matters

The Commission proposed to add new § 49.31 to set forth and consolidate delegations of authority for part 49 of the Commission's regulations.²³⁵ A number of current and proposed provisions in part 49 require an SDR to perform various functions at the Commission's request or to provide information as prescribed or instructed by the Commission. The Commission proposed to adopt new § 49.31 by which the Commission would delegate its authority under most these of the part 49 provisions to the Director of DMO. The new delegations are intended to enhance the Commission's ability to respond to changes in the swaps market and technological developments, to quickly and efficiently access information and data from SDRs to meet the Commission's oversight obligations, and to more efficiently perform the Commission's regulatory functions.

More specifically, the Commission proposed to delegate its authority under the current and proposed part 49 regulations, as set forth below, to the Director of DMO, and to such members of the Commission's staff acting under his or her direction as he or she may see fit from time to time.

The Commission did not receive any comments on proposed § 49.31. The Commission continues to believe the proposed addition of § 49.31 and the proposed new delegations thereunder will improve the Commission's ability to respond to developments in the swaps market, to access information and data from SDRs, and to

²³⁵ Proposal at 21066-67.

fulfill the Commission's oversight obligations. Accordingly, the Commission is adopting § 49.31 as proposed.

Final § 49.31(a)(1) delegates to the Director of DMO the Commission's authority to request documentation related to an SDR equity interest transfer pursuant to § 49.5.²³⁶

Final § 49.31(a)(2) delegates to the Director of DMO the Commission's authority to instruct an SDR on transmitting open swaps reports to the Commission pursuant to § 49.9.²³⁷

Final § 49.31(a)(3) delegates to the Director of DMO the Commission's authority under § 49.10 to modify an SDR's required acceptance of all SDR data in a particular asset class for which the SDR accepts data.

Final § 49.31(a)(4) delegates to the Director of DMO the Commission's authority under § 49.12 to request records from an SDR.²³⁸

Final § 49.31(a)(5) delegates to the Director of DMO the Commission's authority under § 49.13 to require an SDR to monitor, screen, and analyze SDR data.²³⁹

Final § 49.31(a)(6) delegates to the Director of DMO the Commission's authority under § 49.16 to request that an SDR disclose aggregated SDR data in the form and manner prescribed by the Commission.

Final § 49.31(a)(7) delegates to the Director of DMO the Commission's authority with respect to all functions reserved to the Commission under § 49.17.²⁴⁰

²³⁶ See section II.C above.

²³⁷ See section II.E above.

²³⁸ See section II.H above.

²³⁹ See section II.I above.

²⁴⁰ This includes the authority to: prescribe the form of direct electronic access that an SDR must make available to the Commission; prescribe the format by which an SDR must maintain SDR data; request an

Final § 49.31(a)(8) delegates to the Director of DMO the Commission’s authority under § 49.18 to permit an SDR to accept alternative forms of confidentiality arrangements and the ability to direct an SDR to limit, suspend, or revoke access to swap data.²⁴¹

Final § 49.31(a)(9) delegates to the Director of DMO the authority under § 49.22 to grant an SDR an extension to the annual compliance report filing deadline.

Final § 49.31(a)(10) delegates to the Director of DMO the Commission’s authority under § 49.23 to require an SDR to exercise emergency authority and to request the documentation underlying an SDR’s decision to exercise its emergency authority.

Final § 49.31(a)(11) delegates to the Director of DMO the Commission’s authority under § 49.24 to determine an SDR to be a “critical SDR” and to request copies of BC-DR books and records, assessments, test results, plans, and reports.

Final § 49.31(a)(12) delegates to the Director of DMO the Commission’s authority under § 49.25, including the authority under § 49.25(b)(2) to deem other financial resources as acceptable; the authority under § 49.25(c) to review and require changes to an SDR’s computations of projected operating costs; the authority under § 49.25(f)(1) to request reports of financial resources; and the authority under § 49.25(f)(3) to extend the deadline by which an SDR must file a quarterly financial report.

Final § 49.31(a)(13) delegates to the Director of DMO the Commission’s authority under § 49.29 to request information from an SDR, and to require an SDR to provide a written demonstration of its compliance with the Act and Commission

SDR transmit SDR data to the Commission; and instruct an SDR on the transmission of SDR data to the Commission. *See* section II.L above.

²⁴¹ *See* section II.M above.

regulations, including the authority to specify the form, manner and time for the an SDR's provision of such information or written demonstration.²⁴²

Final § 49.31(a)(14) delegates to the Director of DMO the Commission's authority under § 49.30 to establish the format, coding structure, and electronic data transmission procedures for the submission of SDR data reports and any other information required by the Commission under part 49.²⁴³

III. Amendments to Part 45

A. § 45.1 – Definitions

The Commission is adding a definition for the term “open swap” to final § 45.1 that will define the term as an executed swap transaction that has not reached maturity or expiration, and has not been fully exercised, closed out, or terminated. The definition is identical to the definition for “open swap” added to final § 49.2 and is intended to create consistency between defined terms in parts 45 and 49 of the Commission's regulations. The term “open swap” is used in both final part 45 and part 49, particularly in regards to the requirements related to swap data verification, and consistency in the use of the term across both parts is crucial to ensure swap data verification functions properly. See section II.A.3 above for a more robust discussion of the definition of “open swap.”

B. § 45.2 – Swap Recordkeeping

As discussed above in Section II.H, as part of the amendments to § 49.12, the Commission proposed to consolidate the SDR recordkeeping requirements set forth in

²⁴² See section II.T above.

²⁴³ See section II.U above.

current § 45.2(f) and (g) into § 49.12. As discussed above, the Commission has determined to adopt the consolidation of § 45.2(f) and (g) into § 49.12, as proposed.

C. § 45.14 – Correcting Errors in Swap Data and Verification of Swap Data Accuracy

1. Background and Summary of the Final Rule

Pursuant to CEA section 2(a)(13)(G), all swaps must be reported to an SDR.²⁴⁴ The requirements for reporting swaps to an SDR, including requirements regarding swap data, are set forth in part 45 of the Commission’s regulations.²⁴⁵ If the information for a specific data element that is required to be reported is incorrect, or swap data was not reported as required, the SEF, DCM, DCO, or reporting counterparty that was required to report has not satisfied its obligations under the Act and the Commission’s regulations. There is no expiration for the requirement in the CEA and the Commission’s regulations to report swaps, and therefore, the requirement to report swap data remains in effect until satisfied. Accordingly, if swap data is not completely and accurately reported, the obligation to report the swap data remains in effect. The Commission also interprets the statutory requirement to report swaps to include a requirement to ensure that the reporting was performed completely and accurately. Further, as discussed in section II.G above, CEA section 21(c)(2) requires SDRs to confirm the accuracy of swap data with both counterparties. The Commission interprets this provision to require each counterparty to participate in ensuring the completeness and accuracy of swap data.

²⁴⁴ 7 U.S.C. 2(a)(13)(g).

²⁴⁵ *See generally* 17 CFR part 45.

Accordingly, in order to ensure the high quality of swap data, the Commission is adopting the proposed rules, with modifications, to require counterparties to take steps to ensure the accuracy and completeness of swap data reported to SDRs. In response to comments, the Commission is modifying final § 45.14 to make the error-correction and verification processes less burdensome and more flexible than the processes set forth in proposed § 45.14. To this end, final § 45.14(a)(1), as does current § 45.14, requires each SEF, DCM, and reporting counterparty to correct errors²⁴⁶ relating to swap data that it was required to report under part 45. Further, final § 45.14(b) requires reporting counterparties to verify the accuracy and completeness of the swap data for their open swaps. Final § 45.14(a)(2) requires each non-reporting counterparty to notify the reporting counterparty if it discovers an error.

Final § 45.14(a)(1) provides that any SEF, DCM, or reporting counterparty that by any means²⁴⁷ becomes aware of any error relating to swap data that it was required to

²⁴⁶ The Commission notes that current § 45.14 and proposed § 45.14 both use the phrases “errors and omissions” and “errors or omissions” in the correction requirements. *See generally* 17 CFR 45.14 and Proposal at 21098-99. The Commission is not including the word “omission” in final § 45.14 for simplicity purposes, but the Commission emphasizes that all omissions of required swap data, whether the omissions are the failure to report individual data elements for a swap or the failure to report all swap data for a swap, are errors that must be corrected under final § 45.14, just as the omissions must be corrected under current § 45.14. The Commission makes clear in final § 45.14(c), discussed below, that all omissions of required swap data are errors under final § 45.14.

²⁴⁷ The Commission notes that, as explained in the Proposal, “by any means” includes absolutely any means that alerts a SEF, DCM, or reporting counterparty to an error in the relevant swap data. Awareness or discovery of errors to be corrected would include, but would not be limited to, errors present in the swap data during the verification process specified in final § 45.14(b). This would include swap data for any open swaps that should be present in the swap data accessible through the applicable SDR verification mechanism that are omitted, or swap data for swaps that are no longer open that is still accessible through the verification mechanism, in addition to any other errors in the swap data accessible through the verification mechanism. The requirement would also include, but is not limited to, a SEF, DCM, or reporting counterparty being informed of errors by an outside source, such as a non-reporting counterparty under final § 45.14(a)(2), a SEF or DCM, or the Commission; errors discovered by a SEF, DCM, or reporting counterparty during a review of its own records or a voluntary review of swap data maintained by the SDR, including the discovery of any over-reporting or under-reporting of swap data; and the discovery of errors during the investigation of a separate issue. The Commission also expects that a SEF, DCM, or reporting counterparty that repeatedly discovers errors, especially repeated errors that follow a pattern, such

report under part 45 must correct the error. This correction requirement includes swap data for a swap that has terminated, matured, or otherwise is no longer considered to be an open swap. As noted, there is no expiration on the requirement to report swaps, and the requirement includes all swaps regardless of the state of the swap.

However, final § 45.14(a)(3) provides that the error correction requirement in final § 45.14(a)(1) does not apply to swaps for which the record retention periods under § 45.2 of this part have expired as of the time that the errors are discovered. The Commission determined that this exclusion is appropriate, as SEFs, DCMs, and reporting counterparties are not required to maintain records related to their swaps beyond the applicable retention periods in § 45.2. The exclusion therefore removes any potential confusion as to the correction of swaps beyond the retention period for these swaps. The Commission further notes that, with the adoption of the verification requirement, the Commission expects that errors will generally be discovered during the record retention period and the exclusion will not have a significant impact on the accuracy of swap data for future swaps. The Commission emphasizes that a SEF, DCM, or reporting counterparty may not in any way attempt to avoid “discovering” errors, including, but not limited to, by not performing thorough verification as required under final § 45.14(b).

Final § 45.14(a)(1)(i) provides that corrections must be made as soon as technologically practicable after discovery of an error. In all cases, errors must be corrected within seven business days after discovery. This deadline is necessary to ensure that errors are corrected in a timely manner. Final § 45.14(a)(1)(ii) provides that if an

as the reporting for a certain type of swap regularly resulting in errors, would evaluate its reporting systems to discover and correct any issues. *See* Proposal at 21069-70.

error will not be corrected in a timely fashion, the entity required to correct must notify the Director of DMO, or such other employee or employees of the Commission as the Director may designate from time to time, of the error. The notification must be made within twelve hours of when the determination is made that the error will not be corrected in time. This notification requirement is necessary to alert the Commission to problems with the quality of swap data. The notification must be made according to the instructions that will be specified by the Director of DMO, or such other employee or employees of the Commission as the Director may designate from time to time. The notification must generally include an initial assessment of the scope of the error or errors. If an initial remediation plan exists, the notification must include the initial remediation plan as well.²⁴⁸

Final § 45.14(b) requires each reporting counterparty to verify the accuracy and completeness of swap data for all of its open swaps. To perform verification, each reporting counterparty must utilize the mechanism adopted for verification under § 49.11 by each SDR the reporting counterparty uses for swap data reporting. Each reporting counterparty must use the relevant SDR mechanism to compare all swap data for each open swap that is maintained by the SDR for which it is the reporting counterparty with all swap data contained in the reporting counterparty's internal books and records to verify that there are no errors.

Final § 45.14(a)(1)(i) provides that any error that is discovered or could have been discovered during the performance of the verification process is considered discovered as

²⁴⁸ The Commission notes that, while final § 45.14(a)(1)(ii) only requires the entity to provide an initial remediation plan with the notice if such a plan exists, the Commission may also request additional information regarding any error(s) and the correction process at any time, including requesting an updated or fully-developed remediation plan.

of the moment the verification process began, and the error must be corrected accordingly. The Commission determined that this rule is necessary in order to ensure that reporting counterparties diligently perform verification.

Under final § 45.14(b)(1) and final § 49.11(b)(2), the verification requirement entails verifying that there are no errors for each data field for each open swap that the reporting counterparty was required to report under this part. The Commission determined that all swap data is relevant, and that none of the data that the Commission requires to be reported is unnecessary. All swap data fields are necessary to ensure the quality of all swap data available to the Commission, which the Commission uses to fully perform its regulatory mission. Accordingly, the verification requirement applies to all reporting counterparties, for all open swaps, and for each required data element. However, the Commission determined that it is only necessary for reporting counterparties to verify that there are no errors in the up-to-date swap data for each data field that is required to be reported under part 45 of this chapter, and it is unnecessary to require verification of data reporting messages. Accordingly, SDRs are only required to make available to reporting counterparties the most current swap data the SDR maintains using the verification mechanism, as discussed above in II.G, and reporting counterparties are only required to verify using the swap data available through this mechanism under final § 45.14(b).

Final § 45.14(b)(4) provides the minimum frequency at which a reporting counterparty must perform verification. A reporting counterparty that is an SD, MSP, or DCO, must perform verification once every thirty calendar days. All other reporting

counterparties must perform verification once every calendar quarter, provided that there are at least two calendar months between verifications.

The Commission determined that these time frames are sufficient to ensure the quality of swap data because SDs, MSPs, and DCOs serve as reporting counterparties for the overwhelming majority of swap data,²⁴⁹ meaning the overwhelming majority of open swaps would be verified on a monthly basis. The Commission also believes that non-SD/MSP/DCO reporting counterparties may include various entities that would bear a significant burden to verify swap data more often than quarterly, without a corresponding increase in data quality, because these entities are more likely to not have the same resources and experience to devote to verification as SD/MSP/DCO reporting counterparties and are only responsible for verifying a small proportion of swaps. The Commission further determined that final § 45.14(b)(4)(ii) requiring a duration of at least two calendar months between quarterly verifications for non-SD/MSP/DCO reporting counterparties is necessary to ensure that there is sufficient time between verifications to adequately ensure data quality.

Under final § 45.14(b), a reporting counterparty is not required to notify the relevant SDR regarding the result of a verification,²⁵⁰ as was required under proposed § 45.14(a).²⁵¹ The Commission determined that in order to ensure the quality of swap data, it is sufficient for the Commission to have the ability to confirm that verification was

²⁴⁹ See De Minimis Exception to the Swap Dealer Definition, 83 FR 56666, 56674 (Nov. 13, 2018) (stating that, in 2017, approximately 98 percent of swap transactions involved at least one registered SD).

²⁵⁰ However, as noted, under final § 45.14(a)(1)(i) and final § 45.14(b)(3), if the reporting counterparty discovered, or could have discovered, an error, the reporting counterparty is required to correct the error under final § 45.14(a)(1).

²⁵¹ See Proposal at 21099.

performed timely and properly, and to enforce the verification and error correction requirements. Therefore, the notification of the result of a verification is not necessary to ensure data quality or to fulfill the SDR's obligation to confirm the accuracy of data under CEA section 21. Accordingly, final § 45.14(b)(5) requires each reporting counterparty to keep a log of each verification that it performs. The log must include all errors discovered during the verification, as well as the corrections made under final § 45.14(a). Final § 45.14(b)(5) further clarifies that the requirement to keep a verification log is in addition to all other applicable recordkeeping requirements.

Non-reporting counterparties must also participate in ensuring that errors in swap data are corrected, although to a much smaller degree than reporting counterparties. Final § 45.14(a)(2) provides that a non-reporting counterparty that by any means discovers an error must notify the reporting counterparty of the error. The notification must be made as soon as technologically practicable after discovery, but not later than three business days following discovery of the error. The Commission notes that non-reporting counterparties are not required to verify swap data, and that the notification only needs to include the errors that the non-reporting counterparty discovers. To the extent that an error exists, the reporting counterparty will be required to correct the error under the requirements of final § 45.14(a)(1). The Commission determined that this notification requirement is necessary to ensure the quality of swap data. The Commission further determined that the three-business-day notification deadline is necessary to ensure that the non-reporting counterparty will notify the reporting counterparty of errors in a timely manner.

The Commission recognizes that a non-reporting counterparty may not know the identity of the reporting counterparty. Accordingly, § 45.14(a)(2) provides that when the non-reporting counterparty does not know the identity of the reporting counterparty, the non-reporting counterparty must notify the SEF or DCM where the swap was executed of the error in the same time frame for notifying the reporting counterparty. Such notification constitutes discovery of the error for the SEF or DCM for purpose of the SEF's or DCM's error correction requirement under final § 45.14(a).

Errors are described in final § 45.14(c), which provides that for the purposes of § 45.14, there is an error when swap data is not completely and accurately reported. Under final § 45.14(c)(1), errors include, but are not limited to, where swap data is reported to an SDR, or is maintained by an SDR, containing incorrect information (i.e. the swap data is present, but is incorrect); where some required swap data for a swap is reported to an SDR, or is maintained by an SDR, and other required swap data is omitted (i.e. some required swap data elements are blank); where no required swap data for a swap is reported to an SDR, or maintained by an SDR, at all (i.e. none of the swap data was reported as required and/or is missing from the SDR); and where swap data for swaps that are no longer open is maintained by an SDR as if the swaps are still open (i.e., swap data for swaps that are no longer open swaps is still available during the verification process).²⁵² In each of these circumstances, among others, swap data is not complete and accurate.

²⁵² The Commission notes that for each of these examples the entity responsible for the error may or may not be the entity that is required to correct the error. For example, if an SDR fails to record swap data that a reporting counterparty properly reported, it will still be the reporting counterparty that reports the error. The Commission emphasizes that the error correction process is one overarching requirement intended to result in accurate and complete swap data, regardless of the entities involved and their respective roles in any particular error correction. The SEFs, DCMs, and reporting counterparties have the responsibility to correct errors to the SDR once they are discovered, even if the SEF, DCM, or reporting counterparty is not at fault

Under § 45.14(c)(2), there is a presumption that, for the purposes of § 45.14, an error exists if the swap data that is maintained and disseminated by an SDR for a swap is not complete and accurate. The Commission determined that this presumption is necessary because the swap data maintained and disseminated by the SDRs is the same as the swap data available to the Commission and it is necessary to ensure the accuracy of that swap data for the Commission's regulatory purposes. Further, the presumption that the swap data maintained and disseminated by SDRs is the same as the swap data that was reported is implicit in the structure of swap data reporting under CEA section 21. Under CEA section 21(c)(4) and (7), an SDR is required to make the swap data it maintains available to the Commission and to certain other regulators. This requirement only serves its purpose if there is a presumption that the swap data maintained by the SDR is the same as the swap data that was reported to the SDR.

2. Comments on the Proposal

The Commission received a number of comments on the Proposal recommending limitations on the scope of the error correction rules. Comments recommended that the error correction rules should only apply to open swaps²⁵³ or that error correction rules should only apply in a limited fashion to swaps that are not open.²⁵⁴ These comments included recommendations to add a materiality threshold to the requirement to correct errors for swaps that are not open,²⁵⁵ to limit the requirement to correct errors to specific

for the error, which is an independent responsibility from the responsibility to successfully report or maintain swap data. The Commission would endeavor to hold the entity responsible for the reporting error accountable for the failure to correctly report or maintain the erroneous swap data, as applicable, regardless of which entity corrects the error under final § 45.14.

²⁵³ FIA at 9; Chatham at 4-5.

²⁵⁴ ISDA/SIFMA at 46; FIA at 9.

data elements, such as counterparty, price, and product;²⁵⁶ to limit the requirement to correct errors to errors that are discovered within the relevant record retention period for the swap;²⁵⁷ and to limit the requirement to correct errors to certain reporting counterparties.²⁵⁸

The Commission generally does not agree with the recommendations to exclude swaps that are no longer open from the full requirement to correct errors. There is no expiration in the CEA and the Commission's regulations on the requirement to report swap data. If there is an error in the reporting of swap data, the reporting counterparty has not fulfilled its requirement to report swap data. Further, the Commission utilizes data regarding swaps that are no longer open in a variety of ways, including in its market and economic analyses and in its enforcement and administration of the provisions of the CEA. It is therefore necessary to ensure that swap data for these swaps does not contain errors. Although the Commission is limiting the verification requirements to open swaps, the Commission is doing so because the verification of swaps that are no longer open is not as practicable as with open swaps, not because it is unnecessary to ensure that swap data from these swaps is free from error.

The Commission similarly declines to accept recommendations to limit the scope of the error correction rules by adopting a materiality requirement, or by limiting the application of the rules to only certain data elements. A reporting counterparty does not satisfy the requirement to report swap data until all required elements are accurately

²⁵⁵ CS at 3.

²⁵⁶ ISDA/SIFMA at 47; FIA at 9.

²⁵⁷ *Id.*

²⁵⁸ Joint Associations at 10-12.

reported. Further, all the required swap data elements are significant and required in order for the Commission to perform its regulatory functions. As a result, it is necessary for the Commission to ensure that the swap data for every data element is accurate.

However, the Commission agrees with the recommendation to exclude errors that are discovered after the expiration of the relevant recordkeeping requirement. The Commission recognizes that it would be impracticable for SEFs, DCMs, and reporting counterparties to be required to correct such errors, as these entities are not required to keep records of swap data beyond the applicable retention periods, and these records would be necessary to discover and correct errors. Accordingly, final § 45.14(a)(3) excludes such errors from the error correction requirement.

The Proposal provided that errors must be corrected as soon as technologically practicable after discovery, but no later than three business days after discovery.²⁵⁹ The Proposal, like final § 45.14(a)(1)(ii), also included a requirement to notify the Director of DMO if an error will not be timely corrected.²⁶⁰ The Commission received a number of comments on these rules. Comments generally recommended limiting the notification requirement by expanding the time frame to correct errors.²⁶¹ Comments also stated that three business days may not be sufficient time to identify the scope of the errors and develop a remediation plan.²⁶² Other comments recommended including a materiality threshold to the notification requirement,²⁶³ and adopting a principles-based rule that

²⁵⁹ See Proposal at 21099 (proposed § 45.14(b)(1)(i)).

²⁶⁰ See *id.* (proposed § 45.14(b)(1)(ii)).

²⁶¹ See, e.g., CEWG at 5.

²⁶² *Id.*; ISDA/SIFMA at 46.

²⁶³ *Id.* at 5-6.

would provide greater flexibility regarding the deadline for correcting errors.²⁶⁴ Other comments recommended not adopting the three-day deadline and the notification requirement,²⁶⁵ and instead replacing the notification requirement with a requirement to maintain a log of errors and remediation and only require notification for material errors and only after “due review of the facts and circumstances.”²⁶⁶

The Commission does not agree with the recommendations to replace or not adopt the notification requirement. The purpose of the notification requirement is to provide the Commission with the information that it needs to assess the accuracy of swap data. The notification requirement is not punitive. However, to make the notification more useful to the Commission, the Commission accepts the recommendation for a longer notification time frame and final § 45.14(a)(1)(ii) extends the notification deadline for correcting errors to seven business days. This longer time frame will provide the entity making the correction time to develop a more accurate understanding of the scope of the error. The Commission also agrees with the recommendations that it may not be feasible in every case to develop an initial remediation plan. Accordingly, final § 45.14(a)(1)(ii) provides that the notification needs to include the initial remediation plan, but only if one exists.²⁶⁷

The Commission received several comments recommending against requiring reporting counterparties to verify their swap data. Several commenters stated that improving SDR validations and the required data elements is a more efficient way to

²⁶⁴ ICE Clear at 3-4.

²⁶⁵ FIA at 8; Joint Associations at 13.

²⁶⁶ ISDA/SIFMA at 46.

²⁶⁷ The current common practice for market participants is to notify DMO after discovering reporting errors and to develop a remediation plan once a solution for the errors is formulated. The Commission expects that this practice will continue, but notes that final § 45.14(a)(1)(ii) does not require the notification of the failure to timely correct an error to include an initial remediation plan if one does not yet exist.

increase data accuracy than the proposed verification rules.²⁶⁸ Other commenters stated that verification is unnecessary because it would only marginally improve the data accuracy, and the burden on reporting counterparties outweighs that marginal gain.²⁶⁹ Other commenters stated that verification is unnecessary because the extent of errors in swap data is unknown.²⁷⁰ The Commission also received several comments generally supporting the proposed verification rule, asserting that it will help to ensure the high quality of swap data.²⁷¹

The Commission does not agree with the recommendations against requiring verification. As noted above, the Commission interprets the requirement to report data to an SDR in section 2(a)(13)(G) of the CEA to include a requirement that the reporting counterparty verifies that it accurately complied with the requirement. The Commission also interprets the requirement in section 21(c)(2) of the CEA for SDRs to confirm the accuracy of reported data with the counterparties to also include a requirement for counterparties to participate in ensuring the swap data accuracy, as not including counterparties in the confirmation process would render the statutory requirement useless. The purpose of the verification requirement is to ensure the quality of swap data, as required by the Act. Improving SDR validations and standardizing the data elements alone will not accomplish this, because a swap data error that is still a plausible value, such as reporting a notional value of \$1,000,000 instead of the correct notional value of

²⁶⁸ Chatham at 6; FIA at 7-8; ICE TV at 2-4; NGSa at 4; Joint Associations at 6-10; Eurex at 2; CEWG at 2-3.

²⁶⁹ FIA at 2-3.

²⁷⁰ Chatham at 5; GIFMA at 14.

²⁷¹ Joint SDR at 1; IATP at 1-7; LCH at 4; Markit at 2.

\$10,000,000, would not be caught by validations. Only a review of the swap data by the counterparty that is responsible for reporting the swap data would catch this error.

Additionally, the Commission has ample experience with the existence of swap data errors that would pass validations that, in the absence of an adequate verification requirement, persisted for long periods of time before being discovered and corrected. The Commission cannot know the precise nature and scope of existing errors that have not been corrected, which the verification requirement is designed to address, because the errors are not obvious from the swap data and will not be knowable to the Commission unless and until they are discovered and corrected. However, based on its experience, the Commission has determined that data quality can be further improved by requiring verification, and doing so is consistent with the requirements in the Act to report swap data and to verify the accuracy of the reported swap data.

The Commission also received comments regarding which counterparties should be required to perform verifications. Comments recommended excluding specific reporting counterparties, including end users with centralized trading structures,²⁷² non-bank SDs and reporting counterparties that are not SDs or MSPs,²⁷³ “unregistered end users,”²⁷⁴ reporting counterparties that report less than fifty-one swaps per month,²⁷⁵ and DCOs.²⁷⁶ The Commission rejects these recommendations to exempt any classes of reporting counterparties from verification. As noted, the requirement under section

²⁷² Prudential at 1-2.

²⁷³ NGSa at 1-4.

²⁷⁴ Freddie Mac at 2.

²⁷⁵ COPE at 3.

²⁷⁶ ICH at 3-4; ICE Clear at 2.

2(a)(13)(G) of the CEA to verify that swap data was reported correctly and the requirement under section 21(c)(2) to confirm the accuracy of swap data applies to all reporting counterparties, regardless of size, registration status, type, or how frequently the reporting counterparty reports swaps. All reporting counterparties are, by definition, also users of at least one SDR and are fully capable of communicating with an SDR to report swap data and correct swap data as required, whether directly or through the use of a third-party service provider, and are also therefore fully capable of verifying swap data through an SDR-provided mechanism, as required by final § 45.14(b). Further, all swap data for all swaps is significant, material, and important for the Commission's performance of its regulatory responsibilities. Verification is necessary to ensure that the swap data is free from errors, and every reporting counterparty performing verification as required is essential to rooting out swap data errors.

The Commission notes that although CEA section 21(c)(2) also includes non-reporting counterparties in the obligation to confirm the accuracy of reported swap data, the Commission determined that it is unnecessary to require non-reporting counterparties to perform verification. The Act places the burden of reporting on the reporting counterparty, and, as the only counterparty with swap data reporting responsibilities, the reporting counterparty is best positioned to perform verification. Commenters generally supported this determination.²⁷⁷ Comments stated that non-reporting counterparties will generally not be able to communicate with the relevant SDR(s), and that it will be very uncommon for there to be discrepancies between the data maintained by the reporting

²⁷⁷ Joint Associations at 13; ISDA/SIFMA at 39; Chatham at 1-2; COPE at 2; Joint SDR at 2; ICI at 10-11.

counterparty and the non-reporting counterparty, such that the reporting counterparty's verification is sufficient to ensure the quality of swap data.²⁷⁸

The Commission also received comments recommending changes to the proposed verification rule. The proposed rule required reporting counterparties that are SDs, MSPs, or DCOs to perform verification weekly and all other reporting counterparties to perform verification monthly.²⁷⁹ Instead, commenters recommended adopting a rule that would require verification to be performed less frequently. One suggested alternative was to adopt a more "principles based" approach, under which reporting counterparties would periodically perform verification less frequently than the proposed rule required.²⁸⁰ One comment recommended that verification should only be required to be performed monthly by all reporting counterparties.²⁸¹ Another comment recommended that verification should only be required to be performed monthly by reporting counterparties that are SDs, and quarterly by all other reporting counterparties.²⁸² The Commission accepts the recommendation that it is not necessary for verification to be performed with the frequency of the Proposal in order to meet the Commission's swap data quality needs. Accordingly, final § 45.14(b)(4) provides that a reporting counterparty that is an SD, MSP or DCO must perform verification once every thirty calendar days, and all other reporting counterparties must perform verification once every calendar quarter, provided that there are at least two calendar months between the quarterly verifications.

²⁷⁸ GIFMA at 4; Chatham at 1-2.

²⁷⁹ Proposal at 84 FR 21103 (May 13, 2019).

²⁸⁰ CS at 3; FIA at 7-8; ISDA/SIFMA at 45.

²⁸¹ GIFMA at 5.

²⁸² ISDA/SIFMA at 45.

The Commission also received comments on the scope of the data that must be verified. The verification rule in the Proposal would apply to all required swap data fields for all open swaps.²⁸³ The Commission received comments in support of limiting the verification requirement to only the required swap data elements and not to all swap data messages.²⁸⁴ The Commission also received a comment recommending that the verification rule should be limited to specific data elements, such as economic terms.²⁸⁵

The Commission declines to accept the recommendation to limit the scope of the verification requirement. Every data field that is required to be reported to the Commission is significant and necessary for the Commission's performance of its regulatory responsibilities, and to ensure the quality of all swap data.

One comment recommended limiting the verification requirement to once per swap, meaning that once swap data for a particular swap has been verified, the reporting counterparty no longer is required to verify the data for that swap.²⁸⁶ The Commission does not agree with this recommendation. Swap data is often updated frequently through continuation data reporting, including lifecycle event reporting and valuation reporting, and errors can occur throughout the life of the swap. Regular verification of open swaps is necessary to ensure that the swap data for each open swap remains free from errors throughout the life of the swap.

The Commission also received comments regarding the requirements on non-reporting counterparties to ensure that swap data is free from errors. Comments supported

²⁸³ Proposal at 21098, 21103.

²⁸⁴ GIFMA at 4-6; ISDA/SIFMA at 40-41; IATP at 5.

²⁸⁵ GIFMA at 10.

²⁸⁶ ISDA/SIFMA at 45.

excluding non-reporting counterparties from the verification requirements.²⁸⁷ Comments also supported not requiring non-reporting counterparties to submit error corrections to SDRs.²⁸⁸ The Commission received one comment recommending against requiring a non-reporting counterparty to notify the reporting counterparty when it discovers an error.²⁸⁹ The Commission does not agree with this recommendation. The confirmation requirement in CEA section 21(c)(2) requires both counterparties to confirm the accuracy of swap data. The Commission has excluded non-reporting counterparties from the requirement to verify swap data, but if a non-reporting counterparty discovers an error, it must take steps to correct the error by notify the reporting counterparty.

The Commission also received comments on the proposed § 45.14(b)(2), which provided, in part, that a reporting counterparty, SEF, or DCM that is notified of an error by a non-reporting counterparty is only required to correct the error if it agrees with the non-reporting counterparty that an error exists.²⁹⁰ Comments recommended against adopting the requirement that the non-reporting counterparty and the reporting counterparty, SEF, or DCM must agree to the error,²⁹¹ and comments requested that the requirement be clarified.²⁹²

The Commission is not adopting the requirement. Final § 45.14(a) explicitly applies to errors regardless of the how the SEF, DCM, or reporting counterparty becomes aware of the error. If the non-reporting counterparty notifies the reporting counterparty of

²⁸⁷ Joint Associations at 13; ISDA/SIFMA at 39; Chatham at 1-2; COPE at 2; Joint SDR at 2; ICI at 10-11.

²⁸⁸ COPE at 2.

²⁸⁹ Joint Associations at 13.

²⁹⁰ CEWG at 5, Joint Associations at 13.

²⁹¹ Joint Associations at 13.

²⁹² CEWG at 5.

the error, and the SEF, DCM, or reporting counterparty disagrees that there is an error, then the SEF, DCM, or reporting counterparty has not discovered an error and there is nothing to correct. The Commission does however note that a SEF, DCM, or reporting counterparty refusing to acknowledge an error that does exist, and therefore not correcting the error, would violate the Commission's regulations.

IV. Amendments to Part 43

A. § 43.3(e) – Correction of Errors

The Commission is adopting proposed § 43.3(e), with modifications. Final § 43.3(e) is identical in substance to § 45.14(a), described in III.B, above, except that § 45.14(a) provides the rules for correcting errors²⁹³ in swap data, while § 43.3(e) provides the rules for correcting errors in swap transaction and pricing data. As in § 45.14(a), § 43.3(e) generally requires each SEF, DCM, and reporting counterparty to correct any error it discovers, including for swaps that are no longer open. The Commission notes that, although market participants generally treat the current error correction requirements in § 43.3(e) and § 45.14 as if they are consistent, existing §§ 43.3(e) and 45.14 do not share consistent terminology and style. In addition to the substantive amendments and rules that are described above in section III.C, the Commission determined that the terminology and style of the error correction rules final §§ 45.14(a) and 43.3(e) should be consistent. This will add clarity to the error correction requirements, which may result in

²⁹³ The Commission notes that, as with final § 45.14, current § 43.3(e) and proposed § 43.3(e) both use the phrases “errors and omissions” and “errors or omissions” in the correction requirements. *See generally* 17 CFR 43.3(e) and Proposal at 84 FR 21097-98 (May 13, 2019). The Commission is not including the word “omission” in final § 43.3(e) for simplicity purposes, but the Commission emphasizes that all omissions of required swap transaction and pricing data, whether the omissions are the failure to report individual data elements for a swap or the failure to report all swap transaction and pricing data for a swap, are errors that must be corrected under final § 43.3(e), just as the omissions must be corrected under current § 43.3(e). The Commission makes clear in final § 43.3(e)(4) that all omissions of required swap data are errors under final § 43.3(e).

increased compliance. The Commission received numerous comments on the proposed amendments to the error correction rules. The Commission did not receive any comments that apply only to § 43.3(e), and is assessing all comments on error correction as if they apply equally to both §§ 43.3(e) and 45.14(a).²⁹⁴ The comments are described above in section III.C.

B. Removal of § 43.3(f) and (g)

Current § 43.3(f) and (g) set forth the operating hours requirements for SDRs.²⁹⁵ As discussed above, the Commission proposed to remove § 43.3(f) and (g) and to incorporate the provisions in new § 49.28.²⁹⁶ The Commission believes these provisions are better placed in part 49 of this chapter because they address SDR operations and, as amended, final § 49.28 applies to all SDR data and also incorporates provisions from SBSDR operating hours requirements. Accordingly, the Commission is adopting the proposed removal of § 43.3(f) and (g).

V. Amendments to Part 23

§ 23.204 – Reports to Swap Data Repositories, and § 23.205 – Real-Time Public Reporting

The Commission proposed additions to §§ 23.204 and 23.205 of the Commission’s regulations. The proposed additions would require each SD and MSP to establish, maintain, enforce, review, and update as needed written policies and procedures that are reasonably designed to ensure that the SD or MSP complies with all

²⁹⁴ See e.g. ISDA/SIFMA at 47 (“Refer to responses above for proposed § 45.14 which also apply similarly to § 43.3.”).

²⁹⁵ 17 CFR 43.3(f) and (g).

²⁹⁶ See section II.S above. Current § 43.3(f) contains the hours of operations requirements and current § 43.3(g) contains the requirements for SDRs to accept swap transaction and pricing data during closing hours.

obligations to report swap data to an SDR, consistent with parts 43 and 45. The Proposal noted that pursuant to other Commission regulations, SDs and MSPs are already expected to establish policies and procedures related to their swap market activities, including but not limited to, swaps reporting obligations.²⁹⁷ The Commission proposed to make this expectation explicit with respect to swaps reporting obligations. Commenters recommended that the Commission take a less prescriptive approach than the Proposal, and noted that it is unnecessary to add specificity for swaps reporting obligations for data reporting policies and procedures.²⁹⁸ The Commission notes that existing §§ 23.204 and 23.205 require SDs and MSPs to report all swap data and swap transaction and pricing data they are required to report under parts 43 and 45, and to have in place the electronic systems and procedures necessary to transmit electronically all such information and data.²⁹⁹ As noted above, these requirements are encompassed by the existing requirement that SDs and MSPs establish policies and procedures. Therefore, the Commission agrees with the comments and determines that it is unnecessary to make the proposed additions. Accordingly, the Commission does not adopt any amendments to § 23.204 or 23.205.

VI. Compliance Date

In the Proposal, the Commission stated that it intended to provide a unified compliance date for all three of the Roadmap rulemakings because all three must work in tandem to achieve the Commission's goals.³⁰⁰ The Commission also stated its intention to

²⁹⁷ See, e.g., 17 CFR 3.3(d)(1)(requiring a chief compliance officer to administer each of the registrant's policies and procedures relating to its business as an SD/MSP that are required to be established pursuant to the Act and the Commission's regulations); 17 CFR 3.2(c)(3)(ii) (requiring the National Futures Association to assess whether an entity's SD/MSP documentation demonstrates compliance with the Section 4s Implementing Regulation to which it pertains, which includes § 23.204 and § 23.205).

²⁹⁸ ISDA/SIFMA at 48; GFMA at 12.

²⁹⁹ 17 CFR 23.204, 23.205.

provide sufficient time for market participants to implement the changes in the rulemakings prior to the compliance date.³⁰¹ The Commission is adopting a unified compliance date for all three Roadmap rulemakings, May 25, 2022, unless otherwise noted.

The Commission received comments recommending a staggered implementation period instead of a unified one,³⁰² comments supporting an implementation period of one year,³⁰³ and a comment stating that one year is insufficient and recommending a compliance date that allows for a two-year implementation period.³⁰⁴ The Commission disagrees with comments recommending a staggered implementation period. The various rules in the Roadmap rulemakings, including verification and error correction, address different compliance areas and will achieve the overall goal of improved data quality only by working in tandem. The Commission agrees with the comment recommending an implementation period longer than a year, but the Commission disagrees that the implementation period should extend for two years. The amendments and additions in these final rules, as well as the related Roadmap rulemakings, are critical steps in implementing the requirements of the Act and ensuring high quality swap data. Accordingly, the Commission believes that an implementation period longer than eighteen months is unwarranted and to ensure that all market participants have sufficient

³⁰⁰ Proposal at 84 FR 21046 (May 13, 2019).

³⁰¹ *Id.*

³⁰² GFMA at 13; GFXD at 35.

³⁰³ ISDSA/SIFMA at 36; LCH at 2 and 4; ICE SDR at 2 and 5.

³⁰⁴ FIA at 10-11.

time to implement the changes required in these rulemakings, the Commission has determined to provide an eighteen month implementation period.

VII. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (“RFA”) requires federal agencies, in promulgating rules, to consider the impact of those rules on small entities.³⁰⁵ The Commission has previously established certain definitions of “small entities” to be used by the Commission in evaluating the impact of its rules on small entities in accordance with the RFA.³⁰⁶ The changes to parts 43, 45, and 49 adopted herein would have a direct effect on the operations of DCMs, DCOs, MSPs, reporting counterparties, SDs, SDRs, and SEFs. The Commission has previously certified that DCMs,³⁰⁷ DCOs,³⁰⁸ MSPs,³⁰⁹ SDs,³¹⁰ SDRs³¹¹, and SEFs³¹² are not small entities for purpose of the RFA.

Various changes to parts 43, 45, and 49 would have a direct impact on all reporting counterparties. These reporting counterparties may include SDs, MSPs, DCOs,

³⁰⁵ See 5 U.S.C. 601 et seq.

³⁰⁶ See Policy Statement and Establishment of “Small Entities” for purposes of the Regulatory Flexibility Act, 47 FR 18618 (Apr. 30, 1982).

³⁰⁷ See *id.*

³⁰⁸ See Derivatives Clearing Organization General Provisions and Core Principles, 76 FR 69334, 69428 (Nov. 8, 2011).

³⁰⁹ See Swap Dealer and Major Swap Participant Recordkeeping, Reporting, and Duties Rules, 77 FR 20128, 20194 (Apr. 3, 2012) (basing determination in part on minimum capital requirements).

³¹⁰ See Swap Trading Relationship Documentation Requirements for Swap Dealers and Major Swap Participants, 76 FR 6715 (Feb. 8, 2011).

³¹¹ See Swap Data Repositories; Proposed Rule, 75 FR 80898, 80926 (Dec. 23, 2010) (basing determination in part on the central role of SDRs in swaps reporting regime, and on the financial resource obligations imposed on SDRs).

³¹² Core Principles and Other Requirements for Swap Execution Facilities, 78 FR 33476, 33548 (June 4, 2013).

and non-SD/MSP/DCO counterparties. Regarding whether non-SD/MSP/DCO reporting counterparties are small entities for RFA purposes, the Commission notes that CEA section 2(e) prohibits a person from entering into a swap unless the person is an eligible contract participant (“ECP”), except for swaps executed on or pursuant to the rules of a DCM.³¹³ The Commission has previously certified that ECPs are not small entities for purposes of the RFA.³¹⁴

The Commission has analyzed swap data reported to each SDR³¹⁵ across all five asset classes to determine the number and identities of non-SD/MSP/DCOs that are reporting counterparties to swaps under the Commission’s jurisdiction. A recent Commission staff review of swap data, including swaps executed on or pursuant to the rules of a DCM, identified nearly 1,600 non-SD/MSP/DCO reporting counterparties. Based on its review of publicly available data, the Commission believes that the overwhelming majority of these non-SD/MSP/DCO reporting counterparties are either ECPs or do not meet the definition of “small entity” established in the RFA. Accordingly, the Commission does not believe the rules would affect a substantial number of small entities.

³¹³ See 7 U.S.C. 2(e).

³¹⁴ See *Opting Out of Segregation*, 66 FR 20740, 20743 (Apr. 25, 2001). The Commission also notes that this determination was based on the definition of ECP as provided in the Commodity Futures Modernization Act of 2000. The Dodd-Frank Act amended the definition of ECP as to the threshold for individuals to qualify as ECPs, changing “an individual who has total assets in an amount in excess of” to “an individual who has amounts invested on a discretionary basis, the aggregate of which is in excess of...” Therefore, the threshold for ECP status is currently higher than was in place when the Commission certified that ECPs are not small entities for RFA purposes, meaning that there are likely fewer entities that could qualify as ECPs than when the Commission first made the determination.

³¹⁵ The sample data sets varied across SDRs and asset classes based on relative trade volumes. The sample represents data available to the Commission for swaps executed over a period of one month. These sample data sets captured 2,551,907 FX swaps, 98,145 credit default swaps, 357,851 commodities swaps, 603,864 equities swaps, and 276,052 interest rate swaps.

Based on the above analysis, the Commission does not believe that this Final Rule will have a significant economic impact on a substantial number of small entities. Therefore, the Chairman, on behalf of the Commission, pursuant to 5 U.S.C. 605(b), hereby certifies that the Final Rule will not have a significant economic impact on a substantial number of small entities.

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (“PRA”)³¹⁶ imposes certain requirements on federal agencies, including the Commission, in connection with their conducting or sponsoring any collection of information, as defined by the PRA. The rule amendments adopted herein will result in the revision of three information collections, as discussed below. The Commission has previously received three control numbers from the Office of Management and Budget (“OMB”), one for each of the information collections impacted by this rulemaking : (1) OMB Control Number 3038-0096 (Swap Data Reporting and Recordkeeping Requirements), relating to part 45 swap data recordkeeping and reporting; (2) OMB Control Number 3038-0070 (Real-Time Public Reporting and Block Trades), relating to part 43 real-time swap transaction and pricing data; and (3) OMB Control Number 3038–0086 (Swap Data Repositories; Registration and Regulatory Requirements), relating to part 49 SDR regulations. Persons otherwise required to respond to an information collection are not required to respond to the collection of information unless a currently valid OMB control number is displayed.

The Commission did not receive any comments regarding its PRA burden analysis in the preamble to the Proposal. The Commission is revising the three

³¹⁶ See 44 U.S.C. 3501.

information collections to reflect the adoption of amendments to parts 43, 44, and 49, including changes to reflect adjustments that were made to the final rules in response to comments on the Proposal (not relating to the PRA).

1. Revisions to Collection 3038-0096 (relating to part 45 swap data recordkeeping and reporting)

i. § 45.2 – Swap Recordkeeping

The Commission is adopting changes that remove paragraphs (f) and (g) from § 45.2 and move the requirements of these paragraphs to amended § 49.12. Paragraphs (f) and (g) contain recordkeeping requirements specific to SDRs. Existing § 49.12 already incorporates the requirements of current § 45.2(f) and (g), and amended § 49.12 includes the same requirements, but deleting this requirement from § 45.2 and amending § 49.12 to clarify the requirements better organizes the regulations for SDRs by locating these SDR requirements in part 49 of the Commission's regulations. These amendments modify collection 3038-0096 because it removes these recordkeeping requirements from part 45 of the Commission's regulations. The Commission estimates that moving these requirements results in a reduction of 50 annual burden hours for each SDR in collection 3038-0096, for a total reduction of 150 annual burden hours across all three SDRs.

ii. § 45.14 – Verification of Swap Data Accuracy and Correcting Errors and Omissions in Swap Data

Final § 45.14(a) requires SEFs, DCMs, and reporting counterparties to correct errors and omissions in swap data previously reported to an SDR, or erroneously not reported to an SDR as required, as soon as technologically practicable after discovery of the errors or omissions, similar to existing § 45.14. Also, similar to existing § 45.14, final

§ 45.14(a) requires a non-reporting counterparty to report a discovered error or omission to the relevant SEF, DCM, or reporting counterparty as soon as technologically practicable after discovery of the error or omission.³¹⁷ These requirements, being effectively the same as the requirements in existing § 45.14, do not require amendments to the collection.

Final § 45.14(a)(1)(ii) includes the new requirement for SEFs, DCMs, and reporting counterparties to notify the Director of DMO when errors or omissions cannot be timely corrected and, in such case, to provide the Director of DMO with an initial assessment of the errors and omissions and an initial remediation plan if one exists. The notification shall be made in the form and manner, and according to the instructions, specified by the Director of DMO. This requirement constitutes a new collection of information. The Commission estimates that each SEF, DCM, and reporting counterparty will, on average need to provide notice to the Commission under final § 45.14(a)(1)(ii) once per year and that each instance will require 6 burden hours.³¹⁸ As there are approximately 1,729 SEFs, DCMs, and reporting counterparties that handle swaps, the Commission estimates an overall additional annual hours burden of 10,374, hours related to this requirement. This estimate is based on the Commission's experience with the

³¹⁷ The Commission notes that final § 45.14(a)(2) does add provisions that are not present in current § 45.14(a) to address the situation where a non-reporting counterparty does not know the identity of the reporting counterparty. The Commission does not believe that these additions have PRA implications, as the amount of information the non-reporting counterparty must provide and the frequency with which it must be provided remain the same and are de minimis. The only change is the requirement that non-reporting counterparties inform the SEF or DCM of errors, instead of the reporting counterparty. SEFs and DCMs have correction responsibilities under current § 45.14(b) and final § 45.14(a)(2) does not change these responsibilities.

³¹⁸ The Commission notes that, currently, it receives significantly less than one notice and initial assessment of reporting errors and omissions per SEF, DCM, or reporting counterparty per year, but estimates one notice annually, as the final requirements of § 45.14(a) may reveal more reporting errors to reporting counterparties that would then require corrections pursuant to final § 45.14(b).

current practices of SEFs, DCMs, and reporting counterparties regarding the reporting of errors and omissions, including the initial assessments and remediation plans that SEFs, DCMs, and reporting counterparties provide to the Commission under current practice. The Commission does not anticipate any one-time, initial burdens related to final § 45.14(b)(1)(ii).

Final § 45.14(b) requires all reporting counterparties to verify the accuracy and completeness of all swap data for all open swaps to which they are the reporting counterparty. Reporting counterparties comply with this provision by utilizing the relevant mechanism(s) to compare all swap data for each open swap for which it serves as the reporting counterparty maintained by the relevant swap data repository or repositories with all swap data contained in the reporting counterparty's internal books and records for each swap, to verify that there are no errors in the relevant swap data maintained by the swap data repository. Additionally, reporting counterparties must conform to each relevant swap data repository's verification policies and procedures created pursuant to final § 49.11. Final § 45.14(b)(5) requires each reporting counterparty to keep a log of each verification that it performs. The log must include all errors discovered during the verification and the corrections performed under § 45.14(a). Compliance with § 45.14(b) constitutes a collection of information not currently included in collection 3038-0096, and therefore requires a revision of that collection.

The Commission expects that compliance with § 45.14(b) will include: (1) a one-time hours burden to establish internal systems needed to perform their verification responsibilities, and (2) an ongoing hours burden to complete the verification process for each report provided by an SDR.

In order to comply with the relevant SDR verification policies and procedures as required to complete the verification process, the Commission believes that reporting counterparties will create their own verification systems or modify their existing connections to the SDRs. The Commission estimates that each reporting counterparty will incur an initial, one-time burden of 100 hours to build, test, and implement their verification systems based on SDR instructions. This burden may be reduced, if complying with SDR verification requirements only requires reporting counterparties to make small modifications to their existing SDR reporting systems, but the Commission is estimating the burden based on the creation of a new system. The Commission also estimates an ongoing annual burden of 10 hours per reporting counterparty to maintain their verification systems and to make any needed updates to verification systems to conform to any changes to SDR verification policies and procedures. As there are approximately 1,702 reporting counterparties based on data available to the Commission, the Commission estimates a one-time overall hours burden of 170,200 hours to build reporting counterparty verification systems and an ongoing annual overall hours burden of 17,020 hours to maintain the reporting counterparty verification systems.

Under final § 45.14(b)(4), SD, MSP, or DCO reporting counterparties must perform verification once every thirty days for each SDR where the reporting counterparty maintains any open swaps. Non-SD/MSP/DCO reporting counterparties must perform verification once every calendar quarter for each SDR where the reporting counterparty maintains any opens swaps. The Commission also expects, based on discussions with SDRs and reporting counterparties, that the verification process will be

largely automated for all parties involved. The Commission estimates an average burden of two hours per verification performed at each SDR per reporting counterparty.

As there are 117 SDs, MSPs, or DCOs that clear swaps registered with the Commission, the Commission estimates³¹⁹ that these 117 reporting counterparties will, at maximum, be required to verify data 13 times per year at a maximum of 3 SDRs, for an overall additional annual hours burden of 9,126 ongoing burden hours related to the verification process for these reporting counterparties. The Commission also estimates, based on data available to the Commission, that there are 1,585 non-SD/MSP/DCO reporting counterparties.³²⁰ The Commission estimates that these 1,585 reporting counterparties will be required to, at maximum, verify data 4 times per year at a maximum of 3 SDRs, for an overall additional annual hours burden of 38,040 burden hours related to verification process for these reporting counterparties.

The Commission therefore estimates that the overall burden for updated Information Collection 3038-0096 will be as follows:

Estimated number of respondents affected: 1,732 SEFs, DCMs, DCOs, SDRs, and reporting counterparties

Estimated annual number of responses per respondent: 257,595

Estimated total annual responses: 446,154,540

Estimated burden hours per response: 0.005

³¹⁹ Though there are 117 SDs, MSPs, or DCOs that clear swaps registered with the Commission that could be a reporting counterparty, not all potential reporting counterparties will perform data verification for any given verification cycle. Only those reporting counterparties with open swaps are required to perform data verification for that verification cycle.

³²⁰ Though there are 1,585 non-SD/MSP/DCOs that could be a reporting counterparty, not all potential reporting counterparties will perform data verification for any given verification cycle. Only those reporting counterparties with open swaps are required to perform data verification for that verification cycle.

Estimated total annual burden hours per respondent: 1,316

Estimated aggregate total burden hours for all respondents: 2,279,312

2. Revisions to Collection 3038-0070 (Real-Time Transaction Reporting)

§ 43.3 – Method and Timing for Real-Time Public Reporting

Final § 43.3(e) requires SEFs, DCMs, and reporting counterparties to correct errors and omissions in swap transaction and pricing data as soon as technologically practicable after discovery. Final § 43.3(e) also requires a non-reporting counterparty to report a discovered error or omission to the relevant SEF, DCM, or reporting counterparty as soon as technologically practicable after discovery of the error or omission. These final rules clarify the requirements to be consistent with the requirements in final § 45.14(b), but are also effectively the same as the requirements of existing § 43.3(e).³²¹ These requirements therefore do not require amendments to the collection.

Final § 43.3(e)(1)(ii) includes the new requirement for SEFs, DCMs, and reporting counterparties to notify the Director of DMO when errors or omissions cannot be timely corrected and, in such case, to provide the Director of DMO with an initial assessment of the errors and omissions and an initial remediation plan if one exists. This requirement constitutes a new collection of information. The Commission estimates that each SEF, DCM, and reporting counterparty will, on average need to provide notice to

³²¹ The Commission notes that final § 43.3(e)(2) does add provisions that are not present in current § 43.3(e)(1) to address the situation where a non-reporting counterparty does not know the identity of the reporting counterparty. The Commission does not believe that these additions have PRA implications, as the amount of information the non-reporting counterparty must provide and the frequency with which it must be provided remain the same as the current requirement and are de minimis. The only change is the requirement that non-reporting counterparties inform the SEF or DCM of errors, instead of the reporting counterparty. SEFs and DCMs have correction responsibilities under current § 43.3(e)(1) and final § 43.3(e)(2) does not change these responsibilities.

the Commission under final § 43.3(e)(1)(ii) once per year and that each instance will require 6 burden hours.³²² As there are approximately 1,729 SEFs, DCMs, and reporting counterparties that handle swaps, the Commission estimates an overall additional annual hours burden of 10,374 hours related to this requirement. This estimate is based on the Commission's experience with SEFs, DCMs, and reporting counterparties current practices regarding the reporting of errors and omissions, including the initial assessments that SEFs, DCMs, and reporting counterparties provide to the Commission under current practice. The Commission does not anticipate any one-time, initial burdens related to final § 43.3(e)(1)(ii).

The Commission is also removing paragraphs (f) and (g) from § 43.3 in order to move the requirements of these paragraphs to final § 49.28. Paragraphs (f) and (g) contain requirements for SDRs related to their operating hours. Final § 49.28 includes all of the current § 43.3(f) and (g) requirements, and this deletion and move is intended to better organize regulations for SDRs by locating as many SDR requirements as possible in part 49 of the Commission's regulations. Moving the requirements modifies collections 3038-0070 and 3038-0086 because it removes these recordkeeping requirements from part 43 of the Commission's regulations and adds them to part 49 of the Commission's regulations. The Commission estimates that the public notice requirements of existing § 43.3(f) and (g) require SDRs to issue three notices per year and spend five hours creating and disseminating each notice, for a total of 15 hours annually for each SDR, for a total of 45 annual burden hours being moved across all three

³²² The Commission notes that, currently, it receives significantly less than one notice and initial assessment of reporting errors and omissions per SEF, DCM, or reporting counterparty per year, but estimates one notice annually, as the final requirements of § 45.14(a) may reveal more reporting errors to reporting counterparties that would then require corrections pursuant to final § 43.3(e).

SDRs. As a result, the Commission estimates that moving these requirements will result in a total reduction of 45 annual burden hours for SDRs in collection 3038-0070.

The Commission therefore estimates that the total overall burdens for updated Information Collection 3038-0070 will be as follows:

Estimated number of respondents affected: 1,732 SEFs, DCMs, DCOs, SDRs, and reporting counterparties

Estimated annual number of responses per respondent: 21,247

Estimated total annual responses: 36,799,804

Estimated burden hours per response: 0.033

Estimated total annual burden hours per respondent: 701

Estimated aggregate total burden hours for all respondents: 1,214,392

3. Revisions to Collection 3038-0086 (relating to part 49 SDR regulations)³²³

The Commission is revising collection 3038-0086 to account for changes in certain SDR responsibilities under the final amendments to §§ 49.3, 49.5, 49.6, 49.9, 49.10, 49.11, and 49.26, and to the addition of §§ 49.28, 49.29, and 49.30. The estimated hours burdens and costs provided below are in addition to or subtracted from the existing hours burdens and costs in collection 3038-0086. The Commission also describes a number of changes to sections that do not have PRA implications below, for clarity.

i. § 49.3 – Procedures for Registration

The final amendments to § 49.3(a)(5) remove the requirement for each SDR to file an annual amendment to its Form SDR. This reduces the PRA burden for SDRs by

³²³ The Commission is also proposing to reduce the number of SDRs used in collection 3038-0086 to calculate burdens and costs from 4 to 3. There are currently three SDRs provisionally registered with the Commission. The Commission has not received any applications for SDR registration since 2012.

lowering the number of filings required for each SDR. The Commission estimates that the PRA burden for each SDR will remain at 15 hours per filing, but that the number of filings per year will be reduced from three to two, meaning that the final amendments to § 49.3(a)(5) reduces the burden on SDRs by 15 hours per year, for a total reduction of 45 annual burden hours across all three SDRs. This estimate is based on the Commission's experience with current SDR practices and the original supporting statement for collection 3038-0086.³²⁴ The Commission does not anticipate any one-time, initial burden changes related to final § 49.3(a)(5).

ii. § 49.5 – Equity Interest Transfers

The final amendments to § 49.5 require SDRs to file a notification with the Commission for each transaction involving the direct or indirect transfer of ten percent or more of the equity interest in the SDR within ten business days of the firm obligation to transfer the equity interest, to provide the Commission with supporting documentation for the transaction upon the Commission's request, and, within two business days of the completion of the equity interest transfer, to file a certification with the Commission that the SDR will meet all of its obligations under the Act and the Commission's regulations. The Commission estimates that the requirements of final § 49.5 create a burden of 15 hours per SDR for each qualifying equity interest transfer. Equity interest transfers for SDR are rare, so the Commission estimates that each SDR will provide information pursuant to final § 49.5 no more often than once every three years. As a result, the estimated average annual PRA burden related to final § 49.5 is 5 hours per SDR, for a

³²⁴ The original supporting statement for collection 3038-0086 estimated that the requirements of current § 49.3(a)(5) will necessitate three filings per year and 15 hours per filing.

total estimated ongoing annual burden of 15 hours total for all three SDRs. The Commission does not anticipate any one-time, initial burdens related to final § 49.5.

iii. § 49.6 – Request for Transfer of Registration

The final amendments to § 49.6 require an SDR seeking to transfer its registration to another legal entity due to a corporate change to file a request for approval with the Commission before the anticipated corporate change, including the specific documents and information listed in final § 49.6(c). The Commission estimates that the requirements of final § 49.6 create a burden of 15 hours per SDR for each transfer of registration. Transfers of registration for SDR are rare, so the Commission estimates that each SDR will provide information pursuant to final § 49.6 no more often than once every three years. As a result, the estimated average annual PRA burden related to final § 49.6 is 5 hours per SDR, for a total estimated ongoing annual burden of 15 hours total for all three SDRs. The Commission does not anticipate any one-time, initial burdens related to final § 49.6.

iv. § 49.9 – Open Swaps Reports Provided to the Commission

The final amendments to § 49.9 remove the current text of the section and replace it with requirements related to SDRs providing open swaps reports to the Commission, as instructed by the Commission. The instructions may include the method, timing, frequency, and format of the open swaps reports.

The Commission estimates that SDRs will incur a one-time initial burden of 250 hours per SDR to create or modify their systems to provide the open swaps reports to the Commission as instructed, for a total estimated hours burden of 750 hours. This burden may be mitigated by the fact that SDRs currently have systems in place to provide similar

information to the Commission, which may reduce the effort needed to create or modify SDRs' systems. The Commission additionally estimates 30 hours per SDR annually to perform any needed maintenance or adjustments to SDR systems.

The Commission expects that the process for providing the open swaps reports to the Commission will be largely automated and therefore estimates a burden on the SDRs of 2 hours per report. Though the Commission is not prescribing the frequency of the open swaps reports at this time, the Commission estimates, only for the purposes of this burden calculation, that the SDRs will provide the Commission with 365 open swaps reports per year, meaning that the estimated ongoing annual additional hours burden for generating the open swaps reports and providing the reports to the Commission is 730 hours per SDR.

The Commission therefore estimates a total ongoing additional annual hours burden related to final § 49.9 of 760 hours per SDR³²⁵, for a total estimated ongoing annual burden of 2,280 hours.

v. § 49.10 – Acceptance of Data

Final § 49.10(e) requires SDRs to accept, process, and disseminate corrections to SDR data errors and omissions. Final § 49.10(e) also requires SDRs to have policies and procedures in place to fulfill these requirements.

The Commission estimates that SDRs will incur a one-time initial burden of 100 hours per SDR to update and implement the systems, policies, and procedures necessary to fulfill their obligations under final § 49.10(e), for a total increased initial hours burden of 300 hours across all three SDRs. This burden may be mitigated by the fact that SDRs

³²⁵ 730 hours for the open swaps reports, and 30 hours to perform system maintenance.

already have systems, policies, and procedures in place to accomplish corrections to SDR data and that the SDRs currently make such corrections on a regular basis. The Commission additionally estimates 30 hours per SDR annually to perform any needed maintenance on correction systems and to update corrections policies and procedures as needed.

The Commission anticipates that the process for SDRs to perform corrections will be largely automated, as this is the case with current SDR corrections. Based on swap data available to the Commission and discussions with the SDRs, the Commission estimates that an SDR will perform an average of approximately 2,652,000 data corrections per year. Based on the same information, the Commission estimates that performing each correction will require 2 seconds from an SDR. As a result, the Commission estimates that the ongoing burden of performing the actual corrections to SDR data will be approximately 1,473 hours per SDR annually, on average. The Commission anticipates that once applicable, the verification rules may have the short term effect of increasing the number of corrections per year, as reporting counterparties discover errors in open swaps. The Commission further anticipates that the number of corrections will then decrease as the new validation rules and revised technical specifications improve the quality and accuracy of initial reporting, reducing the number of corrections.

The Commission therefore estimates a total additional annual hours burden related to final § 49.10(e) of 1,503 hours per SDR annually, for a total estimated ongoing burden of 4,509 hours.

The final amendments to § 49.11 modify the existing obligations on SDRs to confirm the accuracy and completeness of swap data. Final § 49.11(b) requires SDRs to provide a mechanism that allows each reporting counterparty that is a user of the swap data repository to access all swap data maintained by the swap data repository for each open swap for which the reporting counterparty is serving as the reporting counterparty. Final §§ 49.11(a) and 49.11(c)³²⁶ do not have PRA implications beyond the burdens discussed for paragraph (b) below.

While SDRs are already required to confirm the accuracy and completeness of swap data under current § 49.11, the requirements in final § 49.11 impose different burdens on the SDRs than the current regulation. The Commission estimates that each SDR will incur an initial, one-time burden of 300 hours to build, test, and implement updated verification systems, for a total of 900 initial burden hours across all SDRs. The Commission also estimates 30 hours per SDR annually for SDRs to maintain their verification systems and make any needed updates to verification policies and procedures required under final § 49.11(a) and (c).

Currently, SDRs are required to confirm swap data by contacting both counterparties for swaps that are not submitted by a SEF, DCM, DCO, or third-party service provider every time the SDR receives swap data related to the swap. For swaps reported by a SEF, DCM, DCO, or third-party service provider, the SDRs must currently assess the swap data to form a reasonable belief that the swap data is accurate every time

³²⁶ The Commission notes that requirements of part 40 of the Commission's regulations apply to SDRs amending their verification policies and procedures regardless of final § 49.11(c), because verification policies and procedures fall under the part 40 definition of a "rule." *See* 17 CFR 40.1(i) (definition of rule for the purposes of part 40). PRA implications for final § 49.11(c) are included under the existing approved PRA collection for part 40 of the Commission's regulations.

swap data is submitted for a swap. Under final § 49.11(b) and (c), SDRs are only required to provide the mechanism that will allow reporting counterparties to perform verification, as described above. The Commission also anticipates, based on discussions with SDRs and other market participants, that the verification process will be largely automated once the processes are in place, and will consist of an annual burden of 30 hours per SDR.

The Commission therefore estimates a total additional ongoing hours burden related to final § 49.11 of 60 hours per SDR annually³²⁷, for a total estimated ongoing burden of 180 hours.

vii. § 49.12 – Swap Data Repository Recordkeeping Requirements

The final amendments to § 49.12(a) and (b) incorporate existing SDR recordkeeping obligations from § 45.2(f) and (g) respectively, which are already applicable to SDRs under current § 49.12(a). As the recordkeeping requirements being moved from § 45.2 already apply to SDRs under current § 49.12, the Commission does not believe that amended § 49.12(a) or (b) requires any revision to hours burden related to § 49.12 already included in collection 3038-0086. Final amendments to § 49.12(c) require SDRs to maintain records of data validation errors and of data reporting errors, which include records of data subsequently corrected by a SEF, DCM, or reporting counterparty pursuant to parts 43, 45, and 46. Final § 49.12(c) does not, however, add any new requirement to part 49, as all of the records to be kept are already required to be kept by existing recordkeeping obligations as data submitted under part 43, 45, or 46. As a result, the Commission does not believe that final § 49.12(c) requires an additional PRA burden beyond that already included in collection 3038-0086.

³²⁷ 30 hours for system maintenance and 30 hours for the verification process.

viii. § 49.26 – Disclosure Requirements of Swap Data Repositories

Final new § 49.26(j) requires SDRs to provide their users and potential users with the SDR's policies and procedures on reporting SDR data, including SDR data validation procedures, swap data verification procedures, and SDR data correction procedures. The Commission anticipates that SDRs will incur a one-time burden of 20 burden hours to draft written documents to provide to their users and potential users, for a total increase of 60 one-time burden hours across SDRs. The Commission also anticipates that SDRs will update their policies once per year and incur a recurring burden of 10 hours annually from providing any updated reporting policies and procedures to their users and potential users, as needed, for a for a total estimated ongoing annual burden of 30 hours across the three SDRs.

ix. § 49.28 – Operating Hours of Swap Data Repositories

Final new § 49.28 incorporates existing provisions of § 43.3(f) and (g) with respect to hours of operation with minor changes and clarifications. Final § 49.28 extends the provisions of current § 43.3(f) and (g) to include all SDR data and clarifies the different treatment of regular closing hours and special closing hours. SDRs currently have closing hours systems, policies, and procedures that apply to all SDR functions and all SDR data under the current requirements. The final requirements related to declaring regular closing hours and special closing hours also effectively follow current requirements, without necessitating changes to current SDR systems or practices. The Commission does, however, anticipate that the SDRs will need to issue notices to the public related to closing hours under final § 49.28(a) and (c). The Commission estimates that each SDR will issue three notices per year and spend five hours creating and

disseminating each notice, for a total of 15 hours per year preparing and providing public notices per SDR, for a for a total estimated ongoing annual burden of 45 hours per year across all SDRs.

x. § 49.29 – Information Relating to Swap Data Repository Compliance

Final new § 49.29 requires each SDR to provide, upon request by the Commission, information relating to its business as an SDR, and such other information that the Commission needs to perform its regulatory duties. This provision also requires each SDR, upon request by the Commission, to provide a written demonstration of compliance with the SDR core principles and other regulatory obligations. The PRA burden associated with such responses is dependent on the number of requests made and the complexity of such requests. Based on its experience with requests to DCMs, the Commission estimates that each SDR will likely receive on average between three and five requests per year, considering that an SDR is a newer type of registered entity than a DCM. The Commission anticipates that the number of requests will decrease over time. The Commission also anticipates that each such request will require the SDR to spend 20 hours to gather information and formulate a response, and bases its estimate of burden hours assuming five such requests per year, for a total additional hours burden of 100 hours per SDR per year, for a total estimated ongoing annual burden of 300 hours per year across all SDRs. The Commission does not anticipate that SDRs will incur any one-time hours burden or costs in complying with this regulation.

The Commission therefore estimates that the total overall burdens for updated Information Collection 3038-0086 will be as follows:

Estimated number of respondents affected: 3 SDRs

Estimated annual number of responses per respondent: 154,327,169

Estimated total annual responses: 462,981,508

Estimated burden hours per response: 0.0006

Estimated total annual burden hours per respondent: 99,197

Estimated aggregate total burden hours for all respondents: 297,591

C. Cost-Benefit Considerations

1. Introduction

Section 15(a)³²⁸ of the CEA requires the Commission to consider the costs and benefits of its actions before promulgating a regulation under the CEA or issuing certain orders. Section 15(a) further specifies that the costs and benefits shall be evaluated in light of five broad areas of market and public concern: (1) Protection of market participants and the public; (2) efficiency, competitiveness, and financial integrity of markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations. The Commission considers the costs and benefits resulting from its discretionary determinations with respect to the section 15(a) factors.

In this release, the Commission is revising existing regulations in parts 43, 45, and 49. The Commission is also issuing new regulations in part 49. Together, these revisions and additions are intended to address swap data verification and to improve the quality of data reporting generally. Some of the amendments are substantive. A number of

³²⁸ 7 U.S.C. 19(a).

amendments, however, are non-substantive or technical, and therefore will not have associated cost-benefits implications.³²⁹

In the sections that follow, the Commission discusses the costs and benefits associated with the final rule and reasonable alternatives are considered. Comments addressing the associated costs and benefits of the rule are addressed in the appropriate sections. Wherever possible, the Commission has considered the costs and benefits of the final rule in quantitative terms.

Given that many aspects of the Proposal did not dictate the means by which SDRs or reporting counterparties must comply, the Commission recognized that the quantitative impact of the proposed rule would vary by each entity because the affected market participants vary in technological and staffing structure and resources. The Commission also noted in the Proposal that because of differences in the sizes of SDR operations, many of the costs associated with the proposed rulemaking were not readily quantifiable without relying on and potentially divulging confidential information. The Commission believed that many of the proposed rules would have affected a wide variety of proprietary reporting systems developed by SDRs and reporting counterparties.

With these understandings, the Commission asked the public to provide information regarding quantitative costs and benefits related to complying with the Commission's proposed rules. The Commission received comments from market participants, such as SDRs and reporting counterparties, and other interested public commenters. Some of the commenters asserted that some of the proposed rules would

³²⁹ The Commission believes there are no cost-benefit implications for Final §§ 49.2, 49.15, 49.16, 49.18, 49.20, 49.24, and 49.31.

generate significant or burdensome costs, but no commenters quantified such costs. Nor did commenters, in particular the limited universe of market participants required to report and collect data, quantify costs they currently expend to comply with current swap data reporting requirements.³³⁰ If the Commission possessed information regarding current and actual costs, the Commission could consider current monetary outlays against the anticipated quantitative costs and benefits needed to comply with the rules in this final rulemaking.

As a result, the Commission has considered the costs and benefits of the rules in this final rulemaking and has provided broad ranges of estimates of the costs associated with implementing some of the rule changes. It is reasonable to use ranges because the final rules are flexible, which means SDRs and reporting counterparties will take different approaches to comply with the final rules. In addition, ranges account for variation in technological and staffing structure, resources, and operational sophistication of affected market participants.

In several of the sections below, the Commission has estimated the number of hours it believes market participants will likely expend to comply with the final rules. These cost estimates focus on the technical aspects of the final rules and are separate from those listed in the Paperwork Reduction Act discussion above in section VII.B. The Commission has made reasonable estimations based, in part, on its familiarity with the work of SDRs and reporting counterparties, and its own experience in building systems to collect swap data. To monetize the hours, the Commission multiplies the number of hours

³³⁰ See section I above for discussion of the history behind swaps data reporting required by CEA section 21.

and an hourly wage estimate. As most of the final rules may require technological changes, the Commission uses hourly wages for developers. The Commission estimated the hourly wages market participants will likely pay software developers to implement changes to be between \$48 and \$101 per hour.³³¹ The Commission recognizes that for some services—like compliance review, and legal drafting and review—the wage rates may be more or less than the \$48 to \$101 range for developers. The Commission believes, however, that the estimated cost ranges, discussed below, will cover most budgets for tasks, regardless of the exact nature of the tasks needed to comply with the final rules.

2. Background

Since their promulgation in 2011, the provisions in part 49 have required SDRs to, among other things, accept and confirm data reported to SDRs. The Commission believes SDRs' collection and maintenance of swap data as required in parts 45 and 49 has allowed the Commission to better monitor the overall swaps market and individual market participants. In contrast, before the adoption of the Dodd-Frank Act and its implementing regulations, the swaps market generally, and transactions and positions of individual market participants in particular, were not transparent to regulators or the public.

³³¹ Hourly wage rates were based on the Software Developers and Programmers category of the May 2019 National Occupational Employment and Wage Estimates Report produced by the U.S. Bureau of Labor Statistics, available at https://www.bls.gov/oes/current/oes_nat.htm. The 25th percentile was used for the low range and the 90th percentile was used for the upper range (\$36.89 and \$78.06, respectively). Each number was multiplied by an adjustment factor of 1.3 for overhead and benefits (rounded to the nearest whole dollar) which is in line with adjustment factors the Commission has used for similar purposes in other final rules adopted under the Dodd-Frank Act. *See, e.g.*, 77 FR at 2173 (Jan. 13, 2012) (using an adjustment factor of 1.3 for overhead and other benefits). These estimates are intended to capture and reflect U.S. developer hourly rates market participants are likely to pay when complying with the proposed changes. The Commission recognizes that individual entities may, based on their circumstances, incur costs substantially above or below the estimated averages.

Under the current data reporting requirements, the Commission has had the opportunity to work directly with SDR data reported to, and held by, SDRs. Based on its experience working with SDR data, along with extensive feedback and comments received from market participants, the Commission believes that improving SDR data quality will help enhance the data's usefulness. In this final rulemaking, the Commission has focused on the operation and implementation of CEA section 21,³³² which contains requirements related to SDRs, including the requirement to confirm data.³³³ The Commission also is modifying a number of other regulations for clarity and consistency and to enhance the Commission's ability to monitor and supervise the swaps market.

Prior to discussing the rule changes, the Commission describes below the current environment that will be impacted by these changes. Three SDRs are currently provisionally registered with the Commission: CME, DDR, and ICE. Each SDR has unique characteristics and structures that determine how the rule changes will impact its operations. For example, SDRs affiliated with DCOs tend to receive a large proportion of their SDR data from swaps cleared through those affiliated DCOs, while independent SDRs tend to receive SDR data from a wider range of market participants.

The current reporting environment also involves third-party service providers. These entities assist market participants with fulfilling the applicable data reporting requirements, though the reporting requirements do not apply to third-party service providers directly.

³³² See 7 U.S.C. 24a.

³³³ See 7 U.S.C. 24a(c)(2).

Current regulations have not resulted in data quality that meets the Commission's expectations. For example, current regulations do not include a specific affirmative obligation for swap counterparties to review reported swap data for errors.³³⁴ Swap counterparties are required to correct data errors only if inaccurate data is discovered, and therefore data quality is partially dependent on processes that are not mandated by the Commission. The result has been that market participants too often have not reviewed data and corrected any errors. It is not uncommon for Commission staff to find discrepancies between open swaps information available to the Commission and reported data for the same swaps. For example, in processing open swaps reports to generate the CFTC's Weekly Swaps Report,³³⁵ Commission staff has observed instances where the notional amount of a swap differs from the swap data reported to an SDR for the same swap. Other common examples of discrepancies include incorrect references to an underlying currency, such as a notional value incorrectly linked to U.S. dollars instead of Japanese Yen. These examples, among others, strongly suggest a need for better verification of reported swap data.

Weaknesses in SDR policies and procedures also have created additional challenges for swap data accuracy. As discussed above, certain SDR policies and procedures for swap data have been based on negative affirmation, i.e., predicated on the assumption that reported swap data is accurate and confirmed if a reporting counterparty does not inform the SDR of errors, or otherwise make subsequent modifications to the swap data, within a certain period of time.³³⁶ As reporting counterparties are typically not

³³⁴ See 17 CFR 43.3(e); 17 CFR 45.14.

³³⁵ See CFTC's Weekly Swaps Report, *available at* <https://www.cftc.gov/MarketReports/SwapsReports/index.htm>.

reviewing their reported swap data maintained by SDRs, the data is effectively assumed to be accurate, and errors are not sufficiently discovered and corrected. The volume of inaccurate swap data that is discovered by market participants or the Commission shows that current regulations are ineffective in producing the quality of swap data the Commission expects and needs to fulfill its regulatory responsibilities.

The Commission believes that amendments and additions to certain regulations, particularly in parts 43, 45, and 49, will improve data accuracy and completeness. The regulatory changes in this final rulemaking aim to meet this objective.

This final rulemaking also includes amendments to part 49 to improve and streamline the Commission's oversight of SDRs. These amendments include new provisions allowing the Commission to request demonstrations of compliance and other information from SDRs.

For each amendment discussed below, the Commission summarizes the changes,³³⁷ and identifies and discusses the costs and benefits attributable to the changes. The Commission then considers reasonable alternatives to the rules. Finally, the Commission considers the costs and benefits of all of the rules jointly in light of the five public interest considerations in CEA section 15(a).

The Commission notes that this consideration of costs and benefits is based on the understanding that the swaps market functions internationally. Many swaps transactions involving U.S. firms occur across international borders and some Commission registrants

³³⁶ See 17 CFR 49.11(b)(1)(ii) and (b)(2)(ii).

³³⁷ As described throughout this release, the Commission is also proposing a number of non-substantive, conforming rule amendments in this release, such as renumbering certain provisions and modifying the wording of existing provisions. Non-substantive amendments of this nature may be described in the cost-benefit portion of this release, but the Commission will note that there are no costs or benefits to consider.

are organized outside of the United States, with leading industry members often conducting operations both within and outside the United States, and with market participants commonly following substantially similar business practices wherever located. Where the Commission does not specifically refer to matters of location, the discussion of costs and benefits refers to the rules' effects on all swaps activity, whether by virtue of the activity's physical location in the United States or by virtue of the activity's connection with, or effect on, U.S. commerce under CEA section 2(i).³³⁸ The Commission contemplated this cross-border perspective in 2011 when it adopted § 49.7, which applies to trade repositories located in foreign jurisdictions.³³⁹

3. Baseline

There are separate baselines for the costs and benefits that arise from the finalized regulations in this release. The baseline for final § 43.3(e) is existing § 43.3(e). The baseline for final § 45.14 is existing § 45.14. The baseline for amendments to current part 49 regulations is the existing part 49 and current practices. For final § 49.12, the baseline is existing § 49.12, as well as § 45.2(f) and (g), which will be replaced by final § 49.12. For final § 49.17, the baseline is current §§ 49.17 and 45.13.

The Commission is also finalizing four new regulations: §§ 49.28, 49.29, 49.30, and 49.31. For final § 49.28 the baseline is existing § 43.3(f) and (g), because the

³³⁸ See 7 U.S.C. 2(i). CEA section 2(i) limits the applicability of the CEA provisions enacted by the Dodd-Frank Act, and Commission regulations promulgated under those provisions, to activities within the U.S., unless the activities have a direct and significant connection with activities in, or effect on, commerce of the U.S.; or contravene such rules or regulations as the Commission may prescribe or promulgate as are necessary or appropriate to prevent the evasion of any provision of the CEA enacted by the Dodd-Frank Act. The application of section 2(i)(1) to § 45.2(a), to the extent it duplicates § 23.201, with respect to SDs/MSPs and non-SD/MSP counterparties is discussed in the Commission's final rule, "Cross-Border Application of the Registration Thresholds and Certain Requirements Applicable to Swap Dealers and Major Swap Participants," 85 FR 56924, 56965-66 (Sept. 14, 2020).

³³⁹ See 17 CFR 49.7.

requirements in § 43.3(f) and (g) are being moved to final § 49.28. For final §§ 49.29 and 49.30, the baselines are current practices. Final § 49.31 concerns internal Commission practices and is not subject to consideration of costs and benefits.

4. Costs and Benefits of Amendments to Part 49

i. § 49.2 – Definitions

The Commission is adopting editorial and conforming amendments to certain definitions in final § 49.2. The Commission considers the definitions to have no cost-benefit implications on their own. In addition, the Commission believes the amendments to § 49.2 are non-substantive changes that will not impact existing obligations on SDRs or reporting counterparties, and, therefore, the amended definitions have no cost-benefit implications.

ii. § 49.3 – Procedures for Registration

The Commission is adopting the amendments to § 49.3(a)(5) and the conforming amendments to Form SDR and § 49.22(f)(2) as proposed in part and is not adopting the proposed amendments in part. The Commission is removing the current requirements for SDRs to file an annual amendment to Form SDR but declines to amend the requirement to update the Form SDR after the Commission grants an SDR registration under § 49.3(a).³⁴⁰ The annual Form SDR filing requirement is unnecessary for the Commission to successfully perform its regulatory functions.

The amendments to § 49.3(a)(5) benefit SDRs by reducing the amount of information that SDRs must provide to the Commission on an annual basis and the frequency with which SDRs must deliver information updating Form SDR.

³⁴⁰ See 17 CFR 49.3(a)(5).

By removing the requirement to file an annual update to Form SDR in current § 49.3(a)(5), SDRs will benefit from expending fewer resources to provide information to the Commission. The Commission believes that the eliminated requirement is burdensome and unnecessary, as the SDRs already submit, and will continue to submit, the same updated information in the required periodic Form SDR amendments. The Commission believes that costs of eliminating the annual Form SDR update requirement, in terms of impairing the Commission's access to information, will be minimal. The costs related to the changes to § 49.3(a)(5) will largely be associated with any needed adjustments to SDR policies and procedures related to reducing the number of updates to Form SDR.

Notwithstanding the anticipated incremental costs, the Commission believes this change to § 49.3(a)(5) is warranted in light of the anticipated benefits.

iii. § 49.5 – Equity Interest Transfers

The Commission is finalizing various amendments to § 49.5 to simplify and streamline the requirements for when an SDR enters into an agreement involving the transfer of an equity interest of ten percent or more in the SDR. The Commission also is extending the notice filing deadline.

Current § 49.5 requires three actions by an SDR as part of an equity interest transfer: (1) issue a notice to the Commission within one business day of committing to the transfer; (2) submit specific documents to the Commission, as well as update its Form SDR; and (3) certify compliance with CEA section 21 and Commission regulations adopted thereunder within two business days of the transfer of equity.

Final § 49.5 is less demanding than current § 49.5. Final § 49.5 ensures that the Commission is apprised of a change that might impact SDR operations and provided with information to aid any evaluation processes the Commission undertakes. Yet, final § 49.5 gives an SDR more time in which to notify the Commission of an equity interest transfer and eliminates unnecessary filings. Final § 49.5(a) requires an SDR: (i) to notify the Commission of each transaction involving the direct or indirect transfer of ten percent or more of the equity interest in the SDR within ten business days of “a firm obligation to transfer”; and (ii) to provide the Commission with supporting documentation upon request. Final § 49.5(b) requires that the notice in § 49.5(a) be filed electronically with the Secretary of the Commission and DMO at the earliest possible time, but in no event later than ten business days following the date upon which a firm obligation is made for the equity interest transfer. Final § 49.5(c) requires that upon the transfer, whether directly or indirectly, the SDR shall file electronically with the Secretary of the Commission and DMO a certification that the SDR meets all of the requirements of CEA section 21 and the Commission regulations thereunder, no later than two business days following the date on which the equity interest was acquired.

The Commission requested the public to comment on the cost-benefit considerations related to proposed § 49.5, but the Commission did not receive any comments. Consequently, the Commission continues to believe that the amendments will benefit SDRs by lowering the burdens related to notifying the Commission of equity interest transfers and by extending the time SDRs have to file the notice with the Commission. The amendments benefit SDRs by reducing the burden to notify the Secretary of the Commission and DMO of transfers by extending the available time from

one business day to ten business days. More time will give SDRs greater latitude in managing how they use their time and allocate resources to file the required notices and certification.

In addition, SDRs will no longer have the obligations in current § 49.5(a) to update Form SDR and in current § 49.5(b) to provide specifically-identified documents to the Commission with the equity interest transfer notification. Final § 49.5 instead states that the Commission may request supporting documentation for the transaction. Even if the request causes the SDR to submit more documents than the ones listed in the current regulation or Form SDR, the requested documents will be tailored to the Commission's evaluation of the equity transfer. SDRs will benefit from not expending resources and time to collect, file, record, and track documents listed in current § 49.5 that may have no value to the Commission's review. The Commission's ability to request supporting documentation mitigates costs in terms of detrimental effects that could arise from less information about the transfer being available to the Commission.

Additional costs to SDRs, if any, will stem from the inclusion of "indirect transfers" of equity interest in § 49.5. This could increase the costs to SDRs, if the inclusion of indirect transfers results in more equity interest transfers being subject to the regulation and the associated need to provide information to the Commission. The inclusion of indirect transfers benefits the Commission by providing greater insight into equity interest transfers that could affect the business of an SDR, even though the equity interest transfer does not involve the SDR directly. As equity interest transfers are rare occurrences and the Commission does not anticipate that including indirect transfers will

result in substantially more equity interest transfers, the Commission expects the potential additional costs connected to final § 49.5 to be small.

Notwithstanding the anticipated incremental costs, the Commission believes the changes to § 49.5 are warranted in light of the anticipated benefits.

iv. § 49.6 – Request for Transfer of Registration

The Commission is finalizing § 49.6 as proposed. Final § 49.6(a) requires an SDR seeking to transfer its SDR registration following a corporate change to file a request for approval to transfer the registration with the Secretary of the Commission in the form and manner specified by the Commission. Final § 49.6(b) specifies that an SDR file a request for transfer of registration as soon as practicable before the anticipated corporate change. Final § 49.6(c) sets forth the information that must be included in the request for transfer of registration, including the documentation underlying the corporate change, the impact of the change on the SDR, governance documents, updated rulebooks, and representations by the transferee entity, among other things. Final § 49.6(d) specifies that upon review of a request for transfer of registration, the Commission, as soon as practicable, shall issue an order either approving or denying the request for transfer of registration.

The Commission sought public comment on its cost-benefit considerations related to § 49.6. The Commission did not receive any comments.

The Commission continues to believe that § 49.6 will not impose any additional costs on SDRs compared to the current requirements that include meeting filing deadlines for submitting a Form SDR. The amendments to § 49.6 create several benefits that include simplifying the process for requesting a transfer of SDR registration and reducing

the burdens on SDRs for successfully transferring an SDR registration to a successor entity. Final § 49.6 eliminates duplicative filings by requiring a more limited scope of information and representations from the transferor and transferee entities than existing § 49.6, which requires a full application for registration on Form SDR, including all Form SDR exhibits. Final § 49.6 focuses on ensuring the Commission receives relevant information needed to approve a request for a transfer of an SDR registration promptly.

v. § 49.9 – Open Swaps Reports Provided to the Commission

The Commission is finalizing § 49.9 as proposed. Final § 49.9 creates a new regulatory obligation by requiring an SDR to provide the Commission with an open swaps report that contains an accurate reflection of data for every swap data field required to be reported under part 45 for every open swap maintained by the SDR.

Final § 49.9 alters current § 49.9 substantially. Current § 49.9 does not specifically discuss open swaps reports; rather, it outlines twelve SDR duties through cross-references to other part 49 regulations. For example, current § 49.9 states that SDRs must “accept swap data as prescribed in § 49.10;” provide direct electronic access to the Commission “as prescribed in § 49.17;” and adopt disaster recovery plans “as prescribed in § 49.23 and § 49.13.”³⁴¹ The Commission is removing the list of duties in § 49.9 and replacing it with a regulation that assigns SDRs the obligation to issue open swaps reports to the Commission.³⁴²

³⁴¹ 17 CFR 49.9(a).

³⁴² The Commission believes that removing the list of duties in § 49.9 is a non-substantive change that does not implicate cost or benefit considerations, because the list consists of cross-references to other regulations. The costs and benefits of the addition of new requirements in final § 49.9 are considered below.

The Commission requested public comment on its consideration of the costs and benefits related to proposed § 49.9. The Commission did not receive any comments.

The Commission believes that while there may be costs imposed by final § 49.9, costs will be mitigated by the fact that SDRs already send the Commission reports that are similar to the open swaps reports required by final § 49.9. Given that SDRs already have systems to issue reports, the adjustments SDRs must undertake to comply with final § 49.9 should be incremental in terms of financial and administrative outlays to modify technological infrastructures to meet the Commission's requirements. The Commission believes the costs may include expenditures to modify current reporting systems to meet the requirements for the open swaps reporting systems and costs to maintain SDR systems.

Currently, SDRs produce reports using differing approaches to calculations and formats. There may be costs to change systems to meet the Commission's required standardized format for open swaps reports. The Commission, however, does not expect the format of these reports to change frequently. The Commission believes a standardized report will ensure the report is in a more usable format that assists and improves the Commission's regulatory efforts. The Commission uses current SDR reports to perform market risk and position calculations. The Commission also uses SDR reports to create and publish the Commission's weekly swaps report and quarterly entity-netted notional reports. The Commission-issued reports benefit market participants and the public by providing and analyzing data sourced directly from the SDRs. This information on open swaps is unique and is not available to the public until the Commission publishes its reports.

The Commission recognizes that the three existing SDRs vary in size of operations. They also service and process different volumes of data for various asset classes. As a result, the qualitative and quantitative costs to comply with § 49.9 will differ between SDRs. Notably, however, no commenters submitted estimates of time or monetized costs for proposed § 49.9 or the amount of current costs to produce reports. Based on the Commission's knowledge of SDRs and its own technological experience, the Commission estimates that each SDR will expend 250 hours to establish an open swaps report system that complies with § 49.9. Thereafter, the Commission estimates that each SDR will spend 30 hours on maintenance and 730 hours dedicated to issuing open swaps reports annually. The Commission monetizes the initial set-up and annual hours by multiplying by the wage-rate range of \$48 to \$101 to estimate that each SDR will expend \$12,000 to \$25,250 to establish an open swaps report system and then expend \$36,480 to \$76,760 for annual maintenance and reporting.³⁴³

The Commission considered and rejected the alternative of not adopting § 49.9. The Commission believes that the absence of a requirement for open swaps reports creates regulatory ambiguity and the possibility that SDRs might stop voluntarily producing open swaps reports. If the latter were to occur, the weekly swaps report would

³⁴³ See *supra* note 344 (discussion of BLS wage estimates). These estimates, discussed here and below, focus on the costs and benefits of the amended rules market participants are likely to encounter with an emphasis on technical details, implementation, and market-level impacts. Where software changes are expected, these costs reflect software developer labor costs only, not a blend of different occupations. Costs and benefits quantified at the market participant or reporting entity level are listed in the Paperwork Reduction Act discussion above in section VII.B and reflect blended burden costs as defined in the supporting statement for Part 49. Those costs are not repeated in this section. Wherever appropriate, quantified costs reflected in the Paperwork Reduction Act discussion are noted below.

be adversely impacted, possibly temporarily eliminated, and efforts to inform the public of developments in swaps markets would be hindered. This cost is significant because SDR reports and Commission-issued reports have become invaluable to the public's and the Commission's understanding of derivatives markets.

Notwithstanding the costs and in light of the drawbacks of possible alternatives, the Commission believes § 49.9 is warranted in light of the anticipated benefits.

vi. § 49.10 – Acceptance of Data

Final § 49.10(e) requires an SDR to accept corrections for errors in SDR data that was previously reported, or erroneously not reported, to SDRs. The Commission is finalizing § 49.10(e)(1) through (4) generally as proposed, with modifications and textual clarifications in response to public comments. The final rule sets forth the specific requirements SDRs will need to satisfy under § 49.10(e): (i) accept corrections for errors reported to, or erroneously not reported to, the SDR until the end of the record-keeping retention period under § 49.12(b)(2); (ii) record corrections as soon as technologically practicable after accepting the corrections; (iii) disseminate corrected SDR data to the public and the Commission, as applicable; and (iv) establish, maintain, and enforce policies and procedures designed to fulfill these responsibilities under § 49.10(e)(1) through (3).

In the Proposal, the Commission explained that § 49.10(e) could impose some costs on SDRs, but that the costs would not be significant and are largely related to any needed updates to SDR error correction systems. The Commission based its belief, in part, on the fact that SDRs are currently required to identify cancellations, corrections,

and errors under parts 43 and 45.³⁴⁴ Joint SDR commented that this is an incorrect understanding because SDRs “make available facilities to reporting entities to meet their obligations to make such corrections.”³⁴⁵ Joint SDR added: “In order for an SDR to take on the new obligation of making corrections, rather than allowing a reporting entity to submit corrections themselves, would necessitate significant changes to the SDR’s systems.”³⁴⁶ Joint SDR also stated that it would be costly to make corrections to data for dead swaps. They specifically explained: “This requirement would be costly for the SDRs as data will need to be maintained in a readily accessible format for an unlimited amount of time and the SDR will be unable to archive the data in accordance with its internal policies and procedures.”³⁴⁷

The Commission is persuaded by commenters’ statements that proposed § 49.10(e) would be costly and burdensome without changes. Given that final § 49.10(e) must be read with final §§ 43.3(e), 45.14, and 49.11, SDRs’ costs related to § 49.10(e) should be far less than anticipated.

The Commission believes that there will be costs connected with implementing final § 49.10(e). Currently, SDRs must accept and record data, as well as disseminate calculations and corrections to SDR data.³⁴⁸ Final § 49.10(e) might require SDRs to expend incremental costs in terms of financial and staff outlays to adjust systems to “accept” and “record” corrections. These incremental costs should be limited because, as

³⁴⁴ See 17 CFR 43.3(e)(1), (3), and (4); 17 CFR 45.14(c).

³⁴⁵ Joint SDR at 8 n. 28.

³⁴⁶ Joint SDR at 8 n. 28.

³⁴⁷ Joint SDR at 9.

³⁴⁸ 17 CFR 49.10 (SDR “shall accept and promptly record all swap data...”). See also § 43.3(e)(1), (3), and (4); 17 CFR 45.14(c).

mentioned earlier, SDRs already make facilities available to reporting counterparties to make corrections. The Commission believes that the commenter misunderstands the requirements of proposed and final § 49.10(e) and the associated costs as requiring more direct participation in the correction process than is currently required. Nothing in proposed or final § 49.10(e) would require the SDRs to change a current approach based on making facilities available that allow market participants to submit corrections or obligate an SDR to do anything more to accept, record, and disseminate corrections than is currently required.

The Commission also believes that the inclusion of the technical specification and validation requirements for SDR data in parallel Commission rulemaking³⁴⁹ will help prevent certain types of SDR data reporting errors before they occur, and, therefore, reduce the need for market participants and the SDRs to correct those types of errors and, as a result, the corresponding costs incurred by SDRs to correct errors will likely decrease over time.

Final § 49.10(e) will also limit SDR error correction requirements to the applicable recordkeeping obligation in final § 49.12. SDRs will not be obligated to indefinitely maintain storage and legacy systems for dead swaps or to correct dead swaps for which the records retention period has expired.

SDRs also might incur incremental costs related to establishing, maintaining, and enforcing the policies and procedures required by final § 49.10(e). The Commission, however, believes that costs will be limited to initial creation costs and update costs for

³⁴⁹ See generally 85 FR 21516, et seq. (Apr. 17, 2020); 85 FR 21578, et seq. (Apr. 17, 2020)

the policies and procedures as needed, as mitigated by any existing SDR error correction policies and procedures.

The Commission continues to believe that one of the main benefits of § 49.10(e) is improved data quality resulting from SDRs collecting and disseminating accurate swaps data. Accurate and complete datasets will enable the Commission to better understand markets and trading behavior, and guard against abusive practices. In addition, the Commission uses swap SDR data to produce public information on the swaps markets, such as the weekly swaps reports. The Commission believes that accurate data reflected in the weekly swaps report will improve the quality and reliability of the reports. All market participants and the public benefit from complete and accurate SDR data.

Final § 49.10(e) is linked closely to final §§ 43.3(e), 45.14, and 49.11. Because of the changes to current §§ 43.3(e), 45.14, and 49.11, there will be costs associated with § 49.10(e). The Commission, however, believes that the benefits related to using accurate data sets warrant the costs of changes to § 49.10(e).

vii. § 49.11 – Verification of Swap Data Accuracy

In response to comments, the Commission is modifying final § 49.11 so that the verification process is less burdensome and more flexible than the process set forth in proposed § 49.11. Final § 49.11 requires an SDR to: (i) verify the accuracy and completeness of swap data that the SDR receives from a SEF, DCM, or reporting counterparty, or third-party service providers acting on their behalf; and (ii) establish, maintain, and enforce policies and procedures reasonably designed to verify the accuracy and completeness of that swap data. In terms of implementation, § 49.11 requires an SDR

to provide a mechanism that allows each reporting counterparty that is a user of the SDR to access all swap data maintained by the SDR for each open swap for which the reporting counterparty is serving as the reporting counterparty. Under companion provisions in § 45.14, a reporting counterparty is required to perform verifications of the relevant swap data at specified intervals, using the mechanism provided by an SDR under § 49.11, and to correct any errors discovered.

The Commission anticipates that the final rule will provide benefits, as compared to the current regulation, by improving the quality of data received and maintained by SDRs. The final rule is expected to lead to swap data errors being discovered and corrected more frequently and earlier than is often the case under the current regulations. Existing Commission regulations and SDRs rules and policies allow counterparties to presume data is accurate when it may not be. The absence of an affirmative verification requirement has also resulted in counterparties not discovering errors, including many obvious errors, and therefore not correcting the errors, for extended periods.

The new requirements in final § 49.11 will also impose costs. As discussed in more detail below, commenters provided qualitative comments on the Commission's consideration of the costs and benefits of proposed § 49.11, but did not provide quantitative information. As final § 49.11 grants SDRs the flexibility to devise their own processes to allow reporting counterparties to access swap data for verification, it is difficult to determine the amount of hours and effort SDRs will need to comply with § 49.11. Based on comments, the Commission believes that SDRs will be able to leverage current technological systems to provide access to reporting counterparties to verify data

under § 49.11.³⁵⁰ In the absence of information from commenters, the Commission estimates that it will take each SDR up to 500 hours to build, test, and implement verification systems that are of their own design.³⁵¹ The Commission estimates that SDRs will expend 50 hours or fewer annually to maintain systems and revise policies and procedures. The Commission monetizes the hours by multiplying by a wage rate of \$48 to \$101.³⁵² The Commission estimates that the initial costs to an SDR of implementing § 49.11 will range between \$24,000 and \$50,500. The annual costs will range between \$2,400 and \$ 5,050.

Before adopting the verification requirements in final § 49.11, the Commission considered the two following requirements that were in the Proposal: (1) requiring an SDR to establish, maintain, and enforce policies and procedures reasonably designed for the SDR to successfully receive verifications of data accuracy and notices of discrepancy from reporting counterparties³⁵³ and (2) requiring SDRs to issue open swaps reports to reporting counterparties on a weekly or monthly basis, depending on the type of reporting counterparty involved.³⁵⁴

The Commission received numerous comments on these two requirements in response to the Commission's request for comment. ISDA/SIFMA suggested that the

³⁵⁰ Joint SDR at 6 n. 28.

³⁵¹ In the Proposal, the Commission estimated burden hours based on proposed § 49.11. Because final § 49.11 is more flexible and does not require the creation of open swaps reports or the building of systems to send and receive messages with reporting counterparties, the Commission believes that SDRs and reporting counterparties will employ less onerous and more economical approaches to meeting their § 49.11 and § 45.14 obligations. Therefore, the Commission is using the estimated burden hours in the Proposal as upper limits on the number of hours entities will use to develop and maintain data verification systems.

³⁵² See *supra* note 344 (discussion of BLS wage estimates).

³⁵³ Proposal at 84 FR 21051-55 (May 13, 2019).

³⁵⁴ *Id.*

Commission issue a more principles-based verification process than the one described in proposed §§ 45.14(a) and 49.11(b).³⁵⁵ ISDA/SIFMA recommended eliminating the requirement that reporting counterparties reconcile swaps data with SDR-issued open swaps reports as well as obligations that SDRs manage or monitor such reconciliations.³⁵⁶ ISDA/SIFMA proposed a verification process that would require reporting counterparties, via required policies and procedures, “to periodically reconcile the relevant SDR data with the data from their internal books and records for accuracy.”³⁵⁷ Reporting counterparties that are SDs, MSPs, or DCOs would be required to perform verifications monthly and all other reporting counterparties would be required to verify data quarterly.³⁵⁸ The reporting counterparties would need to keep a record of verifications and make that information available to SDRs or the Commission upon request.³⁵⁹ This approach would enable reporting counterparties to leverage their own data validation efforts and eliminate the burden of sending multiple notifications.³⁶⁰

As explained in section II.G above, the Commission is persuaded by comments that a more flexible verification process will have the same, if not better, effect on data quality as the proposed verification process. As final § 49.11 does not include the requirement for SDRs to distribute open swaps reports to reporting counterparties or to have policies and procedures to receive verifications of accuracy and notices of discrepancy from reporting counterparties, SDRs will have greater flexibility in

³⁵⁵ ISDA/SIFMA at 45.

³⁵⁶ *Id.*

³⁵⁷ *Id.*

³⁵⁸ *Id.*

³⁵⁹ *Id.*

³⁶⁰ *Id.*

managing their relationships with reporting counterparties than they were expected to have under the Proposal.

The differences between final § 49.11 and the Proposal also affect the Commission's cost considerations. In the Proposal, the Commission recognized that the SDRs would bear most of the costs associated with the proposed amendments to § 49.11.³⁶¹ The Commission stated that there would be initial costs from establishing systems to generate open swaps reports and to successfully distribute these reports to all reporting counterparties. There also would be recurring costs related to any needed adjustments to SDR systems over time and to accommodate the arrival or departure of reporting counterparties. The Commission also stated that an SDR's costs would be insignificant because an SDR would automate the verification process.³⁶²

Joint SDR disagreed with the Commission's cost assessments for proposed § 49.11.³⁶³ Joint SDR commented that "chasing reporting counterparties who have not provided verification of data accuracy or a notice of discrepancy in order to establish the SDR made a 'full, good-faith effort to comply'" would require an expenditure of significant resources.³⁶⁴ Joint SDR also highlighted that the "cost of creating and maintaining a system to verify each message would be significant."³⁶⁵ Joint SDR encouraged the Commission to recognize that any new message types impose

³⁶¹ Proposal at 84 FR 21084 (May 13, 2019).

³⁶² Proposal at 84 FR 21084 (May 13, 2019) ("these changes would [not] be significant because, based on discussion with the SDRs and other market participants, the Commission believes SDRs would largely automate the verification process.")

³⁶³ Joint SDR at 2-3.

³⁶⁴ Joint SDR at 3.

³⁶⁵ Joint SDR at 6. *See also* ICE Clear at 3 (referencing Joint SDR).

development costs on SDRs, reporting counterparties, and all third-parties or vendors who build and maintain reporting systems.³⁶⁶

Other commenters characterized their objections to the proposed message-based verification process as a costly endeavor. FIA requested a more principles-based approach to verifying swaps under § 49.11, because they believed the approach in proposed § 49.11 would create more burdens than benefits.³⁶⁷ FIA added that “verification requirements will have little marginal benefit relative to the increased costs on reporting counterparties, in particular those that are not registered [SDs].”³⁶⁸ ISDA/SIFMA stated that they believe the “proposed prescriptive approach to verification would result in considerable costs for reporting parties to implement.”³⁶⁹ ICE Clear commented that the Commission failed to discuss how the additional verification and messaging costs “would result in increased levels of data accuracy sufficient to warrant imposing the obligations.”³⁷⁰

The Commission believes that the costs resulting from the verification process under § 49.11 as finalized will be less burdensome than the costs the Commission estimated in the Proposal. For instance, SDRs would have incurred costs to create and distribute weekly and monthly open swaps reports as the Commission initially proposed, but will not incur these costs under final § 49.11.³⁷¹ Under final § 49.11, SDRs and other

³⁶⁶ Joint SDR at 6 and n. 22.

³⁶⁷ See FIA May at 7-8; ISDA/SIFMA at 44-45.

³⁶⁸ FIA May at 7.

³⁶⁹ ISDA/SIFMA at 44.

³⁷⁰ ICE Clear at 3.

³⁷¹ Proposal at 84 FR 21084 (May 13, 2019) (discussion of costs related to generating and distributing open swaps reports).

entities will incur fewer costs because they will be able to employ different data-accuracy approaches that will not include the costs of building-out and maintaining message-based verification systems that rely on open swaps reports.

The Commission is not eliminating the overall verification requirement because it believes verifying data is crucial to ensure data quality. Data review and verification improves the reliability and usability of swap data, and more accurate swap data helps the Commission in monitoring risk; analyzing metrics for such indicators as volume, price, and liquidity; and developing policy. Thus, final § 49.11 will benefit the Commission and the public by improving the accuracy of data they will receive.

Besides considering proposed § 49.11, the Commission also considered and rejected the idea of maintaining current § 49.11. The Commission rejected this approach because of concerns about the quality of data received under current regulations, as swap data quality has not sufficiently improved under current regulations. As explained above, the presumption that reported swap data is accurate along with the absence of an affirmative verification requirement, have resulted in many instances of inaccurate or unusable swap data being provided to the Commission under current regulations and procedures. In the nine years since the Commission issued the data reporting regulations, it has become apparent that the current requirements are inadequate to ensure swap data accuracy and that processes like verification can improve the accuracy and completeness of data sets. Accurate data sets are crucial for overseeing modern markets and for understanding the structure and operations of the markets.

Notwithstanding the anticipated incremental costs of final § 49.11 and after considering alternatives, the Commission believes the amendments to § 49.11 are warranted in light of the anticipated benefits.

viii. § 49.12 – Swap Data Repository Recordkeeping Requirements

The Commission is finalizing § 49.12 as proposed. Final § 49.12(a) requires an SDR to keep full, complete, and systematic records, together with all pertinent data and memoranda, of all activities relating to the business of the SDR, including, but not limited to, all SDR information and all SDR data reported to the SDR.

Final § 49.12(b)(1) requires an SDR to maintain all SDR information received by the SDR in the course of its business. Final § 49.12(b)(2) requires an SDR to maintain all SDR data and timestamps, and all messages to and from an SDR, related to SDR data reported to the SDR throughout the existence of the swap to which the SDR data relates and for five years following final termination of the swap, during which time the records must be readily accessible by the SDR and available to the Commission via real-time electronic access, and then for an additional period of at least ten years in archival storage from which such records are retrievable by the SDR within three business days.

Final § 49.12(c) requires an SDR to create and maintain records of errors related to SDR data validations and errors related to SDR data reporting. Final § 49.12(c)(1) requires an SDR to create and maintain an accurate record of all SDR data that fails to satisfy the SDR's data validation procedures. Final § 49.12(c)(2) requires an SDR to create and maintain an accurate record of all SDR data errors reported to the SDR and all corrections disseminated by the SDR pursuant to parts 43, 45, 46, and 49. SDRs must make the records available to the Commission on request.

Final § 49.12(d) contains the requirements of existing § 49.12(c) and provides that: (i) All records required to be kept pursuant to part 49 must be open to inspection upon request by any representative of the Commission or any representative of the U.S. Department of Justice; and (ii) an SDR must produce any record required to be kept, created, or maintained by the SDR in accordance with § 1.31.

The Commission did not receive any comments concerning its consideration of costs and benefits related to the recordkeeping requirements in proposed § 49.12.

The Commission continues to believe that the costs of amendments to § 49.12 will primarily be incurred by the SDRs as they make any needed adjustments to create and maintain all required records. The Commission believes these incremental costs will be limited, as the recordkeeping requirements in § 49.12 are largely the same as the requirements in existing § 49.12 and existing § 45.2(f) and (g).

The amendments to § 49.12 related to SDR information will also be substantially similar to the SEC's requirements for its SBSDRs.³⁷² The Commission expects that there will be substantial overlap in these requirements for SDRs that are also SBSDRs and these entities will be able to leverage resources to reduce any duplicative costs.

Joint SDR objected to the requirements moved to final § 49.12(b) that requires SDRs to retain data “for a period of at least ten additional years in archival storage from which such records are retrievable by the swap data repository within three business days.”³⁷³ Joint SDR suggested that the Commission harmonize retention periods with that of Europe and other Commission-regulated entities.³⁷⁴ Joint SDR pointed-out that the

³⁷² See 17 CFR 240.13n-7 (detailing the SBSDR recordkeeping requirements).

³⁷³ Final § 49.12(b); See Joint SDR at 11.

Commission collects its own data from SDRs so the Commission “can itself retain relevant data in accordance with its own recordkeeping policies.”³⁷⁵

The Commission recognizes that the ten-year archival storage is lengthy, but the Commission notes that this period is the current SDR retention periods for the same data under existing § 45.2(f) and (g)³⁷⁶ and that the Commission has not proposed to modify this current requirement. The amendments to § 49.12(b) are part of the Commission’s effort to better organize its own rules, not the result of the Commission changing a current requirement. As a result, there are no new costs to SDRs associated with the retention period in final § 49.12(b). The Commission also continues believe the ten-year period is reasonable. Archived data is important to regulatory oversight and the SDRs serve as the source of SDR data for the Commission. The Commission benefits from access to archived swap data, for the purpose of understanding trends in swaps markets, such as exposures, trades, and positions, and guarding against abusive practices.

The Commission believes that the amendments to § 49.12 will provide greater clarity to SDRs in regards to their recordkeeping responsibilities. The amendments also will help improve efforts to track data reporting errors, because the requirements for SDRs to maintain records of reporting errors will be clearer. Data recordkeeping should lead to better quality data by allowing an SDR and the Commission to look for patterns in records that may lead to adjustments to SDR systems or future adjustments to reporting policies. The availability of quality records is also crucial for the Commission to

³⁷⁴ Joint SDR at 11.

³⁷⁵ *Id.*

³⁷⁶ 17 CFR 45.2(f) and (g).

effectively perform its market surveillance and enforcement functions, which benefit the public by protecting market integrity and identifying risks within the swaps markets.

Notwithstanding the anticipated incremental costs of § 49.12, the Commission believes this change is warranted in light of the anticipated benefits.

ix. § 49.17 – Access to SDR Data

The Commission is finalizing § 49.17 as proposed. Final § 49.17(b)(3) amends the definition of “direct electronic access” to mean an electronic system, platform, framework, or other technology that provides internet-based or other form of access to real-time SDR data that is acceptable to the Commission and also provides scheduled data transfers to Commission electronic systems.

Final § 49.17(c) requires an SDR to provide access to the Commission for all SDR data maintained by the SDR pursuant to the Commission’s regulations. Final § 49.17(c)(1) requires an SDR to provide direct electronic access to the Commission or its designee in order for the Commission to carry out its legal and statutory responsibilities under the CEA and Commission regulations. Final § 49.17(c)(1) also requires an SDR to maintain all SDR data reported to the SDR in a format acceptable to the Commission, and transmit all SDR data requested by the Commission to the Commission as instructed by the Commission.

Final § 49.17(c)(1) amends the requirements of existing § 45.13(a) from maintaining and transmitting “swap data” to maintaining and transmitting “SDR data,” to make clear that an SDR must maintain all SDR data reported to the SDR in a format acceptable to the Commission and transmit all SDR data requested by the Commission, not just swap data.

Final § 49.17(c)(1) also modifies the requirements of existing § 45.13(a) from “transmit all swap data requested by the Commission to the Commission in an electronic file in a format acceptable to the Commission” to “transmit all SDR data requested by the Commission to the Commission as instructed by the Commission,” and explains what these instructions may include.

The Commission also is finalizing amendments to § 49.17(f) to replace the incorrect reference to § “37.12(b)(7)” at the end of paragraph (f)(2) with a correct reference to § “39.12(b)(7)” of the Commission’s regulations, as there is no § 37.12(b)(7) in the Commission's regulations.

The Commission’s amendments also include the movement of the delegation of authority in existing § 49.17(i) to final § 49.31(a)(7).

The Commission believes that § 49.17 will generate costs and benefits. In the Proposal, the Commission asked for public comment on its consideration of costs and benefits. DDR commented that an SDR cannot estimate costs of proposed § 49.17(c)(1) because the proposed rule provided “no specificity as to the method, timing, format or transmission frequency for required transmission of SDR data requested by the Commission” and left “the requirements associated with both the provision of direct electronic access and the maintenance of SDR data to be determined by the Commission at a later date.”³⁷⁷ While the Commission agrees that costs may be difficult to determine, the Commission notes that no commenters provided information related to current costs associated with responding to the similar current requirements for scheduled data transfers. If the Commission possessed current financial and staffing outlays, the

³⁷⁷ DDR at 5.

Commission could consider incremental increases or decreases that might result from finalizing § 49.17.

The Commission continues to believe that the costs imposed by the changes to § 49.17(c) will fall mainly on SDRs, because SDRs will incur costs to provide the Commission with direct electronic access to all SDR data and to provide access to SDR data as instructed. The costs associated with the use of the term “direct electronic access” in § 49.17(c) are negligible, as SDRs are currently required to provide the Commission with direct electronic access and the definition is being modified to allow SDRs more flexibility in providing the Commission with direct electronic access to SDR data, subject to the Commission’s approval. The other amendments to § 49.17(c) grant the Commission greater flexibility to instruct SDRs on how to transfer SDR data to the Commission at the Commission’s request. As mentioned above, the Commission currently works closely with SDRs to facilitate data transfers and implement technology changes. The Commission anticipates that because the rule changes reinforce the existing working relationships, there will be better communications between the Commission and SDRs that will help both parties devise efficient and cost-effective ways to facilitate the transfer of SDR data to the Commission. As explained in the Proposal, SDRs are already required to transmit data under existing § 49.17(b)(3) and (c)(1), and are required to transmit all swap data requested by the Commission to the Commission in an electronic file in a format acceptable to the Commission under existing § 45.13(a). It is also current market practice for SDRs to regularly provide SDR data to the Commission as instructed by Commission staff. The changes in final § 49.17 do not substantially change the current requirements or market practices.

The final changes to § 49.17(b)(3) that modify the definition of “direct electronic access” to allow for more technological flexibility will likely reduce future costs for SDRs because the amendment allows the Commission to consider any technology that may provide direct electronic access. This will allow the Commission to adapt to changing technology more quickly and may allow SDRs to save costs by having more efficient technology and processes approved in the future.

The Commission continues to believe that the amendments to § 49.17 will be beneficial to SDRs by including the data access requirements applicable to SDRs in one section and by more clearly stating the Commission’s ability to instruct SDRs on all aspects of providing SDR data to the Commission.

Notwithstanding the anticipated incremental costs of § 49.12, the Commission believes the changes are warranted in light of the anticipated benefits.

x. § 49.25 – Financial Resources

The Commission is finalizing changes to § 49.25 as proposed, except for the proposed amendments to § 49.25(f)(3). The conforming changes to § 49.25 eliminate the reference to § 49.9 and to core principle obligations identified in § 49.19. Final § 49.25(a) refers to SDR obligations under “this chapter,” to be broadly interpreted as any regulatory or statutory obligation specified in part 49. The Commission considered these to be non-substantive changes that will not impact existing obligations on SDRs, and therefore have no cost-benefit implications. The Commission did not receive any comments on this point.

The Commission is not finalizing proposed amendments to § 49.25(f)(3) to extend the time SDRs have to submit their quarterly financial resources reports to 40 calendar

days after the end of the SDR's first three fiscal quarters, and 90 days after the end of the SDR's fourth fiscal quarter, or a later time that the Commission permits upon request. As discussed above, the Commission has determined not to address the proposed changes to the filing deadline for the annual compliance report under § 49.22(f)(2) in this final rulemaking. Accordingly, the Commission is not adopting the related proposed amendment to § 49.25(f)(3).

xi. § 49.26 – Disclosure Requirements of Swap Data Repositories

The Commission is finalizing § 49.26 as proposed. Final § 49.26 includes updates to the introductory paragraph of § 49.26 to reflect updates to the terms “SDR data,” “registered swap data repository,” and “reporting entity” in final § 49.2. The Commission is also finalizing updates to other defined terms used in the section to conform to the amendments to § 49.2. These non-substantive amendments do not change the requirements of § 49.26 and do not have cost-benefit implications.

The Commission also is finalizing § 49.26(j) as proposed. Final § 49.26(j) requires that the SDR disclosure document set forth the SDR's policies and procedures regarding the reporting of SDR data to the SDR, including the SDR data validation and swap data verification procedures implemented by the SDR, and the SDR's procedures for correcting SDR data errors and omissions (including the failure to report SDR data as required pursuant to the Commission's regulations).

The Commission requested public comments on its cost-benefit considerations related to § 49.26, but the Commission did not receive any comments.

The Commission believes that costs related to final § 49.26 will be limited and incremental given that current § 49.26 requires every SDR to issue disclosure

documents.³⁷⁸ Costs will likely entail the costs related to adding information required under final § 49.26(j) to the required SDR disclosure document and updating the document as needed. For example, there may be administrative and staff costs to revise current SDR disclosure documents to include the required information.

The Commission expects that the addition of final § 49.26(j) will benefit market participants by providing more instructive information regarding data reporting to SDR users. The availability of this information should improve data reporting, because SDR users will be able to align their data reporting systems with SDRs' data reporting systems before using the SDRs' services. SDR users will be able to prepare operations and train staff before reporting SDR data and, thereby, able reduce reporting errors and potential confusion.

Notwithstanding the anticipated incremental costs associated with § 49.26, the Commission believes this change is warranted in light of the anticipated benefits.

xii. § 49.28 – Operating Hours of Swap Data Repositories

The Commission is finalizing § 49.28 as proposed. Final § 49.28 provides more detail on an SDR's responsibilities with respect to hours of operation. Final § 49.28(a) requires an SDR to have systems in place to continuously accept and promptly record all SDR data reported to the SDR, and, as applicable, publicly disseminate all swap transaction and pricing data reported to the SDR pursuant to part 43. Final § 49.28(a)(1) allows an SDR to establish normal closing hours to perform system maintenance when, in the SDR's reasonable estimation, the SDR typically receives the least amount of SDR

³⁷⁸ See 17 CFR 49.26(a) through (i).

data, and requires the SDR to provide reasonable advance notice of its normal closing hours to market participants and the public.

Final § 49.28(a)(2) allows an SDR to declare, on an ad hoc basis, special closing hours to perform system maintenance that cannot wait until normal closing hours. Final § 49.28(a)(2) requires an SDR to schedule special closing hours during periods when, in the SDR's reasonable estimation while considering the circumstances that prompt the need for the special closing hours, the special closing hours will be least disruptive to the SDR's data reporting responsibilities. Final § 49.28(a)(2) also requires the SDR to provide reasonable advance notice of the special closing hours to market participants and the public whenever possible, and, if advance notice is not reasonably possible, to give notice to the public as soon as is reasonably possible after declaring special closing hours.

Final § 49.28(b) requires an SDR to comply with the requirements under part 40 of the Commission's regulations when adopting or amending normal closing hours or special closing hours.³⁷⁹

Final § 49.28(c) requires an SDR to have the capability to accept and hold in queue any and all SDR data reported to the SDR during normal closing hours and special closing hours³⁸⁰ Final § 49.28(c)(1) requires an SDR, on reopening from normal or special closing hours, to promptly process all SDR data received during the closing hours and, pursuant to part 43, publicly disseminate swap transaction and pricing data reported to the SDR that was held in queue during the closing hours.³⁸¹ Final § 49.28(c)(2)

³⁷⁹ This requirement already applies to SDRs pursuant to current § 43.3(f)(3). *See* 17 CFR 43.3(f)(3).

³⁸⁰ Final § 49.28(c) expands the similar existing requirements for swap transaction and pricing data in current § 43.3(g) to all SDR data and largely follows the SBSDR requirements to receive and hold in queue information regarding security-based swaps.

requires an SDR to immediately issue notice to all SEFs, DCMs, reporting counterparties, and the public in the event that the SDR is unable to receive and hold in queue any SDR data reported during normal closing hours or special closing hours. Final § 49.28(c)(2) also requires an SDR to issue notice to all SEFs, DCMs, reporting counterparties, and the public that the SDR has resumed normal operations immediately on reopening. Final § 49.28(c)(2) requires a SEF, DCM, or reporting counterparty that was not able to report SDR data to an SDR because of the SDR's inability to receive and hold in queue SDR data to report the SDR data to the SDR immediately after receiving such notice that the SDR has resumed normal operations.³⁸²

The Commission requested public comment on its consideration of costs and benefit related to § 49.28 but did not receive any.

The Commission continues to believe that the final requirements, which are largely based on existing rule text found in current § 43.3(f) and (g), will have limited cost implications for SDRs. There may be costs associated with any needed modification to SDR systems to accommodate all SDR data during closing hours, as opposed to only swap transaction and pricing data. These costs will be incremental because all SDRs currently have policies, procedures, and systems in place to accommodate all SDR data during closing hours under the current requirements.

³⁸¹ Final § 49.28(c)(1) expands the similar existing requirements for the SDRs to disseminate swap transaction and pricing data pursuant to current § 43.3(g)(1) to also include the prompt processing of all other SDR data received and held in queue during closing hours. The requirements also largely follow the SBSDR requirements for disseminating transaction reports after reopening following closing hours.

³⁸² Final § 49.28(c)(2) expands the similar existing requirements for swap transaction and pricing data in current § 43.3(g)(2) to all SDR data and is largely consistent with the SBSDR requirements to receive and hold in queue information regarding security-based swaps.

The Commission also still believes that SDRs, market participants, and the public will benefit from final § 49.28 because the requirements for setting closing hours and handling SDR data during closing hours will be clearer. Final § 49.28 removes discrepancies between current requirements for SDRs and SBSDRs related to closing hours, which will allow SDRs that are also registered as SBSDRs to comply with one consistent requirement.

Notwithstanding the anticipated incremental costs related to § 49.28, the Commission believes the addition of § 49.28 is warranted in light of the anticipated benefits.

xiii. § 49.29 – Information Relating to Swap Data Repository Compliance

The Commission is finalizing new § 49.29 as proposed, which requires an SDR to respond to Commission information requests regarding, among other things, its business as an SDR and its compliance with SDR regulatory duties and core principles.

Final § 49.29(a) requires an SDR, upon request of the Commission, to file certain information related to its business as an SDR or other such information as the Commission determines to be necessary or appropriate for the Commission to perform its regulatory duties. An SDR must provide the requested information in the form and manner and within the time specified by the Commission in its request.

Final § 49.29(b) requires an SDR, upon the request of the Commission, to demonstrate compliance with its obligations under the CEA and Commission regulations, as specified in the request. An SDR must provide the requested information in the form

and manner and within the time specified by the Commission in its request. Final § 49.29 is based on similar existing Commission requirements applicable to SEFs and DCMs.³⁸³

The costs associated with responding to requests for information include the staff hours required to prepare and submit materials related to the Commission's requests. These costs will vary among SDRs depending upon the nature and frequency of Commission inquiries. The Commission expects these requests to be limited in both size and scope, which will likely mitigate the associated costs for SDRs. While final § 49.29 allows the Commission to make requests on an ad hoc basis, the Commission expects that the need for these requests will decrease over time as SDR data quality and SDR compliance with Commission regulations improve.³⁸⁴

DDR commented that because proposed § 49.29 provided “no detail as to the potential scope of a request or to the form, manner and timing associated with satisfying the request” an SDR could not assess accurately costs associated with the rule.³⁸⁵ While the Commission agrees that costs are difficult to accurately determine, the Commission notes that no commenters provided current costs associated with responding to requests for information, as currently SDRs routinely provide the same information to the Commission on request. If the Commission possessed current cost information related to responding to requests, the Commission could consider incremental increases or decreases that might result from finalizing § 49.29 as proposed. Without that information as a reference, the Commission continues to believe that there will be an incremental cost

³⁸³ *See, e.g.*, 17 CFR 37.5 and 38.5.

³⁸⁴ The Commission currently exercises similar authority fewer than ten times per year in total with other registered entities, such as SEFs, DCMs, and DCOs.

³⁸⁵ DDR at 7.

for each response. Yet, the Commission also believes that that costs will be mitigated by the fact that current practice is for SDRs to provide similar information to the Commission on request and that the SDRs do so regularly. In addition, SDRs will be required to adhere to form and manner specifications established pursuant to final § 49.30. The Commission expects that clearly defining the form and manner for each response will further mitigate the cost burden to SDRs that may arise from any uncertainty as to the information to be provided.

Benefits attributed to final § 49.29 include improving the Commission's oversight of SDRs due to Commission inquiries. The Commission expects that this oversight will lead to improved data quality and SDR compliance with Commission regulations. Better data quality will help improve the Commission's ability to fulfill its regulatory responsibilities and help to increase the Commission's understanding of the swaps market. These improvements are expected to benefit the public because accurate and complete SDR data reporting improves the Commission's analyses and oversight of the swaps markets, and increases market integrity due to the Commission's improved ability to detect and investigate noncompliance issues and oversee their correction.

The Commission also continues to believe that final § 49.29 will help the Commission to obtain the information it needs to perform its regulatory functions more effectively, as opposed to requiring SDRs to supply information on a set schedule, such as under the current requirement for annual Form SDR updates in § 49.3(a)(5). This will reduce the burden on SDRs, as the SDRs will no longer need to expend resources to prepare annual filings.

Notwithstanding the anticipated incremental costs related to § 49.29, the Commission believes the addition of § 49.29 is warranted in light of the anticipated benefits.

xiii. § 49.30 – Form and Manner of Reporting and Submitting Information to the Commission

The Commission is finalizing new § 49.30 as proposed to address the form and manner of information the Commission requests from SDRs.

Final § 49.30 establishes the broad parameters of the “form and manner” requirements found in part 49. The form and manner requirement in § 49.30 will not supplement or expand upon existing substantive provisions of part 49, but instead, will allow the Commission to specify how information reported by SDRs should be formatted and delivered to the Commission. Final § 49.30 provides that an SDR must submit any information required under part 49, within the time specified, using the format, coding structure, and electronic data transmission procedures approved in writing by the Commission.

The Commission continues to believe that the form and manner requirements will have costs associated with conforming reports and information to Commission specifications. For instance, there may be costs associated with staff hours and technology used to format reports. DDR commented that because proposed § 49.30 was vague, an SDR could not assess accurately costs associated with the rule.³⁸⁶ While the Commission agrees that costs are difficult to determine, the Commission notes that no commenters provided current reporting costs or projections for staffing and systems

³⁸⁶ DDR at 7.

costs, which the Commission could use to consider incremental increases or decreases that might result from finalizing § 49.30 as proposed.

The Commission continues to believe that, in practice, the incremental costs of § 49.30 will be limited, because SDRs have ample experience working with Commission staff to deliver data, reports, and other information in the form and manner requested by Commission staff. The Commission believes that this experience will significantly mitigate the costs of similar activities under this requirement. The Commission also still believes that the Commission will benefit through increased standardization of information provided by SDRs, thereby aiding the Commission in the performance of its regulatory obligations by ensuring the provided information is in useable formats and delivered by usable methods. The ability to standardize the form and manner of information provided to the Commission will also help SDRs to efficiently fulfill their obligations to provide information to the Commission.

Notwithstanding the anticipated incremental costs related to § 49.30, the Commission believes the addition of § 49.30 is warranted in light of the anticipated benefits.

5. Costs and Benefits of Amendments to Part 45

i. § 45.2 – Swap Recordkeeping

The Commission is moving existing § 45.2(f) and (g) (SDR recordkeeping and SDR records retention, respectively) to final § 49.12. As such, all costs and benefits associated with this change are discussed in the section, above, that discusses the amendments to § 49.12.

ii. § 45.14 – Correcting errors and omissions in swap data and verification of swap data accuracy

The Commission is adopting proposed § 45.14, with modifications, to improve the requirements to correct data errors and to verify data. Currently, the Commission requires error corrections but it does not directly require reporting counterparties to verify data. In the Proposal, the Commission outlined error correction and verification processes that included specific actions and timelines for those actions. In response to comments on the Proposal, the Commission is modifying final § 45.14 so that the error-correction and verification processes for reporting counterparties are less burdensome and more flexible than the processes set forth in the Proposal. The Commission will discuss the final error-correction process first, and then the final verification process.

Final § 45.14(a) sets forth requirements for correcting swap data errors. Final § 45.14(a) requires a SEF, DCM, or reporting counterparty to correct swap data errors as soon as technologically practicable, but no later than seven business days, after discovery. Final § 45.14(a) requires a SEF, DCM, or reporting counterparty to correct errors and omissions for open swaps and dead swaps, but § 45.14(a)(3) provides that the error correction requirement does not apply to swaps for which the applicable record retention period under § 45.2 has expired. Final § 45.14(a)(2) requires a non-reporting counterparty that becomes aware of an error to notify the reporting counterparty of the error as soon as technologically practicable, but no later than three business days, after discovery. If a non-reporting counterparty does not know the identity of the reporting counterparty, the non-reporting counterparty must notify the SEF or DCM where the

swap was executed of the error as soon as technologically practicable, but no later than three business days, following the discovery.

Final § 45.14(a) differs from current § 45.14, because it provides more parameters for SEFs, DCMs, and reporting counterparties correcting errors and sets timelines for correcting errors or issuing error notices to the Commission. Current § 45.14(a) requires each registered entity or swap counterparty to report discovered data errors and omissions as soon as technologically practicable, but there is no deadline for making a correction.³⁸⁷ Current § 45.14(b) requires a non-reporting counterparty to promptly notify the reporting counterparty of any errors or omissions, but the rule does not define promptly.³⁸⁸ Proposed § 45.14(b) would have required a SEF, DCM, or reporting counterparty to correct errors or notify the Director of DMO within three business days of discovery of errors, regardless of the state of the swap.

In final § 45.14(a), the Commission establishes a seven-day correction period in response to comments that the proposed three-day period to correct or notify would not be practicable.³⁸⁹ One commenter asserted that the Commission's proposed rule was a "one size fits all" approach that failed to account for "different errors and omission scenarios and levels of materiality" with an impractical error remediation period that would result in an excessive volume of notifications being sent to the director of DMO³⁹⁰ The proposed three-day period was based on the Commission's preliminary belief that the costs related to correcting errors and omissions or drafting remediation plans and

³⁸⁷ 17 CFR 45.14(a).

³⁸⁸ 17 CFR 45.14(b).

³⁸⁹ ISDA/SIFMA at 46. FIA May at 8-9; ICE Clear at 3.

³⁹⁰ ISDA/SIFMA at 45-46. *See also* FIA May at 8 ("Verification of swap data and/or remediation of known errors or omission is not a 'one-size-fits-all' task").

sending notices would not impose an undue burden on reporting counterparties. Commenters stated that the requirements of proposed § 45.14(b), such as the notification requirement, would consume significant resources, even for immaterial errors, that would take away resources needed to actually correct errors.³⁹¹ Commenters also explained that the proposed three-day deadline would be burdensome because the process for identifying errors and then resolving such issues often takes more than three business days.³⁹² The Commission is persuaded by comments that the three-day period, as proposed, would hamper the correction of errors.

The Commission believes there will be costs associated with correcting errors under the revised seven-business day correction period. Market participants correcting errors will need to expend technological and staff resources to identify the causes of data errors and resources to correct errors. The amount of resources used will likely be dictated by the complexity of the error. The Commission notes that these costs will be minimal, compared to current requirements, because the current requirements would necessitate the same cause identification and error correction. The seven-day deadline in final § 45.14, however, will require some reporting counterparties to allocate resources differently to meet the deadline, because the current error-correction rule has no time deadline.³⁹³

³⁹¹ ISDA/SIFMA at 46. *See also* GFMA at 6, 12 (timeframe should be in business days); CEWG at 5-6 (For a non-registrant reporting counterparty, it would be difficult to address a reporting error while simultaneously commit resources to file a report with the Commission).

³⁹² FIA May at 8 (“Members report that these reviews routinely take significantly more than three business days to determine scope, let alone to outline a remediation plan to a regulator.”); ISDA/SIFMA at 45-46 (three days would often not be enough time to find the causes and scope of errors and omissions and submit a report); GFMA at 13 (proposed verification process would impose significant headcount costs).

³⁹³ *See generally* 17 CFR 45.14.

The Commission believes that market participants will benefit from the seven-day correction period because it eliminates any uncertainty about the time period in which market participants must correct errors before notifying the Commission of an issue. A time period also helps market participants manage time in terms of scheduling and assigning resources to correct errors. The Commission believes seven business days is sufficient time to complete the steps needed to identify, investigate, and rectify most errors or omissions. The Commission also believes that the seven-day period, as compared to the absence of a deadline in current § 45.14, will not negatively affect the Commission's regulatory duties, including its ability to monitor swaps markets. Under the current error correction requirements, counterparties have neglected to inform SDRs of errors or omissions for extended periods, which has meant that SDRs have transmitted inaccurate data to the Commission and the Commission may have relied on inaccurate data while performing its regulatory responsibilities.

The Commission is also modifying, in final § 45.14, the proposed requirement for a reporting counterparty to produce remediation plans and issue notices to the Commission, and for a non-reporting counterparty to notify a reporting counterparty, SEF, or DCM of errors, as applicable.³⁹⁴ Current § 45.14 does not require market participants to issue any error notices or submit a remediation plan, if one exists, to the Commission. Final § 45.14 requires SEF, DCM, or reporting counterparties to notify the Commission of any error that cannot be corrected within seven business days of discovery. The notice must include an initial assessment of the scope of the error and an

³⁹⁴ Proposal at 84 FR 21069-70 (May 13, 2019) (discussion of proposed § 45.14(b)(1)(ii) and the current practices for remediation plans).

initial remediation plan, if one exists. This notification must be made within twelve hours of the SEF's, DCM's, or reporting counterparty's determination that it will fail to timely correct the error.

The Commission believes that the final § 45.14 requirement to issue error notices will generate costs. Market participants will need to expend technological and staff resources to develop and maintain notification systems. SEF's, DCM's, and reporting counterparties will incur additional costs to develop systems to assess the scope of an error and to submit initial remediation plans, if they decide to use such plans. For SEFs, DCMs, and reporting counterparties that already send the Commission error-correction notices and remediation plans, the costs will be incremental.³⁹⁵

The Commission believes that error correction notices are beneficial because they will help alert the Commission to data that is unreliable and to reporting issues. Notices also will help the Commission monitor whether market participants are complying with Commission regulations. If a market participant creates an initial remediation plan, it will be useful to the market participants and the Commission because such plans help with tracking errors, identifying data issues, discovering recurring errors, and preventing errors from reoccurring. The Commission also believes that the inclusion of the technical specification and validation requirements for swap data in parallel Commission rulemaking³⁹⁶ will help reduce certain types of swap data reporting errors, and reduce the need for market participants to correct those types of errors and, as a result, the corresponding costs incurred by market participants to correct swap data errors will likely

³⁹⁵ Proposal at 84 FR 20170 (May 13, 2019).

³⁹⁶ *See generally* 85 FR 21578, et seq. (Apr. 17, 2020).

decrease over time. Finally, the Commission believes that the error correction process becomes less burdensome and less disruptive when market participants remedy data errors as soon as possible and in an organized manner.

The Commission also believes that the final § 45.14 error correction process will improve data accuracy and will enable the Commission to better monitor risk and identify issues in the swaps markets. As discussed above, the Commission currently issues a weekly swaps report and quarterly entity-netted notional reports using swaps data.³⁹⁷ Using swap data, the weekly swaps report has the capacity to illustrate trends in exposures, trades, and positions, and the entity-netted notional reports measure the transfer of risk in swaps markets. Both reports give the Commission and the public greater insight into trading behavior, liquidity, pricing, various types of risk, and how swaps markets work in general—all factors important in developing policy and allocating oversight resources. More accurate swap data will increase the usefulness of these reports.

The Commission is requiring error corrections for all swaps that are within their respective records retention periods. In a change from the Proposal, and in response to comments received, the Commission is finalizing a limit on the SEFs', DCMs', and reporting counterparties' obligations to correct errors in swap data that confines the error correction requirements to errors discovered during the relevant recordkeeping periods for the relevant swaps under § 45.2. The Commission recognizes the comments that argued that correcting swaps that are outside of their record retention periods is

³⁹⁷ The weekly swaps report is available at: <https://www.cftc.gov/MarketReports/SwapsReports/index.htm>. ENNs reports for different asset classes are available at: <https://www.cftc.gov/About/EconomicAnalysis/ReportsOCE/index.htm>.

burdensome and impractical. ISDA/SIFMA explained that as dead swaps “no longer pose risks to U.S. markets, it is unclear how correcting any errors would enhance the Commission’s ability to monitor risk.”³⁹⁸ ISDA/SIFMA also remarked that there would be costs incurred by SDRs and reporting counterparties that are associated with correcting dead swaps, such as maintaining and storing data and building validations that can accommodate the reporting of dead swaps.³⁹⁹

The Commission acknowledges that the burden shouldered by market participants to expend resources to correct older data and to maintain legacy formats will affect costs and complexity of compliance.⁴⁰⁰ However, there is value in correcting dead swaps, as the Commission is charged with ensuring market integrity and guarding against fraud and manipulation, among its other regulatory responsibilities, which includes the use of data for dead swaps. With accurate data, including for dead swaps, the Commission will be able to better analyze years of market activity, study market events, perform back-testing, and, ultimately, use the swap data to inform policy.⁴⁰¹ The correction of dead swaps also provides a strong incentive for market participants to properly design their reporting systems, to perform thorough verification, and to promptly correct errors, to avoid or mitigate the cost of correcting data errors, which will improve data quality.

³⁹⁸ ISDA/SIFMA at 47.

³⁹⁹ *Id.*

⁴⁰⁰ *Id.* at 46-47. *See also* FIA May at 9.

⁴⁰¹ For example, since January 2013, the Commission has produced weekly swaps data, and since early 2018, the Commission has issued quarterly, ENNs reports. Over time, Commission staff will be able to produce studies using historical swaps data, similar to the papers about futures trading. *See, e.g.*, “Commodity Index Trading and Hedging Costs,” Celso Brunetti and David Reiffen, August 2014, *Journal of Financial Markets*, vol. 21, pp. 153-180, *available at*: <https://doi.org/10.1016/j.finmar.2014.08.001> (authors used 10 years of futures data, 2003-2012; “The Lifecycle of Exchange-traded Derivatives,” Grant Cavanaugh and Michael Penick, July 2014, *Journal of Commodity Markets*, vol. 10, pp. 47-68, *available at* <https://doi.org/10.1016/j.jcomm.2018.05.007> (authors studied over 50 years of futures data from 1954 to the 2000s).

In final § 45.14(b), the Commission is requiring reporting counterparties to verify data. Currently, there are no specific verification requirements for reporting counterparties. The Commission is adopting verification requirements in final § 45.14(b) that differ from the process described in the Proposal.

Proposed § 45.14(a) outlined a verification process that involved an exchange of open swaps reports and messaging between SDRs and reporting counterparties. Proposed § 45.14(a) would have required reporting counterparties to reconcile open swaps reports with their internal records for the swap data and to submit to an SDR a verification of the accuracy or notice of discrepancy for the relevant swap data within a 48- or 96-hour period, as applicable,⁴⁰² after receipt of open swaps reports from the SDR. Proposed 49.11 would have required an SDR to distribute open swaps reports for verification by reporting counterparties who are SDs, MSPs or DCOs on a weekly basis and to other reporting counterparties on a monthly basis. By not adopting certain elements in proposed § 49.11—that is, the messaging process based on open swaps reports issued by SDRs—SDRs and reporting counterparties will have more flexibility (as compared to the Proposal) in determining how reporting counterparties verify data and correct errors pursuant to § 45.14.

Final § 45.14(b) modifies the proposed verification process. Final § 45.14(b)(1) requires a reporting counterparty to utilize the mechanism provided by an SDR pursuant to final § 49.11 to access and verify swap data by comparing its internal records for swap data with the relevant swap data maintained by the SDR. Under final § 45.14(b)(2), a reporting counterparty must conform to the relevant SDR's policies and procedures for

⁴⁰² Under the Proposal, SDs, MSPs and DCOs are subject to a shorter 48-hour time frame for verification.

verification. In final § 45.14(b)(4), the Commission is setting the verification frequency at every thirty calendar days for reporting counterparties that are SDs, MSPs, or DCOs, and at every quarter for other reporting counterparties. Final § 45.14(b)(5) requires a reporting counterparty to maintain a verification log, wherein the reporting counterparty records the verifications it performed, errors discovered during the verification processes, and corrections made. The reporting counterparty must provide the verification log to the Commission on request.

The Commission understands that the costs of verification processes under final § 45.14 will involve time and personnel resources for reporting counterparties. A reporting counterparty may be required to expend resources to develop processes to access swap data through one or more SDR mechanisms and to compare swap data maintained by SDRs with its internal data and records for open swaps. The absence of a verification process under the Commission's current rules has been costly in terms of the harmful effect erroneous and incomplete swaps data submissions have had on the Commission's regulatory efforts, especially when data errors that could have been discovered through verification are not discovered and not corrected.

The Commission believes there may be recurring costs associated with performing monthly and quarterly verifications and with preparing verification logs. The Commission proposed more frequent verifications than are included in the final requirement, and some commenters suggested that the Commission reduce the frequency of the verification process and focus on key economic fields for trades to alleviate the costs and the challenges of verification.⁴⁰³ A number of commenters believed that the

⁴⁰³ See, e.g., GFMA at 13.

Commission's technical specifications and validation requirements proposed from other Roadmap rules would mean that data is reliable enough for verification to be performed less frequently than proposed.⁴⁰⁴ The Commission agrees with these comments, and has reduced the frequency of verifications from the proposed weekly/monthly to monthly/quarterly, as recommended by commenters.

The Commission believes that the final frequency of verifications will still support the Commission's objectives for high-quality data without overburdening reporting counterparties and SDRs.⁴⁰⁵ Monthly and quarterly verifications, depending on the type of reporting counterparty, will also require the use of resources, such as personnel and time, but the Commission believes that reporting counterparties' verification processes will become more efficient and, in some cases, automated as experience and technology develops. Also, as commenters suggested, it is likely that the Commission's enhanced validation and technical specifications will produce more accurate and reliable data, in certain respects, which, in turn, will reduce the amount of time needed to verify data. Validations and standardized data fields would help eliminate inappropriately blank data fields, though they would not eliminate the reporting of incorrect but plausible swap data, meaning that verification is still a necessity. Reducing or eliminating the number of inappropriately blank data fields will, however reduce the number of errors to be discovered in verification and the number of errors to be corrected.

⁴⁰⁴ See ICE Clear at 3 ("By focusing on obtaining a critical set of data elements, utilizing existing and future upfront data validations, and leveraging existing requirements to correct errors and omissions, the Commission has crafted a reporting framework that should substantially enhance the accuracy, reliability and utility of swap data.")

⁴⁰⁵ ISDA/SIFMA at 45 (ISDA/SIFMA suggested monthly verifications for reporting counterparties that are SDs, MSPs, or DCOs, and quarterly verifications for all other reporting counterparties).

The Commission also believes that § 45.14 encourages accountability, because reporting counterparties must record their data verification efforts. Under the current regulations, there is little accountability for counterparties that do not participate in the confirmation process.

The Commission believes that verification processes that lead to accurate data are vital to meaningful regulation and essential to fulfilling the purposes of CEA section 21. With more accurate data, the Commission can better identify discrepancies in swaps markets, determine whether market participants are complying with Commission regulations, and guard against abusive practices. Accurate data also benefits the public, because it is used to inform the Commission's policy decisions that help support well-functioning markets.

For proposed § 45.14, like proposed § 49.11, commenters provided qualitative comments in response to the Commission's consideration of costs and benefits. Commenters did not provide quantitative information.

Based on the Commission's familiarity with reporting counterparty operations and the currently collected data, the Commission recognizes there will be monetary costs for reporting counterparties to comply with the error-correction and verification requirements in § 45.14. For the error-correction process, the Commission estimates that SEFs, DCMs, and reporting counterparties will each spend about 30 hours per year correcting data previously submitted to SDRs, providing notices to the Commission, and submitting remediation plans, if such plans exist.⁴⁰⁶ Those hours will not be new time commitments because reporting counterparties are currently required to correct errors.

⁴⁰⁶ Proposal at 84 FR 21076 (May 13, 2019).

The Commission monetizes the hours by multiplying by a wage rate of \$48 to \$101.⁴⁰⁷ Accordingly, the Commission estimates that each reporting counterparty will expend between \$1,440 and \$3,030 annually to implement § 45.14(a), and each non-reporting counterparty will expend between \$48 and \$101.

The Commission estimates that the hours needed for reporting counterparties to meet their verification obligations under the final rules will be less than the hours estimated to be required under the Proposal, as a result of the technical specifications and validation requirements from other Roadmap rulemakings, which the Commission expects will reduce errors in the first instance, and because the verification process under final § 45.14(b) will be less time-consuming than the requirements under proposed §§ 45.14(a) and 49.11. The Commission understands that the hours and rates will vary based on many factors, including each reporting counterparty's expertise in data reporting and operational size. The Commission estimates that the initial efforts to implement § 45.14(b) will require 100 hours on average, meaning each reporting counterparty will expend up to 100 hours a year to establish systems to verify data and prepare verification logs. The Commission estimates these efforts to cost between \$4,800 to \$10,100, which are the sums of the hours multiplied by a wage rate of \$48 to \$101.⁴⁰⁸ The Commission estimates that reporting counterparties will expend up to two hours every 30 days to verify data, or 24 hours annually. The annual costs to verify data every 30 days for some reporting counterparties will range between \$1,152 and \$2,424. The annual costs to

⁴⁰⁷ See *supra* note 344 (discussion of BLS wage estimates).

⁴⁰⁸ See *supra* note 344 (discussion of BLS wage estimates).

expend up to two hours every quarter to verify data for other reporting counterparties will range between \$384 and \$808.

Besides considering proposed § 45.14, the Commission considered and rejected the idea of maintaining current § 45.14. The Commission rejected this approach because it has become evident that mandates to correct errors and verification processes improve data quality, and that current requirements have proven inadequate for providing the Commission with the level of data quality that it requires to perform its regulatory functions. As explained above, the current regulations for confirmation and error correction have resulted in the Commission receiving data that is presumed accurate, when this is often not the case. The Commission also has observed that the absence of a verification requirement has resulted in counterparties neglecting to inform SDRs of errors, or otherwise not discovering even glaring errors in swap data, often for long periods of time. This leaves the Commission with flawed data, which hinders the Commission's ability to understand the nature of swaps, price fluctuations, and markets generally, and hampers the Commission's ability to perform its regulatory functions. Thus, the Commission believes the alternative of retaining current § 45.14 would undermine the Commission's regulatory efforts and hinder the Commission's ability to make informed decisions using accurate data.

Notwithstanding the anticipated incremental costs related to final § 45.14 and after considering alternative approaches, the Commission believes the amendments to § 45.14 are warranted in light of the anticipated benefits.

6. Costs and Benefits of Amendments to Part 43

§ 43.3(e) – Error Correction

The Commission is amending the error correction requirements of existing § 43.3(e) to conform to the error correction requirements in § 45.14. The amendments to § 43.3(e) create regulatory consistency and reduce any confusion around error-correction requirements for data under Part 43 and swap data required under Part 45.

Final § 43.3(e)(1) requires any SEF, DCM, or reporting counterparty that by any means becomes aware of any errors in swap transaction and pricing data previously-reported, or not properly reported, to an SDR by the SEF, DCM, or reporting counterparty to submit corrected swap transaction and pricing data to the SDR regardless of the state of the swap, including swaps that have terminated, matured, or are otherwise no longer open. Final § 43.3(e)(1)(i) requires a SEF, DCM, or reporting counterparty to correct swap transaction and pricing data as soon as technologically practicable following discovery of the errors, but no later than seven business days following the discovery of the error. Under final § 43.3(e)(1)(ii), if a SEF, DCM, or reporting counterparty is unable to correct the errors within seven business days following discovery of the errors, the SEF, DCM, or reporting counterparty must inform the Director of DMO, or his or her designee, of such errors or omissions and provide an initial assessment of the scope of the errors or omissions and an initial remediation plan for correcting the errors, if one exists, within 12 hours of determining that the correction cannot be made within the required time frame. Final § 43.3(e)(1)(iii) requires that a SEF, DCM, or reporting counterparty conform to an SDR's policies and procedures for corrections of errors in previously-reported swap transaction and pricing data and reporting of omitted swap transaction and pricing data.

Final § 43.3(e)(2) applies to a non-reporting counterparty that becomes aware of any errors in swap transaction and pricing data. Final § 43.3(e)(2) requires a non-reporting counterparty to inform the reporting counterparty for the swap of the error, but does not require the non-reporting counterparty to correct the error. A non-reporting counterparty has three business days following the discovery of the errors or omissions to notify the reporting counterparty of the error, instead of the seven business days provided for corrections under final § 43.3(e)(1). If a non-reporting counterparty does not know the identity of the reporting counterparty, the non-reporting counterparty must notify the SEF or DCM where the swap was executed of the errors and omissions no later than three business days after the discovery.

The Commission is moving all of the requirements of existing § 43.3(f) and (g) to new § 49.28. As such, all costs and benefits associated with this change are discussed above in section discussing § 49.28.

The costs related to final § 43.3(e)(1) are similar to the costs to correct errors under final § 45.14(a)(1), as the final rules to each section are intended to be consistent. Final § 43.3(e) will impose costs on SEFs, DCMs, and reporting counterparties for correcting errors and submitting remediation plans, if they exist, to the Director of DMO within a seven-day period. Market participants are also currently required to correct errors under existing § 43.3(e), so costs associated with § 43.3(e) are only those that result from the modified requirements as compared to the existing requirements, such as the requirement for notices. Costs to correct errors and issue error notices with initial remediation plans, if they exist, will be mitigated by the fact that the duties under § 43.3(e) are similar to duties in final § 45.14. The Commission also believes that the costs

related to remediation plans will be incremental because reporting counterparties typically provide a remediation plan to the Commission as part of current practice. The seven-day deadline will require some reporting counterparties to allocate resources differently to meet the deadline because the current rule does not have a specific time deadline.⁴⁰⁹ The Commission also believes that the inclusion of the technical specification and validation requirements for swap transaction and pricing data in parallel Commission rulemaking⁴¹⁰ will help reduce certain types of swap transaction and pricing data reporting errors, and, therefore, reduce the need for market participants to correct those types of errors and, as a result, the corresponding costs incurred by market participants to correct swap transaction and pricing data errors will likely decrease over time.

Non-reporting counterparties also may incur additional costs related to the requirements in § 43.3(e)(2). Non-reporting counterparties may expend resources to make the required notification within the three-day period under final § 43.3(e)(2). Under current § 43.3(e)(1)(i), non-reporting counterparties must act “promptly” so the three-day deadline under the final rule may require non-reporting counterparties to allocate resources differently to meet the deadline. The additional requirement in final § 43.3(e)(2) for a non-reporting counterparty to inform a SEF or DCM of an error if the identity of the reporting counterparty is not known is intended to accommodate non-reporting counterparties in fulfilling their role in the data correction process for swaps executed anonymously. The Commission expects that non-reporting counterparties will

⁴⁰⁹ See generally 17 CFR 43.3(e).

⁴¹⁰ See generally 85 FR 21516, et seq. (Apr. 17, 2020)

not incur many costs to notify a SEF or DCM of errors and omissions beyond the cost currently incurred when notifying reporting counterparties.

As discussed in the section regarding the benefits of final § 45.14, the Commission believes consistent error correction requirements for swap data and swap transaction and pricing data will help ensure that the Commission has access to accurate and complete swap transaction and pricing data in order to fulfill its various regulatory responsibilities. Accurate swap transaction and pricing data helps the Commission to monitor and surveil market activity and risks within the swaps markets. Accurate and complete swap transaction and pricing data is also beneficial to market participants and the public, who rely on the data in their swaps-related decision-making. Inaccurate or incomplete swap transaction and pricing data can create market volatility. Additionally, the Commission believes that accurate swap transaction and pricing data is necessary for effective risk management for swap counterparties, and the correction requirements under the final rule will help ensure that swap counterparties have access to accurate and complete swap transaction and pricing data.

SDRs and counterparties also benefit from consistent regulations. The final rule establishes a swap data error-correction framework for reporting counterparties in § 45.14. The requirements in final § 43.3(e) are consistent with the requirements in final § 45.14(a). Both of these rules complement amendments to Part 49 that require SDRs to provide reporting counterparties with access to swaps data reporting systems to identify errors and make corrections. The Commission believes that inconsistent requirements may lead to confusion and unnecessary efforts by covered entities. By ensuring that obligations in final § 43.3(e) are consistent with the obligations to § 45.14, these issues

should be avoided. Finally, the Commission believes its ability to monitor swaps markets is not compromised by the three-day or seven-day correction and notification periods in final § 43.3(e). While incorrect data might affect market analysis in the short-term, there is greater value in possessing accurate data for the life of a swap that can provide insight into market activity for months and years; support a point-in-time examination of the data, and enable back-testing.

The Commission recognizes there will be monetary costs for reporting counterparties and non-reporting counterparties to comply with the error-correction and notification requirements in § 43.3(e). For the error-correction and remediation process, the Commission estimates that 1,729 SEFs, DCMs, and reporting counterparties will each spend about 30 hours a year correcting swap transaction and pricing data, providing notices to the Commission and submitting remediation plans, if such plans exist.⁴¹¹ Those hours will not be new time commitments because reporting counterparties are currently required to correct errors. Because the Commission believes that error notifications by non-reporting counterparties will be infrequent, it estimates that non-reporting counterparties will expend no more than one hour issuing error notices. The Commission monetizes the hours by multiplying by a wage rate of \$48 to \$101.⁴¹² Accordingly, the Commission estimates that each reporting counterparty will expend between \$1,440 and \$3,030 annually to implement § 43.3(e), and each non-reporting counterparty will expend between \$48 and \$101 annually.

⁴¹¹ Proposal at 84 FR 21076-77 (May 13, 2019).

⁴¹² *See supra* note 344 (discussion of BLS wage estimates).

While the Commission does anticipate incremental costs associated with § 43.3(e), the Commission believes the amendments to § 43.3(e) are warranted in light of the anticipated benefits related to error-correction processes that lead to accurate data.

7. Section 15(a) Factors

The Dodd-Frank Act sought to promote the financial stability of the United States, in part, by improving financial system accountability and transparency. More specifically, Title VII of the Dodd-Frank Act directs the Commission to promulgate regulations to increase swaps market transparency and thereby reduce the potential for counterparty and systemic risk.⁴¹³ Transaction-based reporting is a fundamental component of the legislation's objectives to increase transparency, reduce risk, and promote market integrity within the financial system generally, and the swaps market in particular. SEFs, DCMs, and reporting counterparties that submit data to SDRs are central to achieving the legislation's objectives related to swap reporting.

Section 15(a) of the Act requires the Commission to consider the costs and benefits of the amendments to parts 43, 45, and 49 with respect to the following factors:

- Protection of market participants and the public;
- Efficiency, competitiveness, and financial integrity of markets;
- Price discovery;
- Sound risk management practices; and
- Other public interest considerations.

⁴¹³ See Congressional Research Service Report for Congress, *The Dodd-Frank Wall Street Reform and Consumer Protection Act: Title VII, Derivatives*, by Mark Jickling and Kathleen Ann Ruane (August 30, 2010); Department of the Treasury, *Financial Regulatory Reform: A New Foundation: Rebuilding Financial Supervision and Regulation 1* (June 17, 2009) at 47-48.

A discussion of these amendments in light of section 15(a) factors is set out immediately below.

i. Protection of Market Participants and the Public

In the Part 49 Adopting Release, the Commission noted that it believed that the registration and regulation of SDRs will serve to better protect market participants by providing the Commission and other regulators with important oversight tools to monitor, measure, and comprehend the swaps markets. Inaccurate and incomplete data reporting hinders the Commission's ability to oversee the swaps market. The final rules adopted in this release mostly focus on ensuring that SDRs and reporting counterparties verify and correct errors or omissions in data reported to SDRs and on streamlining and simplifying the requirements for SDRs. Both error-correction and verification processes are steps in a series of data checks or techniques needed to build accurate data sets. Regardless of whether verification is done automatically or manually, the accuracy of SDR data should improve under these final regulations because inaccuracies will be removed.

Overall, the Commission believes that the adoption of all the amendments to parts 43, 45, and 49 will improve the quality of the data reported, increase transparency, and enhance the Commission's ability to fulfill its regulatory responsibilities, including its market surveillance and enforcement capabilities. In some cases, as discussed above, the final regulations are expected to be more flexible as compared to the requirements in the Proposal. The Commission does not believe that this increased flexibility will encumber the benefits from better quality data. Rather, the Commission believes that monitoring of potential risks to financial stability will be more effective with more accurate data. More

accurate data will therefore lead to improved protection of market participants and the public.

ii. Efficiency, Competitiveness, and Financial Integrity of Markets

The Commission believes that the adoption of the amendments to parts 43, 45, and 49, together with the swap data recordkeeping and reporting requirements in parts 43 and 45, will provide a robust source of information on swaps markets that is expected to promote increased efficiency and competition. Under the final Roadmap regulations, parts 43, 45, and 49 will work together to establish a data validation and verification system for SDRs and reporting counterparties. The result is a data reporting system that fulfills the CEA's mandate that the Commission prescribe data collection and maintenance standards for SDRs, and, ultimately, supports the collection of accurate and complete data.

The Commission believes that accurate swap transaction and pricing data will lead to greater efficiencies for market participants executing swap transactions due to a better understanding of their overall positions within the context of the broader market. This improved understanding will be facilitated by two distinct channels. First, amendments adopted in this final rulemaking are expected to result in improved swap transaction and pricing data being made available to the public, which will improve the ability of market participants to monitor real-time activity by other participants and to respond as they see fit. Second, amendments that result in improved swap data will improve the Commission's ability to monitor the swaps markets for abusive practices and improve the Commission's ability to create policies that ensure the integrity of the swaps markets. This improvement will be facilitated by the Commission's improved oversight

and enforcement capabilities and the reports and studies published as part of the Commission's research and information programs.

In particular, the amendments to §§ 45.14, 49.2, 49.10, 49.11, 49.12, and 49.26 will help improve the financial integrity of markets. For example, the verification and correction of swap data will improve the accuracy and completeness of swap data available to the Commission. The verification and correction processes also will assist the Commission with, among other things, improving monitoring of risk exposures of individual counterparties, monitoring concentrations of risk exposure, and evaluating systemic risk. The efficient oversight and accurate data reporting enabled by these amendments will improve the financial integrity of the swaps markets.

In the Part 49 Adopting Release, the Commission expected that the introduction of SDRs would further automate the reporting of swap data. The Commission expected that automation would benefit market participants and reduce transactional risks through the SDRs and other service providers offering important ancillary services, such as confirmation and matching services, valuation, pricing, reconciliation, position limits management, and dispute resolution. These benefits did follow and have enhanced the efficiency, competitiveness, and financial integrity of markets.⁴¹⁴ The Commission believes that the amendments in this release will help to further enhance these benefits.

iii. Price Discovery

The CEA requires that swap transaction and pricing data be made publicly available. The CEA and its existing regulations in part 43 also require swap transaction and pricing data to be available to the public in real-time. Combined, parts 43 and 49

⁴¹⁴ See Part 49 Adopting Release at 54573.

achieve the statutory objective of providing transparency and enhanced price discovery to swap markets in a timely manner. The amendments to §§ 43.3, 49.2, 49.10, 49.11, 49.12, and 49.26 improve the fulfillment of these objectives. The amendments, both directly and indirectly, upgrade the quality of real-time public reporting of swap transaction and pricing data by improving the accuracy of information that is reported to the SDRs and disseminated to the public.

As explained above, many of the final rules adopted in this release focus on a system for verifying swap data reported to and maintained by SDRs, who are also charged with disseminating such data to the Commission. The value of the swap data to the Commission depends on its accuracy and completeness. Swap data that contains errors or missing information has limited value because the Commission cannot rely on it to monitor risk and pricing, measure volume and liquidity, or inform policy.

Similarly, the Commission believes that inaccurate and incomplete swap transaction and pricing data hinders the public's use of the data, which harms transparency and price discovery. The Commission is aware of at least three publicly-available studies that support this point. The studies examined data and remarked on incomplete, inaccurate, and unreliable data. The first study analyzed the potential impact of the Dodd-Frank Act on OTC transaction costs and liquidity using real-time CDS trade data. The study found that more than 5,000 reports had missing data and more than 15,000 reports included a price of zero, leaving a usable sample of 180,149 reports.⁴¹⁵ The second study reported a number of data fields that were routinely null or missing,

⁴¹⁵ Y.C. Loon, Z. (Ken) Zhong, "Does Dodd-Frank affect OTC transaction costs and liquidity? Evidence from real-time trade reports," *Journal of Financial Economics* (2016), available at <http://dx.doi.org/10.1016/j.jfineco.2016.01.019>.

making it difficult to analyze swap market volumes.⁴¹⁶ The third study assessed the size of the agricultural swaps market and described problems in identifying the underlying commodity as well as other errors in the reported data that made some data unusable, including, for example, swaps with a reported notional quantity roughly equal to the size of the entire U.S. soybean crop.⁴¹⁷ The Commission expects the final rules will result in more accurate and complete data, which will improve market participants' ability to analyze swap transaction and pricing data. This, in turn, should improve transparency and price discovery.

iv. Sound Risk Management Practices

In the Part 49 Adopting Release, the Commission stated that part 49 and part 45 will strengthen the risk management practices of the swaps market.⁴¹⁸ Prior to the adoption of the Dodd-Frank Act, participants in the swaps markets operated without obligations to disclose transactions to regulators or to the public. The Dodd-Frank Act specifically changed the transparency of the swaps market with the adoption of CEA section 21 and the establishment of SDRs as the entities to which swap data and swap transaction and pricing data are reported and maintained for use by regulators or disseminated to the public. The Commission believes that the improved reporting of data to SDRs will serve to improve risk management practices by market participants. To the extent that better swap transaction and pricing data improves the ability of market

⁴¹⁶ See Financial Stability Report, Office of Financial Research (Dec. 15, 2015) at 84-85, *available at* https://financialresearch.gov/financial-stability-reports/files/OFR_2015-Financial-Stability-Report_12-15-2015.pdf.

⁴¹⁷ Peterson, P.E. 2014. "How Large is the Agricultural Swaps Market?" Proceedings of the NCCC-134 Conference on Applied Commodity Price Analysis, Forecasting, and Market Risk Management. St. Louis, MO, *available at* <http://www.farmdoc.illinois.edu/nccc134>.

⁴¹⁸ See Part 49 Adopting Release at 54574.

participants to gauge their risks in the context of the overall market, risk management practices should improve. Earlier and more-informed discussions between relevant market participants and regulators regarding systemic risk, facilitated by accurate swap data, will also lead to improved risk management outcomes. Market participants should also see improvements in their risk management practices, as improved swap data allows for more accurate and timely market analyses that are publicly disseminated by the Commission.

The Commission believes that the amendments to parts 43, 45, and 49 will improve the quality of SDR data reported to SDRs and, hence, improve the Commission's ability to monitor the swaps market, react to potential market emergencies, and fulfill its regulatory responsibilities generally. The amendments adopted in this final rulemaking place different obligations on SDRs and reporting counterparties to verify accuracy and completeness of SDR data. The Commission believes that access for regulators to accurate and reliable SDR data is essential for appropriate risk management and is especially important for regulators' ability to monitor the swaps market for systemic risk. Moreover, the Commission expects efforts to improve data quality will increase market participants' confidence in SDR data and therefore their confidence in any subsequent analyses based on the data.

v. Other Public Interest Considerations

The Commission believes that the increased transparency resulting from improvements to the SDR data via the amendments to parts 43, 45, and 49 has other public interest considerations including: Creating greater understanding for the public, market participants, and the Commission of the interaction between the swaps market,

other financial markets, and the overall economy; improving regulatory oversight and enforcement capabilities; and generating more information for regulators so that they may establish more effective public policies to reduce overall systemic risk.

D. Antitrust Considerations

Section 15(b) of the CEA requires the Commission to take into consideration the public interest to be protected by the antitrust laws and endeavor to take the least anticompetitive means of achieving the objectives of the CEA, in issuing any order or adopting any Commission rule or regulation (including any exemption under section 4(c) or 4c(b)), or in requiring or approving any bylaw, rule, or regulation of a contract market or registered futures association established pursuant to section 17 of the CEA.⁴¹⁹ The Commission believes that the public interest to be protected by the antitrust laws is generally to protect competition.

The Commission requested comments on whether the Proposal may have the potential to be inconsistent with the anti-trust laws or anti-competitive in nature. The Commission has considered this final rule to determine whether it is anticompetitive and has identified no anticompetitive effects.

Because the Commission has determined that the final rule is not anticompetitive and has no anticompetitive effects, the Commission has not identified any less anticompetitive means of achieving the purposes of the CEA.

List of Subjects

17 CFR Part 43

Real-time public swap reporting.

⁴¹⁹ 7 U.S.C. 19(b).

17 CFR Part 45

Data recordkeeping requirements, Data reporting requirements, Swaps.

17 CFR Part 49

Registration and regulatory requirements, Swap data repositories.

For the reasons stated in the preamble, the Commodity Futures Trading

Commission amends 17 CFR chapter I as follows:

PART 43—REAL-TIME PUBLIC REPORTING

1. The authority citation for part 43 continues to read as follows:

Authority: 7 U.S.C. 2(a), 12a(5) and 24a, as amended by Pub. L. 111–203, 124 Stat. 1376 (2010).

2. Amend § 43.3 by revising paragraph (e) to read as follows:

§ 43.3 Method and timing for real-time public reporting.

* * * * *

(e) *Correction of errors—(1) Swap execution facilities, designated contract markets, and reporting counterparties.* Any swap execution facility, designated contract market, or reporting counterparty that by any means becomes aware of any error relating to swap transaction and pricing data that it was required to report under this part shall correct the error. To correct an error, the swap execution facility, designated contract market, or reporting counterparty shall submit complete and accurate swap transaction and pricing data to the swap data repository that maintains the swap transaction and pricing data for the relevant swap, or completely and accurately report swap transaction and pricing data for a swap that was not previously reported to a swap data repository as required under this part, as applicable. Except as otherwise provided in this section, the requirement to correct any error applies regardless of the state of the swap that is the

subject of the swap transaction and pricing data, including a swap that has terminated, matured, or otherwise is no longer considered to be an open swap.

(i) *Timing requirement for correcting errors.* The swap execution facility, designated contract market, or reporting counterparty shall correct any error as soon as technologically practicable after discovery of the error. In all cases, errors shall be corrected within seven business days after discovery. Any error that a reporting counterparty discovers or could have discovered during the verification process required under § 45.14(b) of this chapter is considered discovered for the purposes of this section as of the moment the reporting counterparty began the verification process during which the error was first discovered or discoverable.

(ii) *Notification of failure to timely correct.* If the swap execution facility, designated contract market, or reporting counterparty will, for any reason, fail to timely correct an error, the swap execution facility, designated contract market, or reporting counterparty shall notify the Director of the Division of Market Oversight, or such other employee or employees of the Commission as the Director may designate from time to time. The notification shall be in the form and manner, and according to the instructions, specified by the Director of the Division of Market Oversight, or such other employee or employees of the Commission as the Director may designate from time to time. Unless otherwise instructed by the Director of the Division of Market Oversight, or such other employee or employees of the Commission as the Director may designate from time to time, the notification shall include an initial assessment of the scope of the error or errors that were discovered, and shall include any initial remediation plan for correcting the error or errors, if an initial remediation plan exists. This notification shall be made within

12 hours of the swap execution facility's, designated contract market's, or reporting counterparty's determination that it will fail to timely correct the error.

(iii) *Form and manner for error correction.* In order to satisfy the requirements of this section, a swap execution facility, designated contract market, or reporting counterparty shall conform to a swap data repository's policies and procedures created pursuant to § 49.10 of this chapter for correction of errors.

(2) *Non-reporting counterparties.* Any non-reporting counterparty that by any means becomes aware of any error in the swap transaction and pricing data for a swap to which it is the non-reporting counterparty, shall notify the reporting counterparty for the swap of the error as soon as technologically practicable after discovery, but not later than three business days following discovery of the error. If the non-reporting counterparty does not know the identity of the reporting counterparty, the non-reporting counterparty shall notify the swap execution facility or designated contract market where the swap was executed of the error as soon as technologically practicable after discovery, but no later than three business days following the discovery. Such notice from the non-reporting counterparty to the swap execution facility, designated contract market, or reporting counterparty constitutes discovery under this section.

(3) *Exception.* The requirements to correct errors set forth in paragraph (e) of this section only apply to errors in swap transaction and pricing data relating to swaps for which the record retention period under § 45.2 of this chapter has not expired as of the time the error is discovered. Errors in swap transaction and pricing data relating to swaps for which the record retention periods under § 45.2 of this chapter have expired at the

time that the errors are discovered are not subject to the requirements to correct errors set forth in paragraph (e) of this section.

(4) *Error defined*—(i) *Errors*. For the purposes of this part, there is an error when swap transaction and pricing data is not completely and accurately reported. This includes, but is not limited to, the following circumstances:

(A) Any of the swap transaction and pricing data for a swap reported to a swap data repository is incorrect or any of the swap transaction and pricing data that is maintained by a swap data repository differs from any of the relevant swap transaction and pricing data contained in the books and records of a party to the swap.

(B) Any of the swap transaction and pricing data for a swap that is required to be reported to a swap data repository or to be maintained by a swap data repository is not reported to a swap data repository or is not maintained by the swap data repository as required by this part.

(C) None of the swap transaction and pricing data for a swap that is required to be reported to a swap data repository or to be maintained by a swap data repository is reported to a swap data repository or is maintained by a swap data repository.

(D) Any of the swap transaction and pricing data for a swap that is no longer an open swap is maintained by the swap data repository as if the swap is still an open swap.

(ii) *Presumption*. For the purposes of this section, there is a presumption that an error exists if the swap data or the swap transaction and pricing data that is maintained and disseminated by an SDR for a swap is not complete and accurate. This includes, but is not limited to, the swap data that the SDR makes available to the reporting counterparty for verification under § 49.11 of this chapter.

* * * * *

PART 45—SWAP DATA RECORDKEEPING AND REPORTING

REQUIREMENTS

3. The authority citation for part 45 continues to read as follows:

Authority: 7 U.S.C. 6r, 7, 7a-1, 7b-3, 12a, and 24a, as amended by Title VII of the Wall Street Reform and Consumer Protection Act of 2010, Pub. L. 111-203, 124 Stat. 1376 (2010), unless otherwise noted.

4. In § 45.1(a), add a definition for the term “Open swap” in alphabetical order to read as follows:

§ 45.1 Definitions.

(a) * * *

Open swap means an executed swap transaction that has not reached maturity or expiration, and has not been fully exercised, closed out, or terminated.

* * * * *

§ 45.2 [Amended]

5. In § 45.2, remove and reserve paragraphs (f) and (g).
6. Revise § 45.14 to read as follows:

§ 45.14 Correcting errors in swap data and verification of swap data accuracy.

(a) *Correction of errors*—(1) *Swap execution facilities, designated contract markets, and reporting counterparties.* Any swap execution facility, designated contract market, or reporting counterparty that by any means becomes aware of any error relating to swap data that it was required to report under this part shall correct the error. To correct an error, the swap execution facility, designated contract market, or reporting counterparty shall submit complete and accurate swap data to the swap data repository

that maintains the swap data for the relevant swap, or completely and accurately report swap data for a swap that was not previously reported to a swap data repository as required under this part, as applicable. Except as otherwise provided in this section, the requirement to correct any error applies regardless of the state of the swap that is the subject of the swap data, including a swap that has terminated, matured, or otherwise is no longer considered to be an open swap.

(i) *Timing requirement for correcting errors.* The swap execution facility, designated contract market, or reporting counterparty shall correct any error as soon as technologically practicable after discovery of the error. In all cases, errors shall be corrected within seven business days after discovery. Any error that a reporting counterparty discovers or could have discovered during the verification process required under paragraph (b) of this section is considered discovered for the purposes of this section as of the moment the reporting counterparty began the verification process during which the error was first discovered or discoverable.

(ii) *Notification of failure to timely correct.* If the swap execution facility, designated contract market, or reporting counterparty will, for any reason, fail to timely correct an error, the swap execution facility, designated contract market, or reporting counterparty shall notify the Director of the Division of Market Oversight, or such other employee or employees of the Commission as the Director may designate from time to time. The notification shall be in the form and manner, and according to the instructions, specified by the Director of the Division of Market Oversight, or such other employee or employees of the Commission as the Director may designate from time to time. Unless otherwise instructed by the Director of the Division of Market Oversight, or such other

employee or employees of the Commission as the Director may designate from time to time, the notification shall include an initial assessment of the scope of the error or errors that were discovered, and shall include any initial remediation plan for correcting the error or errors, if an initial remediation plan exists. This notification shall be made within 12 hours of the swap execution facility's, designated contract market's, or reporting counterparty's determination that it will fail to timely correct the error.

(iii) *Form and manner for error correction.* In order to satisfy the requirements of this section, a swap execution facility, designated contract market, or reporting counterparty shall conform to a swap data repository's policies and procedures created pursuant to § 49.10 of this chapter for correction of errors.

(2) *Non-reporting counterparties.* Any non-reporting counterparty that by any means becomes aware of any error in the swap data for a swap to which it is the non-reporting counterparty, shall notify the reporting counterparty for the swap of the error as soon as technologically practicable after discovery, but not later than three business days following discovery of the error. If the non-reporting counterparty does not know the identity of the reporting counterparty, the non-reporting counterparty shall notify the swap execution facility or designated contract market where the swap was executed of the error as soon as technologically practicable after discovery, but no later than three business days following the discovery. Such notice from the non-reporting counterparty to the swap execution facility, designated contract market, or reporting counterparty constitutes discovery under this section.

(3) *Exception.* The requirements to correct errors set forth in paragraph (a) of this section only apply to errors in swap data relating to swaps for which the record retention

period under § 45.2 has not expired as of the time the error is discovered. Errors in swap data relating to swaps for which the record retention periods under § 45.2 have expired at the time that the errors are discovered are not subject to the requirements to correct errors set forth in paragraph (a) of this section.

(b) *Verification that swap data is complete and accurate.* Each reporting counterparty shall verify that there are no errors in the swap data for all open swaps that the reporting counterparty reported, or was required to report, to a swap data repository under the requirements of this part, in accordance with this paragraph (b).

(1) *Method of verification.* Each reporting counterparty shall utilize the mechanism for verification that each swap data repository to which the reporting counterparty reports swap data adopts under § 49.11 of this chapter. Each reporting counterparty shall utilize the relevant mechanism(s) to compare all swap data for each open swap for which it serves as the reporting counterparty maintained by the relevant swap data repository or repositories with all swap data contained in the reporting counterparty's internal books and records for each swap, to verify that there are no errors in the relevant swap data maintained by the swap data repository. Notwithstanding the foregoing, a reporting counterparty is not required to verify the accuracy and completeness of any swap data to which the reporting counterparty is not permitted access under the Act or Commission regulations, including, but not limited to, § 49.17 of this chapter.

(2) *Verification policies and procedures.* In performing verification as required by this paragraph, each reporting counterparty shall conform to each relevant swap data repository's verification policies and procedures created pursuant to § 49.11 of this

chapter. If a reporting counterparty utilizes a third-party service provider to perform verification, the reporting counterparty shall conform to each relevant swap data repository's third-party service provider verification policies and procedures created pursuant to § 49.11 of this chapter and shall require the third-party service provider to conform to the same policies and procedures while performing verification on behalf of the reporting counterparty.

(3) *Correcting errors.* Any and all errors discovered during the verification process shall be corrected in accordance with paragraph (a)(1) of this section.

(4) *Frequency.* Each reporting counterparty shall perform verification at a minimum:

(i) If the reporting counterparty is a swap dealer, major swap participant, or derivatives clearing organization, once every thirty calendar days; or

(ii) If the reporting counterparty is not a swap dealer, major swap participant, or a derivatives clearing organization, once every calendar quarter, provided that there are at least two calendar months between verifications.

(5) *Verification log.* Each reporting counterparty shall keep a log of each verification that it performs. For each verification, the log shall include all errors discovered during the verification, and the corrections performed under paragraph (a) of this section. This requirement is in addition to any other applicable reporting counterparty recordkeeping requirement.

(c) *Error defined—(1) Errors.* For the purposes of this part, there is an error when swap data is not completely and accurately reported. This includes, but is not limited to, the following circumstances:

(i) Any of the swap data for a swap reported to a swap data repository is incorrect or any of the swap data that is maintained by a swap data repository differs from any of the relevant swap data contained in the books and records of a party to the swap.

(ii) Any of the swap data for a swap that is required to be reported to a swap data repository or to be maintained by a swap data repository is not reported to a swap data repository or is not maintained by the swap data repository as required by this part.

(iii) None of the swap data for a swap that is required to be reported to a swap data repository or to be maintained by a swap data repository is reported to a swap data repository or is maintained by a swap data repository.

(iv) Any of the swap data for a swap that is no longer an open swap is maintained by the swap data repository as if the swap is still an open swap.

(2) *Presumption.* For the purposes of this section, there is a presumption that an error exists if the swap data that is maintained and disseminated by an SDR for a swap is not complete and accurate. This includes, but is not limited to, the swap data that the SDR makes available to the reporting counterparty for verification under § 49.11 of this chapter.

PART 49—SWAP DATA REPOSITORIES

7. The authority citation for part 49 is revised to read as follows:

Authority: 7 U.S.C. 1a, 2(a), 6r, 12a, and 24a, as amended by Title VII of the Wall Street Reform and Consumer Protection Act of 2010, Pub. L. 111-203, 124 Stat. 1376 (Jul. 21, 2010), unless otherwise noted.

8. Amend § 49.2 by:

a. In paragraph (a)—

i. Revising the definition of "Affiliate";

- ii. Adding in alphabetical order a definition for “As soon as technologically practicable”;
 - iii. Revising the definitions of “Asset class,” “Commercial use,” “Control,” “Foreign regulator,” “Independent perspective,” “Market participant,” and “Non-affiliated third party”;
 - iv. Adding in alphabetical order a definition for “Open swap”;
 - v. Revising the definitions of “Person associated with a swap data repository” and “Position”;
 - vi. Removing the definition of “Registered swap data repository”;
 - vii. Adding in alphabetical order a definition for “Reporting counterparty”;
 - viii. Removing the definition of “Reporting entity”;
 - ix. Adding in alphabetical order a definition for “SDR data”;
 - x. Revising the definitions of “SDR Information,” “Section 8 material,” and “Swap data”;
 - xi. Adding in alphabetical order a definition for “Swap transaction and pricing data”; and
- b. Revising paragraph (b).

The revisions and additions read as follows:

§ 49.2 Definitions.

(a) * * *

Affiliate means a person that directly, or indirectly, controls, is controlled by, or is under common control with, the swap data repository.

As soon as technologically practicable means as soon as possible, taking into consideration the prevalence, implementation, and use of technology by comparable market participants.

Asset class means a broad category of commodities including, without limitation, any “excluded commodity” as defined in section 1a(19) of the Act, with common characteristics underlying a swap. The asset classes include interest rate, foreign exchange, credit, equity, other commodity, and such other asset classes as may be determined by the Commission.

Commercial use means the use of SDR data held and maintained by a swap data repository for a profit or business purposes. A swap data repository’s use of SDR data for regulatory purposes and/or to perform its regulatory responsibilities would not be considered a commercial use regardless of whether the swap data repository charges a fee for reporting such SDR data.

Control (including the terms “*controlled by*” and “*under common control with*”) means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise.

* * * * *

Foreign regulator means a foreign futures authority as defined in section 1a(26) of the Act, foreign financial supervisors, foreign central banks, foreign ministries, and other foreign authorities.

Independent perspective means a viewpoint that is impartial regarding competitive, commercial, or industry concerns and contemplates the effect of a decision on all constituencies involved.

Market participant means any person participating in the swap market, including, but not limited to, designated contract markets, derivatives clearing organizations, swap execution facilities, swap dealers, major swap participants, and any other counterparty to a swap transaction.

Non-affiliated third party means any person except:

- (1) The swap data repository;
- (2) The swap data repository's affiliate; or
- (3) A person jointly employed by a swap data repository and any entity that is not the swap data repository's affiliate (the term "non-affiliated third party" includes such entity that jointly employs the person).

Open swap means an executed swap transaction that has not reached maturity or expiration, and has not been fully exercised, closed out, or terminated.

Person associated with a swap data repository means:

- (1) Any partner, officer, or director of such swap data repository (or any person occupying a similar status or performing similar functions);
- (2) Any person directly or indirectly controlling, controlled by, or under common control with such swap data repository; or
- (3) Any person employed by such swap data repository, including a jointly employed person.

Position means the gross and net notional amounts of open swap transactions aggregated by one or more attributes, including, but not limited to, the:

- (1) Underlying instrument;
- (2) Index, or reference entity;
- (3) Counterparty;
- (4) Asset class;
- (5) Long risk of the underlying instrument, index, or reference entity; and
- (6) Short risk of the underlying instrument, index, or reference entity.

Reporting counterparty means the counterparty required to report SDR data pursuant to part 43, 45, or 46 of this chapter.

SDR data means the specific data elements and information required to be reported to a swap data repository or disseminated by a swap data repository pursuant to two or more of parts 43, 45, 46, and/or 49 of this chapter, as applicable in the context.

SDR information means any information that the swap data repository receives or maintains related to the business of the swap data repository that is not SDR data.

Section 8 material means the business transactions, SDR data, or market positions of any person and trade secrets or names of customers.

Swap data means the specific data elements and information required to be reported to a swap data repository pursuant to part 45 of this chapter or made available to the Commission pursuant to this part, as applicable.

Swap transaction and pricing data means the specific data elements and information required to be reported to a swap data repository or publicly disseminated by a swap data repository pursuant to part 43 of this chapter, as applicable.

(b) *Other defined terms.* Terms not defined in this part have the meanings assigned to the terms in § 1.3 of this chapter.

9. In § 49.3:

a. Revise paragraph (a)(5);

b. Remove the phrase "swap transaction data" from paragraph (d) and add in its place "SDR data"; and

c. Remove the reference "§ 40.1(e)" from paragraph (d) and add in its place "§ 40.1".

The revision reads as follows:

§ 49.3 Procedures for registration.

(a) * * *

(5) *Amendments.* If any information reported on Form SDR or in any amendment thereto is or becomes inaccurate for any reason, whether before or after the application for registration has been granted under this paragraph (a), the swap data repository shall promptly file an amendment on Form SDR updating such information.

* * * * *

10. Revise the paragraph heading for § 49.4(c) to read as follows:

§ 49.4 Withdrawal from registration.

* * * * *

(c) *Revocation of registration for false application.* * * *

* * * * *

11. Revise § 49.5 to read as follows:

§ 49.5 Equity interest transfers.

(a) *Equity interest transfer notification.* A swap data repository shall file with the Commission a notification of each transaction involving the direct or indirect transfer of ten percent or more of the equity interest in the swap data repository. The Commission may, upon receiving such notification, request that the swap data repository provide supporting documentation of the transaction.

(b) *Timing of notification.* The equity interest transfer notice described in paragraph (a) of this section shall be filed electronically with the Secretary of the Commission at its Washington, D.C. headquarters at *submissions@cftc.gov* and the Division of Market Oversight at *DMOSubmissions@cftc.gov*, at the earliest possible time but in no event later than the open of business ten business days following the date upon which a firm obligation is made to transfer, directly or indirectly, ten percent or more of the equity interest in the swap data repository.

(c) *Certification.* Upon a transfer, whether directly or indirectly, of an equity interest of ten percent or more in a swap data repository, the swap data repository shall file electronically with the Secretary of the Commission at its Washington, D.C. headquarters at *submissions@cftc.gov* and the Division of Market Oversight at *DMOSubmissions@cftc.gov*, a certification that the swap data repository meets all of the requirements of section 21 of the Act and the Commission regulations in 17 CFR chapter I, no later than two business days following the date on which the equity interest of ten percent or more was acquired.

12. Revise § 49.6 to read as follows:

§ 49.6 Request for transfer of registration.

(a) *Request for approval.* A swap data repository seeking to transfer its registration from its current legal entity to a new legal entity as a result of a corporate change shall file a request for approval to transfer such registration with the Secretary of the Commission in the form and manner specified by the Commission.

(b) *Timing for filing a request for transfer of registration.* A swap data repository shall file a request for transfer of registration as soon as practicable prior to the anticipated corporate change.

(c) *Required information.* The request for transfer of registration shall include the following:

(1) The underlying documentation that governs the corporate change;

(2) A description of the corporate change, including the reason for the change and its impact on the swap data repository, including the swap data repository's governance and operations, and its impact on the rights and obligations of market participants;

(3) A discussion of the transferee's ability to comply with the Act, including the core principles applicable to swap data repositories and the Commission's regulations;

(4) The governance documents adopted by the transferee, including a copy of any constitution; articles or certificate of incorporation, organization, formation, or association with all amendments thereto; partnership or limited liability agreements; and any existing bylaws, operating agreement, or rules or instruments corresponding thereto;

(5) The transferee's rules marked to show changes from the current rules of the swap data repository; and

(6) A representation by the transferee that it:

(i) Will be the surviving entity and successor-in-interest to the transferor swap data repository and will retain and assume the assets and liabilities of the transferor, except if otherwise indicated in the request;

(ii) Will assume responsibility for complying with all applicable provisions of the Act and the Commission's regulations; and

(iii) Will notify market participants of all changes to the transferor's rulebook prior to the transfer, including those changes that may affect the rights and obligations of market participants, and will further notify market participants of the concurrent transfer of the registration to the transferee upon Commission approval and issuance of an order permitting the transfer.

(d) *Commission determination.* Upon review of a request for transfer of registration, the Commission, as soon as practicable, shall issue an order either approving or denying the request for transfer of registration.

13. Revise § 49.9 to read as follows:

§ 49.9 Open swaps reports provided to the Commission.

Each swap data repository shall provide reports of open swaps to the Commission in accordance with this section.

(a) *Content of the open swaps report.* In order to satisfy the requirements of this section, each swap data repository shall provide the Commission with open swaps reports that contain an accurate reflection, as of the time the swap data repository compiles the open swaps report, of the swap data maintained by the swap data repository for every swap data field required to be reported for swaps pursuant to part 45 of this chapter for every open swap. The report shall be organized by the unique identifier created pursuant

to § 45.5 of this chapter that is associated with each open swap.

(b) *Transmission of the open swaps report.* Each swap data repository shall transmit all open swaps reports to the Commission as instructed by the Commission. Such instructions may include, but are not limited to, the method, timing, and frequency of transmission, as well as the format of the swap data to be transmitted.

14. In § 49.10, add paragraph (e) to read as follows:

§ 49.10 Acceptance of data.

* * * * *

(e) *Error corrections*—(1) *Accepting corrections.* A swap data repository shall accept error corrections for SDR data. Error corrections include corrections to errors and omissions in SDR data previously reported to the swap data repository pursuant to part 43, 45, or 46 of this chapter, as well as omissions in reporting SDR data for swaps that were not previously reported to a swap data repository as required under part 43, 45, or 46 of this chapter. The requirement to accept error corrections applies for all swaps, regardless of the state of the swap that is the subject of the SDR data. This includes swaps that have terminated, matured, or are otherwise no longer considered to be open swaps, provided that the record retention period under § 49.12(b)(2) has not expired as of the time the error correction is reported.

(2) *Recording corrections.* A swap data repository shall record the corrections, as soon as technologically practicable after the swap data repository accepts the error correction.

(3) *Dissemination.* A swap data repository shall disseminate corrected SDR data to the public and the Commission, as applicable, in accordance with this chapter, as soon

as technologically practicable after the swap data repository records the corrected SDR data.

(4) *Policies and procedures.* A swap data repository shall establish, maintain, and enforce policies and procedures designed for the swap data repository to accept error corrections, to record the error corrections as soon as technologically practicable after the swap data repository accepts the error correction, and to disseminate corrected SDR data to the public and to the Commission, as applicable, in accordance with this chapter.

* * * * *

15. Revise § 49.11 to read as follows:

§ 49.11 Verification of swap data accuracy.

(a) *General requirement.* Each swap data repository shall verify the accuracy and completeness of swap data that it receives from swap execution facilities, designated contract markets, reporting counterparties, or third-party service providers acting on their behalf, in accordance with paragraph (b) of this section.

(b) *Verifying swap data accuracy and completeness—(1) Swap data access.* Each swap data repository shall provide a mechanism that allows each reporting counterparty that is a user of the swap data repository to access all swap data maintained by the swap data repository for each open swap for which the reporting counterparty is serving as the reporting counterparty, as specified in paragraph (b)(2) of this section. This mechanism shall allow sufficient access, provide sufficient information, and be in a form and manner to enable each reporting counterparty to perform swap data verification as required under § 45.14 of this chapter.

(2) *Scope of swap data access.* The swap data accessible through the mechanism provided by each swap data repository shall accurately reflect the most current swap data maintained by the swap data repository, as of the time the reporting counterparty accesses the swap data using the provided mechanism, for each data field that the reporting counterparty was required to report for each relevant open swap pursuant to part 45 of this chapter, except as provided in paragraph (b)(3) of this section. The swap data accessible through the mechanism provided by each swap data repository shall include sufficient information to allow reporting counterparties to successfully perform the swap data verification required under § 45.14 of this chapter.

(3) *Confidentiality.* The swap data access each swap data repository shall provide pursuant to this section is subject to all applicable confidentiality requirements of the Act and this chapter, including, but not limited to, § 49.17. The swap data accessible to any reporting counterparty shall not include any swap data that the relevant reporting counterparty is prohibited to access under any Commission regulation.

(4) *Frequency of swap data access.* Each swap data repository shall allow each reporting counterparty that is a user of the relevant swap data repository to utilize the mechanism as required under this section with at least sufficient frequency to allow each relevant reporting counterparty to perform the swap data verification required under § 45.14 of this chapter.

(5) *Third-party service providers.* If a reporting counterparty informs a swap data repository that the reporting counterparty will utilize a third-party service provider to perform verification as required pursuant to § 45.14 of this chapter, the swap data repository will satisfy its requirements under this section by providing the third-party

service provider with the same access to the mechanism and the relevant swap data for the reporting counterparty under this section, as if the third-party service provider was the reporting counterparty. The access for the third-party service provider shall be in addition to the access for the reporting counterparty required under this section. The access for the third-party service provider under this paragraph shall continue until the reporting counterparty informs the swap data repository that the third-party service provider should no longer have access on behalf of the reporting counterparty. The policies and procedures each swap data repository adopts under paragraph (c) of this section shall include instructions detailing how each reporting counterparty can successfully inform the swap data repository regarding a third-party service provider.

(c) *Policies and procedures*—(1) *Contents*. Each swap data repository shall establish, maintain, and enforce policies and procedures designed to ensure compliance with the requirements of this section. Such policies and procedures shall include, but are not limited to, instructions detailing how each reporting counterparty, or third-party service provider acting on behalf of a reporting counterparty, can successfully utilize the mechanism provided pursuant to this section to perform each reporting counterparty's verification responsibilities under § 45.14 of this chapter.

(2) *Amendments*. Each swap data repository shall comply with the requirements under part 40 of this chapter in adopting or amending the policies and procedures required by this section.

16. Revise § 49.12 to read as follows:

§ 49.12 Swap data repository recordkeeping requirements.

(a) *General requirement.* A swap data repository shall keep full, complete, and systematic records, together with all pertinent data and memoranda, of all activities relating to the business of the swap data repository, including, but not limited to, all SDR information and all SDR data that is reported to the swap data repository pursuant to this chapter.

(b) *Maintenance of records.* A swap data repository shall maintain all records required to be kept by this section in accordance with this paragraph (b).

(1) A swap data repository shall maintain all SDR information, including, but not limited to, all documents, policies, and procedures required by the Act and the Commission's regulations, correspondence, memoranda, papers, books, notices, accounts, and other such records made or received by the swap data repository in the course of its business. All SDR information shall be maintained in accordance with § 1.31 of this chapter.

(2) A swap data repository shall maintain all SDR data and timestamps reported to or created by the swap data repository pursuant to this chapter, and all messages related to such reporting, throughout the existence of the swap that is the subject of the SDR data and for five years following final termination of the swap, during which time the records shall be readily accessible by the swap data repository and available to the Commission via real-time electronic access, and for a period of at least ten additional years in archival storage from which such records are retrievable by the swap data repository within three business days.

(c) *Records of data errors and omissions.* A swap data repository shall create and maintain records of data validation errors and SDR data reporting errors and omissions in accordance with this paragraph (c).

(1) A swap data repository shall create and maintain an accurate record of all reported SDR data that fails to satisfy the swap data repository's data validation procedures including, but not limited to, all SDR data reported to the swap data repository that fails to satisfy the data validation procedures, all data validation errors, and all related messages and timestamps. A swap data repository shall make these records available to the Commission on request.

(2) A swap data repository shall create and maintain an accurate record of all SDR data errors and omissions reported to the swap data repository and all corrections disseminated by the swap data repository pursuant to parts 43, 45, and 46 of this chapter and this part. A swap data repository shall make these records available to the Commission on request.

(d) *Availability of records.* All records required to be kept pursuant to this part shall be open to inspection upon request by any representative of the Commission or the United States Department of Justice in accordance with the provisions of § 1.31 of this chapter. A swap data repository required to keep, create, or maintain records pursuant to this section shall provide such records in accordance with the provisions of § 1.31 of this chapter, unless otherwise provided in this part.

(e) A swap data repository shall establish policies and procedures to calculate positions for position limits and any other purpose as required by the Commission, for all persons with swaps that have not expired maintained by the swap data repository.

17. Revise paragraph (a) and the paragraph (b) heading in § 49.13 to read as follows:

§ 49.13 Monitoring, screening and analyzing swap data.

(a) *Duty to monitor, screen and analyze SDR data.* A swap data repository shall monitor, screen, and analyze all relevant SDR data in its possession in such a manner as the Commission may require. A swap data repository shall routinely monitor, screen, and analyze SDR data for the purpose of any standing swap surveillance objectives that the Commission may establish as well as perform specific monitoring, screening, and analysis tasks based on ad hoc requests by the Commission.

(b) *Capacity to monitor, screen and analyze SDR data.* * * *

18. Revise § 49.15 to read as follows:

§ 49.15 Real-time public reporting by swap data repositories.

(a) *Scope.* The provisions of this section apply to the real-time public reporting of swap transaction and pricing data submitted to a swap data repository pursuant to part 43 of this chapter.

(b) *Systems to accept and disseminate data in connection with real-time public reporting.* A swap data repository shall establish such electronic systems as are necessary to accept and publicly disseminate swap transaction and pricing data submitted to the swap data repository pursuant to part 43 of this chapter in order to meet the real-time public reporting obligations of part 43 of this chapter. Any electronic system established for this purpose shall be capable of accepting and ensuring the public dissemination of all data fields required by part 43 this chapter.

(c) *Duty to notify the Commission of untimely data.* A swap data repository shall notify the Commission of any swap transaction for which the real-time swap data was not received by the swap data repository in accordance with part 43 of this chapter.

19. Revise § 49.16 to read as follows:

§ 49.16 Privacy and confidentiality requirements of swap data repositories.

(a) Each swap data repository shall:

(1) Establish, maintain, and enforce written policies and procedures reasonably designed to protect the privacy and confidentiality of any and all SDR information and all SDR data that is not swap transaction and pricing data disseminated under part 43 of this chapter. Such policies and procedures shall include, but are not limited to, policies and procedures to protect the privacy and confidentiality of any and all SDR information and all SDR data (except for swap transaction and pricing data disseminated under part 43 of this chapter) that the swap data repository shares with affiliates and non-affiliated third parties; and

(2) Establish and maintain safeguards, policies, and procedures reasonably designed to prevent the misappropriation or misuse, directly or indirectly, of:

(i) Section 8 material;

(ii) Other SDR information or SDR data; and/or

(iii) Intellectual property, such as trading strategies or portfolio positions, by the swap data repository or any person associated with a swap data repository. Such safeguards, policies, and procedures shall include, but are not limited to:

(A) Limiting access to such section 8 material, other SDR information or SDR data, and intellectual property;

(B) Standards controlling persons associated with a swap data repository trading for their personal benefit or the benefit of others; and

(C) Adequate oversight to ensure compliance with this paragraph (a)(2).

(b) A swap data repository shall not, as a condition of accepting SDR data from any swap execution facility, designated contract market, or reporting counterparty, require the waiver of any privacy rights by such swap execution facility, designated contract market, or reporting counterparty.

(c) Subject to section 8 of the Act, a swap data repository may disclose aggregated SDR data on a voluntary basis or as requested, in the form and manner prescribed by the Commission.

20. Amend § 49.17 by:

a. Revising paragraph (b)(3);

b. Adding paragraph (c) introductory text;

c. Revising paragraph (c)(1), the headings to paragraphs (d)(1) and (5), and paragraph (f)(2);

d. Removing paragraph (i); and

e. In the table below, for each paragraph indicated in the left column, remove the text indicated in the middle column from wherever it appears, and add in its place the text indicated in the right column:

Paragraphs	Remove	Add
(a)	swap data	SDR data
(a)	Section 8 of the Act	section 8 of the Act
(b)(1) heading	<i>Domestic Regulator</i>	<i>domestic regulator</i>
(b)(1) introductory text	<i>Appropriate Domestic Regulator</i>	<i>appropriate domestic regulator</i>
(b)(2) heading	<i>Foreign Regulator</i>	<i>foreign regulator</i>
(b)(2)	<i>Appropriate Foreign</i>	<i>appropriate foreign</i>

Paragraphs	Remove	Add
	<i>Regulator</i>	<i>regulator</i>
(b)(2)	those Foreign Regulators	those foreign regulators
(c)(2)	analyzing of swap data	analyzing of SDR data
(c)(2)	transfer of data	transfer of SDR data
(c)(3)	swap data provided	SDR data provided
(c)(3)	authorized users	authorized users
(d)(1)(i)	Appropriate Domestic Regulator	appropriate domestic regulator
(d)(1)(i)	Appropriate Foreign Regulator	appropriate foreign regulator
(d)(1)(ii)	Appropriate Domestic Regulators and Appropriate Foreign Regulators seeking	Appropriate domestic regulators and appropriate foreign regulators seeking
(d)(1)(ii)	applicable to Appropriate Domestic Regulators and Appropriate Foreign Regulators	applicable to appropriate domestic regulators and appropriate foreign regulators
(d)(3) heading	<i>Foreign Regulator</i>	<i>Foreign regulator</i>
(d)(3)	Foreign Regulator	foreign regulator
(d)(3)	Foreign Regulator's	foreign regulator's
(d)(4) heading	<i>requests for data access</i>	<i>requests for swap data access</i>
(d)(4)(i)	Appropriate Domestic Regulator or Appropriate Foreign Regulator	appropriate domestic regulator or appropriate foreign regulator
(d)(4)(i)	Appropriate Domestic Regulator's or Appropriate Foreign Regulator's	appropriate domestic regulator's or appropriate foreign regulator's
(d)(4)(iii)	Appropriate Domestic Regulator or Appropriate Foreign Regulator	appropriate domestic regulator or appropriate foreign regulator
(d)(4)(iii)	Appropriate Domestic Regulator's or Appropriate Foreign Regulator's	appropriate domestic regulator's or appropriate foreign regulator's
(d)(5)(i) through (iii)	Appropriate Domestic Regulator or Appropriate Foreign Regulator	appropriate domestic regulator or appropriate foreign regulator
(d)(6) heading	<i>Arrangement</i>	<i>arrangement</i>
(d)(6)	Appropriate Domestic Regulator or Appropriate Foreign Regulator	appropriate domestic regulator or appropriate foreign regulator
(e) introductory text, (e)(1), and (e)(2)	swap data and SDR Information	SDR data and SDR information
(e)(2)	swap data or SDR Information	SDR data or SDR information

Paragraphs	Remove	Add
(f)(1)	swap data maintained	SDR data maintained
(g) heading	Commercial uses of data	Commercial uses of SDR data
(g) introductory text	Swap data accepted	SDR data accepted
(g)(1)	swap data required	SDR data required
(g)(2)(A)	The swap dealer, counterparty, or any other registered entity	The swap execution facility, designated contract market, or reporting counterparty
(g)(2)(A)	swap data maintained	SDR data maintained
(g)(2)(B)	swap transaction data	SDR data
(g)(2)(B)	reporting party	swap execution facility, designated contract market, or reporting counterparty
(g)(2)(B)	any reported data	any reported SDR data
(g)(3)	real-time swap data	swap transaction and pricing data
(h)(3) introductory text	CEA section 21(c)(7)	section 21(c)(7) of the Act
(h)(4)	Appropriate Domestic Regulator or Appropriate Foreign Regulator	appropriate domestic regulator or appropriate foreign regulator

The revisions and addition read as follows:

§ 49.17 Access to SDR data.

* * * * *

(b) * * *

(3) *Direct electronic access.* For the purposes of this section, the term “*direct electronic access*” shall mean an electronic system, platform, framework, or other technology that provides internet-based or other form of access to real-time SDR data that is acceptable to the Commission and also provides scheduled data transfers to Commission electronic systems.

(c) *Commission access.* A swap data repository shall provide access to the Commission for all SDR data maintained by the swap data repository pursuant to this chapter in accordance with this paragraph (c).

(1) *Direct electronic access requirements.* A swap data repository shall provide direct electronic access to the Commission or the Commission's designee, including another registered entity, in order for the Commission to carry out its legal and statutory responsibilities under the Act and the Commission's regulations in 17 CFR chapter I. A swap data repository shall maintain all SDR data reported to the swap data repository in a format acceptable to the Commission, and shall transmit all SDR data requested by the Commission to the Commission as instructed by the Commission. Such instructions may include, but are not limited to, the method, timing, and frequency of transmission, as well as the format and scope of the SDR data to be transmitted.

* * * * *

(d) * * *

(1) *General procedure for gaining access to swap data repository data.* * * *

* * * * *

(5) *Timing, limitation, suspension, or revocation of swap data access.* * * *

(f) * * *

(2) *Exception.* SDR data and SDR information related to a particular swap transaction that is maintained by the swap data repository may be accessed by either counterparty to that particular swap. However, the SDR data and SDR information maintained by the swap data repository that may be accessed by either counterparty to a particular swap shall not include the identity or the legal entity identifier (as such term is

used in part 45 of this chapter) of the other counterparty to the swap, or the other counterparty's clearing member for the swap, if the swap is executed anonymously on a swap execution facility or designated contract market, and cleared in accordance with §§ 1.74, 23.610, and 39.12(b)(7) of this chapter.

* * * * *

§ 49.18 [Amended]

21. Amend § 49.18 by:

a. Removing from paragraphs (a) and (d) the words "Appropriate Domestic Regulator or Appropriate Foreign Regulator" and "Appropriate Domestic Regulator's or Appropriate Foreign Regulator's" wherever they appear, and add in their places "appropriate domestic regulator or appropriate foreign regulator" and "appropriate domestic regulator's or appropriate foreign regulator's", respectively; and

b. Removing paragraph (e).

§ 49.19 [Amended]

22. In § 49.19(a), remove the word "paragraph" from wherever it appears and add in its place the word "section".

23. Amend § 49.20 by:

a. Revising paragraphs (b)(2)(v), (b)(2)(vii), and (c)(1)(ii)(B); and

b. In the table below, for each paragraph indicated in the left column, removing the text indicated in the middle column from wherever it appears, and adding in its place the text indicated in the right column:

Paragraph	Remove	Add
(b) heading	<i>Governance Arrangements</i>	<i>governance arrangements</i>
(c)(1)(i) introductory text	Regulation	section
(c)(1)(i)(A)(2)	Independent Perspective	independent perspective

Paragraph	Remove	Add
(c)(1)(i)(B)	Independent Perspective	independent perspective
(c)(5)	Regulation	section

The revisions read as follows:

§ 49.20 Governance arrangements (Core Principle 2).

* * * * *

(b) * * *

(2) * * *

(v) A description of the manner in which the board of directors, as well as any committee referenced in paragraph (b)(2)(ii) of this section, considers an independent perspective in its decision-making process, as § 49.2(a) defines such term;

* * * * *

(vii) Summaries of significant decisions impacting the public interest, the rationale for such decisions, and the process for reaching such decisions. Such significant decisions shall include decisions relating to pricing of repository services, offering of ancillary services, access to SDR data, and use of section 8 material, SDR information, and intellectual property (as referenced in § 49.16). Such summaries of significant decisions shall not require the swap data repository to disclose section 8 material or, where appropriate, information that the swap data repository received on a confidential basis from a swap execution facility, designated contract market, or reporting counterparty.

* * * * *

(c) * * *

(1) * * *

(ii) * * *

(B) A description of the relationship, if any, between such members and the swap data repository or any swap execution facility, designated contract market, or reporting counterparty user thereof (or, in each case, affiliates thereof, as § 49.2(a) defines such term); and

* * * * *

24. Amend § 49.22 by:

a. In the table below, for each paragraph indicated in the left column, removing the text indicated in the middle column from wherever it appears, and adding in its place the text indicated in the right column:

Paragraph	Remove	Add
(a) heading	<i>Board of Directors</i>	<i>board of directors</i>
(b)(1) heading	<i>Compliance Officer</i>	<i>compliance officer</i>
(b)(2) heading	<i>Chief Compliance Officer</i>	<i>chief compliance officer</i>
(b)(2)(i)	Sections	section
(d)(1)	Section	section
(d)(4)	Section	section
(e)(2) introductory text and (e)(2)(i)	Section	section
(f)(3)	(e)(67)	(e)(6)
(g)(1)(iii)(A)	Created, sent or received in connection with the annual compliance report and	Created, sent, or received in connection with the annual compliance report; and

b. Revising the paragraph (c)(1) heading, the paragraph (f) heading, and paragraph (f)(2) to read as follows:

§ 49.22 Chief compliance officer.

* * * * *

(c) * * *

(1) *Appointment and compensation of chief compliance officer determined by board of directors.* * * *

* * * * *

(f) *Submission of annual compliance report to the Commission.* * * *

(2) The annual compliance report shall be provided electronically to the Commission not more than 60 days after the end of the swap data repository's fiscal year.

* * * * *

§ 49.23 [Amended]

25. Amend § 49.23 by:

a. Removing from paragraph (a) the words "swap transaction data" and adding in their place "SDR data"; and

b. Removing from the heading of paragraph (e) the word "commission" and adding in its place "Commission".

26. Amend § 49.24 by:

a. Revising paragraph (d); and

b. In the table below, for each paragraph indicated in the left column, removing the text indicated in the middle column from wherever it appears, and adding in its place the text indicated in the right column:

Paragraphs	Remove	Add
(a) introductory text	all swap data in its custody	all SDR data in its custody
(e)(3)(i)	dissemination of swap data	dissemination of SDR data
(e)(3)(ii)	normal swap data	normal SDR data
(f)(2)	all swap data contained	all SDR data contained
(i) introductory text and (i)(5)	§§ 1.31 and 45.2	§ 1.31
(j)(1) definitions of	data and information	SDR data and SDR

Paragraphs	Remove	Add
“Controls” and “Enterprise technology risk assessment”		information
(j)(1) definition of “Security incident”	or integrity of data	, or integrity of SDR data
(k)(1) and (2)	report swap data	report SDR data
(l)(3)	any data related to	any SDR data related to
(m)	Board of Directors	board of directors

The revision reads as follows:

§ 49.24 System safeguards.

* * * * *

(d) A swap data repository shall maintain a business continuity-disaster recovery plan and business continuity-disaster recovery resources, emergency procedures, and backup facilities sufficient to enable timely recovery and resumption of its operations and resumption of its ongoing fulfillment of its duties and obligations as a swap data repository following any disruption of its operations. Such duties and obligations include, without limitation, the duties set forth in §§ 49.10 through 49.18, § 49.23, and the core principles set forth in §§ 49.19 through 49.21 and §§ 49.25 through 49.27, and maintenance of a comprehensive audit trail. The swap data repository’s business continuity-disaster recovery plan and resources generally should enable resumption of the swap data repository’s operations and resumption of ongoing fulfillment of the swap data repository’s duties and obligation during the next business day following the disruption. A swap data repository shall update its business continuity-disaster recovery plan and emergency procedures at a frequency determined by an appropriate risk analysis, but at a minimum no less frequently than annually.

* * * * *

27. In § 49.25, revise paragraph (a)(1) to read as follows:

§ 49.25 Financial resources.

(a) * * * (1) A swap data repository shall maintain sufficient financial resources to perform its statutory and regulatory duties set forth in this chapter.

* * * * *

28. Amend § 49.26 by:

a. Revising the introductory text;

b. In the table below, for each paragraph indicated in the left column, removing the text indicated in the middle column from wherever it appears, and adding in its place the text indicated in the right column:

Paragraph	Remove	Add
(a)	swap data maintained	SDR data maintained
(c)	safeguarding of swap data	safeguarding of SDR data
(d)	any and all swap data	any and all SDR data
(d)	reporting entity	swap execution facility, designated contract market, or reporting counterparty
(e)	swap data that it receives	SDR data that it receives
(e)	market participant, any registered entity, or any other person;	swap execution facility, designated contract market, or reporting counterparty;
(h)	rebates; and	rebates;
(i)	arrangements.	arrangements; and

c. Adding paragraph (j).

The revisions and additions read as follows:

§ 49.26 Disclosure requirements of swap data repositories.

Before accepting any SDR data from a swap execution facility, designated contract market, or reporting counterparty; or upon a swap execution facility's, designated contract market's, or reporting counterparty's request; a swap data repository shall furnish to the swap execution facility, designated contract market, or reporting counterparty a disclosure document that contains the following written information, which shall reasonably enable the swap execution facility, designated contract market, or reporting counterparty to identify and evaluate accurately the risks and costs associated with using the services of the swap data repository:

* * * * *

(j) The swap data repository's policies and procedures regarding the reporting of SDR data to the swap data repository, including the swap data repository's SDR data validation procedures, swap data verification procedures, and procedures for correcting SDR data errors and omissions.

§ 49.27 [Amended]

29. Amend § 49.27 by removing the term "Regulation" from paragraph (a)(2) and add in its place the term "section", and by removing "reporting of swap data" from paragraph (b)(1) and adding in its place "reporting of SDR data".

30. Add § 49.28 to read as follows:

§ 49.28 Operating hours of swap data repositories.

(a) Except as otherwise provided in this paragraph (a), a swap data repository shall have systems in place to continuously accept and promptly record all SDR data reported to the swap data repository as required in this chapter and, as applicable,

publicly disseminate all swap transaction and pricing data reported to the swap data repository as required in part 43 of this chapter.

(1) A swap data repository may establish normal closing hours to perform system maintenance during periods when, in the reasonable estimation of the swap data repository, the swap data repository typically receives the least amount of SDR data. A swap data repository shall provide reasonable advance notice of its normal closing hours to market participants and to the public.

(2) A swap data repository may declare, on an ad hoc basis, special closing hours to perform system maintenance that cannot wait until normal closing hours. A swap data repository shall schedule special closing hours during periods when, in the reasonable estimation of the swap data repository in the context of the circumstances prompting the special closing hours, the special closing hours will be the least disruptive to the swap data repository's SDR data reporting responsibilities. A swap data repository shall provide reasonable advance notice of its special closing hours to market participants and to the public whenever possible, and, if advance notice is not reasonably possible, shall provide notice of its special closing hours to market participants and to the public as soon as reasonably possible after declaring special closing hours.

(b) A swap data repository shall comply with the requirements under part 40 of this chapter in adopting or amending normal closing hours and special closing hours.

(c) During normal closing hours and special closing hours, a swap data repository shall have the capability to accept and hold in queue any and all SDR data reported to the swap data repository during the normal closing hours or special closing hours.

(1) Upon reopening after normal closing hours or special closing hours, a swap data repository shall promptly process all SDR data received during normal closing hours or special closing hours, as required pursuant to this chapter, and, pursuant to part 43 of this chapter, publicly disseminate all swap transaction and pricing data reported to the swap data repository that was held in queue during the normal closing hours or special closing hours.

(2) If at any time during normal closing hours or special closing hours a swap data repository is unable to receive and hold in queue any SDR data reported pursuant to this chapter, then the swap data repository shall immediately issue notice to all swap execution facilities, designated contract markets, reporting counterparties, and the public that it is unable to receive and hold in queue SDR data. Immediately upon reopening, the swap data repository shall issue notice to all swap execution facilities, designated contract markets, reporting counterparties, and the public that it has resumed normal operations. Any swap execution facility, designated contract market, or reporting counterparty that was obligated to report SDR data pursuant to this chapter to the swap data repository, but could not do so because of the swap data repository's inability to receive and hold in queue SDR data, shall report the SDR data to the swap data repository immediately after receiving such notice.

31. Add § 49.29 to read as follows:

§ 49.29 Information relating to swap data repository compliance.

(a) *Requests for information.* Upon the Commission's request, a swap data repository shall file with the Commission information related to its business as a swap data repository and such information as the Commission determines to be necessary or

appropriate for the Commission to perform the duties of the Commission under the Act and regulations in 17 CFR chapter I. The swap data repository shall file the information requested in the form and manner and within the time period the Commission specifies in the request.

(b) *Demonstration of compliance.* Upon the Commission's request, a swap data repository shall file with the Commission a written demonstration, containing supporting data, information, and documents, that it is in compliance with its obligations under the Act and the Commission's regulations in 17 CFR chapter I, as the Commission specifies in the request. The swap data repository shall file the written demonstration in the form and manner and within the time period the Commission specifies in the request.

32. Add § 49.30 to read as follows:

§ 49.30 Form and manner of reporting and submitting information to the Commission.

Unless otherwise instructed by the Commission, a swap data repository shall submit SDR data reports and any other information required under this part to the Commission, within the time specified, using the format, coding structure, and electronic data transmission procedures approved in writing by the Commission.

33. Add § 49.31 to read as follows:

§ 49.31 Delegation of authority to the Director of the Division of Market Oversight relating to certain part 49 matters.

(a) The Commission hereby delegates, until such time as the Commission orders otherwise, the following functions to the Director of the Division of Market Oversight

and to such members of the Commission staff acting under his or her direction as he or she may designate from time to time:

- (1) All functions reserved to the Commission in § 49.5.
- (2) All functions reserved to the Commission in § 49.9.
- (3) All functions reserved to the Commission in § 49.10.
- (4) All functions reserved to the Commission in § 49.12.
- (5) All functions reserved to the Commission in § 49.13.
- (6) All functions reserved to the Commission in § 49.16.
- (7) All functions reserved to the Commission in § 49.17.
- (8) All functions reserved to the Commission in § 49.18.
- (9) All functions reserved to the Commission in § 49.22.
- (10) All functions reserved to the Commission in § 49.23.
- (11) All functions reserved to the Commission in § 49.24.
- (12) All functions reserved to the Commission in § 49.25.
- (13) All functions reserved to the Commission in § 49.29.
- (14) All functions reserved to the Commission in § 49.30.

(b) The Director of the Division of Market Oversight may submit to the Commission for its consideration any matter that has been delegated under paragraph (a) of this section.

(c) Nothing in this section may prohibit the Commission, at its election, from exercising the authority delegated in this section.

34. Revise appendix A to part 49 to read as follows:

Appendix A to Part 49—Form SDR

COMMODITY FUTURES TRADING COMMISSION

FORM SDR

SWAP DATA REPOSITORY
APPLICATION OR AMENDMENT TO APPLICATION FOR REGISTRATION

REGISTRATION INSTRUCTIONS

Intentional misstatements or omissions of material fact may constitute federal criminal violations (7 U.S.C. 13 and 18 U.S.C. 1001) or grounds for disqualification from registration.

DEFINITIONS

Unless the context requires otherwise, all terms used in this Form SDR have the same meaning as in the Commodity Exchange Act, as amended (“Act”), and in the General Rules and Regulations of the Commodity Futures Trading Commission (“Commission”) thereunder (17 CFR chapter I).

For the purposes of this Form SDR, the term “Applicant” shall include any applicant for registration as a swap data repository or any applicant amending a pending application.

GENERAL INSTRUCTIONS

1. This Form SDR, which includes instructions, a Cover Sheet, and required Exhibits (together “Form SDR”), is to be filed with the Commission by all Applicants, pursuant to section 21 of the Act and the Commission’s regulations thereunder. Upon the filing of an application for registration in accordance with the instructions provided herein, the Commission will publish notice of the filing and afford interested persons an opportunity to submit written comments concerning such application. No application for registration shall be effective unless the Commission, by order, grants such registration.
2. Individuals’ names, except the executing signature, shall be given in full (Last Name, First Name, Middle Name).
3. Signatures on all copies of the Form SDR filed with the Commission can be executed electronically. If this Form SDR is filed by a corporation, it shall be signed in the name of the corporation by a principal officer duly authorized; if filed by a limited liability company, it shall be signed in the name of the limited liability company by a manager or member duly authorized to sign on the limited liability company’s behalf; if filed by a partnership, it shall be signed in the name of the partnership by a general partner duly authorized; if filed by an unincorporated organization or association that is not a partnership, it shall be signed in the name of such organization or association by the managing agent, i.e., a duly authorized

person who directs manages or who participates in the directing or managing of its affairs.

4. If this Form SDR is being filed as an application for registration, all applicable items must be answered in full. If any item is inapplicable, indicate by “none,” “not applicable,” or “N/A,” as appropriate.
5. Under section 21 of the Act and the Commission’s regulations thereunder, the Commission is authorized to solicit the information required to be supplied by this Form SDR from any Applicant seeking registration as a swap data repository. Disclosure by the Applicant of the information specified in this Form SDR is mandatory prior to the start of the processing of an application for registration as a swap data repository. The information provided in this Form SDR will be used for the principal purpose of determining whether the Commission should grant or deny registration to an Applicant. The Commission may determine that additional information is required from an Applicant in order to process its application. **A Form SDR that is not prepared and executed in compliance with applicable requirements and instructions may be returned as not acceptable for filing. Acceptance of this Form SDR, however, shall not constitute a finding that the Form SDR has been filed as required or that the information submitted is true, current, or complete.**
6. Except in cases where confidential treatment is requested by the Applicant and granted by the Commission pursuant to the Freedom of Information Act and Commission Regulation § 145.9, information supplied on this Form SDR will be included in the public files of the Commission and will be available for inspection by any interested person. The Applicant must identify with particularity the information in these exhibits that will be subject to a request for confidential treatment and supporting documentation for such request pursuant to Commission Regulations § 40.8 and § 145.9.

APPLICATION AMENDMENTS

1. An Applicant amending a pending application for registration as a swap data repository shall file an amended Form SDR electronically with the Secretary of the Commission in the manner specified by the Commission.
2. When filing this Form SDR for purposes of amending a pending application, an Applicant must re-file the entire Cover Sheet, amended if necessary, include an executing signature, and attach thereto revised Exhibits or other materials marked to show any amendments. The submission of an amendment to a pending application represents that all unamended items and Exhibits remain true, current, and complete as previously filed.

WHERE TO FILE

This Form SDR shall be filed electronically with the Secretary of the Commission in the manner specified by the Commission.

COMMODITY FUTURES TRADING COMMISSION

FORM SDR

SWAP DATA REPOSITORY
APPLICATION OR AMENDMENT TO APPLICATION FOR REGISTRATION

COVER SHEET

Exact name of Applicant as specified in charter

Address of principal executive offices

- If this is an **APPLICATION** for registration, complete in full and check here.
- If this is an **APPLICATION FOR PROVISIONAL REGISTRATION**, complete in full and check here.
- If this is an **AMENDMENT** to an application or to an effective registration, complete in full, list all items that are amended and check here.

GENERAL INFORMATION

1. Name under which business is or will be conducted, if different than name specified above:

2. If name of business is being amended, state previous business name:

3. Contact information, including mailing address if different than address specified above:

Number and Street

City State Country Zip Code

Main Phone Number Fax

Website URL E-mail Address

4. List of principal office(s) and address(es) where swap data repositories activities are or will be conducted:

<u>Office</u>	<u>Address</u>
<hr/>	<hr/>

5. If the Applicant is a successor to a swap data repository, please complete the following:

a. Date of succession

b. Full name and address of predecessor registrant

Name

Number and Street

City State Country Zip Code

Phone Number

Fax Number

E-mail Address

6. Furnish a description of the function(s) that the Applicant performs or proposes to perform:

Please indicate which asset class(es) the Applicant intends to serve:

- Interest Rate
- Equity
- Credit
- Foreign Currency
- Commodity (Specify) _____
- Other (Specify) _____

BUSINESS ORGANIZATION

7. Applicant is a:

- Corporation
- Partnership
- Limited Liability Company
- Other (Specify) _____

8. Date of incorporation or formation: _____

9. State of incorporation or jurisdiction of organization:

List all other jurisdictions in which Applicant is qualified to do business
(including non-US jurisdictions):

10. List all other regulatory licenses or registrations of Applicant (or exemptions from any licensing requirement), including with non-US regulators:

11. Date of fiscal year end: _____

12. Applicant agrees and consents that the notice of any proceeding before the Commission in connection with its application may be given by sending such notice by certified mail to the person named below at the address given.

Print Name and Title

Number and Street

City

State

Zip Code

Phone Number

Fax Number

E-mail Address

SIGNATURES

13. The Applicant had duly caused this application or amendment to be signed on its behalf by the undersigned, hereunto duly authorized, this _____ day of _____, 20____. The Applicant and the undersigned represent hereby that all information contained herein is true, current, and complete. It is understood that all required items and Exhibits are considered integral parts of this Form SDR and that the submission of any amendment represents that all unamended items and Exhibits remain true, current, and complete as previously filed.

Name of Applicant

Signature of Duly Authorized Person

Print Name and Title of Signatory

EXHIBITS INSTRUCTIONS

The following Exhibits must be included as part of Form SDR and filed with the Commission by each Applicant seeking registration as a swap data repository pursuant to section 21 of the Act and the Commission's regulations thereunder. Such Exhibits must be labeled according to the items specified in this Form SDR. If any Exhibit is inapplicable, please specify the Exhibit letter and indicate by "none," "not applicable," or "N/A," as appropriate. The Applicant must identify with particularity the information in these Exhibits that will be subject to a request for confidential treatment and supporting documentation for such request pursuant to Commission Regulations § 40.8 and § 145.9.

If the Applicant is a newly formed enterprise and does not have the financial statements required pursuant to Items 27 and 28 of this form, the Applicant should provide pro forma financial statements for the most recent six months or since inception, whichever is less.

EXHIBITS I – BUSINESS ORGANIZATION

14. Attach as **Exhibit A**, any person who owns ten (10) percent or more of Applicant's equity or possesses voting power of any class, either directly or indirectly, through agreement or otherwise, in any other manner, may control or direct the management or policies of Applicant. "Control" for this purpose is defined in Commission Regulation § 49.2(a).

State in Exhibit A the full name and address of each such person and attach a copy of the agreement or, if there is none written, describe the agreement or basis upon which such person exercises or may exercise such control or direction.

15. Attach as **Exhibit B**, a narrative that sets forth the fitness standards for the board of directors and its composition including the number or percentage of public directors.

Attach a list of the present officers, directors (including an identification of the public directors), governors (and, if the Applicant is not a corporation, the members of all standing committees grouped by committee), or persons performing functions similar to any of the foregoing, of the swap data repository or of the entity identified in Item 16 that performs the swap data repository activities of the Applicant, indicating for each:

- a. Name
- b. Title
- c. Date of commencement and, if appropriate, termination of present term of position
- d. Length of time each present officer, director, or governor has held the same position

- e. Brief account of the business experience of each officer and director over the last five (5) years
 - f. Any other business affiliations in the securities industry or OTC derivatives industry
 - g. A description of:
 - (1) any order of the Commission with respect to such person pursuant to section 5e of the Act;
 - (2) any conviction or injunction within the past 10 years;
 - (3) any disciplinary action with respect to such person within the last five (5) years;
 - (4) any disqualification under sections 8b and 8d of the Act;
 - (5) any disciplinary action under section 8c of the Act; and
 - (6) any violation pursuant to section 9 of the Act.
 - h. For directors, list any committees on which the director serves and any compensation received by virtue of their directorship.
16. Attach as **Exhibit C**, the following information about the chief compliance officer who has been appointed by the board of directors of the swap data repository or a person or group performing a function similar to such board of directors:
- a. Name
 - b. Title
 - c. Dates of commencement and termination of present term of office or position
 - d. Length of time the chief compliance officer has held the same office or position
 - e. Brief account of the business experience of the chief compliance officer over the last five (5) years
 - f. Any other business affiliations in the derivatives/securities industry or swap data repository industry
 - g. A description of:
 - (1) any order of the Commission with respect to such person pursuant to section 5e of the Act;
 - (2) any conviction or injunction within the past 10 years;
 - (3) any disciplinary action with respect to such person within the last five (5) years;
 - (4) any disqualification under sections 8b and 8d of the Act;
 - (5) any disciplinary action under section 8c of the Act; and
 - (6) any violation pursuant to section 9 of the Act.
17. Attach as **Exhibit D**, a copy of documents relating to the governance arrangements of the Applicant, including, but not limited to:
- a. the nomination and selection process of the members on the Applicant's board of directors, a person or group performing a function similar to a board of directors (collectively, "board"), or any committee that has the authority to act on behalf of the board, the responsibilities of each of the

- board and such committee, and the composition of each board and such committee;
- b. a description of the manner in which the composition of the board allows the Applicant to comply with applicable core principles, regulations, as well as the rules of the Applicant; and
 - c. a description of the procedures to remove a member of the board of directors, where the conduct of such member is likely to be prejudicial to the sound and prudent management of the swap data repository.
18. Attach as **Exhibit E**, a narrative or graphic description of the organizational structure of the Applicant. Note: If the swap data repository activities are conducted primarily by a division, subdivision, or other segregable entity within the Applicant's corporation or organization, describe the relationship of such entity within the overall organizational structure and attach as Exhibit E only such description as applies to the segregable entity. Additionally, provide any relevant jurisdictional information, including any and all jurisdictions in which the Applicant or any affiliated entity is doing business and registration status, including pending application (e.g., country, regulator, registration category, date of registration). In addition, include a description of the lines of responsibility and accountability for each operational unit of the Applicant to (i) any committee thereof and/or (ii) the board.
19. Attach as **Exhibit F**, a copy of the conflicts of interest policies and procedures implemented by the Applicant to minimize conflicts of interest in the decision-making process of the swap data repository and to establish a process for the resolution of any such conflicts of interest.
20. Attach as **Exhibit G**, a list of all affiliates of the swap data repository and indicate the general nature of the affiliation. Provide a copy of any agreements entered into or to be entered by the swap data repository, including partnerships or joint ventures, or its participants, that will enable the Applicant to comply with the registration requirements and core principles specified in section 21 of the Act. With regard to an affiliate that is a parent company of the Applicant, if such parent controls the Applicant, an Applicant must provide (i) the board composition of the parent, including public directors, and (ii) all ownership information requested in Exhibit A for the parent. "Control" for this purpose is defined in Commission Regulation § 49.2(a).
21. Attach as **Exhibit H**, a copy of the constitution; articles of incorporation or association with all amendments thereto; existing by-laws, rules, or instruments corresponding thereto, of the Applicant. The Applicant shall also provide a certificate of good standing dated within one week of the date of the application.
22. Where the Applicant is a foreign entity seeking registration or filing an amendment to an existing registration, attach as **Exhibit I**, an opinion of counsel that the swap data repository, as a matter of law, is able to provide the

Commission with prompt access to the books and records of such swap data repository and that the swap data repository can submit to onsite inspection and examination by the Commission.

23. Where the Applicant is a foreign entity seeking registration, attach as **Exhibit I-1**, a form that designates and authorizes an agent in the United States, other than a Commission official, to accept any notice or service of process, pleadings, or other documents in any action or proceedings brought against the swap data repository to enforce the Act and the regulations thereunder.
24. Attach as **Exhibit J**, a current copy of the Applicant's rules, as defined in Commission Regulation § 40.1, consisting of all the rules necessary to carry out the duties as a swap data repository.
25. Attach as **Exhibit K**, a description of the Applicant's internal disciplinary and enforcement protocols, tools, and procedures. Include the procedures for dispute resolution.
26. Attach as **Exhibit L**, a brief description of any material pending legal proceeding(s), other than ordinary and routine litigation incidental to the business, to which the Applicant or any of its affiliates is a party or to which any of its or their property is the subject. Include the name of the court or agency in which the proceeding(s) are pending, the date(s) instituted, and the principal parties thereto, a description of the factual basis alleged to underlie the proceeding(s) and the relief sought. Include similar information as to any such proceeding(s) known to be contemplated by the governmental agencies.

EXHIBITS II — FINANCIAL INFORMATION

27. Attach as **Exhibit M**, a balance sheet, statement of income and expenses, statement of sources and application of revenues, and all notes or schedules thereto, as of the most recent fiscal year of the Applicant. If a balance sheet and statements certified by an independent public accountant are available, such balance sheet and statement shall be submitted as Exhibit M.
28. Attach as **Exhibit N**, a balance sheet and an income and expense statement for each affiliate of the swap data repository that also engages in swap data repository activities as of the end of the most recent fiscal year of each such affiliate.
29. Attach as **Exhibit O**, the following:
 - a. A complete list of all dues, fees, and other charges imposed, or to be imposed, by or on behalf of Applicant for its swap data repository services and identify the service or services provided for each such due, fee, or other charge.

- b. Furnish a description of the basis and methods used in determining the level and structure of the dues, fees, and other charges listed in paragraph a of this item.
- c. If the Applicant differentiates, or proposes to differentiate, among its customers, or classes of customers in the amount of any dues, fees, or other charges imposed for the same or similar services, so state and indicate the amount of each differential. In addition, identify and describe any differences in the cost of providing such services, and any other factors, that account for such differentiations.

EXHIBITS III — OPERATIONAL CAPABILITY

- 30. Attach as **Exhibit P**, copies of all material contracts with any swap execution facility, designated contract market, clearing agency, central counterparty, or third party service provider. To the extent that form contracts are used by the Applicant, submit a sample of each type of form contract used. In addition, include a list of swap execution facilities, designated contract markets, clearing agencies, central counterparties, and third party service providers with whom the Applicant has entered into material contracts. Where swap data repository functions are performed by a third-party, attach any agreements between or among the Applicant and such third party, and identify the services that will be provided.
- 31. Attach as **Exhibit Q**, any technical manuals, other guides or instructions for users of, or participants in, the market.
- 32. Attach as **Exhibit R**, a description of system test procedures, test conducted or test results that will enable the Applicant to comply, or demonstrate the Applicant's ability to comply, with the core principles for swap data repositories.
- 33. Attach as **Exhibit S**, a description in narrative form, or by the inclusion of functional specifications, of each service or function performed as a swap data repository. Include in Exhibit S a description of all procedures utilized for the collection, processing, distribution, publication, and retention (e.g., magnetic tape) of information with respect to transactions or positions in, or the terms and conditions of, swaps entered into by market participants.
- 34. Attach as **Exhibit T**, a list of all computer hardware utilized by the Applicant to perform swap data repository functions, indicating where such equipment (terminals and other access devices) is physically located.
- 35. Attach as **Exhibit U**, a description of the personnel qualifications for each category of professional employees employed by the swap data repository or the division, subdivision, or other segregable entity within the swap data repository as described in Item 16.

36. Attach as **Exhibit V**, a description of the measures or procedures implemented by Applicant to provide for the security of any system employed to perform the functions of a swap data repository. Include a general description of any physical and operational safeguards designed to prevent unauthorized access (whether by input or retrieval) to the system. Describe any circumstances within the past year in which the described security measures or safeguards failed to prevent any such unauthorized access to the system and any measures taken to prevent a reoccurrence. Describe any measures used to verify the accuracy of information received or disseminated by the system.
37. Attach as **Exhibit W**, copies of emergency policies and procedures and Applicant's business continuity-disaster recovery plan. Include a general description of any business continuity-disaster recovery resources, emergency procedures, and backup facilities sufficient to enable timely recovery and resumption of its operations and resumption of its ongoing fulfillment of its duties and obligations as a swap data repository following any disruption of its operations.
38. Where swap data repository functions are performed by automated facilities or systems, attach as **Exhibit X** a description of all backup systems or subsystems that are designed to prevent interruptions in the performance of any swap data repository function as a result of technical malfunctions or otherwise in the system itself, in any permitted input or output system connection, or as a result of any independent source. Include a narrative description of each type of interruption that has lasted for more than two minutes and has occurred within the six (6) months preceding the date of the filing, including the date of each interruption, the cause, and duration. Also state the total number of interruptions that have lasted two minutes or less.
39. Attach as **Exhibit Y**, the following:
 - a. For each of the swap data repository functions:
 - (1) quantify in appropriate units of measure the limits on the swap data repository's capacity to receive (or collect), process, store, or display (or disseminate for display or other use) the data elements included within each function (e.g., number of inquiries from remote terminals);
 - (2) identify the factors (mechanical, electronic, or other) that account for the current limitations reported in answer to (1) on the swap data repository's capacity to receive (or collect), process, store, or display (or disseminate for display or other use) the data elements included within each function.
 - b. If the Applicant is able to employ, or presently employs, the central processing units of its system(s) for any use other than for performing the

functions of a swap data repository, state the priorities of assignment of capacity between such functions and such other uses, and state the methods used or able to be used to divert capacity between such functions and such other uses.

EXHIBITS IV — ACCESS TO SERVICES

40. Attach as **Exhibit Z**, the following:
 - a. As to each swap data repository service that the Applicant provides, state the number of persons who presently utilize, or who have notified the Applicant of their intention to utilize, the services of the swap data repository.
 - b. For each instance during the past year in which any person has been prohibited or limited in respect of access to services offered by the Applicant as a swap data repository, indicate the name of each such person and the reason for the prohibition or limitation.
 - c. Define the data elements for purposes of the swap data repository's real-time public reporting obligation. Appendix A to Part 43 of the Commission's Regulations (Data Elements and Form for Real-Time Reporting for Particular Markets and Contracts) sets forth the specific data elements for real-time public reporting.
41. Attach as **Exhibit AA**, copies of any agreements governing the terms by which information may be shared by the swap data repository, including with market participants. To the extent that form contracts are used by the Applicant, submit a sample of each type of form contract used.
42. Attach as **Exhibit BB**, a description of any specifications, qualifications, or other criteria that limit, are interpreted to limit, or have the effect of limiting access to or use of any swap data repository services furnished by the Applicant and state the reasons for imposing such specifications, qualifications, or other criteria, including whether such specifications, qualifications, or other criteria are imposed.
43. Attach as **Exhibit CC**, any specifications, qualifications, or other criteria required of participants who utilize the services of the Applicant for collection, processing, preparing for distribution, or public dissemination by the Applicant.
44. Attach as **Exhibit DD**, any specifications, qualifications, or other criteria required of any person, including, but not limited to, regulators, market participants, market infrastructures, venues from which data could be submitted to the Applicant, and third party service providers who request access to data maintained by the Applicant.

45. Attach as **Exhibit EE**, policies and procedures implemented by the Applicant to review any prohibition or limitation of any person with respect to access to services offered or data maintained by the Applicant and to grant such person access to such services or data if such person has been discriminated against unfairly.

EXHIBITS V — OTHER POLICIES AND PROCEDURES

46. Attach as **Exhibit FF**, a narrative and supporting documents that may be provided under other Exhibits herein, that describes the manner in which the Applicant is able to comply with each core principle and other requirements pursuant to Commission Regulation § 49.19.
47. Attach as **Exhibit GG**, policies and procedures implemented by the Applicant to protect the privacy of any and all SDR data, section 8 material, and SDR information that the swap data repository receives from reporting entities.
48. Attach as **Exhibit HH**, a description of safeguards, policies, and procedures implemented by the Applicant to prevent the misappropriation or misuse of (a) any confidential information received by the Applicant, including, but not limited to, SDR data, section 8 material, and SDR information, about a market participant or any of its customers; and/or (b) intellectual property by Applicant or any person associated with the Applicant for their personal benefit or the benefit of others.
49. Attach as **Exhibit II**, policies and procedures implemented by the Applicant regarding its use of the SDR data, section 8 material, and SDR information that it receives from a market participant, any registered entity, or any person for non-commercial and/or commercial purposes.
50. Attach as **Exhibit JJ**, procedures and a description of facilities of the Applicant for effectively resolving disputes over the accuracy of the SDR data and positions that are maintained by the swap data repository.
51. Attach as **Exhibit KK**, policies and procedures relating to the Applicant's calculation of positions.
52. Attach as **Exhibit LL**, policies and procedures that are reasonably designed to prevent any provision in a valid swap from being invalidated or modified through the procedures or operations of the Applicant.
53. Attach as **Exhibit MM**, Applicant's policies and procedures that ensure that the SDR data that are maintained by the Applicant continues to be maintained after the Applicant withdraws from registration as a swap data repository, which shall include procedures for transferring the SDR data to the Commission or its designee (including another swap data repository).

35. Revise appendix B to part 49 to read as follows:

Appendix B to Part 49—Confidentiality Arrangement for Appropriate Domestic Regulators and Appropriate Foreign Regulators To Obtain Access To Swap Data Maintained by Swap Data Repositories Pursuant to §§ 49.17(d)(6) and 49.18(a)



**CONFIDENTIALITY ARRANGEMENT BETWEEN THE
U.S. COMMODITY FUTURES TRADING COMMISSION
AND [NAME OF FOREIGN/DOMESTIC REGULATOR]
CONCERNING ACCESS TO SWAP DATA HELD AND**

MAINTAINED BY SWAP DATA REPOSITORIES

The U.S. Commodity Futures Trading Commission (“CFTC”) and the [*name of foreign/domestic regulator* (“ABC”)] (each an “Authority” and collectively the “Authorities”) have entered into this Confidentiality Arrangement (“Arrangement”) in connection with [whichever is applicable] [CFTC Regulation 49.17(b)(1)[(i)-(vi)]/the determination order issued by the CFTC to [ABC] (“Order”)] and any request for swap data by [ABC] to any swap data repository (“SDR”) registered or provisionally registered with the CFTC.

Article One: General Provisions

1. ABC is permitted to request and receive swap data directly from an SDR (“Swap Data”) on the terms and subject to the conditions of this Arrangement.

2. This Arrangement is entered into to fulfill the requirements under Section 21(d) of the Commodity Exchange Act (“Act”) and CFTC Regulation 49.18. Upon receipt by an SDR, this Arrangement will satisfy the requirement for a written agreement pursuant to Section 21(d) of the Act and CFTC Regulation 49.17(d)(6). This Arrangement does not apply to information that is [reported to an SDR pursuant to [ABC]’s regulatory regime where the SDR also is registered with [ABC] pursuant to separate statutory authority, even if such information also is reported pursuant to the Act and CFTC regulations][reported to an SDR pursuant to [ABC]’s regulatory regime where the SDR also is registered with, or recognized or otherwise authorized by, [ABC], which has supervisory authority over the repository pursuant to foreign law and/or regulation, even if such information also is reported pursuant to the Act and CFTC regulations.]¹
3. This Arrangement is not intended to limit or condition the discretion of an Authority in any way in the discharge of its regulatory responsibilities or to prejudice the individual responsibilities or autonomy of any Authority.
4. This Arrangement does not alter the terms and conditions of any existing arrangements.

Article Two: Confidentiality of Swap Data

5. ABC will be acting within the scope of its jurisdiction in requesting Swap Data and employs procedures to maintain the confidentiality of Swap Data and any

¹ The first bracketed phrase will be used for ADRs; the second will be used for AFRs. The inapplicable phrase will be deleted.

information and analyses derived therefrom (collectively, the “Confidential Information”). ABC undertakes to notify the CFTC and each relevant SDR promptly of any change to ABC’s scope of jurisdiction.

6. ABC undertakes to treat Confidential Information as confidential and will employ safeguards that:
 - a. To the maximum extent practicable, identify the Confidential Information and maintain it separately from other data and information;
 - b. Protect the Confidential Information from misappropriation and misuse;
 - c. Ensure that only authorized ABC personnel with a need to access particular Confidential Information to perform their job functions related to such Confidential Information have access thereto, and that such access is permitted only to the extent necessary to perform their job functions related to such particular Confidential Information;
 - d. Prevent the disclosure of aggregated Confidential Information; provided, however, that ABC is permitted to disclose any sufficiently aggregated Confidential Information that is anonymized to prevent identification, through disaggregation or otherwise, of a market participant’s business transactions, trade data, market positions, customers, or counterparties;
 - e. Prohibit use of the Confidential Information by ABC personnel for any improper purpose, including in connection with trading for their personal

benefit or for the benefit of others or with respect to any commercial or business purpose; and

- f. Include a process for monitoring compliance with the confidentiality safeguards described herein and for promptly notifying the CFTC, and each SDR from which ABC has received Swap Data, of any violation of such safeguards or failure to fulfill the terms of this Arrangement.
7. Except as provided in Paragraphs 6.d. and 8, ABC will not onward share or otherwise disclose any Confidential Information.
8. ABC undertakes that:
 - a. If a department, central bank, or agency of the Government of the United States, it will not disclose Confidential Information except in an action or proceeding under the laws of the United States to which it, the CFTC, or the United States is a party;
 - b. If a department or agency of a State or political subdivision thereof, it will not disclose Confidential Information except in connection with an adjudicatory action or proceeding brought under the Act or the laws of [*name of either the State or the State and political subdivision*] to which it is a party; or
 - c. If a foreign futures authority or a department, central bank, ministry, or agency of a foreign government or subdivision thereof, or any other Foreign Regulator, as defined in Commission Regulation 49.2(a)(5), it will

not disclose Confidential Information except in connection with an adjudicatory action or proceeding brought under the laws of [*name of country, political subdivision, or (if a supranational organization) supranational lawmaking body*] to which it is a party.

9. Prior to complying with any legally enforceable demand for Confidential Information, ABC will notify the CFTC of such demand in writing, assert all available appropriate legal exemptions or privileges with respect to such Confidential Information, and use its best efforts to protect the confidentiality of the Confidential Information.
10. ABC acknowledges that, if it does not fulfill the terms of this Arrangement, the CFTC may direct any SDR to suspend or revoke ABC's access to Swap Data.
11. ABC will comply with all applicable security-related requirements imposed by an SDR in connection with access to Swap Data maintained by the SDR, as such requirements may be revised from time to time.
12. ABC will promptly destroy all Confidential Information for which it no longer has a need or which no longer falls within the scope of its jurisdiction, and will certify to the CFTC, upon request, that ABC has destroyed such Confidential Information.

Article Three: Administrative Provisions

13. This Arrangement may be amended with the written consent of the Authorities.

14. The text of this Arrangement will be executed in English, and may be made available to the public.
15. On the date this Arrangement is signed by the Authorities, it will become effective and may be provided to any SDR that holds and maintains Swap Data that falls within the scope of ABC's jurisdiction.
16. This Arrangement will expire 30 days after any Authority gives written notice to the other Authority of its intention to terminate the Arrangement. In the event of termination of this Arrangement, Confidential Information will continue to remain confidential and will continue to be covered by this Arrangement.

This Arrangement is executed in duplicate, this _____ day of _____.

[*name of Chairman*]

[*name of signatory*]

Chairman

[*title*]

U.S. Commodity Futures Trading Commission

[*name of foreign/domestic regulator*]

[Exhibit A: Description of Scope of Jurisdiction. If ABC is not enumerated in Commission Regulations 49.17(b)(1)(i)-(vi), it must attach the Determination Order received from the Commission pursuant to Commission Regulation 49.17(h). If ABC is enumerated in Commission Regulations 49.17(b)(1)(i)-(vi), it must attach a sufficiently detailed description of the scope of ABC's jurisdiction as it relates to Swap Data maintained by SDRs. In both cases, the description of the scope of jurisdiction must include elements allowing SDRs to establish, without undue obstacles, objective parameters for determining whether a particular Swap Data request falls within such scope of jurisdiction. Such elements could include legal entity identifiers of all

jurisdictional entities and could also include unique product identifiers of all jurisdictional products or, if no CFTC-approved unique product identifier and product classification system is yet available, the internal product identifier or product description used by an SDR from which Swap Data is to be sought.]

36. Further amend part 49 by removing all references to “registered swap data repository”, “Registered Swap Data Repository”, and “registered swap data repositories”, and adding in their place “swap data repository”, “Swap Data Repository”, and “swap data repositories”, respectively, wherever they appear.

Issued in Washington, DC, on September 24, 2020, by the Commission.

Christopher Kirkpatrick,

Secretary of the Commission.

Note: The following appendices will not appear in the Code of Federal Regulations.

**Appendices to Amendments to Regulations Relating to Certain Swap Data
Repository and Data Reporting Requirements—Commission Voting Summary,
Chairman’s Statement, and Commissioners’ Statements
Appendix 1—Commission Voting Summary**

On this matter, Chairman Tarbert and Commissioners Quintenz, Behnam, Stump, and Berkovitz voted in the affirmative. No Commissioner voted in the negative.

Appendix 2—Statement of Chairman Heath P. Tarbert

I am pleased to support today’s final swap data reporting rules under Parts 43, 45, and 49 of the CFTC’s regulations, which are foundational to effective oversight of the derivatives markets. As I noted when these rules were proposed in February, “[d]ata is the lifeblood of our markets.”¹ Little did I know just how timely that statement would prove to be.

COVID-19 Crisis and Beyond

In the month following our data rule proposals, historic volatility caused by the coronavirus pandemic rocketed through our derivatives markets, affecting nearly every asset class.² I said at the time that while our margin rules acted as “shock absorbers” to cushion the impact of volatility, the Commission was also considering data rules that would expand our insight into potential systemic risk. In particular, the data rules “would for the first time require the reporting of margin and collateral data for uncleared swaps . . . significantly strengthen[ing] the CFTC’s ability to monitor for systemic risk” in those markets.³ Today we complete those rules, shoring up the data-based reporting systems that can help us identify—and quickly respond to—emerging systemic threats.

¹ Statement of Chairman Heath P. Tarbert in Support of Proposed Rules on Swap Data Reporting (Feb. 20, 2020), <https://www.cftc.gov/PressRoom/SpeechesTestimony/tabertstatement022020> (hereinafter, Tarbert, Proposal Statement).

² See Heath P. Tarbert, Volatility Ain’t What it Used to Be, Wall Street Journal (Mar. 23, 2020), <https://www.wsj.com/articles/volatility-aint-what-it-used-to-be-11585004897?mod=searchresults&page=1&pos=1> (hereinafter Tarbert, Volatility).

³ *Id.*

But data reporting is not just about mitigating systemic risk. Vibrant derivatives markets must be open and free, meaning transparency is a critical component of any reporting system. Price discovery requires robust public reporting that supplies market participants with the information they need to price trades, hedge risk, and supply liquidity. Today we double down on transparency, ensuring that public reporting of swap transactions is even more accurate and timely. In particular, our final rules adjust certain aspects of the Part 43 proposal's block-trade⁴ reporting rules to improve transparency in our markets. These changes have been carefully considered to enhance clarity, one of the CFTC's core values.⁵

Promoting clarity in our markets also demands that we, as an agency, have clear goals in mind. Today's final swap data reporting rules reflect a hard look at the data we need and the data we collect, building on insights gleaned from our own analysis as well as feedback from market participants. The key point is that more data does not necessarily mean better information. Instead, the core of an effective data reporting system is focus.

As Aesop reminds us, "Beware lest you lose the substance by grasping at the shadow."⁶ Today's final swap data reporting rules place substance first, carefully tailoring our requirements to reach the data that really matters, while removing unnecessary burdens on our market participants. As Bill Gates once remarked, "My success, part of it certainly, is that I have focused in on a few things."⁷ So too are the

⁴ The final rule's definition of "block trade" is provided in regulation 43.2.

⁵ See CFTC Core Values, <https://www.cftc.gov/About/Mission/index.htm>.

⁶ Aesop, "The Dog and the Shadow," The Harvard Classics, <https://www.bartleby.com/17/1/3.html>.

final swap data reporting rules limited in number. The Part 45 Technical Specification, for example, streamlines hundreds of different data fields currently required by swap data repositories into 128 that truly advance the CFTC’s regulatory goals. This focus will simplify the data reporting process without undermining its effectiveness, thus fulfilling the CFTC’s strategic goal of enhancing the regulatory experience for market participants at home and abroad.⁸

That last point is worth highlighting: our final swap data reporting rules account for market participants both within and outside the United States. A diversity of market participants, some of whom reside beyond our borders and are accountable to foreign regulatory regimes, contribute to vibrant derivatives markets. But before today, inconsistent international rules meant some swap dealers were left to navigate what I have called “a byzantine maze of disparate data fields and reporting timetables” for the very same swap.⁹ While perfect alignment may not be possible or even desirable, the final rules significantly harmonize reportable data fields, compliance timetables, and implementation requirements to advance our global markets. Doing so brings us closer to realizing the CFTC’s vision of being the global standard for sound derivatives regulation.¹⁰

Overview of the Swap Data Reporting Rules

⁷ ABC News, One-on-One with Bills Gates (Feb. 21, 2008), <https://abcnews.go.com/WNT/CEOProfiles/story?id=506354&page=1>.

⁸ See CFTC Strategic Plan 2020-2024, at 4 (discussing Strategic Goal 3), https://www.cftc.gov/media/3871/CFTC2020_2024StrategicPlan/download.

⁹ Tarbert, Proposal Statement, *supra* note 1.

¹⁰ See CFTC Vision Statement, available at <https://www.cftc.gov/About/AboutTheCommission#:~:text=CFTC%20Vision%20Statement,standard%20for%20sound%20derivatives%20regulation>.

It is important to understand the specific function of each of the three swap data reporting rules, which together form the CFTC's reporting system. First, Part 43 relates to the *real-time public reporting* of swap pricing and transaction data, which appears on the "public tape." Swap dealers and other reporting parties supply Part 43 data to swap data repositories (SDRs), which then make the data public. Part 43 includes provisions relating to the treatment and public reporting of large notional trades (blocks), as well as the "capping" of swap trades that reach a certain notional amount.

Second, Part 45 relates to the *regulatory reporting* of swap data to the CFTC by swap dealers and other covered entities. Part 45 data provides the CFTC with insight into the swaps markets to assist with regulatory oversight. A Technical Specification available on the CFTC's website¹¹ includes data elements that are unique to CFTC reporting, as well as certain "Critical Data Elements," which reflect longstanding efforts by the CFTC and other regulators to develop global guidance for swap data reporting.¹²

Finally, Part 49 requires *data verification* to help ensure that the data reported to SDRs and the CFTC in Parts 43 and 45 is accurate. The final Part 49 rule will provide enhanced and streamlined oversight of SDRs and data reporting generally. In particular, Part 49 will now require SDRs to have a mechanism by which reporting counterparties can access and verify the data for their open swaps held at the SDR. A reporting

¹¹ See CFTC, Technical Specification Document, https://www.cftc.gov/media/3496/DMO_Part43_45TechnicalSpecification022020/download.

¹² Since November 2014, the CFTC and regulators in other jurisdictions have collaborated through the Committee on Payments and Market Infrastructures ("CPMI") and the International Organization of Securities Commissions ("IOSCO") working group for the harmonization of key over-the-counter ("OTC") derivatives data elements ("Harmonisation Group"). The Harmonisation Group developed global guidance for key OTC derivatives data elements, including the Unique Transaction Identifier, the Unique Product Identifier, and critical data elements other than UTI and UPI.

counterparty must compare the SDR data with the counterparty's own books and records, correcting any data errors with the SDR.

Systemic Risk Mitigation

Today's final swap data reporting rules are designed to fulfill our agency's first Strategic Goal: to strengthen the resilience and integrity of our derivatives markets while fostering the vibrancy.¹³ The Part 45 rule requires swap dealers to report uncleared margin data for the first time, enhancing the CFTC's ability to "to monitor systemic risk accurately and to act quickly if cracks begin to appear in the system."¹⁴ As Justice Brandeis famously wrote in advocating for transparency in organizations, "sunlight is the best disinfectant."¹⁵ So too it is for financial markets: the better visibility the CFTC has into the uncleared swaps markets, the more effectively it can address what until now has been "a black box of potential systemic risk."¹⁶

Doubling Down on Transparency

Justice Brandeis's words also resonate across other areas of the final swap data reporting rules. The final swap data reporting rules enhance transparency to the public of pricing and trade data.

1. Blocks and Caps

A critical aspect of the final Part 43 rule is the issue of block trades and dissemination delays. When the Part 43 proposal was issued, I noted that "[o]ne of the issues we are looking at closely is whether a 48-hour delay for block trade reporting is

¹³ See CFTC Strategic Plan, *supra* note 7, at 5.

¹⁴ Tarbert, Proposal Statement, *supra* note 1, note 2.

¹⁵ Hon. Louis D. Brandeis, *Other People's Money* 62 (National Home Library Foundation ed. 1933).

¹⁶ Tarbert, Proposal Statement, *supra* note 1.

appropriate.”¹⁷ I encouraged market participants to “provide comment letters and feedback concerning the treatment of block delays.”¹⁸ Market participants responded with extensive feedback, much of which advocated for shorter delays in making block trade data publicly available. I agree with this view, and support a key change in the final Part 43 rule. Rather than apply the proposal’s uniform 48-hour dissemination delay on block trade reporting, the final rule returns to bespoke public reporting timeframes that consider liquidity, market depth, and other factors unique to specific categories of swaps. The result is shorter reporting delays for most block trades.

The final Part 43 rule also changes the threshold for block trade treatment, raising the amount needed from a 50% to 67% notional calculation. It also increases the threshold for capping large notional trades from 67% to 75%. These changes will enhance market transparency by applying a stricter standard for blocks and caps, thereby enhancing public access to swap trading data. At the same time, the rule reflects serious consideration of how these thresholds are calculated, particularly for block trades. In excluding certain option trades and CDS trades around the roll months from the 67% notional threshold for blocks, the final rule helps ensure that dissemination delays have their desired effect of preventing front-running and similar disruptive activity.

2. *Post-Priced and Prime-Broker Swaps*

The swaps market is highly complex, reflecting a nearly endless array of transaction structures. Part 43 takes these differences into account in setting forth the public reporting requirements for price and transaction data. For example, post-priced

¹⁷ Tarbert, Proposal Statement, *supra* note 1, note 14.

¹⁸ *Id.*

swaps are valued after an event occurs, such as the ringing of the daily closing bell in an equity market. As it stands today, post-priced swaps often appear on the public tape with no corresponding pricing data—rendering the data largely unusable. The final Part 43 rule addresses this data quality issue and improves price discovery by requiring post-priced swaps to appear on the public tape after pricing occurs.

The final Part 43 rule also resolves an issue involving the reporting of prime-brokerage swaps. The current rule requires that offsetting swaps executed with prime brokers—in addition to the initial swap reflecting the actual terms of trade—be reported on the public tape. This duplicative reporting obfuscates public pricing data by including prime-broker costs and fees that are unrelated to the terms of the swap. As I explained when the rule was proposed, cluttering the public tape with duplicative or confusing data can impair price discovery.¹⁹ The final Part 43 rule addresses this issue by requiring that only the initial “trigger” swap be reported, thereby improving public price information.

3. *Verification and Error Correction*

Data is only as useful as it is accurate. The final Part 49 rule establishes an efficient framework for verifying SDR data accuracy and correcting errors, which serves both regulatory oversight and public price discovery purposes.

Improving the Regulatory Experience

Today’s final swap data reporting rules improve the regulatory experience for market participants at home and abroad in several key ways, advancing the CFTC’s third Strategic Goal.²⁰ Key examples are set forth below.

¹⁹ Tarbert, Proposal Statement, *supra* note 1.

²⁰ CFTC Strategic Plan, *supra* note 7, at 7.

1. *Streamlined Data Fields*

As I stated at the proposal stage, “[s]implicity should be a central goal of our swap data reporting rules.”²¹ This sentiment still holds true, and a key improvement to our final Part 45 Technical Specification is the streamlining of reportable data fields. The current system has proven unworkable, leaving swap dealers and other market participants to wander alone in the digital wilderness, with little guidance about the data elements that the CFTC actually needs. This uncertainty has led to “a proliferation of reportable data fields” required by SDRs that “exceed what market participants can readily provide and what the [CFTC] can realistically use.”²²

We resolve this situation today by replacing the sprawling mass of disparate SDR fields—sometimes running into the hundreds or thousands—with 128 that are important to the CFTC’s oversight of the swaps markets. These fields reflect an honest look at the data we are collecting and the data we can use, ensuring that our market participants are not burdened with swap reporting obligations that do not advance our statutory mandates.

2. *Regulatory Harmonization*

The swaps markets are integrated and global; our data rules must follow suit.²³ To that end, the final Part 45 rule takes a sensible approach to aligning the CFTC’s data reporting fields with the standards set by international efforts. Swap data reporting is an area where harmonization simply makes sense. The costs of failing to harmonize are high, as swap dealers and other reporting parties must provide entirely different data sets

²¹ Tarbert, Proposal Statement, *supra* note 1.

²² *Id.*

²³ *See* Tarbert, Proposal Statement, *supra* note 1.

to multiple regulators for the very same swap.²⁴ A better approach is to conform swap data reporting requirements where possible.

Data harmonization is not just good for market participants: it also advances the CFTC's vision of being the global standard for sound derivatives regulation.²⁵ The CFTC has a long history of leading international harmonization efforts in data reporting, including by serving as a co-chair of the Committee on Payments and Infrastructures and the International Organization of Securities Commissioners (CPMI-IOSCO) working group on critical data elements (CDE) in swap reporting.²⁶ I am pleased to support a final Part 45 rule that advances these efforts by incorporating CDE fields that serve our regulatory goals.

In addition to certain CDE fields, the final Part 45 rule also adopts other important features of the CPMI-IOSCO Technical Guidance, such as the use of a Unique Transaction Identifier (UTI) system in place of today's Unique Swap Identifier (USI) system. This change will bring the CFTC's swap data reporting system in closer alignment with those of other regulators, leading to better data sharing and lower burdens on market participants.

Last, the costs of altering data reporting systems makes implementation timeframes especially important. To that effect, the CFTC has worked with ESMA to bring our jurisdictions' swap data reporting compliance timetables into closer harmony, easing transitions to new reporting systems.

²⁴ *See id.*

²⁵ *See* CFTC Vision Statement, <https://www.cftc.gov/About/AboutTheCommission#:~:text=CFTC%20Vision%20Statement,standard%20for%20sound%20derivatives%20regulation>.

²⁶ The CFTC also co-chaired the Financial Stability Board's working group on UTI and UPI governance.

3. *Verification and Error Correction*

The final Part 49 rule has changed since the proposal stage to facilitate easier verification of SDR data by swap dealers. Based on feedback we received, the final rule now requires SDRs to provide a mechanism for swap dealers and other reporting counterparties to access the SDR's data for their open swaps to verify accuracy and address errors. This approach replaces a message-based system for error identification and correction, which would have produced significant implementation costs without improving error remediation. The final rule achieves the goal—data accuracy—with fewer costs and burdens.²⁷

4. *Relief for End Users*

I have long said that if our derivatives markets are not working for agriculture, then they are not working at all.²⁸ While swaps are often the purview of large financial institutions, they also provide critical risk-management functions for end users like farmers, ranchers, and manufacturers. Our final Part 45 rule removes the requirement that end users report swap valuation data, and it provides them with a longer “T+2” timeframe to report the data that is required. I am pleased to support these changes to end-user reporting, which will help ensure that our derivatives markets work for all Americans, advancing another CFTC strategic goal.²⁹

²⁷ Limiting error correction to open swaps—versus all swaps that a reporting counterparty may have entered into at any point in time—is also a sensible approach to addressing risk in the markets. The final Part 49 rule limits error correction to errors discovered prior to the expiration of the five-year recordkeeping period in regulation 45.2, ensuring that market participants are not tasked with addressing old or closed transactions that pose no active risk.

²⁸ Opening Statement of Chairman Heath P. Tarbert Before the April 22 Agricultural Advisory Committee Meeting (April 22, 2020), <https://www.cftc.gov/PressRoom/SpeechesTestimony/tarbertstatement042220>.

²⁹ CFTC Strategic Plan, *supra* note 7, at 6.

Conclusion

The derivatives markets run on data. They will be even more reliant on it in the future, as digitization continues to sweep through society and industry. I am pleased to support the final rules under Parts 43, 45, and 49, which will help ensure that the CFTC's swap data reporting systems are effective, efficient, and built to last.

Appendix 3—Supporting Statement of Commissioner Brian Quintenz

The Commodity Exchange Act (CEA) specifically directs the Commission to ensure that real-time public reporting requirements for swap transactions (i) do not identify the participants; (ii) specify the criteria for what constitutes a block trade and the appropriate time delay for reporting such block trades, and (iii) take into account whether public disclosure will materially reduce market liquidity.¹ The Commission has long recognized the intrinsic tension between the policy goals of enhanced transparency versus market liquidity. In fact, in 2013, the Commission noted that the optimal point in this interplay between enhanced swap transaction transparency and the potential that, in certain circumstances, this enhanced transparency could reduce market liquidity “defies precision.”² I agree with the Commission that the ideal balance between transparency and liquidity is difficult to ascertain and necessarily requires not only robust data but also the exercise of reasoned judgement, particularly in the swaps marketplace with a finite number of institutional investors trading hundreds of thousands of products, often by appointment.

¹ CEA Section 2(a)(13)(E).

² Procedures to Establish Appropriate Minimum Block Sizes for Large Notional Off-Facility Swaps and Block Trades, 78 Fed. Reg. 32866, 32917 (May 31, 2013).

Unfortunately, I fear the balance struck in this rule misses that mark. The final rule before us today clearly favors transparency over market liquidity, with the sacrifice of the latter being particularly more acute given the nature of the swaps market. In this final rule, the Commission asserts that the increased transparency resulting from higher block trade thresholds and cap sizes will lead to increased competition, stimulate more trading, and enhance liquidity and pricing. That is wishful thinking, which is no basis upon which to predicate a final rule. As numerous commenters pointed out, this increased transparency comes directly at the expense of market liquidity, competitive pricing for end-users, and the ability of dealers to efficiently hedge their large swap transactions. While the Commission hopes the 67% block calculation will bring about the ample benefits it cites, I think the exact opposite is the most probable outcome. I remain unconvinced that the move from the 50% notional amount calculation for block sizes to the 67% notional amount calculation is necessary or appropriate. Unfortunately, the decision to retain the 67% calculation, which was adopted in 2013 but never implemented, was not seriously reconsidered in this rule.

Instead, in the final rule, the Commission asserts that it “extensively analyzed the costs and benefits of the 50-percent threshold and 67-percent threshold when it adopted the phased-in approach” in 2013. Respectfully, I believe that statement drastically inflates the Commission’s prior analysis. I have no doubt the Commission “analyzed” the costs and benefits in 2013 to the best of its ability. However, the reality is that in 2013, as the Commission acknowledged in its own cost-benefit analysis, “in a number of instances, the Commission lacks the data and information required to precisely estimate costs, *owing to the fact that these markets do not yet exist or are not yet fully*

*developed.*³ In 2013, the Commission was just standing up its SEF trading regime, had not yet implemented its trade execution mandate, and had adopted interim time delays for all swaps – meaning that, in 2013 when it first adopted this proposal, no swap transaction data was publicly disseminated in real time. Seven years later, the Commission has a robust, competitive SEF trading framework and a successful real-time reporting regime that results in 87% of IRS trades and 82% of CDS trades being reported in real time. In light of the sea change that has occurred since 2013, I believe the Commission should have undertaken a comprehensive review of whether the transition to a 67% block trade threshold was appropriate.

In my opinion, the fact that currently 87% of IRS and 82% of CDS trades are reported in real time is evidence that the transparency policy goals underlying the real-time reporting requirements have already been achieved. In 2013, the Commission, quoting directly from the Congressional Record, noted that when it considered the benefits and effects of enhanced market transparency, the “guiding principle in setting appropriate block trade levels [is that] the *vast majority of swap transactions* should be exposed to the public market through exchange trading.”⁴ The current block sizes have resulted *in exactly that - the vast majority of trades being reported in real time*. The final rule, acknowledging these impressively high percentages, nevertheless concludes that because less than half of total IRS and CDS *notional* amounts is reported in real time, additional trades should be forced into real-time reporting. I reach the exact opposite conclusion. By my logic, the 13% of IRS and 18% of CDS trades that currently receive a

³ *Id.*

⁴ *Id.* at 32870 n.41 (quoting from the Congressional Record—Senate, S5902, S5922 (July 15, 2010) (emphasis added)).

time delay represent roughly *half of notional* for those asset classes. In other words, these trades are *huge*. In my view, these trades are exactly the type of outsized transactions that Congress appropriately decided should receive a delay from real-time reporting.

Despite my reservations, I am voting for the real-time reporting rule before the Commission today for several reasons. First, I worked hard to ensure that this final rule contains many significant improvements from the initial draft we were first presented, as well as the original proposal which I supported. For example, in order to make sure the CDS swap categories are representative, the Commission established additional categories for CDS with optionality. In addition, the Commission is also providing guidance that certain risk-reduction exercises, which are not arm's length transactions, are not publicly reportable swap transactions, and therefore should be excluded from the block size calculations.

Second, while most of the changes to the part 43 rules will have a compliance period of 18 months, compliance with the new block and cap sizes will not be required until one year later, providing market participants with a 30-month compliance period and the Commission with an extra 12 months to revisit this issue with actual data analysis, as good government and well-reasoned public policy demands. This means that when any final block and cap sizes go into effect for the amended swap categories, it will be with the benefit of cleaner, more precise data resulting from our part 43 final rule improvements adopted today. It is my firm expectation that DMO staff will review the revised block trade sizes, in light of the new data, at that time to ensure they are appropriately calibrated for each swap category. In addition, as required by the rule,

DMO will publish the revised block trade and cap sizes the month before they go effective. I am hopeful that with the benefit of time, cleaner data and public comment, the Commission can, if necessary, re-calibrate the minimum block sizes to ensure they strike the appropriate balance built into our statute between the liquidity needs of the market and transparency. To the extent market participants also have concerns about maintaining the current time delays for block trades given the move to the 67% calculation, I encourage them to reach out to DMO and my fellow Commissioners during the intervening 30-month window. That time frame is more than enough to further refine the reporting delays, as necessary, for the new swap categories based on sound data.

Appendix 4—Concurring Statement of Commissioner Rostin Behnam

I respectfully concur in the Commission's amendments to its regulations regarding real-time public reporting, recordkeeping, and swap data repositories. The three rules being finalized together today are the culmination of a multi-year effort to streamline, simplify, and internationally harmonize the requirements associated with reporting swaps. Today's actions represent the end of a long procedural road at the Commission, one that started with the Commission's 2017 Roadmap to Achieve High Quality Swap Data.¹

But the road really goes back much further than that, to the time prior to the 2008 financial crisis, when swaps were largely exempt from regulation and traded exclusively over-the-counter.² Lack of transparency in the over-the-counter swaps market contributed to the financial crisis because both regulators and market participants lacked

¹ Roadmap to Achieve High Quality Swap Data, *available at* http://www.cftc.gov/idc/groups/public/@newsroom/documents/file/dmo_swapdataplan071017.pdf.

² See Commodity Futures Modernization Act of 2000, Public Law 106-554, 114 Stat. 2763 (2000).

the visibility necessary to identify and assess swaps market exposures, counterparty relationships, and counterparty credit risk.³

In the aftermath of the financial crisis, Congress enacted the Dodd-Frank Wall Street Reform and Consumer Protection Act in 2010 (Dodd-Frank Act).⁴ The Dodd-Frank Act largely incorporated the international financial reform initiatives for over-the-counter derivatives laid out at the 2009 G20 Pittsburgh Summit, which sought to improve transparency, mitigate systemic risk, and protect against market abuse.⁵ With respect to data reporting, the policy initiative developed by the G20 focused on establishing a consistent and standardized global data set across jurisdictions in order to support regulatory efforts to timely identify systemic risk. The critical need and importance of this policy goal given the consequences of the financial crisis cannot be overstated.

Among many critically important statutory changes, which have shed light on the over-the-counter derivatives markets, Title VII of the Dodd-Frank Act amended the Commodity Exchange Act (“CEA” or “Act”) and added a new term to the Act: “real-time public reporting.”⁶ The Act defines that term to mean reporting “data relating to swap transaction, including price and volume, *as soon as technologically practicable* after the time at which the swap transaction has been executed.”⁷

³ See The Financial Crisis Inquiry Commission, *The Financial Crisis Inquiry Report: Final Report of the National Commission on the Causes of the Financial and Economic Crisis in the United States* (Official Government Edition), at 299, 352, 363-364, 386, 621 n. 56 (2011), available at <https://www.gpo.gov/fdsys/pkg/GPO-FCIC/pdf/GPO-FCIC.pdf>.

⁴ See Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111-203, 124 Stat. 1376 (2010).

⁵ G20, *Leaders’ Statement, The Pittsburgh Summit* (Sept. 24-25, 2009) at 9, available at https://www.treasury.gov/resource-center/international/g7-g20/Documents/pittsburgh_summit_leaders_statement_250909.pdf.

⁶ 7 U.S.C. 2(a)(13)(A).

⁷ *Id.*

As we amend these rules, I think it is important that we keep in mind the Dodd-Frank Act's emphasis on transparency, and what transpired to necessitate that emphasis. However, the Act is also clear that its purpose, in regard to transparency and real time public reporting, is to authorize the Commission to make swap transaction and pricing data available to the public "as the Commission determines appropriate to enhance price discovery."⁸ The Act expressly directs the Commission to specify the criteria for what constitutes a block trade, establish appropriate time delays for disseminating block trade information to the public, and "take into account whether the public disclosure will materially reduce market liquidity."⁹ So, as we keep Congress's directive regarding public transparency (and the events that necessitated that directive) in mind as we promulgate rules, we also need to be cognizant of instances where public disclosure of the details of large transactions in real time will materially reduce market liquidity. This is a complex endeavor, and the answers vary across markets and products. I believe that these final rules strike an appropriate balance.

Today's final rules amending the swap data and recordkeeping and reporting requirements also culminate a multi-year undertaking by dedicated Commission staff and our international counterparts working through the Committee on Payments and Market Infrastructures and the International Organization of Securities Commissions working group for the harmonization of key over-the-counter derivatives data elements. The amendments benefit from substantial public consultation as well as internal data and regulatory analyses aimed at determining, among other things, how the Commission can

⁸ 7 U.S.C. 2(a)(13)(B).

⁹ 7 U.S.C. 2(a)(13)(C)(ii-iv).

meet its current data needs in support of its duties under the CEA. These include ensuring the financial integrity of swap transactions, monitoring of substantial and systemic risks, formulating bases for and granting substituted compliance and trade repository access, and entering information sharing agreements with fellow regulators.

I wish to thank the responsible staff in the Division of Market Oversight, as well as in the Offices of International Affairs, Chief Economist, and General Counsel for their efforts and engagement over the last several years as well as their constructive dialogues with my office over the last several months. Their timely and fulsome responsiveness amid the flurry of activity at the Commission as we continue to work remotely is greatly appreciated.

The final rules should improve data quality by eliminating duplication, removing alternative or adjunct reporting options, utilizing universal data elements and identifiers, and focusing on critical data elements. To the extent the Commission is moving forward with mandating a specific data standard for reporting swap data to swap data repositories (“SDRs”), and that the standard will be ISO 20022, I appreciate the Commission’s thorough discussion of its rationale in support of that decision. I also commend Commission staff for its demonstrated expertise in incorporating the mandate into the regulatory text in a manner that provides certainty while acknowledging that the chosen standard remains in development.

The rules provide clear, reasonable and universally acceptable reporting deadlines that not only account for the minutiae of local holidays, but address the practicalities of common market practices such as allocation and compression exercises.

I am especially pleased that the final rules require consistent application of rules across SDRs for the validation of both Part 43 and Part 45 data submitted by reporting counterparties. I believe the amendments to part 49 set forth a practical approach to ensuring SDRs can meet the statutory requirement to confirm the accuracy of swap data set forth in CEA section 21(c)¹⁰ without incurring unreasonable burdens.

I appreciate that the Commission considered and received comments regarding whether to require 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) needs not be considered in determining whether a person is a swap dealer or need not be counted towards a person's *de minimis* threshold for purposes of determining swap dealer status under Commission regulations.¹¹ While today's rules may not be the appropriate means to acquire such information, I continue to believe that that the Commission's ongoing surveillance for compliance with the swap dealer registration requirements could be enhanced through data collection and analysis.

Thank you again to the staff who worked on these rules. I support the overall vision articulated in these several rules and am committed to supporting the acquisition and development of information technology and human resources needed for execution of that vision. As data forms the basis for much of what we do here at the Commission,

¹⁰ 7 U.S.C. 24a(c)(2).

¹¹ Commission staff has identified the lack of these fields 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. See De Minimis Exception to the Swap Dealer Definition, 83 FR 27444, 27449 (proposed June 12, 2018); Swap Dealer De Minimis Exception Final Staff Report at 19 (Aug. 15, 2016); (Nov. 18, 2015), available at https://www.cftc.gov/sites/default/files/idc/groups/public/@swaps/documents/file/dfreport_sddeminis081516.pdf; Swap Dealer De Minimis Exception Preliminary Report at 15 (Nov. 18, 2015), available at https://www.cftc.gov/sites/default/files/idc/groups/public/@swaps/documents/file/dfreport_sddeminis_1115.pdf.

especially in terms of identifying, assessing, and monitoring risk, I look forward to future discussions with staff regarding how the CFTC’s Market Risk Advisory Committee which I sponsor may be of assistance.

Appendix 5—Statement of Commissioner Dan M. Berkovitz

Introduction

I support today’s final rules amending the swap data reporting requirements in parts 43, 45, 46, and 49 of the Commission’s rules (the “Reporting Rules”). The amended rules provide major improvements to the Commission’s swap data reporting requirements. They will increase the transparency of the swap markets, enhance the usability of the data, streamline the data collection process, and better align the Commission’s reporting requirements with international standards.

The Commission must have accurate, timely, and standardized data to fulfill its customer protection, market integrity, and risk monitoring mandates in the Commodity Exchange Act (“CEA”).¹ The 2008 financial crisis highlighted the systemic importance of global swap markets, and drew attention to the opacity of a market valued notionally in the trillions of dollars. Regulators such as the CFTC were unable to quickly ascertain the exposures of even the largest financial institutions in the United States. The absence of real-time public swap reporting contributed to uncertainty as to market liquidity and pricing. One of the primary goals of the Dodd-Frank Act is to improve swap market transparency through both real-time public reporting of swap transactions and “regulatory reporting” of complete swap data to registered swap data repositories (“SDRs”).²

¹ See CEA section 3b.

² Dodd-Frank Wall Street Reform and Consumer Protection Act, section 727, Pub. L. 111–203, 124 Stat. 1376 (2010) (the “Dodd-Frank Act”), available at <https://www.gpo.gov/fdsys/pkg/PLAW-111publ203/pdf/PLAW-111publ203.pdf>.

As enacted by the Dodd-Frank Act, CEA section 2(a)(13)(G) directs the CFTC to establish real-time and comprehensive swap data reporting requirements, on a swap-by-swap basis. CEA section 21 establishes SDRs as the statutory entities responsible for receiving, storing, and facilitating regulators' access to swap data. The Commission began implementing these statutory directives in 2011 and 2012 in several final rules that addressed regulatory and real-time public reporting of swaps; established SDRs to receive data and make it available to regulators and the public; and defined certain swap dealer ("SD") and major swap participant ("MSP") reporting obligations.³

The Commission was the first major regulator to adopt data repository and swap data reporting rules. Today's final rules are informed by the Commission's and the market's experience with these initial rules. Today's revisions also reflect recent international work to harmonize and standardize data elements.

PART 43 Amendments (Real-time Public Reporting)

Benefits of Real Time Public Reporting

Price transparency fosters price competition and reduces the cost of hedging. In directing the Commission to adopt real-time public reporting regulations, the Congress stated "[t]he purpose of this section is to authorize the Commission to make swap transaction and pricing data available to the public in such form and at such times as the Commission determines appropriate *to enhance price discovery*."⁴ For real-time data to be useful for price discovery, SDRs must be able to report standardized, valid, and timely data. The reported data should also reflect the large majority of swaps executed within a

³ Swap Data Recordkeeping and Reporting Requirements, 77 FR 2136 (Jan. 13, 2012); and Swap Data Repositories: Registration Standards, Duties and Core Principles, 76 FR 54538 (Sept. 1, 2011).

⁴ CEA section 2(13)(B) (emphasis added).

particular swap category. The final Reporting Rules for part 43 address a number of infirmities in the current rules affecting the aggregation, validation, and timeliness of the data. They also provide pragmatic solutions to several specific reporting issues, such as the treatment of prime broker trades and post-priced swaps.

Block Trade Reporting

The Commission's proposed rule for block trades included two significant amendments to part 43: (1) refined swap categories for calculating blocks; and (2) a single 48-hour time-delay for reporting all blocks. In addition, the proposed rule would give effect to increased block trade size thresholds from 50% to 67% of a trimmed (excluding outliers) trade data set as provided for in the original part 43. The increases in the block sizing thresholds and the refinement of swap categories were geared toward better meeting the statutory directives to the Commission to enhance price discovery through real-time reporting while also providing appropriate time delays for the reporting of swaps with very large notional amounts, i.e., block trades.

Although I supported the issuance of the proposed rule, I outlined a number of concerns with the proposed blanket 48-hour delay. As described in the preamble to the part 43 final rule, a number of commenters supported the longer delay as necessary to facilitate the laying off of risk resulting from entering into swaps in illiquid markets or with large notional amounts. Other commenters raised concerns that such a broad, extended delay was unwarranted and could impede, rather than foster, price discovery. The delay also would provide counterparties to large swaps with an information advantage during the 48-hour delay.

The CEA directs the Commission to provide for both real-time reporting and appropriate block sizes. In developing the final rule the Commission has sought to achieve these objectives.

As described in the preamble, upon analysis of market data and consideration of the public comments, the Commission has concluded that the categorization of swap transactions and associated block sizes and time delay periods set forth in the final rule strikes an appropriate balance to achieve the statutory objectives of enhancing price discovery, not disclosing “the business transactions and market positions of any person,” preserving market liquidity, and providing appropriate time delays for block transactions. The final part 43 includes a mechanism for regularly reviewing swap transaction data to refine the block trade sizing and reporting delays as appropriate to maintain that balance.

Consideration of Additional Information Going Forward

I have consistently supported the use of the best available data to inform Commission rulemakings, and the periodic evaluation and updating of those rules, as new data becomes available. The preamble to the final rules for part 43 describes how available data, analytical studies, and public comments informed the Commission’s rulemaking. Following press reports about the contents of the final rule, the Commission recently has received comments from a number of market participants raising issues with the reported provisions in the final rule. These commenters have expressed concern that the reported reversion of the time delays for block trades to the provisions in the current regulations, together with the 67% threshold for block trades, will impair market liquidity, increase costs to market participants, and not achieve the Commission’s objectives of increasing price transparency and competitive trading of swaps. Many of

these commenters have asked the Commission to delay the issuance of the final rule or to re-propose the part 43 amendments for additional public comments.

I do not believe it would be appropriate for the Commission to withhold the issuance of the final rule based on these latest comments and at this late stage in the process. The Commission has expended significant time and resources in analyzing data and responding to the public comments received during the public comment period. As explained in the preamble, the Commission is already years behind its original schedule for revising the block thresholds. I therefore do not support further delay in moving forward on these rules.

Nonetheless, I also support evaluation and refinement of the block reporting rules, if appropriate, based upon market data and analysis. The 30-month implementation schedule for the revised block sizes provides market participants with sufficient time to review the final rule and analyze any new data. Market participants can then provide their views to the Commission on whether further, specific adjustments to the block sizes and/or reporting delay periods may be appropriate for certain instrument classes. This implementation period is also sufficient for the Commission to consider those comments and make any adjustments as may be warranted. The Commission should consider any such new information in a transparent, inclusive, and deliberative manner. Amended part 43 also provides a process for the Commission to regularly review new data as it becomes available and amend the block size thresholds and caps as appropriate.

Cross Border Regulatory Arbitrage Risk

The International Swaps and Derivatives Association, Inc. (“ISDA”) and the Securities Industry and Financial Markets Association (“SIFMA”) commented that

higher block size thresholds may put swap execution facilities (“SEFs”) organized in the United States at a competitive disadvantage as compared to European trading platforms that provide different trading protocols and allow longer delays in swap trade reporting. SIFMA and ISDA commented that the higher block size thresholds might incentivize swap dealers to move at least a portion of their swap trading from United States SEFs to European trading platforms. They also noted that this regulatory arbitrage activity could apply to swaps that are subject to mandatory exchange trading. Importantly, European platforms allow a non-competitive single-quote trading mechanism for these swaps while U.S. SEFs are required to maintain more competitive request-for-quotes mechanisms from at least three parties. The three-quote requirement serves to fulfill important purposes delineated in the CEA to facilitate price discovery and promote fair competition.

The migration of swap trading from SEFs to non-U.S. trading platforms to avoid U.S. trade execution and/or swap reporting requirements would diminish the liquidity in and transparency of U.S. markets, to the detriment of many U.S. swap market participants. Additionally, as the ISDA/SIFMA comment letter notes, it would provide an unfair competitive advantage to non-U.S. trading platforms over SEFs registered with the CFTC, who are required to abide by CFTC regulations. Such migration would fragment the global swaps market and undermine U.S. swap markets.⁵

I have supported the Commission’s substituted compliance determinations for foreign swap trading platforms in non-U.S. markets where the foreign laws and

⁵ In my dissenting statement on the Commission’s recent revisions to its cross-border regulations, I detailed a number of concerns with how those revisions could provide legal avenues for U.S. swap dealers to migrate swap trading activity currently subject to CFTC trade execution requirements to non-U.S. markets that would not be subject to those CFTC requirements.

regulations provide for comparable and comprehensive regulation. Substituted compliance recognizes the interests of non-U.S. jurisdictions in regulating non-U.S. markets and allows U.S. firms to compete in those non-U.S. markets. However, substituted compliance is *not* intended to encourage—or permit—regulatory arbitrage or circumvention of U.S. swap market regulations. If swap dealers were to move trading activity away from U.S. SEFs to a foreign trading platform for regulatory arbitrage purposes, such as, for example, to avoid the CFTC’s transparency and trade execution requirements, it would undermine the goals of U.S. swap market regulation, and constitute the type of fragmentation of the swaps markets that our cross-border regime was meant to mitigate. It also would undermine findings by the Commission that the non-U.S. platform is subject to regulation that is as comparable and comprehensive as U.S. regulation, or that the non-U.S. regime achieves a comparable outcome.

The Commission should be vigilant to protect U.S. markets and market participants. The Commission should monitor swap data to identify whether any such migration from U.S. markets to overseas markets is occurring and respond, if necessary, to protect the U.S. swap markets.

PART 45 (Swap Data Reporting), PART 46 (Pre-enactment and Transition Swaps), and PART 49 (Swap Data Repositories) Amendments

I also support today’s final rules amending the swap data reporting, verification, and SDR registration requirements in parts 45, 46, and 49 of the Commission’s rules. These regulatory reporting rules will help ensure that reporting counterparties, including SDs, MSPs, designated contract markets (“DCMs”), SEFs, derivatives clearing organizations (“DCOs”), and others report accurate and timely swap data to SDRs. Swap

data will also be subject to a periodic verification program requiring the cooperation of both SDRs and reporting counterparties. Collectively, the final rules create a comprehensive framework of swap data standards, reporting deadlines, and data validation and verification procedures for all reporting counterparties.

The final rules simplify the swap data reports required in part 45, and organize them into two report types: (1) “swap creation data” for new swaps; and (2) “swap continuation data” for changes to existing swaps.⁶ The final rules also extend the deadline for SDs, MSPs, SEFs, DCMs, and DCOs to submit these data sets to an SDR, from “as soon as technologically practicable” to the end of the next business day following the execution date (T+1). Off-facility swaps where the reporting counterparty is not an SD, MSP, or DCO must be reported no later than T+2 following the execution date.

The amended reporting deadlines will result in a moderate time window where swap data may not be available to the Commission or other regulators with access to an SDR. However, it is likely that they will also improve the accuracy and reliability of data. Reporting parties will have more time to ensure that their data reports are complete and accurate before being transmitted to an SDR.⁷

The final rules in part 49 will also promote data accuracy through validation procedures to help identify errors when data is first sent to an SDR, and periodic reconciliation exercises to identify any discrepancies between an SDR’s records and

⁶ Swap creation data reports replace primary economic terms (“PET”) and confirmation data previously required in part 45. The final rules also eliminate optional “state data” reporting, which resulted in extensive duplicative reports crowding SDR databases, and often included no new information.

⁷ The amended reporting deadlines are also consistent with comparable swap data reporting obligations under the Securities and Exchange Commission’s and European Securities and Markets Authority’s rules.

those of the reporting party that submitted the swaps. The final rules provide for less frequent reconciliation than the proposed rules, and depart from the proposal's approach to reconciliation in other ways that may merit future scrutiny to ensure that reconciliation is working as intended. Nonetheless, the validation and periodic reconciliation required by the final rule is an important step in ensuring that the Commission has access to complete and accurate swap data to monitor risk and fulfill its regulatory mandate.

The final rules also better harmonize with international technical standards, the development of which included significant Commission participation and leadership. These harmonization efforts will reduce complexity for reporting parties without significantly reducing the specific data elements needed by the Commission for its purposes. For example, the final rules adopt the Unique Transaction Identifier and related rules, consistent with CPMI-IOSCO technical standards, in lieu of the Commission's previous Unique Swap Identifier. They also adopt over 120 distinct data elements and definitions that specify information to be reported to SDRs. Clear and well-defined data standards are critical for the efficient analysis of swap data across many hundreds of reporting parties and multiple SDRs. Although data elements may not be the most riveting aspect of Commission policy making, I support the Commission's determination to focus on these important, technical elements as a necessary component of any effective swap data regime.

Conclusion

Today's Reporting Rules are built upon nearly eight years of experience with the current reporting rules and benefitted from extensive international coordination. The amendments make important strides toward fulfilling Congress's mandate to bring

transparency and effective oversight to the swap markets. I commend CFTC staff, particularly in Division of Market Oversight and the Office of Data and Technology, who have worked on the Reporting Rules over many years. Swaps are highly variable and can be difficult to represent in standardized data formats. Establishing accurate, timely, and complete swap reporting requirements is a difficult, but important function for the Commission and regulators around the globe. This proposal offers a number of pragmatic solutions to known issues with the current swap data rules. For these reasons, I am voting for the final Reporting Rules.

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