6351-01-P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 43 and 45

RIN 3038-AF26

Real-Time Public Reporting Requirements and Swap Data Recordkeeping and Reporting Requirements

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commodity Futures Trading Commission (the "Commission" or the "CFTC") is proposing revisions to part 43 and part 45 of the Commission's regulations to: allow for continued geographic masking after the designation of the unique product identifier and product classification system ("UPI") for swaps in the other commodity asset class; implement conforming changes in connection with the geographic masking requirement; add reportable data fields to appendix A to part 43 and appendix 1 to part 45 that promote international harmonization and further the Commission's surveillance and analysis activities; and implement non-substantive revisions to the descriptions of the existing reportable data elements in such appendices.

DATES: Comments must be submitted on or before [**INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER**].

ADDRESSES: You may submit comments, identified by "Real-Time Public Reporting Requirements and Swap Data Recordkeeping and Reporting Requirements, RIN 3038-AF26," by any of the following methods:

- *CFTC Comments Portal: https://comments.cftc.gov.* Select the "Submit Comments" link for this rulemaking and follow the instructions on the Public Comment Form.

- *Mail:* Send to Christopher Kirkpatrick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581.
- *Hand Delivery/Courier:* Follow the same instructions as for Mail above.

Please submit your comments using only one of these methods. To avoid possible delays with mail or in-person deliveries, submissions through the CFTC Comments Portal are encouraged.

All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to *https://comments.cftc.gov*. You should submit only information that you wish to make available publicly. If you wish the Commission to consider information that you believe is exempt from disclosure under the Freedom of Information Act ("FOIA"), a petition for confidential treatment of the exempt information may be submitted according to the procedures established in § 145.9 of the Commission's regulations.[1]

The Commission reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse, or remove any or all submissions from *https://www.comments.cftc.gov* that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of the rulemaking will be retained in the public comment file and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under FOIA.

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[1] 17 CFR 145.9.

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SUPPLEMENTARY INFORMATION

I. Background

A. Introduction

The Commission's real-time public reporting and swap data reporting regulations were first adopted in 2012, and are located in parts 43 and 45 of the Commission's regulations.[2] The 2012 Real-Time Public Reporting of Swap Transaction Data Final Rule (the "2012 RTR Final Rule") set forth regulations that require swap counterparties, swap execution facilities ("SEFs"), and designated contract markets ("DCMs") to report publicly reportable swap transactions ("PRST") to swap data repositories ("SDRs").[3] Additionally, the 2012 RTR Final Rule set forth regulations that require SDRs to publicly disseminate swap transaction and pricing data ("STAPD") in real-time, subject to certain exceptions.[4]

In the 2012 Swap Data Recordkeeping and Reporting Requirements Final Rule ("2012 SDRR Final Rule"), the Commission implemented the swap data reporting rules. The part 45 regulations require SEFs, DCMs, and reporting counterparties ("RCPs") (collectively, "Reporting Entities") to report swap data to SDRs.[5] SDRs collect and

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[2] *See* 17 CFR parts 43, 45; Final Rule, Real-Time Public Reporting of Swap Transaction Data, 77 FR 1182 (Jan. 9, 2012); Final Rule, Swap Data Recordkeeping and Reporting Requirements, 77 FR 2136 (Jan. 13, 2012).
[3] *See* 2012 RTR Final Rule, 77 FR 1182; 17 CFR 43.3(a).
[4] *See* 2012 RTR Final Rule, 77 FR 1182; 17 CFR 43.3(b), 43.4(c) and (d).
[5] *See* 2012 SDRR Final Rule, 77 FR 2136; 17 CFR 45.3, 45.4.

maintain data related to swap transactions, making such data electronically available for regulators or the public.

In 2013, the Commission adopted a block trade rule[6] to implement the statutory requirements of Commodity Exchange Act ("CEA") section 2(a)(13)(E)(i)–(iv).[7] In 2016, the Commission amended part 45 to set forth swap data reporting obligations with respect to cleared swaps.[8]

In 2020, the Commission amended part 43 and part 45 by issuing a new Real-Time Public Reporting Requirements final rule (the "2020 RTR Final Rule")[9] and Swap Data Recordkeeping and Reporting Requirements final rule (the "2020 SDRR Final Rule")[10] (collectively the "2020 Final Rules"). The 2020 RTR Final Rule revised the method and timing for real-time reporting and public dissemination, generally and for specific types of swaps; the delay and anonymization of the public dissemination of block trades and large notional trades; the standardization and validation of real-time reporting fields; the delegation of specific authority to Commission staff; and the clarification of specific real-time reporting questions and common issues.[11]

The 2020 SDRR Final Rule generally revised the reporting regulations to: streamline the requirements for reporting swaps; require SDRs to validate swap reports; permit the transfer of swap data between SDRs; alleviate reporting burdens for non-swap dealer ("SD")/major swap participant ("MSP") reporting counterparties; and harmonize

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[6] Procedures to Establish Appropriate Minimum Block Sizes for Large Notional Off-Facility Swaps and Block Trades, 78 FR 32866 (May 31, 2013) (the "Block Trade Final Rule").
[7] These CEA sections contain provisions (e.g., time delays) that the Commission must include in its required rulemakings governing public reporting of STAPD for the categories of swaps set forth in CEA sections 2(a)(13)(C)(i) and (ii), 7 U.S.C. 2(a)(13)(C)(i) and (ii). *See* Notice of Proposed Rulemaking, Real-Time Public Reporting Requirements, 85 FR 21516 n.5 (Apr. 17, 2020) (the "2020 RTR NPRM").
[8] Amendments to Swap Data Recordkeeping and Reporting Requirements for Cleared Swaps, 81 FR 41736 (June 27, 2016).
[9] Real-Time Public Reporting Requirements, 85 FR 75422 (Nov. 25, 2020) (the "2020 RTR Final Rule").
[10] Swap Data Recordkeeping and Reporting Requirements, 85 FR 75503 (Nov. 25, 2020) (the "2020 SDRR Final Rule").
[11] *See* 2020 RTR Final Rule, 85 FR at 75422.

with international technical guidance the swap data elements that counterparties are required to report to SDRs.[12]

To ensure that the Commission continues to receive accurate and high-quality data on swap transactions for its regulatory oversight role, as well as address international swap reporting developments, the Commission proposes revisions to parts 43 and 45 to: allow for geographic masking after designation of the UPI for swaps falling within the other commodity asset class; [13] implement conforming changes in connection with the geographic masking requirement; add reportable data fields to appendix A to part 43 and appendix 1 to part 45; and implement non-substantive revisions to the descriptions of the existing reportable data elements in such appendices.

B. International Harmonization

Since November 2014, regulators overseeing major derivatives jurisdictions and markets, including the CFTC, have come together through the Bank for International Settlements 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") to develop global guidance regarding the definition, format, and usage of key OTC derivatives data elements reported to trade repositories ("TRs"), including the unique transaction identifier ("UTI"), the UPI, and other critical data elements ("CDE").[14] The Harmonisation Group published Guidance on the Harmonisation of Unique Transaction Identifier ("UTI Technical Guidance")[15] and Technical Guidance on the Harmonisation of the Unique Product Identifier ("UPI

[12] *See* 2020 SDRR Final Rule, 85 FR at 75503, 75504.
[13] Other commodity, as used in this notice of proposed rulemaking, shall have the meaning ascribed to such term in § 43.2 (*i.e.*, any commodity that is not categorized in the interest rate, credit, foreign exchange or other asset classes as may be determined by the Commission).
[14] 2020 SDRR NPRM, 85 FR at 21579.
[15] CPMI-IOSCO, Technical Guidance, Harmonisation of the Unique Transaction Identifier (Feb. 2017), available at *https://www.iosco.org/library/pubdocs/pdf/IOSCOPD557.pdf* ("UTI Technical Guidance").

Technical Guidance")[16] in February and September 2017, respectively.[17] In April 2018, the Harmonisation Group published Technical Guidance on the Harmonisation of Critical OTC Derivatives Data Elements (other than UTI and UPI) ("CDE Technical Guidance").[18]

In the UPI Technical Guidance, CPMI and IOSCO specify the requirements necessary for a product identifier to facilitate the reporting of swap data to TRs and the aggregation of such data by authorities.[19] CPMI and IOSCO concluded that semantically meaningless codes should be assigned to each unique product, with the product attributes associated with each code discoverable by reference to standardized tables ("Reference Data Library" or "UPI Taxonomy").[20] The UPI Technical Guidance also requires that the Reference Data Library contain specific reference data elements that vary by asset class. These required reference data elements detail the asset class, asset class sub-types, underlying asset, and other swap product attributes.[21] The UPI Technical Guidance concluded that a UPI should satisfy fifteen distinct technical principles,[22] and appointed the Financial Stability Board ("FSB")[23] to designate one or more service providers to issue product codes and operate and maintain the Reference Data Library. In May 2019,

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[16] CPMI and IOSCO, Technical Guidance: Harmonisation of the Unique Product Identifier, (Sept. 2017), available at *https://www.iosco.org/library/pubdocs/pdf/IOSCOPD580.pdf* ("UPI Technical Guidance").
[17] 2020 SDRR NPRM, 85 FR at 21579 - 21580.
[18] The CDE Technical Guidance was finalized following consultative reports in September 2015, October 2016, and June 2017. *See* CPMI–IOSCO, Technical Guidance, Harmonisation of Critical OTC Derivatives Data Elements (other than UTI and UPI) (Apr. 2018), available at *https://www.bis.org/cpmi/publ/d175.pdf*.
[19] *See Order Designating the Unique Product Identifier and Product Classification System to be Used in Recordkeeping and Swap Data Reporting*, 88 FR 11790, 11791 (Feb. 24, 2023) (the "February 2023 UPI Order"); UPI Technical Guidance at 3.
[20] February 2023 UPI Order at 11791; UPI Technical Guidance at 21.
[21] February 2023 UPI Order at 11791.
[22] *Id.* The fifteen technical principles identified by CPMI and IOSCO are: jurisdiction neutrality, uniqueness, consistency, persistence, adaptability, clarity, ease of assignment/retrieval/query, long-term viability, scope neutrality, compatibility, comprehensiveness, extensibility, precision, public dissemination, and representation.
[23] *Id.* The FSB is an international body that monitors and makes recommendations about the global financial system. The Commission, though not an FSB member, is a member of IOSCO.

the FSB designated the Derivatives Service Bureau Limited ("DSB") as the UPI service provider.[24]

The CDE Technical Guidance provides technical guidance on the definition, format, and allowable values of critical data elements that are reported to TRs and important to facilitate aggregation by authorities.[25] A second version of the CDE Technical Guidance was published in September 2021 and included corrections to the April 2018 CDE Technical Guidance to facilitate the jurisdictional implementations of the CDE Technical Guidance.[26] The third version of the CDE Technical Guidance (the "2023 CDE Technical Guidance") was published in September 2023 and includes certain revisions and new data elements deemed necessary to further improve standardization and understanding of swap data.[27]

The Commission is part of the CDE Technical Guidance Harmonisation Group. In this role, Commission staff works alongside representatives from several countries to provide feedback regarding the data elements, as well as participate in CDE Technical Guidance public consultations, related industry workshops, and conference calls.[28]

The CDE Technical Guidance is global guidance addressed to authorities[29] that "takes account of relevant international technical standards where available and is jurisdiction-agnostic, thus enabling the consistent global aggregation of OTC derivatives transaction data."[30] As emphasized in the 2020 SDRR Final Rule, the Commission

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[24] February 2023 UPI Order at 11791; FSB, Press Release: FSB designates DSB as Unique Product Identifier Service Provider (May 2, 2019), available at *https://www.fsb.org/2019/05/fsb-designates-dsb-as-unique-product-identifier-upi-service-provider/*.
[25] 2020 SDRR NPRM, 85 FR at 21580.
[26] CPMI-IOSCO, Harmonisation of Critical OTC Derivatives Data Elements (other than UTI and UPI), Revised CDE Technical Guidance – Version 2 ("Revised CDE Technical Guidance"), at 11 (Sept. 2021), available at *https://www.leiroc.org/publications/gls/roc_20210922.pdf.*
[27] CPMI-IOSCO, Harmonisation of Critical OTC Derivatives Data Elements (other than UTI and UPI), Revised CDE Technical Guidance – Version 3, (Oct. 2023), available at *https://www.leiroc.org/publications/gls/roc_20230929.pdf*.
[28] 2020 SDRR Final Rule, 85 FR at 75505.
[29] Revised CDE Technical Guidance – Version 2 at 10.
[30] *See* BIS, Harmonisation of Critical OTC Derivatives Data Elements (other that UTI and UPI) – Technical Guidance (Apr. 2018), available at *https://www.bis.org/cpmi/publ/d175.htm*.

believes the implementation of the CDE Technical Guidance will improve the harmonization of TRs data across FSB member jurisdictions. Wide implementation would allow market participants to report swap data to several jurisdictions in the same format, supporting data aggregation for the analysis of global systemic risk in swap markets.[31]

The amendments in this proposal demonstrate the Commission's commitment to the development of global guidance on key OTC derivatives data elements reported to TRs to achieve international harmony in the area of swaps reporting.

C. Statutory and Regulatory Framework for Real-Time Public Reporting and Swap Data Recordkeeping and Reporting

Section 2(a)(13) of the CEA authorizes and requires the Commission to promulgate rules that provide for the public availability of STAPD in real-time in such form and at such times as the Commission determines appropriate to enhance price discovery.[32] CEA sections 2(a)(13)(C) and (E) reflect Congress' intent that regulators "ensure that the public reporting of swap transactions and pricing data does not disclose the names or identities of the parties to the transactions."[33]

Specifically, section 2(a)(13)(C)(iii) of the CEA requires that the Commission prescribe rules that maintain the anonymity of business transactions and market positions of the counterparties to an uncleared swap. Section 2(a)(13)(E)(i) of the CEA directs the Commission to protect the identities of counterparties to swaps subject to the mandatory clearing requirement, swaps excepted from the mandatory clearing requirement, and voluntarily cleared swaps.[34]

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[31] 2020 SDRR Final Rule, 85 FR at 75540.
[32] 7 U.S.C. 2(a)(13); Notice of Proposed Rulemaking, Real-Time Public Reporting of Swap Transaction Data, 75 FR 76140, 76141 (Dec. 7, 2010).
[33] *See* Notice of Proposed Rulemaking, Real-Time Public Reporting of Swap Transaction Data, 75 FR 76140, 76150 n.46 (Dec. 7, 2010).; 156 Cong. Rec. S5921 (daily ed. July 15, 2010) (statement of Sen. Blanche Lincoln).
[34] *See* Block Trade Final Rule, 78 FR at 32867.

The Commission implemented the provisions of section 2(a)(13) of the CEA by adopting the 2012 RTR Final Rule on January 9, 2012. The real-time reporting regulations are located in part 43 and establish, *inter alia*: (1) the entities or persons responsible for reporting STAPD; (2) the entities or persons responsible for publicly disseminating such data; and (3) the data fields and guidance on the appropriate format and manner for STAPD to be reported to the public in real-time. [35]

The 2012 RTR Final Rule required reporting parties, SEFs and DCMs to report the actual underlying asset(s) of PRSTs to an SDR.[36] The SDR, in turn, is required to publicly disseminate the actual underlying asset(s) of all publicly reportable swap transactions in the interest rate, credit, equity, and foreign exchange asset classes.[37] SDRs are similarly required to publicly disseminate the actual underlying asset(s) for certain swaps in the other commodity asset class, subject to the anonymity protections set out in § 43.4(c)(4).[38]

For all swaps in the interest rate, credit, foreign exchange and equity classes, the Commission determined that the actual underlying asset would be disseminated, regardless of whether a swap was executed on or pursuant to the rules of a SEF or DCM, or if it was an off-facility swap.[39] With respect to swaps in the other commodity asset class, § 43.4(d)(4)(ii) directed that, if the PRST referenced, or was economically related to, any of the "Enumerated Physical Commodity Contracts and Other Contracts" listed in appendix B to part 43, or if the swaps were executed on or pursuant to the rules of a SEF

[35] 2012 RTR Final Rule, 77 FR at 1183.
[36] This requirement was originally adopted as 17 CFR 43.4(d)(2), but has since been re-designated as 17 CFR 43.4(c)(2) in the 2020 RTR Final Rule.
[37] 17 CFR 43.4(c)(3).
[38] 17 CFR 43.4(c)(4).
[39] 2012 RTR Final Rule at 1209; 17 CFR 43.4(c)(3) and (4).

or DCM, the actual underlying physical commodity or referenced price or index must be publicly disseminated by the SDR.[40]

However, the Commission determined that all off-facility swaps in the other commodity asset class that did not fall under § 43.4(d)(4)(ii) would not be required to comply with the real-time reporting and public dissemination requirements under part 43 because of the increased likelihood that public dissemination of the underlying asset could disclose the identity, business transactions or market positions of a counterparty, until the adoption of special accommodations in a future Commission release to address these concerns.[41]

The Block Trade Final Rule addressed the public dissemination of STAPD for the group of other commodity swaps that were not covered under § 43.4(d)(4)(ii) by adding § 43.4(d)(4)(iii) and appendix E to part 43. Section 43.4(d)(4)(iii) mandated that SDRs must publicly disseminate the details about the geographic location of the underlying assets of the other commodity swaps not described in § 43.4(d)(4)(ii) pursuant to appendix E to part 43. Appendix E provides top-coding for various geographic regions.[42] Hence, by complying with appendix E, the SDRs would mask or disguise the geographic details related to the underlying assets of a swap when publicly disseminating such STAPD.[43] In addition to appendix E, the Block Trade Final Rule added 13 contracts to appendix B for which an SDR would be required to publicly disseminate the actual underlying asset without geographic masking.

As previously mentioned, the Commission amended parts 43 and 45 in November 2020. Among other objectives, the 2020 Final Rules revised the method and timing for

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[40] 2012 RTR Final Rule at 1211-1212; 17 CFR 43.4(c)(4)(ii). Appendix B listed 28 "Enumerated Physical Commodity Contracts" as well as 1 additional contract - swaps referenced to Brent Crude Oil (ICE) or economically related to Brent Crude Oil (ICE) - under the "Other Contracts" section. The 2020 RTR Final Rule relocated § 43.4(d)(4) to § 43.4(c)(4). 85 FR at 75439.
[41] 2012 RTR Final Rule, 77 FR at 1211.
[42] Block Trade Final Rule, 78 FR at 32910, 32938, 32941.
[43] *Id.* at 32909.

swap real-time reporting and public dissemination, the requirements for swap reporting, and defined and adopted swap data elements that harmonize with international technical guidance.[44]

In its 2020 Notice of Proposed Rulemaking: Real-Time Public Reporting Requirements ("2020 RTR NPRM"), the Commission proposed eliminating appendix B to part 43 and former § 43.4(d)(4)(ii), which required that SDRs publicly disseminate the actual underlying assets of certain swaps in the other commodity asset class that either (i) reference one of the contracts described in appendix B to part 43 or (ii) are economically related to such contracts. The rationale for the proposal was to extend the geographic masking for all of the underlying assets for the other commodity asset class, based on the Commission's belief that other commodity swaps referencing, or economically related to, the contracts in appendix B could be sufficiently bespoke to warrant the additional masking.[45]

After considering whether the proposed geographic masking expansion outweighed the associated reduction in transparency, the Commission declined to adopt the proposed revisions to the masking requirements. The Commission determined that the basis for adopting § 43.4(d)(4) in 2012 remained operative and, as such, left Appendices B and E the same as had been adopted in the 2012 RTR Final Rules and the Block Trade Final Rule, respectively.[46]

Section 21(b) of the CEA directs the Commission to prescribe standards that specify the data elements for each swap that shall be collected and maintained by each registered SDR.[47] In furtherance of this mandate, in adopting the 2020 Final Rules the Commission reviewed the STAPD data fields in appendix A to part 43 and the swap data

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[44] 2020 RTR Final Rule, 85 FR at 75422; and 2020 SDRR Final Rule, 85 FR at 75503.

[45] 2020 RTR NPRM, 85 FR at 21530.

[46] The Commission did make minor technical edits and relocated § 43.4(d)(4) to § 43.4(c)(4). 2020 RTR Final Rule, 85 FR at 75439.

[47] 7 U.S.C. 24a(b)(1).

elements in appendix 1 to part 45 and determined that the STAPD data fields in appendix A to part 43 would be a subset of the part 45 swap data elements in appendix 1 to part 45. In an effort to harmonize both sets of data, the Commission also reviewed the CDE Technical Guidance to determine which data elements the Commission could adopt.[48] In addition to adopting and including the CDE Technical Guidance Data Elements in appendix A and appendix 1, the Commission, listed additional CFTC-specific data elements that support the Commission's regulatory responsibilities in both appendices.[49]

Simultaneous with the adoption of the 2020 Final Rules, Commission staff published a technical specification setting forth the form and manner for reporting the required swap data elements under parts 43 and 45 (the "Technical Specification"). The Technical Specification provides technical guidance on the definition, format, allowable values and validation rules for those data elements required to be reported and publicly disseminated pursuant to part 43, as well as the reportable data elements required to be reported to SDRs under part 45. Commission staff revised the Technical Specification in September 2021, August 2022 and March 2023 (the "Revised Technical Specification").[50]

As discussed above, the Commission has been heavily involved in the international harmonization efforts of swap data reporting. In particular, with respect to unique identifiers, the Commission included the UPI in the 2012 RTR Final Rule[51] and the 2012 SDRR Final Rule, as well as the Data Element Appendices.[52] In the 2020 RTR Final Rule, the Commission included the UPI in the revised Data Element Appendices. The Commission also removed § 43.4(e), which gave SDRs discretion regarding what

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[48] 2020 RTR Final Rule, 85 FR at 75457; 2020 SDRR Final Rule, 85 FR at 75540.
[49] 2020 SDRR Final Rule, 85 FR at 75540.
[50] CFTC, Parts 43 and 45 Technical Specification (March 2023), available at *https://www.cftc.gov/LawRegulation/DoddFrankAct/Rulemakings/DF_18_RealTimeReporting/index.htm* and *https://www.cftc.gov/LawRegulation/DoddFrankAct/Rulemakings/DF_17_Recordkeeping/index.htm*.
[51] 2012 RTR Final Rule, 77 FR at 1212.
[52] 2012 SDRR Final Rule, 77 FR at 2166.

fields to publicly disseminate after a UPI exists, as the fields required to be publicly disseminated are included in appendix A to part 43, as modified by the 2020 RTR Final Rule.[53] The requirement to report and disseminate the UPI is set out through the inclusion of the UPI in appendix A to part 43.[54]

Section 45.7 provides that each swap must be identified in all recordkeeping and all swap data reporting pursuant to part 45 by means of a UPI and product classification system acceptable to the Commission, when such an identifier and classification system has been designated by the Commission. The UPI and product classification system are required to identify and describe the swap asset class and the sub-type within that asset class to which the swap belongs, and the underlying product for the swap, with sufficient distinctiveness and specificity to enable the Commission and other financial regulators to fulfill their regulatory responsibilities and to assist in real time reporting of swaps in part 43.[55]

Section 45.7 further provides that, once the Commission determines that a UPI and product classification system is available for use, the Commission shall designate the UPI and product classification system by means of an order published in the *Federal Register* and on the Commission's website. The designation order will include the notice of the designation, the contact information of the issuer of such unique product identifiers, and information concerning the procedure and requirements to obtain UPIs and use the product classification system. Finally, § 45.7 directs that each registered entity and swap counterparty use the UPI and product classification system in all recordkeeping and swap data reporting once designated by the Commission. Prior to such designations, the regulation provisionally mandates use of the internal product identifier

[53] See 85 FR at 75439.
[54] The use of the UPI in real-time public reporting is also referenced in § 45.7 of the Commission's regulations.
[55] 17 CFR 45.7

or product description used by the SDR to which a swap is reported in all recordkeeping and swap data reporting pursuant to part 45.[56]

On February 16, 2023, the Commission issued the February 2023 UPI Order designating the UPIs issued by the DSB ("DSB UPIs") for swaps in the credit, equity, foreign exchange, and interest rate asset classes as the UPI and product classification system to be used in recordkeeping and swap data reporting pursuant to the Commission's regulations, pursuant to section 21(b) of the Act and Commission regulation § 45.7.[57]

The Commission determined that the DSB UPIs are acceptable and satisfy the criteria mandated by § 45.7, as they identify and describe the swap products with sufficient distinctiveness and specificity to: (i) enable the Commission and other regulators to fulfill their regulatory responsibilities, and (ii) assist in real-time public reporting of swap transaction and pricing data.[58]

As prescribed in the February 2023 UPI Order, registered entities and swap counterparties shall use the DSB UPIs for swaps in the interest rate, credit, foreign exchange and equity classes in all recordkeeping and swap data reporting pursuant to part 45, as well as in real-time public reporting as required by part 43. The Commission expects registered entities and swap counterparties to use DSB UPIs in the aforementioned swap asset classes for part 45 recordkeeping and swap data reporting and part 43 real-time public reporting purposes by no later than January 29, 2024.[59]

A designation of a UPI for swap products in the other commodity asset classes[60] was not made contemporaneously with the other asset classes. This delay has allowed additional time to ensure that appropriate anonymity protections continue to be in place

[56] *Id.*
[57] *See* the February 2023 UPI Order, 88 FR at 11790.
[58] *Id.* at 11792.
[59] *Id.* at 11793.
[60] The other commodity swap asset class includes all swaps not contained in the credit, equity, foreign exchange, and interest rate asset classes. *See* 17 CFR 45.1.

for the swaps in the other commodity asset class once UPI is implemented in that asset class. Specifically, the Commission's regulations balance the CEA's mandate to provide for the public dissemination of STAPD, while maintaining the anonymity of business transactions and market positions of the counterparties to a swap. Geographic locations, such as delivery points, are often key product characteristics of the other commodity asset class swap products. The designation of a UPI code for other commodity asset class swaps would trigger the obligation under parts 43 and 45 that such UPI be included in each public dissemination and confidential swap report.[61] Without modifications to part 43, this could result in RCPs reporting to SDRs a UPI that contains detailed geographic information in contravention of § 43.4(c)(4)(iii) and appendix E to part 43, as explained further in section II.A. below.

To achieve international swap data standardization and promote post-trade transparency and price discovery,[62] the Commission proposes the following modifications to parts 43 and 45 of the Commission's regulations: (i) amend § 43.4(c) to allow for geographic masking after the designation of the UPI for the other commodity asset classes, (ii) implement conforming changes to § 43.4(c) and appendix E to part 43 in connection with the geographic masking requirement, (iii) implement modifications to § 45.7(b) with regards to the Commission's authority to subject a UPI designation order to conditions as deemed appropriate, and to limit, suspend, or withdraw such designation order after appropriate notice and opportunity to respond; and (iv) implement conforming and technical revisions to the title of § 45.7 and the text of § 45.7(c)(2).

Additionally, the Commission proposes modifications to appendix A to part 43 and appendix 1 to part 45 (the "Data Element Appendices") to (v) add additional data

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[61] 2012 SDRR Final Rule, 77 FR at 2166; 17 CFR 45.7(c)(1).
[62] 2012 RTR Final Rule, 77 FR at 1182, 1185.

elements, and (vi) modify the descriptions of the existing reportable data elements to harmonize with changes done at the international level and to remove form and manner detail from the Data Element Appendices that is set out in the Technical Specification.

II. Proposed Amendments to Part 43 and Part 45

The adoption and implementation of the UPI and product classification system for swaps in the other commodity asset class requires certain modifications to part 43. As such, the Commission hereby proposes modifications to § 43.4(c) to allow for geographic masking after the designation of the UPI and product classification system for swaps in the other commodity asset class. In addition, the Commission is proposing modifications to § 45.7(b) with regards to the Commission's authority to subject a UPI designation order to conditions as deemed appropriate, and to limit, suspend, or withdraw such designation order. Finally, the Commission is proposing certain conforming and technical changes to § 43.4(c), appendix E to part 43, § 45.7, and § 45.7(c)(2).

A. Proposed Addition of New § 43.4(c)(5)

Prior to the implementation of the UPI and product classification system for swaps in the other commodity asset class, the regulatory structure must be in place to satisfy the CEA mandate to require real-time reporting that will enhance price discovery while also ensuring the anonymity of the swap counterparties and the confidentiality of business transactions and market positions.[63] The Commission is proposing to further implement this mandate by requiring Reporting Entities to submit to the SDRs a UPI that limits the geographic detail of the underlying asset pursuant to appendix E to part 43, for certain swap transactions in the other commodity asset class, when a UPI and product classification system has been designated by the Commission pursuant to regulation 45.7. The Commission is also proposing to require SDRs to disseminate the appropriately geographically limited UPI that the Reporting Entities report to the SDRs.

[63] *Id.* at 1209.

As previously discussed, CEA section 2(a)(13) directs the Commission to prescribe regulations providing for the public availability of transaction and pricing data for certain swaps. However, CEA sections 2(a)(13)(C) and (E) limits this direction by mandating the protection of the anonymity of swap counterparties, business transactions and market positions to swap transactions. The Commission implemented the statutory mandates through the adoption of the 2012 RTR Final Rule and the Block Trade Final Rule in 2012 and 2013, respectively. Notwithstanding the requirement to publicly disseminate data that discloses the underlying asset(s) of PRSTs, the 2012 RTR Final Rule prohibited an SDR from publicly disseminating STAPD in a manner that discloses or otherwise facilitates the identification of a swap counterparty. The Block Trade Final Rule required the public dissemination of certain swaps in the other commodity asset class to limit the geographic detail of the underlying asset pursuant to appendix E to part 43.

The designation of the UPI for swaps in the other commodity asset class highlight operational complexities arising from the statutory requirements to both provide for the public availability of STAPD and also ensure the anonymity of the parties to a PRST. The implementation of a UPI code for other commodity asset class swaps pursuant to regulation 45.7 would trigger the obligation under parts 43 and 45 that the same UPI be included in each public dissemination and confidential swap report.[64] However, an anonymity issue arises because geographic locations, such as delivery points, are often key product characteristics of certain other commodity asset class swap products and, consequently, included in the underlying UPI reference data library elements. This would mean that key characteristics of each product, such as geographic locations, would be potentially publicly accessible, creating a risk that public dissemination of a UPI code

[64] 17 CFR 45.7(c)(1); 17 CFR part 43, appendix A and 17 CFR part 45, appendix 1, (Data Element # 87 (Unique Product Identifier UPI) (noting that the Commission will designate a UPI pursuant to § 45.7).

pursuant to part 43 could inadvertently allow for the identification of the counterparties to the specific other commodity swap transactions.

Without modifications to part 43, Reporting Entities would report to SDRs a UPI that contains detailed geographic information, dissemination of which could be contrary to § 43.4(c)(4)(iii) and appendix E. Without a rule amendment, SDRs would not be permitted to publicly disseminate a UPI for certain swaps in the other commodity asset class that require geographic masking under the Commission's current regulations, as such dissemination would violate § 43.4(c)(4)(iii).

Therefore, an extension of the UPI mandate to the other commodity asset class must provide for the geographic masking requirement mandated by §43.4(c)(4)(iii). Under proposed § 43.4(c)(5)(ii), Reporting Entities would be obligated to comply with the requirement to provide, and SDRs with their requirement to disseminate, a description of the underlying asset(s) that limits geographic detail pursuant to paragraph (c)(4)(iii) of § 43.4 by providing or disseminating, as applicable, STAPD that includes a UPI that identifies any specific delivery point or pricing point pursuant to appendix E to part 43.

The proposed rule amendment harmonizes the competing obligations under § 43.4(c)(4)(iii) related to limiting geographic detail in public dissemination of certain swaps in the other commodity asset class and those under appendix A to disseminate a UPI, which may contain information that is not adequately geographically masked. However, the geographically limited UPI will not satisfy part 45 reporting obligations. Existing part 45 requires specific delivery and pricing point details to be reported, which would not be included in UPIs that disclose a more generic geographic location to comply with § 43.4(c)(4)(iii). Therefore, Reporting Entities will also need to report a UPI that contains those details in order to comply with the part 45 reporting requirements.

Accordingly, proposed § 43.4(c)(5)(iii) provides that, notwithstanding the requirement under § 43.4(c)(5)(ii) to provide and disseminate a geographically-masked

UPI pursuant to appendix E to part 43, Reporting Entities shall comply with part 45 reporting obligations by providing to SDRs a separate UPI that does not limit the geographic detail of the underlying assets. Finally, proposed § 43.4(c)(5)(i) provides that, for swaps in the interest rate, credit, equity, and foreign exchange asset classes, as well as swaps in the other commodity asset class described in § 43.3(c)(4)(ii), Reporting Entities shall comply with their requirement to provide an actual description of the underlying asset(s) by providing STAPD that includes a UPI system, once such identifier has been designated by the Commission to be used in recordkeeping and swap data reporting pursuant to regulation 45.7. Proposed § 43.3(c)(5)(i) also provides that an SDR will be deemed to have complied with the requirement to disseminate an actual description of the underlying asset(s) by disseminating STAPD that includes a UPI that has been designated by the Commission.

B. Conforming changes to § 43.4(c) and appendix E

The Commission is proposing to make additional conforming and technical changes to § 43.4(c) and appendix E to align with the proposed modifications discussed above.

Existing § 43.4(c)(2) requires Reporting Entities to provide an SDR with STAPD that includes an actual description of the underlying asset. Because, as discussed above, the requirement to provide a UPI and, if applicable, a UPI that limits geographic information, is being proposed in § 43.4(c)(5), the proposal implements a conforming revision to indicate that the requirement in § 43.4(c)(2) to provide an actual description of the underlying asset applies to PRST in the interest rate, credit, equity, and foreign exchange asset classes. Similarly, the Commission is proposing to address the requirement that Reporting Entities provide the underlying asset to an SDR in § 43.4(c)(4), as modified. This change is not meant to be substantive, but rather is intended as a technical revision to group requirements that are specific to an asset class within the same paragraph. The Commission is proposing technical revisions to the title and text of § 43.4(c)(4) to clarify and conform to the amendments proposed in section II.A above. As such, the revision to the title clarifies that the section addresses both the reporting and public dissemination of the underlying asset(s) for certain swaps in the other commodity asset class. The technical revision to § 43.4(c)(4) and § 43.4(c)(4)(i) identifies the Reporting Entities obligated to provide the SDRs with certain STAPD. Additionally, the proposed technical revisions to § 43.4(c)(4)(ii) and (iii) address the obligation to provide the underlying asset(s) of swaps in the other commodity asset class as stipulated in each of these sections, to conform with the rest of the regulatory text in the section.

Appendix E to part 43 includes tables E1 and E2 which must be used by SDRs to disseminate any specific delivery points or pricing points for PRSTs in the other commodity asset class as required by § 43.4(c)(4)(iii). The Commission proposes to add introductory language for consistency with the proposed amendments to § 43.4(c) described above and proposed new § 43.4(c)(5)(ii).

C. Proposed Amendments to § 45.7(b)

In addition to the changes to part 43 discussed above, the Commission is also proposing modifications to § 45.7(b) with regards to the Commission's authority to condition or revoke a UPI designation order. As stated above, § 45.7 provides that when the Commission determines that a UPI and product classification system is available for use and meets the requirements of § 45.7, the Commission shall designate the unique product identifier and product classification system to be used in recordkeeping and swap data reporting by means of a Commission order published in the *Federal Register* and on the Web site of the Commission.

Section 45.7(a) establishes the requirements that the UPI and product classification system must meet to enable the Commission and other financial regulators to fulfill their regulatory responsibilities and to assist in real time reporting of swaps as provided in the CEA and part 43. The Commission is proposing to modify § 45.7 to address the Commission's authority to condition a designation of a UPI and product classification system. For example, the Commission may determine that it is appropriate to condition the designation of a UPI and product classification system on such an identifier continuing to meet certain international standards related to distinctiveness and specificity. As another example, the Commission may include as a condition of designation an implementation date for use of such UPI and product classification system. The Commission proposes adding the following language at the end of § 45.7(b)(2); The Commission may subject such designation order to conditions to ensure the unique product identifier and product classification system continue to meet the requirements set out in paragraph (a) above. The Commission may also set, in such designation order, a date on which such designation shall be effective. The Commission is also proposing to address the Commission's authority to limit, suspend, or revoke a designation order previously issued by the Commission. The Commission proposes to add § 45.7(b)(3), to direct that if the Commission determines that a unique product identifier and product classification system, subject to a designation order pursuant to paragraph (b) of this section, no longer satisfies the requirements set forth in this section, the Commission may limit, suspend, or withdraw the designation order consistent with the Act after appropriate notice and opportunity to respond. This amendment seeks to address the unlikely scenario where a previously designated UPI and product classification system fails to meet the requirements set out in § 45.7.

Finally, the Commission proposes conforming and technical revisions to § 45.7. The Commission proposes adding "and Product Classification System" to the title of § 45.7 for consistency with the rest of the regulatory text. The Commission also proposes a revision to the language in § 45.7(c)(2) to conform to new proposed § 45.7(b)(3), which provides for the withdrawal of a previously issued designation order. Commission regulation 45.7(c)(2) is meant to set out obligations that are applicable in the absence of a designated UPI and product classification system. The proposed modifications are meant to address both a situation where a UPI and product classification system has not yet been designated by the Commission, and, now, a situation where a UPI and product classification system was previously designated but is no longer in effect, as contemplated by new, proposed § 45.7(b)(3).

III. Additional Swap Data Elements Reported to the Commission and to Swap Data Repositories

A. Background

The Commission is proposing to add and further standardize the required data elements and definitions set out in the Data Element Appendices. The Data Element Appendices specify the current requirements for data elements reporting;[65] the Revised Technical Specification, published on the Commission's website pursuant to delegated authority, provides the form and manner specifications for reporting the required data elements.[66] Commission staff published the Revised Technical Specification on March 1, 2023.[67] The Revised Technical Specification organizes each data element from the Data Element Appendices by category and provides for the corresponding definition, format, allowable values, and validation rules for each data element.[68]

Prior to the implementation of the 2020 Final Rules, SDRs had some discretion over what swap data was reported, which led to a lack of standardization across SDRs.[69] This lack of standardization warranted the introduction of the revised Data Element

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[65] 2020 SDRR Final Rule at 75540 (highlighting the differences between swap data elements required to be reported to SDRs pursuant to part 45 in appendix 1 to part 45 and swap transaction and pricing data elements required to be reported to, and then publicly disseminated by, SDRs pursuant to part 43 in appendix A to part 43. Both the appendices are harmonized such that the swap transaction and pricing data elements are a subset of the swap data elements in appendix 1 to part 45).
[66] 17 CFR 43.7(a)(1); 17 CFR 45.15(b).
[67] CFTC Technical Specification, Version 3.2 (Mar. 1, 2023), available at *https://www.cftc.gov/media/8261/Part43_45TechnicalSpecification03012023CLEAN/download*.
[68] *Id*.
[69] 2020 SDRR Final Rule, 85 FR at 75539.

Appendices and the Technical Specification. The Commission's adoption of the 2020 Final Rules standardized a significant number of data elements reported to the Commission and to the public.

When the Commission adopted the Data Element Appendices in 2020, it noted that those appendices did not address the standardization of data elements specific to swap product terms.[70] The Commission noted its expectation that a UPI would be available in two years, and that until the Commission designated a UPI pursuant to § 45.7, SDRs would continue to accept, and reporting entities would continue to report the unstandardized product-related data elements unique to each SDR.[71] As discussed above, subsequent to its 2020 Final Rules' adoption, the Commission has designated DSB as the UPI service provider and expects reporting of DSB UPIs for the interest rate, credit, foreign exchange, and equity classes to begin no later than January 29, 2024.

The Commission is proposing to update the Data Element Appendices[72] to include additional data elements. These additional data elements (1) supplement the UPI Reference Data Library with additional data elements from the 2023 CDE Technical Guidance; (2) add necessary information and address reporting quality issues; and (3) further facilitate the standardization of data elements. At the same time as the Commission is proposing to update the Data Element Appendices, staff is publishing draft updated technical specifications for reporting the swap data elements in the Data Element Appendices. Commission staff is publishing a draft updated technical

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[70] *Id.* at 75540; 2020 RTR Final Rule, 85 FR at 75458 (highlighting the Commission's belief that this temporary solution will benefit SDRs such that they will only have to change their systems once when a UPI becomes available, instead of twice if the Commission created standardized product data elements before UPIs were available and then later when UPIs were designated).

[71] 2020 SDRR Final Rule, 85 FR at 75540.

[72] Staff note the proposed data elements that are not proposed to be publicly disseminated and are for regulatory reporting purposes under part 45 only will be referenced to as additions to appendix 1 of part 45. The proposed data elements that SDRs are to publicly disseminate will be referenced as additions to the Data Element Appendices.

specification ("Technical Specification 3.3"),[73] when this notice is published so commenters can comment on both the NPRM and the technical standards and validation conditions. Commenters are encouraged to comment on the NPRM, as well as provide feedback on the Technical Specification 3.3 that highlights the form and manner of the required fields within the Data Element Appendices pursuant to delegated authority. Commission staff is involved in international efforts for the harmonization of data elements, and the Commission welcomes comments related to the 2023 CDE Technical Guidance in accordance with the CDE Governance Arrangements[74] procedures. To simplify the organization of comments received, the additional data elements discussed below are divided into two categories: (1) fields that are included in the 2023 CDE Technical Guidance ("CDE Fields"); and (2) fields that are not included in the CDE Technical Guidance ("CFTC Fields").

B. Proposed Data Elements from the CDE Technical Guidance

The Commission previously noted its intent to adopt the CDE Technical Guidance data elements to the extent possible.[75] The Commission also anticipated the need to update the Data Element Appendices to adopt any changes to the CDE Technical Guidance.[76] The Commission is proposing the addition of certain data elements that are internationally harmonized in the 2023 CDE Technical Guidance. The Commission believes including certain 2023 CDE Technical Guidance data elements will create significant efficiencies for reporting entities and the Commission.

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[73] CFTC Technical Specification 3.3 will be published on the Commission's website alongside the publication of this NPRM, available at *https://www.cftc.gov/LawRegulation/DoddFrankAct/Rulemakings/DF_18_RealTimeReporting/index.htm* and *https://www.cftc.gov/LawRegulation/DoddFrankAct/Rulemakings/DF_17_Recordkeeping/index.htm*.

[74] CPMI-IOSCO, Governance Arrangements for Critical OTC Derivatives Data Elements (other than UTI and UPI) (October 2019), available at *https://www.bis.org/cpmi/publ/d186.htm* ("CDE Governance Arrangements").

[75] 2020 RTR NPRM, 85 FR at 21542; 2020 RTR Final Rule, 85 FR at 75539-40.

[76] 2020 RTR Final Rule, 85 FR at 75539-40.

The Commission is proposing to add nineteen data elements from the 2023 CDE Technical Guidance to the Data Element Appendices. These data elements are related to the following categories: Custom Baskets, Price, Product, and Notional Amounts and Quantities.

These proposed fields provide additional swap market transparency and separate data elements for various quantity, amount, and schedule date periods. This allows the Commission to access and query the data in a streamlined manner while also enabling analysis of schedule date periods with the corresponding valuations. The Commission invites comments on any of the data elements listed below.

Custom Baskets. The Commission is proposing to add five CDE data elements[77] related to custom baskets to proactively address exposure risks and to allow for the linking of constituents of a custom basket for cross-basket analysis, among other analyses. These proposed data elements would not be publicly disseminated to ensure the anonymity of the swap counterparties and the confidentiality of business transactions and market positions. The Commission currently requires reporting entities to report only one data element[78] related to custom baskets that is publicly disseminated.[79] Existing data element Custom Basket Indicator[80] only provides information pertaining to whether a transaction is associated with a custom basket. The Commission is proposing to add data elements to appendix 1 of part 45 because it believes that the visibility and reporting accuracy of holdings in custom baskets provides critical information.[81] For example, in

[77] These proposed data elements are Custom basket code (34), Basket constituent identifier (35), Basket constituent unit of measure (37), Basket constituent number of units (38), and Basket constituent identifier source (36), which would be added to appendix 1 to part 45.
[78] *See* CFTC Technical Specification, Version 3.2 (March 1, 2023), available at *https://www.cftc.gov/media/8261/Part43_45TechnicalSpecification03012023CLEAN/download*.
[79] 2020 RTR Final Rule, 85 FR at 75458.
[80] *See* CFTC Technical Specification, *supra* note 50, for data element Custom Basket Indicator (25).
[81] This view is shared by other financial regulators. *See, e.g.*, *Frequently Asked Questions on Regulation SBSR*,U.S. Securities and Exchange Commission (Aug. 11, 2022), available at *https://www.sec.gov/tm/faqs-reg-sbs* (clarifying Rule 901(c)(1) requires the reporting of specific underlying reference assets); *See also* CPMI and IOSCO, Technical Guidance: Harmonisation of the Unique Product Identifier (Sept. 2017) at 20, available at *https://www.iosco.org/library/pubdocs/pdf/IOSCOPD580.pdf*

order to conduct adequate market surveillance, including insider trading investigations, it is necessary to identify the constituents of a custom basket. Without this information, the Commission would be unable to determine the underlying positions that a swap counterparty maintained. The Commission is therefore proposing to adopt these internationally harmonized,[82] custom basket data elements.

Prices. The Commission is proposing to add six CDE data elements to the Data Element Appendices related to price schedules.[83] The Commission currently requires SDRs to publicly disseminate certain non-schedule related information within the price category.[84] The Data Element Appendices do not currently contain elements related to price schedules. As such, SDRs currently receive and disseminate several data elements related to price schedules as unstandardized product-related fields. The proposed price schedule data elements are critical for the Commission to receive because it is common for swap transactions to have price-related terms that vary over the duration of the swap, particularly for the equity and other commodity asset classes. These terms impact the transaction value over time. Without the reporting of these price related schedule data elements, the value of the swap transaction over time that is implied from the swap data would be misleading. The proposed fields have been internationally harmonized and are

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(explaining that authorities have an interest in data related to any custom basket of assets underlying an OTC derivative product in order to understand the economics of the product).

[82] In addition, the European Securities and Markets Authority (ESMA) and Ontario Securities Commission (OSC), respectively, are planning to implement or have proposed to implement certain identifying information related to the frequency, creator, and underlier related information of basket creation, among other items, from the CDE Technical Guidance. *See, generally,* July 10, 2022 O.J. (L 262), available at *https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32022R1855&from=EN*; Proposed Amendments to OSC Rule 91-507 Trade Repositories and Derivatives Data Reporting and Proposed Changes to OSC Companion Policy 91-507CP and Proposed Changes to OSC Companion Policy 91-506CP, R.R.O. 2022 – 45 (OSC) (highlighting fields 120-124), available at *https://www.osc.ca/sites/default/files/2022-06/cp_20220609_91-507_trade-repositories-derivatives-data-reporting.pdf*.

[83] These proposed data elements are Price schedule-unadjusted effective date of the price (99), Price schedule-unadjusted end date of the price (100), Price schedule- price (101), Strike price schedule-Unadjusted effective date of the strike price (108), Strike price schedule- unadjusted end date of the strike price (109), and Strike price-schedule-strike price (110). These proposed data elements will be added to the Data Element Appendices.

[84] Currently, SDRs publicly disseminate nine data elements uniquely related to the commodity asset class and eight data elements uniquely related to the equity asset class in the price category. Data Field Option Premium Payment Date (#81) is not publicly disseminated.

expected to be implemented across multiple jurisdictions.[85] The Commission believes that the inclusion of these data elements in the Data Element Appendices will not only further international harmonization efforts but also increase the accuracy and utility of the swap data reported to, and disseminated by, SDRs.

Product. As discussed above, there are certain proposed data elements related to underlier information that capture data not included in the UPI Taxonomy but are within the CDE Technical Guidance. Additionally, there are certain proposed data elements that are not captured in either the UPI Taxonomy or the CDE Technical Guidance. The Commission will first discuss the proposed CDE Fields specific to the product underlier, and then will discuss the proposed CFTC fields that are supplemental to the CDE Fields and the UPI Taxonomy in section III.C below.

The UPI includes granular product-level information, such as underlier and identifier information.[86] When a reporting entity submits a request for a UPI Code to the unique product identifier service provider, the reporting entity submits a set of product reference data elements.[87] When an underlier is not recognized by a unique product identifier service provider, the reporting entity will submit the value "other" for the Underlier ID and Underlier ID Source fields to the UPI service provider. If approved by the UPI service provider, the corresponding issued UPI Reference Data Library would not include detailed underlier information that would allow the Commission to determine the underlying product of the swap transaction. Without this granular information, the Commission would not have sufficient understanding of the financial product and would be unable to distinguish between different products that are represented by the same "other" underlier type. Proposed fields "Underlier ID (Other)" and "Underlier ID (Other)

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[85] *See, e.g.* July 10, 2022 O.J. (L 262) (highlighting fields 50-52 and 135-137), available at *https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32022R1855&from=EN.*
[86] *See* UPI Technical Guidance *supra* note 16 at 6.
[87] *Id.* at 13-18. (highlighting that the UPI Reference Data include attributes such as "Asset Class", "Instrument Type", "Delivery Type", "UPI Code", "CFI Code", "Underlier Name", "Underlying Asset Type", "Underlier ID Source", "Underlying ID", among others).

source" would allow for this granular information to be reported and allow the Commission to understand the characteristics of the non-standard underliers across asset classes at a level of granularity not provided in the UPI Taxonomy that resolves to the "other" underlier type.[88]

The Commission is proposing two additional CDE product-related fields that are necessary to understand specific product information related to the source of the price of an underlier. The UPI Taxonomy does not include the trading venue of an underlier. For example, in the case of an equity swap, although the underlier would be part of the UPI Taxonomy, if that underlier were traded on a venue in a non-U.S. jurisdiction, that venue would not be included in the UPI Taxonomy. For those transactions that occur off-venue, the source of the price of the underlier is also not included in the UPI Taxonomy. Without that source being reported, the Commission would be unable to consistently determine the benchmark value of the source of the underlier. Proposed CDE data elements "Underlying asset trading platform identifier" and "Underlying asset price source" will enable the Commission to receive critical pricing information in a consistent manner across various sources.[89] Moreover, receiving information specifying the underlying asset price source is critical to the Commission's benchmark manipulation surveillance efforts. In order to adequately conduct such surveillance efforts, the Commission must be able to reliably understand what source is being used to price the underlier of the swap transaction.

Finally, the proposed "Crypto asset underlying indicator" data element[90] provides for the identification of derivative transaction underliers that include crypto assets. This data element is particularly important given the quickly-evolving market for crypto assets

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[88] These proposed data elements are Underlier ID (Other) (126) and Underlier ID (Other) source (127). These proposed data elements would be added to appendix 1 to part 45.
[89] These proposed data elements are Underlying asset trading platform identifier (129) and Underlying asset price source (128), which would be added to appendix 1 to part 45.
[90] The proposed data element is Crypto asset underlying indicator (130). This proposed data element will be added to the Data Element Appendices.

and the current lack of standardization in the representation of swap transactions with crypto asset underliers.[91] The submission of this indicator will allow the Commission and the public to more easily identify those transactions that have crypto asset underliers, regardless of the underlying product. This indicator is internationally harmonized and expected to be implemented across multiple jurisdictions.[92]

Notional Amounts and Quantities. The Commission is proposing to add three data elements related to notional quantity schedules to the Data Element Appendices.[93] These data elements would be applicable to the other commodity asset class, where notional is often stated as a quantity rather than a dollar amount. While the Data Element Appendices include certain data elements related to schedules, data elements addressing the non-monetary quantities for these types of instruments are currently not included in the Data Element Appendices.[94] Similar to the discussion of the price-related schedule fields above, the notional quantity fields being proposed are necessary in order to understand the economics and value of a swap transaction changing over time. These notional quantity schedule fields are a part of the CDE Technical Guidance and expected to be adopted across multiple jurisdictions.[95]

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[91] For example, crypto asset transactions are often reported differently across transactions. However, there is currently no ISO currency code corresponding to crypto assets. *See* Kath Lockett, The down-low on digital currency, ISO focus: The New Wave of Finance (Jan. 9, 2020), available at *https://www.iso.org/files/live/sites/isoorg/files/news/magazine/ISOfocus%20(2013-NOW)/en/2020/ISOfocus_138/ISOfocus_138_en.pdf*.

[92] *See, e.g.,* July 10, 2022 O.J. (L 262) (highlighting field 12), available at *https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32022R1855&from=EN*; *See* Proposed Amendments to OSC Rule 91-507 Trade Repositories and Derivatives Data Reporting and Proposed Changes to OSC Companion Policy 91-507CP and Proposed Changes to OSC Companion Policy 91-506CP, R.R.O. 2022 – 45 (OSC) (highlighting field 119), available at *https://www.osc.ca/sites/default/files/2022-06/cp_20220609_91-507_trade-repositories-derivatives-data-reporting.pdf*.

[93] These proposed data elements, which would be added to the Data Element Appendices, are: Notional quantity schedule - unadjusted date on which the associated notional quantity becomes effective (57), Notional quantity schedule - unadjusted end date of the notional quantity (58), and Notional quantity schedule - notional quantity (59).

[94] Existing Data Element Appendices currently include the following data elements related to Notional Amount and Quantity schedules: Notional amount schedule – notional amount in effect on associated effective date (33); Notional amount schedule – unadjusted effective date of the notional amount (34); and Notional amount schedule – unadjusted end date of the notional amount (35).

[95] *See, e.g.,* July 10, 2022 O.J. (L 262), available at *https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32022R1855&from=EN*; *See* Proposed Amendments to OSC Rule 91-

C. Proposed CFTC Data Elements

The Commission is proposing to supplement the Data Element Appendices with data fields sourced beyond the UPI Reference Data Library and CDE Technical Guidance by adding Commission-related data elements to further standardization efforts and address data quality concerns. As discussed below, these proposed data elements will ensure the Commission has access to data needed to facilitate market oversight through surveillance and compliance review.

Primarily, the UPI system is comprised of a UPI code and associated UPI reference data. The UPI reference data elements include three levels of information: instrument type (e.g., forwards, options, swaps), instrument characteristics (e.g., physical delivery, Bermudan exercise), and certain information about the product (e.g., elements of underliers such as identifiers). The UPI system is not designed to identify contract- or transaction-level information. The proposed data elements are intended to facilitate the reporting of information not discernable through the reporting of the UPI. As discussed below, in cases where the underlier product-level information has been assigned the value of “other”—as may be the case for certain bespoke or basket transactions—additional information will be needed to adequately identify the transaction.

In addition to the proposed UPI-related fields, the Commission is proposing to add additional fields to the Data Element Appendices that will enhance data quality and standardization. The Commission noted the significant effort that must be done to standardize swap data.[96] Periodic review of internal processes, market transparency efforts, and proactively addressing the market’s use of new technology is consistent with

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507 Trade Repositories and Derivatives Data Reporting and Proposed Changes to OSC Companion Policy 91-507CP and Proposed Changes to OSC Companion Policy 91-506CP, R.R.O. 2022 – 45 (OSC) (highlighting field 37-39), available at *https://www.osc.ca/sites/default/files/2022-06/cp_20220609_91-507_trade-repositories-derivatives-data-reporting.pdf*.

[96] *See* 2020 SDRR Final Rule, 85 FR at 75539.

the Commission's mission to promote the integrity, resilience, and vibrancy of the U.S. derivatives markets through sound regulation.

Thus, the Commission is proposing to add thirty data elements related to the following categories: Clearing, Counterparty, Notional Amounts and Quantities, Price, Product, and Transaction Categories. The Commission invites comments on any of the data elements listed below; additionally, Commission staff invite separate comment on the draft Technical Specification 3.3 now published on the Commission website that is intended, upon finalization, to provide technical instructions on the acceptable form and manner for transmitting required data elements to an SDR.

Clearing. The Commission is proposing to add two clearing-related fields to appendix 1 to part 45: "Mandatory clearing indicator" and "Clearing member identifier source."[97] The current Data Element Appendices contain a number of clearing related data elements.[98] These data elements provide significant information regarding the clearing-related attributes of a given transaction, however, the currently required clearing-related data elements do not provide an indication as to whether a swap transaction is subject to mandatory clearing. For example, currently the "Cleared" field, which is populated with either yes, no, or intent to clear, does not enable the Commission to determine whether a trade is required to be cleared or voluntarily cleared. Although the Commission previously noted that it may be able to determine this information through a separate analysis based on underlying product fields, it also noted the difficulties in obtaining such information.[99] The Commission believes that the provision of this data

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[97] These proposed data elements are Mandatory clearing indicator (14) and Clearing member identifier source (5). Data Element Mandatory clearing indicator (14) will be added to the Data Element Appendices. Data Element Clearing member identifier source (5) will be added to appendix 1 of part 45.

[98] Appendix A of part 43 contains one clearing-related data element, Cleared (1). Appendix 1 of part 45 contains the following clearing-related data elements: Central counterparty (2), Clearing account origin (3), Clearing member (4), Clearing swap USIs (5), Clearing swap UTIs (6), Original swap USI (7), Original swap UTI (8), Original Swap SDR identifier (9), Clearing receipt timestamp (10), Clearing exceptions and exemptions - Counterparty 1 (11), and Clearing exceptions and exemptions - Counterparty 2 (12).

[99] 2020 SDRR Final Rule, 85 FR at 75541 n.315.

element will allow staff to efficiently monitor compliance with the clearing mandate. In addition, the Commission believes market participants already engage in determinations as to whether a specific transaction is subject to mandatory clearing and as such collection of this indicator should not present a significant burden to market participants.

In addition to the "Mandatory clearing indicator" data element, the Commission is proposing to include a "Clearing member identifier source" data element in appendix 1 to part 45. This data element would provide significant data quality benefits. In order for the SDRs to be able to validate values that are submitted in the "Clearing member" data element, the swap data repositories must know what the source of the identifier is. Because Legal Entity Identifiers ("LEIs"), natural person identifiers, and Privacy Law Identifiers ("PLIs") have different characteristics, without knowing the relevant source for the value submitted in the "Clearing member" data element, adequate validations cannot be applied to that data element. This results in data quality that is lower than it would otherwise be with the implementation of the "Clearing member identifier source."

Counterparty. The Commission is proposing to add four counterparty-related data elements to appendix 1 to part 45 that will enhance data quality in various ways.[100] Similar to the "Clearing member identifier source" data element discussed above, the proposed addition of a "Counterparty 1 identifier source" will provide significant data quality benefits because it will more readily allow for adequate data validation of the Counterparty 1 data element.[101]

The Commission is also proposing to add three data elements that indicate the entity designations of counterparties to a transaction. "Counterparty 1 designation" and "Counterparty 2 designation" will indicate if a counterparty is a SD, MSP, derivatives

[100] These proposed data elements are Counterparty 1 Identifier Source (16), Counterparty 1 Designation (28), Counterparty 2 Designation (29), and Counterparty 2 Special Entity (30). These proposed data elements will be added to appendix 1 to part 45.
[101] In addition, the inclusion of this field will align the Counterparty 1 elements with the Counterparty 2 elements, as "Counterparty 2 identifier source" is included in the existing Appendix 1 to part 45 (#15).

clearing organization ("DCO"), or non-SD/MSP/DCO. Similarly, "Counterparty 2 special entity" will indicate if Counterparty 2 is a special entity. These entity designation fields are important for the Commission because many of the Commission's regulations apply based on entity designation. For example, certain business conduct standards are applicable specifically to transactions entered into with a special entity.[102] The proposed "Counterparty 2 special entity" data element is necessary for the Commission to be able to determine whether a special entity is a party to a given transaction. Similarly, the "Counterparty 1 designation" and "Counterparty 2 designation" data elements are necessary to determine whether, for example, a SD is a party to a transaction, which is critical to understanding both regulatory obligations as well as market dynamics.

Notional Amounts and Quantities. The Commission is proposing to add ten data[103] elements related to Notional Amounts and Quantities to appendix 1 to part 45. Nine of these data elements are specific to the other commodity asset class. These nine data elements would provide information that is necessary to understand the characteristics of the commodity transaction. These data elements provide additional information that is not included in the UPI Reference Data Library and, without adoption of these proposed elements, would not be reported once a unique product identifier and classification system is designated for the other commodity asset class. Specifically, these data elements provide information related to the load profile type, applicable hours, and days of the week for the delivery of power. This information is not included in the UPI

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[102] *See, e.g.,* 17 CFR 23.450.

[103] These proposed data elements are Notional quantity schedule - days of week (60), Notional quantity schedule – hours from thru (63), Notional quantity schedule -load profile type (66), USD equivalent regulatory notional amount (42), Notional quantity schedule - unadjusted effective date of days of week (61), Notional quantity schedule - unadjusted end date of days of week (62), Notional quantity schedule - unadjusted effective date of hours from thru (64), Notional quantity schedule – unadjusted end date of hours from thru (65), Notional quantity schedule -unadjusted effective date of load profile type (67), and Notional quantity schedule- unadjusted end date of load profile type (68). These proposed data elements will be added to appendix 1 of part 45.

Reference Data Library and is necessary to understand the economics of a transaction for the delivery of power.

Finally, the Commission is proposing to add the data element "USD equivalent regulatory notional amount" to appendix 1 to part 45.[104] This data element will allow for the consistent reporting of notional amounts for transactions denominated in U.S. dollars. The reporting of USD notional amount will allow Commission staff to more efficiently monitor swap market activity, specifically for swap dealer de minimis monitoring, part 43 market transparency calculations, and for risk surveillance purposes.

Price. The Commission is proposing to add six price-related data elements to the Data Element Appendices, three of which specifically relate to option-type instruments.[105] The proposed data elements "Option exercise end date", "Option exercise frequency period", and "Option exercise frequency period multiplier" will provide information that is critical to understanding the economics of a particular swap transaction. In particular, these data elements will provide key dates and schedules of the option contract, which is necessary to conduct market surveillance and identify potential cases of market manipulation.

In addition to these three price-related elements, the Commission is proposing to add three data elements related to settlement price analysis to appendix A to part 45.[106] Similar to the three proposed fields above, these fields will further market surveillance. For example, proposed "Swap pricing method" and "Pricing date schedule of the swap" fields will facilitate market surveillance and identification of situations where the value of

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[104] The proposed data element is USD equivalent regulatory notional amount (42).

[105] These proposed data elements are Option exercise end date (113), Option exercise frequency period (114), and Option exercise frequency period multiplier (115). These proposed data elements will be added to the Data Element Appendices.

[106] These proposed data elements are Swap pricing method (116), Pricing date schedule of the swap (117), and Start and end time of the settlement window for the floating leg(s) (118). These proposed data elements will be added to appendix 1 of part 45.

a derivative position impacts the value of the underlying asset on the settlement day in a way that benefits the position.

Product. The Commission is proposing to add two product-related data elements to the Data Element Appendices[107] and three product-related data elements to appendix 1 to part 45.[108] The proposed "Pricing index location" and "Physical delivery location" fields would allow the Commission to receive critical pricing and delivery location information in the case where the UPI is reported with an underlier of "other" or other instances where the pricing or delivery locations could not be derived from the Underlier ID. Proposed "Physical commodity contract indicator" provides critical information related to whether a swap in the other commodity asset class is related to or references one of the contracts in appendix B to part 43. This information is important to perform cross-market analysis and surveillance. The UPI Reference Data Library does not provide for the reporting of the product grade for swaps in the other commodity asset class. The proposed "Product grade" field would aid in the analysis of an entities' exposure, which can vary based on the grade of the commodity. Finally, the proposed "Maturity date of the underlier" field would provide information about the underlier that is relevant for swaption and swap products referencing exchange traded derivative products. This data element is expected to be implemented across jurisdictions.[109]

Transaction Related. The Commission is proposing to add two transaction-related data elements to the Data Element Appendices[110] and one additional transaction-related

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[107] These data elements are Physical commodity contract indicator (131) and Maturity date of the underlier (133).

[108] These proposed data elements are Physical delivery location (124), Pricing index location (125), and Product grade (132).

[109] *See, generally,* July 10, 2022 O.J. (L 262), available at *https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32022R1855&from=EN*; *See* Proposed Amendments to OSC Rule 91-507 Trade Repositories and Derivatives Data Reporting and Proposed Changes to OSC Companion Policy 91-507CP and Proposed Changes to OSC Companion Policy 91-506CP, R.R.O. 2022 – 45 (OSC) (highlighting field 37-39), available at *https://www.osc.ca/sites/default/files/2022-06/cp_20220609_91-507_trade-repositories-derivatives-data-reporting.pdf*.

[110] These proposed data elements are Large notional off-facility swap election indicator (140) and SEF or DCM indicator (146). These proposed data elements will be added to the Data Element Appendices.

data element to appendix 1 to part 45.[111] These elements are intended to facilitate an SDR's ability to meet its regulatory obligations under parts 43 and 49 of the Commission's regulations. Commission regulation 43.5(d) requires an SDR to disseminate swap transaction and pricing data for transactions executed on or pursuant to the rules of a SEF or DCM subject to a specified time delay. The proposed "SEF or DCM indicator" data element would provide an SDR with information necessary to indicate when its obligations under Commission regulation 43.5(d) apply. In addition to dissemination delay requirements specifically related to SEFs and DCMs, § 43.5 generally sets out required time delays for block trades and large notional swap transactions. Proposed data element "Large notional off-facility swap election indicator" would provide an SDR with information necessary to indicate when a time delay is applicable to a large notional off-facility swap transaction. This proposed data element is analogous to the "Block trade election indicator" that is already included in the Data Element Appendices. Finally, the Commission is proposing to add the data element "SEF or DCM anonymous execution indicator" to provide SDRs with information necessary to comply with § 49.17(f)(2), which requires SDRs to make a swap transaction accessible to either counterparty to the swap. In providing this access, § 49.17(f)(2) requires an SDR to not identify one counterparty to another in instances where the swap is executed anonymously on a SEF or DCM and cleared in accordance with §§ 1.74, 23.610, and 39.12(b)(7) of the Commission's regulations. This proposed data element will provide an SDR with information that is necessary to satisfy the requirements of § 49.17(f)(2).

Request for Comment

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[111] The proposed data element is SEF or DCM anonymous execution indicator (147). This proposed data element will be added to the Data Element Appendices.

The Commission invites comments on any of the data elements listed above; additionally, Commission staff invite separate comment on the draft Technical Specification 3.3 now published on the Commission website that is intended, upon finalization, to provide technical instructions on the acceptable form and manner for transmitting required data elements to an SDR. The Commission also requests specific comment on the following:

(1) Are there any data elements not included in the proposed Data Element Appendices that commenters believe are necessary to facilitate further standardization of reporting?

(2) For proposed data element #30 Counterparty 2 special entity, are there any impediments that reporting entities would experience in providing additional information related to special entities, such as whether counterparty 2 is a "utility special entity"?

(3) For proposed data element #116 Swap pricing method, are there additional allowable values other than those published in the Technical Specification that reporting entities believe may be applicable for this data element?

(4) For proposed data element #42 USD equivalent regulatory notional amount, are there impediments that reporting entities would experience in calculating and reporting USD equivalent notional amount? The Commission also seeks comment on the cited calculation methodology and the utility of the notional values calculated according to the methodology.

The Commission requests comment on the following questions related to swap transactions that reference the delivery of power. Specifically, the Commission requests comments on any burden or obstacles for reporting entities in reporting data elements related to these questions.[112]

(5) Days of week: Are there scenarios where the "Days of Week" for delivery vary over the duration of a transaction that necessitates the reporting of multiple "Days of Week" occurrences for a single transaction? Alternatively, is the reporting of a single occurrence of "Days of the Week" sufficient, and can this value be derived from commonly known and available data related to the referenced hub?

(6) Hours from Thru: Are there scenarios where the "Hours from Thru" for delivery vary over the duration of a transaction that necessitates the reporting of multiple "Hours from Thru" occurrences for a single transaction? Alternatively, is the reporting of a single occurrence of "Hours from Thru" sufficient, and can this value be derived from commonly known and available data related to the referenced hub?

(7) Load Profile Type: Are there scenarios where the "Load Profile Type" (e.g. Peak, Off-Peak) for delivery varies over the duration of a transaction that necessitates the reporting of multiple "Load Profile Type" occurrences for a single transaction? Alternatively, is the reporting of a single occurrence of "Load Profile Type" sufficient, and can this value be derived from commonly known and available data related to the referenced hub?

IV. Proposed Revisions to the Descriptions of Existing Data Elements in Appendix A to Part 43 and Appendix 1 to Part 45

The Commission is proposing several modifications to the existing field descriptions in the Data Element Appendices. Some of these modifications are being

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[112] At least one other jurisdiction intends to collect data elements related to these questions. *See* July 10, 2022 O.J. (L 262) (Fields 121 Load Type; 122 Delivery interval start time; 123 Delivery interval end time; 124 Delivery start date; 125 Delivery end date; and 127 Days of the week).

proposed to harmonize the descriptions contained in the Data Element Appendices with the descriptions adopted at the international level by the Regulatory Oversight Committee and related subcommittees.[113] For example, "Reporting timestamp" in appendix 1 to part 45 is proposed to be modified to add "as reported" to the data element description so that it reads, "Data and time of the submission of the report as reported to the trade repository" to align the description with the CDE Technical Guidance.

In addition, the descriptions contained in the appendices would be revised to eliminate detail that describes the form and manner of reporting the data element.[114] The form and manner detail proposed to be removed from the Data Element Appendices would be incorporated in the Technical Specification 3.3. The Commission believes setting out the form and manner in one location, namely the Technical Specification, simplifies the requirements. Moreover, removing such form and manner detail from the Data Element Appendices would avoid inconsistent form and manner instructions in those appendices and the Technical Specification, in the case where such form and manner instruction is modified in a revised Technical Specification. For example, data element #56 "Floating rate reset frequency multiplier" represents the number of time units, as expressed by data element #55 "Floating rate reset frequency period," that determines the frequency at which periodic payment dates for reset occur. In the Data Element Appendices, the description of data element #56 includes an example of a transaction with reset payments occurring every two months. The Data Element Appendices state that in such case data element #55 should be populated with "MNTH" and data element #56 should be populated with "2." As another example, data element #77 "Strike price currency/currency pair" currently states, in part, that for foreign

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[113] The following existing data elements in appendix 1 to part 45 are proposed to be modified in this way, "Action type" (26); "Event type" (27); "Event identifier" (29); "Event timestamp" (30); "Reporting timestamp" (97); "Delta" (109); "Valuation amount" (110).

[114] Nearly all of the data elements in the Data Element Appendices contain such changes.

exchange ("FX") options, the manner in which the field should be expressed is as unit currency/quoted currency. In the Commission's proposed modifications, these types of form and manner instructions would be removed from the Data Element Appendices and incorporated in the Technical Specification.

Similar to the proposed modifications above, the Commission is also proposing to remove the asset class references in the Data Element Appendices. The removal of the asset class information will provide more clarity to reporting entities as the Technical Specification contains more specific information related to asset classes. For example, currently the Data Element Appendices merely indicate, with a checkmark, whether a data element is applicable for a specific asset class. The Technical Specification, however, provides more specific information related to when a particular data element is applicable to a transaction. This specificity provides more information about when and how to report a certain data element. Eliminating the asset class reference from the appendices will avoid any confusion that the more generic indicator in the appendices may create when read in conjunction with the more specific information provided in the Technical Specification. This proposed modification would impact each of the data elements in the Data Element Appendices.

V. Compliance Date

The Commission understands that market participants would need sufficient time to adjust reporting systems to account for the proposed modifications to parts 43 and 45 of the Commission's regulations, including the reporting of additional data elements not currently required by parts 43 and 45. In order to provide market participants with sufficient time, the Commission is proposing that the compliance date for the rules proposed herein be 365 days following publication of a final rule in the *Federal Register***.**

Request for Comment

The Commission requests comment on all aspects of the proposed compliance date. The Commission also requests specific comment on the following:

(8) Is the proposed compliance date of 365 days after publication of a final rule in the *Federal Register* an adequate amount of time for compliance with respect to the additional data elements in the Data Element Appendices? If not, please propose an alternative timeline and provide reasons supporting that alternative timeline.

VI. Related Matters

A. Cost-Benefit Considerations

1. Introduction

Section 15(a) of the CEA requires the Commission to "consider the costs and benefits" of its actions before promulgating a regulation or issuing certain orders under the CEA.[115] 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 futures 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.

While, as discussed previously and further below, the Commission preliminarily believes the proposed amendments—measured relative to the baseline of status quo conditions—would create meaningful benefits for market participants and the public, it also recognizes that they likely would result in some incremental costs. The Commission has endeavored to enumerate material costs and benefits and, when reasonably feasible, assign a quantitative value to them. Where it is not reasonably feasible to quantify costs

[115] 7 U.S.C. 19(a).

and benefits of the proposed amendments, those costs and benefits are discussed qualitatively.

This cost-benefit consideration proceeds by discussing the background; describing the status quo baseline; identifying and assessing costs and benefits attributable to proposed non-data element changes to part 43 and part 45; identifying and assessing costs and benefits attributable to the proposed expansion of the required data elements, separated into CDE and non-CDE data elements, the latter referred to as CFTC data elements;[116] and, assessing how the costs and benefits it has identified bear upon each CEA section 15(a) factors.

2. Background

As discussed above, the Commission has undertaken several rulemakings since 2012 related to real-time public reporting (part 43) and swap data reporting and recordkeeping (part 45). These rulemakings have common threads, including: the Commission's continued attention to uphold its CEA section 2(a)(13) obligations[117] and the Commission's continued progress toward harmonizing data element reporting across international jurisdictions as well as Commission registrants (of which use of a shared UPI and product classification system is a critical piece).[118]

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[116] The cost analysis in section VI. C., as required by the Paperwork Reduction Act (PRA), is consistent, but not identical to the costs discussed in this section because for purposes of the PRA, estimated burden costs are divided between parts 43 and 45, whereas in this section, the cost and benefits discussions are divided between CDE data elements and CFTC data elements. Because of these methodological differences, the estimated costs might not be the same, but the underlying assumptions are the same.

[117] 7 U.S.C. 2(a)(13) (requiring, among other things, that the Commission promulgate rules that provide for real-time public availability of STAPD for uncleared swaps in a form and manner to enhance price discovery while maintaining the anonymity of business transactions and market positions of the counterparties as well as ensuring that transaction participants remain anonymous); see also, e.g., 2012 RTR Final Rule, 77 FR at 1209 ("[T]he Commission is requiring real-time reporting that will enhance price discovery while ensuring the anonymity of the swap counterparties and the confidentiality of business transactions and market positions.").

[118] *See*, *e.g.*, 2012 RTR Final Rule, 77 FR at 1212 (noting Commission work with prudential regulators to develop unique product identifiers for the industry); 2012 SDRR Final Rule, 77 FR at 2166 (adopting 17 CFR 45.7 providing that swaps be identified in recordkeeping and swap data reporting by means of a UPI and product classification system upon designation by the Commission of such an identifier and classification system for this purpose); 2020 SDRR Final Rule, 85 FR at 75540 (discussing expectation for UPI availability within two years and methods for interim reporting to SDRs until the Commission designates a UPI provider pursuant to 17 CFR 45.7).

In the current proposed rulemaking, the Commission builds upon these prior rulemakings by, among other things, seeking to amend: (i) § 43.4(c) to allow for geographic masking after the designation of the UPI for the other commodity asset classes (along with conforming language amendments to related provisions); (ii) § 45.7(b) to explicitly state the Commission's authority to condition orders it issues pursuant to the section, and to limit, suspend or withdraw the designation of a designated UPI service provider and classification system; and (iii) the Data Element Appendices consistent with international harmonization and to provide additional necessary information, address reporting quality issues and make non-substantive conforming changes.

Proposed Amendment to § 43.4(c).

Since 2012, the Commission's regulations have incorporated the concept of UPIs for purposes of both part 43 real-time public reporting and part 45 swap data reporting and recordkeeping.[119] In order to fully implement the use of UPIs in SDR swap data reporting and recordkeeping as well as real-time public reporting, two challenges must be addressed. First, at least one UPI service provider capable of providing Reporting Entities with product codes and operating a corresponding product classification system needed to exist, be deemed by the Commission to meet the requirements set out in § 45.7(a) and be designated under § 45.7(b) for use for swap data reporting and recordkeeping purposes.[120] Second, the Commission's regulations must ensure that CEA section 2(a)(13) anonymity requirements are satisfied for PRSTs—a necessity that remains operative upon the Commission's designation of a UPI service provider under § 45.7 and Reporting Entities' undertaking to report UPI product information data elements to SDRs for transactions

[119] *See* 2012 RTR Final Rule, 77 CFR at 1212; 2012 SDRR Final Rule, 77 FR at 2165, 2166.
[120] 17 CFR 45.7. Paragraph (c)(2) of the current rule provides that prior to the Commission's designation of a UPI and product classification system, Reporting Entities are to use SDRs' internal product identification or description systems for their swap data reporting and recordkeeping. *Id.* 45.7(c)(2).

subject to real-time reporting of PRST. Current § 43.4(c)(4) and appendix E reflect the Commission's rulemaking efforts up to the present in this regard.[121] Summarized through its cumulative rulemakings, the Commission has determined that with one exception—i.e., off-facility swaps in the other commodity asset class for which the PRST is not referenced or not economically related to any of the "Enumerated Physical Commodity Contracts and Other Contracts" listed in appendix B to part 43—compliance with part 43's real-time reporting and public dissemination requirements is required given the relatively low risk of revealing counterparty identity, business transactions or market positions.[122] As to the certain other commodity asset class swap exception, § 43.4(c)(4)(iii) now mandates that SDRs publicly disseminate the geographic location detail in a top-coded (i.e., masked) manner as provided in appendix E to part 43.[123]

By designating a UPI and product classification system for swaps in the credit, equity, foreign exchange, and interest rate asset classes, the UPI February 2023 UPI Order significantly advanced the Commission's progress towards fully implementing UPI data reporting. However, the Commission remains concerned that its current regulations fall short of what is necessary to address the eventuality of designating a UPI and product classification system under § 45.7 for swap contracts in the other commodity asset class. More specifically, SDRs could face an operational dilemma after the designation of a UPI code for other commodity asset class swaps because such designation would trigger the obligation under parts 43 and 45 that such UPI be included in each public dissemination

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[121] 17 CFR 43.4(c)(4); *id.* part 43 appendix E; *see also* 2012 RTR Final Rule, 77 CFR at 1208-1212 (determining that all off-facility swaps in the other commodity asset class that did not fall under § 43.4(d)(4)(ii) would not be required to comply with the real-time reporting and public dissemination requirements under part 43 because of the increased likelihood that public dissemination of the underlying asset could disclose the identity, business transactions or market positions of a counterparty, until the adoption of special accommodations in a future Commission release to address these concerns); Block Trade Final Rule, 78 FR at 32910, 32938, 32941 (adding § 43.4(d)(4)(iii), which mandated that SDRs must publicly disseminate the details about the geographic location of the underlying assets of the other commodity swaps not described in § 43.4(d)(4)(ii) pursuant to the newly added appendix E to part 43, which allowed for top-coding various geographic regions); 2020 RTR Final Rule, 85 FR at 75439 (declining to adopt proposed revisions to the masking requirements); discussion in section I.C., above.

[122] *See* 2012 RTR Final Rule at 1209-1212.

[123] Block Trade Final Rule, 78 FR at 32910, 32938, 32941.

and confidential swap report,[124] yet the UPI may reference data library elements that reveal key, unmasked geographic locations such as delivery points. In some circumstances, it may be impossible for them to meet their general § 43.4(a) obligation to provide real-time price transparency by publicly disseminating the data specified in appendix A that Reporting Entities submit to them for other commodity asset class transactions (i.e., unmasked UPI data elements) without violating § 43.4(c)(4)(iii)'s requirement that publicly disseminated geographical information be masked in accordance with appendix E. Proposed § 43.4(c)(5) is intended to resolve this problem and allow for full UPI reporting implementation.

Proposed Amendment to § 45.7(b).

The Commission also proposes to amend § 45.7(b) to expressly state its authority to issue UPI designation orders subject to conditions and to amend, suspend, or withdraw any such designation order after appropriate notice and opportunity to respond.

Proposed Amendment to Data Element Appendices.

This rulemaking also seeks to amend the Data Element Appendices by adding data elements, including product-related data elements it refrained from including in the 2020 Final Rules out of concern that they would become redundant with the implementation of the UPI.[125] Since the 2020 Final Rules, the Commission has identified product-level data elements important for effective market oversight, but that are not determinable through the UPI and associated data library. The proposed new data elements broadly fall into two categories: CDE fields and CFTC fields. The proposed CDE data elements will further harmonize reported swaps data across jurisdictions, and the proposed CFTC fields will improve the Commission's ability to oversee its

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[124] 2012 SDRR Final Rule, 77 FR at 2166; 17 CFR 45.7(c)(1).

[125] Besides the UPI, the current list of data elements required pursuant to appendix 1 of part 45 includes four other product-related fields; two of these are also included in appendix A of part 43. In the 2020 SDRR Final Rule, the Commission noted that SDRS would continue to accept, and reporting counterparties would continue to report, the product-related data elements unique to each SDR until the Commission designated a UPI. *See* 85 FR at 75540; 17 CFR 45.7(c)(2).

registrants. With respect to the latter, for example, the current Commission regulations do not consider that certain power swaps have associated schedules specific to the delivery process or specific details of the underlying option exercise—a shortcoming that limits transparency into information that can be revelatory and important for oversight purposes.

3. Baseline

The Commission identifies and considers costs and benefits relative to a status quo baseline. In this case that baseline is defined by three components: (1) the Commission's existing requirements under its part 43, part 45 and part 49 regulations; (2) its February 2023 UPI Order; and (3) non-US jurisdictions' movement to implement harmonized swap data reporting regimes that incorporate a UPI and product classification system operated and maintained by a FSB-designated entity, i.e., DSB, in the near future to the extent that they have not done so already.

Current regulations require Reporting Entities to report STAPD, along with swap creation and continuation data, to an SDR as information specified in the Data Element Appendices.[126] As discussed above, the Data Element Appendices currently include UPI data elements, some data elements that are internationally harmonized and included in the CDE Technical Guidance, and some data elements that are specific to the CFTC. SDRs are required to accept these defined data elements from the Reporting Entities and maintain systems to validate the swap data they receive.[127] If a swap is a PRST, an SDR generally must disseminate the data elements listed in appendix A to part 43 to the general public,[128] and, for certain other commodity swaps, must do so in the manner

[126] *See* 17 CFR 43.3(d)(1), 45.13(a)(1). The Commission assumes for purposes of this cost-benefit consideration that Reporting Entities report this data in the form and manner provided in the technical specification published by staff on its website (*see* 17 CFR 43.7(a)(1), 45.15(b)(1)). The current Technical Specification is Version 3.2 (as revised in March 2023), available at *https://www.cftc.gov/media/8261/Part43_45TechnicalSpecification03012023CLEAN/download*.
[127] *See* 17 CFR 49.10(a), (c)(1).
[128] *See* 17 CFR 43.4(a) and 17 CFR 49.15(b).

prescribed in appendix E to part 43 to geographically mask the underlying asset.[129] The February 2023 UPI Order requires Reporting Entities to use UPIs issued by DSB for swaps in the credit, equity, foreign exchange, and interest rate asset classes in all recordkeeping and swap data reporting pursuant to part 45 and to facilitate real-time public reporting as required by part 43.[130] Finally, the Commission's movement towards implementation of UPI usage in swap reporting, as reflected in its past rulemakings, the February 2023 UPI Order and these proposed amendments, is part of a larger global movement by international derivatives regulators, discussed in detail above, to adopt and implement harmonized global swap reporting around commonly accepted criteria, of which UPI is a key component.[131]

The Commission notes that this cost-benefit consideration is based on its understanding that the derivatives market regulated by the Commission functions internationally with: (1) transactions that involve U.S. entities occurring across different international jurisdictions; (2) some entities organized outside of the United States that are registered with the Commission; and (3) some entities that typically operate both within and outside the United States and that follow substantially similar business practices wherever located. Where the Commission does not specifically refer to matters of location, that discussion of costs and benefits below refers to the effects of the proposed regulations on all relevant derivatives activity, whether based on their actual occurrence in the United States or on their connection with activities in, or effect on, U.S. commerce.

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[129] *See* 17 CFR 43.4(c)(4)(iii); *id.* part 43 appendix A. SDRs are additionally required to retain the swap creation and continuation data and make it available to the Commission. *See* 17 CFR 49.17(c).
[130] Order Designating the Unique Product Identifier and Product Classification System to be Used in Recordkeeping and Swap Data Reporting, 88 FR 11790, 11791 (Feb. 24, 2023).
[131] *See* discussion at section I.B., above.

The Commission requests comment on the baseline outlined in this section, including any of its components and what, if any, additional factors that should be considered.

4. Proposed Non-data Element Amendments to Part 43 and Part 45

Costs and Benefits

First, the proposed addition of § 43.4(c)(5) would require Reporting Entities to report a geographically masked UPI to SDRs once a UPI and product classification system has been designated under § 45.7. This proposed change would shift the responsibility to limit the geographic information that is publicly disseminated for certain swaps in the other commodity asset class from SDRs, as currently set out in § 43.4(c)(4), to Reporting Entities. The Commission expects that Reporting Entities will incur minimal costs to implement this proposed modification. The Commission understands that currently, in most instances, in order to facilitate the geographic masking now required in § 43.4(c)(4), Reporting Entities already submit underlier information that limits geographic information for those swaps described in § 43.4(c)(iii). In addition, the Commission believes that Reporting Parties are in the best position to determine, and currently do determine, whether a swap transaction meets the criteria set out in § 43.4(c)(iii). Furthermore, the Commission believes Reporting Entities have developed systems to send required data elements to an SDR that can accommodate reporting specific to part 43. With respect to the SDRs, if Reporting Entities report a UPI that limits the geographic information according to Appendix E to part 43 to an SDR, the SDR will be able to disseminate that UPI without incurring additional costs that would otherwise be required to appropriately mask the geographic information in the reported UPI. For these reasons, the Commission believes costs to Reporting Entities and SDRs will be minimal. The Commission expects market participants and the general public to benefit from this modification since it provides the necessary regulatory groundwork for the

Commission to designate a UPI and product classification system in the other commodity asset class designed to assure the real-time public dissemination of those swaps occurs with the requisite anonymity protection. The use of UPI in the other commodity asset class would significantly increase data quality and standardization in the data that is publicly disseminated and the part 45 swap data received by the Commission. The reporting of a UPI that limits the geographic detail would ensure that geographic masking is done in a consistent manner and help to eliminate reporting errors.

Second, further proposed modifications to part 43 include implementing conforming and technical changes to § 43.4(c) and appendix E in connection with the geographic masking requirement, as described in section II.B above. Preliminarily, the Commission does not anticipate any material costs or benefits resulting from this proposal.

Third, the Commission proposes modifications to § 45.7(b) to expressly articulate its authority to condition a designation of a UPI and product classification system and to limit, suspend or withdraw a designation order after appropriate notice and opportunity to respond. Preliminarily, the Commission does not anticipate any material costs or benefits resulting from this proposal.[132]

Request for Comments

The Commission requests comment on the above assessment of benefits and costs. Are there additional costs or benefits that the Commission should consider? Is there data or other information that the Commission should consider to assist its efforts to quantify costs and benefits? Is there an alternative approach to what the Commission is proposing that would be preferable on cost/benefit grounds and, if so, what is it and why

[132] The Commission recognizes that limiting, suspending or withdrawing a designation order potentially could pose costs to an impacted designee if the Commission were to have cause to exercise this expressly-stated amended § 45.7(b) authority. The Commission, consistent with its obligations under CEA section 15(a) and the Administrative Procedure Act, would consider any such potential costs, along with potential benefits, at the time of deciding whether to exercise its authority in any particular case. 7 U.S.C. 19(a); 5 U.S.C. 706.

would it be preferable? Commenters are encouraged to include both qualitative and quantitative assessments of these costs and/or benefits and to provide substantiating data, statistics, and any other supportive information for positions they may posit.

5. *Additional Swap Data Elements Reported to the Commission and to Swap Data Repositories: Proposed CDE Data Elements*[133]

Introduction

This section considers the costs and benefits of the nineteen new data elements that are currently included in the recommended list of CDE data elements. As previously discussed in the 2020 Final Rules, the Commission believes that new data elements selected from the CDE Technical Guidance will further improve the harmonization of SDR data across FSB-member jurisdictions.[134] And, as the Commission and regulators in other FSB-member jurisdictions define data elements reflecting the CDE Guidance, standardization across SDRs and TRs internationally will support data aggregation for the analysis of global systemic risk in swaps markets.[135]

These new data elements are related to four data categories: custom basket, prices, notional amount and quantities, and product. A subset of these new data elements (ten) are set to also become required under part 43 real-time swap transaction reporting.

There are five data elements in the custom basket category: [1] custom basket code, [2] basket constituent identifier, [3] basket constituent unit of measure, [4] basket

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[133] Besides the proposed data element additions considered in this section and section 6 below, the proposed rulemaking also includes several non-substantive changes to the Data Element Appendices. Specifically, the Commission proposes to remove language setting out the form and manner for reporting specific data elements from the Data Element Appendices, as that language is generally duplicative of the technical specifications published separately for the purpose of addressing the form and manner for reporting. The Commission preliminarily foresees no significant costs or benefits attendant to these non-substantive changes.

[134] *See*, *e.g.*, Final Rule, Swap Data Reporting and Recordkeeping, 85 FR 75503, 75539-40 (Nov. 25, 2020) ("As a general matter, the Commission believes the implementation of the CDE Technical Guidance will further improve the harmonization of SDR data across FSB jurisdictions.").

[135] *See*, *e.g.*, Final Rule, Swap Data Reporting and Recordkeeping, 85 FR 75540 (Nov. 25, 2020) ("This harmonization, when widely implemented, would also allow the Commission to potentially receive more standardized information regarding swaps reported to TRs regulated by other authorities. For instance, such standardization across SDRs and TRs could support data aggregation for the analysis of global systemic risk in swaps markets.").

constituent number of units, and [5] basket constituent identifier source. The Commission believes these fields are essential to capture the underlying products that determine the value of the swap. This category of swaps can be especially important to monitor risk and used to aggregate swaps that have similar risk and reward characteristics. The Commission expects Reporting Entities to have easy access to these details as they represent a key feature of the negotiated swap.

There are six data elements in the price category: [1] price schedule – unadjusted effective date of the price, [2] price schedule – unadjusted end date of the price, [3] price schedule – price, [4] strike price schedule – unadjusted effective date of the strike price, [4] strike price schedule – unadjusted end date of the strike price, and [6] strike price schedule – strike. All six data elements will be reported under part 43. The Commission is aware of many examples of equity and other commodity swaps that contain a well-defined price schedule, which determines the risk/reward profile of the swap. Similarly, swaptions can be structured to have strike prices that change over the life of the swap according to a well-defined schedule determined at the time of trade. By adding the strike price schedule data elements, Commission staff would be able to determine if the change was due to an error or part of the normal lifecycle of the swap.

There are five data elements in the product category: [1] underlier ID (other), [2] underlier ID (other) source, [3] underlying asset price source, [4] underlying asset trading platform identifier, and [5] crypto asset underlying indicator. Only the last data element here (crypto asset underlying indicator) will be reported under part 43. The Commission believes the first two data elements are now necessary following the introduction of the UPI. As Reporting Entities send information about the underlier to the UPI provider, it is possible that the information will be new and not on a pre-defined list of underliers maintained by the UPI provider, in which case the provided UPI will simply note the underlier of "other." Requiring Reporting Entities to submit this information would ensure it is retained and sent to the SDR. This will allow for updates to the reference list of underliers maintained by the UPI provider and will allow the Commission to identify the necessary information to understand the swap. The Commission expects the underlying asset price source field will be necessary to monitor possible manipulation attempts of benchmarks, for example from an oil price reporting agency or index publisher. The Commission is aware that equity and other commodity swaps might trade on a foreign trading venue and thus the new underlying asset trading platform identifier is required to note if the swap is valued in a non-US currency. Finally, considering the increase in trading in cryptocurrency derivatives, the Commission believes that receiving additional information with respect to cryptocurrency swap transactions will assist with identification of swaps that reference a cryptocurrency asset as the underlier.

There are three data elements in the notional amounts and quantities category: [1] notional quantity schedule – unadjusted date on which the associated notional quantity becomes effective, [2] notional quantity schedule – unadjusted end date of the notional quantity, and [3] notional quantity schedule – notional quantity. All three data elements will be reported under part 43. These fields are similar to existing data elements in the Data Element Appendices, but with a key difference. That key difference is that the proposed fields point to "non-monetary amounts." The new fields are being proposed to capture swaps in the other commodity asset class, which specify, for example, a quantity of oil or wheat. The Commission believes these new fields are essential to capture details of the swap not captured by the UPI or other currently required fields.

Benefits

The Commission believes including certain CDE Technical Guidance 3.0 data elements will create significant efficiencies for the Commission and Reporting Entities. By including certain CDE fields, the Commission believes it will receive more cohesive, more standardized, and, ultimately, more accurate data without sacrificing the ability to oversee the markets robustly. Higher-quality swap data will improve the Commission's oversight capabilities of registrants, and, in turn, will aid in protecting markets, participants, and the public in general.

The Commission proposes adding CDE fields related to custom baskets because it believes that the visibility and reporting accuracy of holdings in custom baskets provides critical information required to ensure robust oversight of registrants. The proposed additional fields related to product are necessary to understand the characteristics of the non-standard underliers across asset classes at a level of granularity not provided in the UPI Taxonomy. A more complete identification of certain underliers will allow the Commission to distinguish between positions in different contracts that may not currently be distinguishable, allowing better oversight of registrants and thereby protecting the financial integrity of the swaps market. Moreover, receiving information specifying the underlying asset price source is critical to the Commission's benchmark manipulation surveillance efforts, thereby enhancing the protections afforded to the markets generally.

Since some of these proposed CDE data elements will be publicly disseminated pursuant to part 43, the Commission believes this proposal will provide additional swap market transparency to market participants and to the general public. For example, the Commission is aware of swaps that contain price and/or notional amounts that vary according to a defined schedule. Certain aspects of these defined schedules are not currently disseminated on the real-time ticker. The proposed fields address this problem and will allow for more accurate and complete information, thereby allowing market participants to better analyze STAPD.

The Commission believes that proposing additional CDE fields will benefit cross-jurisdictional Reporting Entities by reducing compliance and reporting costs. As standards are adopted across various jurisdictions, these Reporting Entities can develop a single reporting system that can send the standardized information regardless of data reporting requirements.

The Commission believes adding these CDE data elements will provide access to high-quality swap data that is essential for the public, and for regulators to monitor the swaps market for systemic risk or unusually large concentrations of risk in individual swaps markets or asset classes, thereby promoting financial integrity.

Costs

The Commission believes that because all the new data elements represent important price-forming details of the swap they should readily be available to reporters in the normal course of business. For example, schedules capturing changes in price and strike price or specific details of the underlier along with knowledge of the custom basket constituents are key aspects of a swap. Based on this belief, the Commission expects data access and transmission costs to be minimal since reporting entities have immediate access to the new information and the ability to use current systems and processes to send it to the SDR.

The Commission does acknowledge that the proposed changes could result in some costs to SDRs and Reporting Entities to modify their electronic systems to accommodate the new data elements; to the extent any SDRs and Reporting Entities are already in the process of (or have completed) modifying their electronic systems to accommodate the new data elements for reporting in other jurisdictions, their costs will likely be lower since a fixed component of the infrastructure costs for such modifications may have already been incurred. The Commission, however, does not have access to data to indicate the degree to which SDRs and Reporting Entities have undertaken these modifications already; accordingly, its cost estimates represent the upper limit, with the likely actual costs being lower. These cost burdens are hourly rate for a mix of computer programmer, compliance officer, and lawyer professionals.[136] The Commission estimates the cost burden for SDRs to be $18,195 to $36,391.[137] The Commission estimates the cost burden for Reporting Entities to be $3,639 to $7,278.[138]

Request for Comments

The Commission requests comment on the above assessment of benefits and costs, including on the identified benefits for SDRs, Reporting Entities, market participants and the public generally; and on the range of costs and the estimates of cost burdens to SDRs and Reporting Entities to comply with the proposed amendments related to the addition of the new CDE data elements. Are there additional costs or benefits that the Commission should consider? Is there data or other information that the Commission should consider to assist its efforts to quantify costs and benefits (including improved efficiency) and/or to understand the degree to which SDRs and Reporting Entities have already modified their electronic systems to accommodate the new data elements, or are in the process of doing so? Are there alternatives to what the Commission is proposing that would be preferable on cost/benefit grounds and, if so, what are they and why would they be preferable? Commenters are encouraged to include both qualitative and

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[136] Commission staff arrived at an hourly rate of $93.31 using figures from a weighted average of salaries and bonuses across different professionals contained in the most recent BLS Occupation Employment and Wages Report (May 2022) multiplied by 1.3 to account for overhead and other benefits. The Commission estimated wage rate is a weighted national average of mean hourly wages for the following occupations (and their relative weight): "computer programmer - industry: securities, commodity contracts, and other financial investment and related activities" (50% weight); "compliance officer - industry: securities, commodity contracts, and other financial investment and related activities" (25% weight); and "lawyer-industry: securities, commodity contracts, and other financial investment and related activities" (25% weight). Commission staff chose this methodology to account for the variance in skill sets that may be used to accomplish the collection of information.

[137] This estimate incorporates the hourly rate of $93.31 as discussed above. For the purpose of considering the cost burden to SDRs, the Commission estimates a lower and upper bound for the number of hours required to adjust current electronic systems to send and/or receive swaps data, along with necessary requirements to validate data. For SDRs, the Commission expects a range of 500 to 1,000 hours. The CDE data elements represent 39 percent of the proposed additional data elements, so the range of expected hours for SDRs for the CDE data elements is 195 to 390 hours.

[138] This estimate incorporates the hourly rate of $93.31 as discussed above. For the purpose of considering the cost burden to Reporting Entities, the Commission estimates a lower and upper bound for the number of hours required to adjust current electronic systems to send and/or receive swaps data, along with necessary requirements to validate data. For Reporting Entities, the Commission expects a range of 100 to 200 hours. The CDE data elements represent 39 percent of the proposed additional data elements, so the range of expected hours for Reporting Entities for the CDE data elements is 39 to 78 hours.

quantitative assessments of these costs and/or benefits and to provide substantiating data, statistics, and any other supportive information for positions they may posit.

6. *Additional Swap Data Elements Reported to the Commission and to Swap Data Repositories: Proposed CFTC Data Elements*

Introduction

This section considers the costs and benefits of the thirty new data elements that are not included in the recommended list of CDE data elements. These new data elements can be broken into six data categories: prices, product, notional amount and quantities, clearing, counterparty, and transaction. A subset of these new data elements (eight) are set to also become required under part 43 real-time swap transaction reporting. We consider these CFTC new data elements separately from the CDE new data elements discussed above due to the differences that arise in both the costs and the benefits.

There are six data elements in the prices category: [1] option exercise end date, [2] option exercise frequency period, [3] option exercise frequency period multiplier, [4] swap pricing method, [5] pricing date schedule of the swap, and [6] start and end time of the settlement window for the floating leg(s). Three of these fields (related to option exercise) are reported also under part 43. The Commission expects a primary use-case for these data elements will focus on analysis of important swap-level characteristics that determine the payoffs – specifically noting important exercise and settlement details that will not be captured by the UPI. These details are essential for the Commission to monitor and identify potential cases of market manipulation. The Commission believes these details should be well known to both sides of the swap and be easy to report to the SDR.

There are five data elements in the product category: [1] physical delivery location, [2] pricing index location, [3] physical commodity contract indicator, [4] product grade, and [5] maturity date of the underlier. Two of these fields are reported also under part 43. Except for the last new data element, maturity date of the underlier, all the data elements here in the product category apply only to the other commodity asset class. As previously discussed, prior part 43 and part 45 rulemakings included minimal non-UPI product-related data elements, and the Commission believes the addition of these five data elements will provide it with information essential to understanding the price and risk of swaps in the other commodity asset class that the UPI alone will not capture.

There are 10 data elements in the notional amounts and quantities category, and 9 of these proposed schedule-related fields concern the delivery of power, which can be divided into four data elements related to the following three groups: [1] days of the week, [2] hours from thru, and [3] load profile type. The Commission understands that this delivery information, which is necessary to fully understand the economics of swaps for the delivery of power, will not be captured by UPIs. Further, the Commission believes this information should be readily available to both sides of the swap transaction. The remaining element is USD equivalent regulatory notional amount, which will allow for standardized and consistent reporting of notional amount and will be used to aggregate and monitor swaps market activity.

There are two data elements in the clearing category: [1] mandatory clearing indicator, and [2] clearing member identifier source. One of these fields is reported also under part 43.

There are four data elements in the counterparty category: [1] counterparty 1 identifier source, [2] counterparty 1 designation, [3] counterparty 2 designation, [4] counterparty 2 special entity. Counterparty 1 identifier source is very similar to a currently required data element for counterparty 2 and is now being added to address the introduction of certain swaps that trade without a required swap dealer or LEI. Counterparty designation fields are necessary to distinguish dealers from non-dealers.

Counterparty 2 special entity will be used for identifying reporting thresholds and exemptions.

There are three data elements in the transaction category: [1] SEF or DCM anonymous execution indicator, [2] large notional off-facility swap election indicator, and [3] SEF or DCM indicator. Two fields are reported under part 43. The Commission preliminarily believes that these fields are currently being reported to the SDRs and they are required for the SDR to perform its required responsibilities. The Commission expects this information is available to the Reporting Entities who also have systems in place to send this information to the SDRs.

Benefits

Similar to the 2020 Final Rules in which the Commission first adopted some CFTC-specific data elements, the Commission believes expanding the number of CFTC data elements is necessary to support the Commission's regulatory responsibilities. The expanded set of CFTC data elements will assist the Commission's efforts to investigate potential violations of the CEA and the CFTC regulations. For example, the product fields will be used to investigate price manipulation and disruptive trading practices, which provides benefits to market participants and the general public who could otherwise fall victim.

Further, the Commission expects the new CFTC data elements in this proposed rulemaking will benefit market participants and the general public by increasing transparency. Eight of these data elements will become part of the real-time ticker established under part 43 of the CFTC regulations.[139] The Commission believes the expanded public information increases the value of the post-trade public dissemination. The general public benefits with the increased transparency as the information can be used to generate reports that increase knowledge related to trade activity. This

[139] *See* 17 CFR part 43.

information is also included in the expanded set of regulatory data required under part 45, which further benefits market participants and the general public by allowing Commission staff to incorporate publicly accessible data into its market oversight and compliance responsibilities.

The Commission believes that the new CFTC data elements will benefit SDRs by providing them with required information to comply more easily with Commission regulations. For example, the 'mandatory clearing indicator' represents information that should be known to the Reporting Entity but might be uncertain to the SDR, which requires precise information to comply with required time delays pursuant to § 43.5.

Costs

As discussed above regarding the proposed CDE data elements, the Commission believes the cost burden to SDRs and Reporting Entities will likely be limited to the costs required to modify and expand existing electronic systems and databases to accommodate the new CFTC data elements. While the subset of proposed data elements considered here are not considered CDE, the Commission expects the majority are essential price-forming details of the swap and should be readily available to the Reporting Entity to send to an SDR without incurring significant costs.

Using the same methodology employed, above, to estimate costs related to proposed CDE data elements, the Commission estimates the costs to SDRs and Reporting Entities associated with the need to modify their electronic systems to accommodate the new proposed CFTC data elements to be as follows: SDRs—$28,460 to $56,919;[140] Reporting Entities—$5,692 to $11,384.[141]

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[140] This estimate incorporates the hourly rate of $93.31 as discussed above. The Commission expects the SDRs will be required to spend 500 to 1,000 hours to update systems to accommodate the new data elements. The CFTC data elements represent 61 percent of the proposed additional data elements, so the range of expected hours for SDRs for the CFTC data elements is 305 to 610 hours.

[141] This estimate incorporates the hourly rate of $93.31 as discussed above. The Commission expects the Reporting Entities will be required to spend 100 to 200 hours to update systems to accommodate the new data elements. The CFTC data elements represent 61 percent of the proposed additional data elements, so the range of expected hours for Reporting Entities for the CFTC data elements is 61 to 122 hours.

Request for Comments

The Commission requests comment on the above assessment of benefits and costs, including on the identified benefits for SDRs, market participants and the public generally; and on the range of costs and the estimates of cost burdens to SDRs and Reporting Entities to comply with the proposed amendments related to the addition of the new CFTC data elements. Are there additional costs or benefits that the Commission should consider? Is there data or other information that the Commission should consider to assist its efforts to quantify costs and benefits? Are there alternatives to what the Commission is proposing that would be preferable on cost/benefit grounds and, if so, what are they and why would they be preferable? Commenters are encouraged to include both qualitative and quantitative assessments of these costs and/or benefits and to provide substantiating data, statistics, and any other supportive information for positions they may posit.

7. *Section 15(a) Considerations*

Factor 1: Protection of Market Participants and the Public

The Commission believes the proposed changes will enhance protections already in place for market participants and the public. By adding new data elements, the Commission believes it will receive more cohesive, more standardized, and, ultimately, more accurate data without sacrificing the ability to oversee the markets robustly. Higher-quality swap data will improve the Commission's oversight capabilities, and, in turn, will aid it in protecting markets, market participants, and the public in general. The Commission views this benefit, in combination with the others it recognizes, to warrant the relatively minor expected costs that it has identified.

Factor 2: Efficiency, Competitiveness, and Financial Integrity of Futures Markets

The Commission believes that the proposed amendments may potentially have a beneficial effect for the financial integrity of the swap markets because the proposed amendments would assist the Commission in its supervision of registrants and oversight of the derivatives markets. More complete and more accurate publicly disseminated swap transactions data may improve market efficiency and competitiveness by helping the public make better informed decisions. Moreover, as discussed above, the Commission believes that adding certain CDE fields will benefit cross-jurisdictional Reporting Entities by reducing compliance and reporting costs, and the Commission believes that in some instances the new proposed CFTC data elements will benefit SDRs by providing them with information that can be used to comply with the Commission's regulations. Again, the Commission views this benefit, in combination with the others it recognizes, to warrant the relatively minor expected costs that it has identified.

Factor 3: Price Discovery

Section 2(a)(13) of the CEA and the Commission's existing regulations in part 43 implementing CEA section 2(a)(13) require STAPD to be made available to the public in real time. The Commission believes inaccurate and incomplete STAPD hinders the use of the STAPD, which harms transparency and price discovery. The Commission expects market participants will be better able to analyze STAPD as a result of the additional publicly disseminated data elements, because the fields will make STAPD more accurate and complete. The Commission views this benefit, in combination with the others it recognizes, to warrant the relatively minor expected costs that it has identified.

Factor 4: Sound Risk Management Practices

The Commission believes the proposed rules will improve the quality of swap data reported to SDRs and, hence, improve the Commission's ability to monitor the swaps market, react to changes in market conditions, and fulfill its regulatory responsibilities generally. The Commission believes regulator access to high-quality swap data is essential for regulators to monitor the swaps market for systemic risk or unusually large concentrations of risk in individual swaps markets or asset classes. The

Commission views this benefit, in combination with the others it recognizes, to warrant the relatively minor expected costs that it has identified.

Factor 5: Other Public Interest Considerations

The Commission believes the improved accuracy resulting from improvements to data entry by market participants via the proposed rules has other beneficial public interest impacts including: [1] Increased understanding for the public, market participants, and the Commission of the interaction between the swaps market, other financial markets, and the overall economy; [2] Improved regulatory oversight and enforcement capabilities; and [3] Enhanced information for the Commission and other regulators so that they may establish more effective public policies to monitor and, where necessary, reduce overall systemic risk. The Commission views these benefits, in combination with the others it recognizes, to warrant the relatively minor expected costs that it has identified.

General Request for Comments

The Commission generally requests comments on all aspects of its consideration of costs and benefits, including the identification and assessment of any costs and benefits not discussed herein; data and any other information to assist or otherwise inform the Commission's ability to quantify or qualitatively describe the costs and benefits of the proposed amendments; and substantiating data, statistics, and any other information to support positions posited by commenters with respect to the Commission's discussion. The Commission welcomes comment on such costs and benefits, particularly from existing Reporting Entities and SDRs that can provide quantitative cost and benefit data based on their respective experiences. The Commission also welcomes comments on alternatives to the proposed amendments that may be preferable on cost-benefit grounds and why.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act[142] ("RFA") requires that agencies, in proposing rules, consider the impact of those rules on "small entities."[143] The Commission has defined "small entities" as used by the Commission in evaluating the impact of its rules in accordance with the RFA.[144] The amendments to part 43 and part 45 proposed herein would have a direct effect on the operations of DCMs, DCOs, MSPs, PBs,[145] SDs, RCPs, SEFs, and SDRs. The Commission has previously certified that DCMs,[146] DCOs, [147] MSPs, [148] SDs,[149] SEFs,[150] and SDRs[151] are not small entities for RFA purposes.

The proposed amendments to part 43 and part 45 would have a direct impact on all RCPs. These RCPs may include SDs, MSPs, DCOs, and non-SD/MSP/DCO counterparties. Regarding whether non-SD/MSP/DCO reporting counterparties are small entities for RFA purposes, the Commission notes that section 2(e) of the CEA 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.[152] The Commission has previously certified that ECPs are not small entities for purposes of the RFA.[153]

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[142] 5 U.S.C. 601 *et seq*.
[143] *See* 5 U.S.C. 603. The RFA applies to rules subject to notice and comment rulemakings issued pursuant to section 553(b) of the Administrative Procedure Act, 5 U.S.C. 553(b), or any other law. *Id.*
[144] *See* Policy Statement and Final Establishment of Definitions, 47 FR 18618 (Apr. 30, 1982).
[145] The Commission understands that all prime brokers ("PBs") currently acting as such in connection with swaps are SDs. Consequently, the RFA analysis applicable to SDs applies equally to PBs.
[146] *See* 1982 RFA Release.
[147] The Commission has previously certified that DCOs are not small entities for purposes of the RFA. *See* DCO General Provisions and Core Principles, 76 FR 69334, 69428 (Nov. 8, 2011).
[148] *See* SD and MSP Recordkeeping, Reporting, and Duties Rules, 77 FR 20128, 20194 (Apr. 3, 2012) (basing determination in part on minimum capital requirements).
[149] *See id*.
[150] *See* Core Principles and Other Requirements for SEFs, 78 FR 33476, 33548 (June 4, 2013).
[151] *See* Swap Data Repositories, 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).
[152] *See* 7 U.S.C. 2(e).
[153] *See* 2020 RTR Final Rule, 85 FR at 75461.

The Commission has analyzed swap data reported to each SDR[154] 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 that have reporting obligations under parts 43 and 45 are either ECPs or do not meet the definition of ''small entity'' established in the RFA. Accordingly, the Commission does not believe the Final Rule will affect a substantial number of small entities.

Based on the above analysis, the Commission does not believe that this proposal will have a significant economic impact on a substantial number of small entities. Thus, under section 3(a) of the RFA,[155] the Chairman, on behalf of the Commission, certifies that the proposed rules will not have a significant economic impact on a substantial number of small entities. The Commission nonetheless invites comment from any entity which believes that these rules would have a significant economic impact on its operations.

C. Paperwork Reduction Act

The Paperwork Reduction Act ("PRA")[156] imposes certain requirements on Federal agencies, including the Commission, in connection with agencies' conducting or sponsoring any collection of information, as defined by the PRA. This proposed rulemaking would result in the collection of information within the meaning of the PRA. The Commission has previously received control numbers from the Office of

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[154] 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, 603,864 equity swaps, 357,851 other commodity swaps, 276,052 IRS, and 98,145 CDS.

[155] 5 U.S.C. 605(b).

[156] 44 U.S.C. 3501 *et seq.*

Management and Budget ("OMB") for each of the collections impacted by this rulemaking: OMB Control Numbers 3038-0070 (relating to part 43 Real-Time Public Reporting) and 3038-0096 (relating to part 45 Swap Data Recordkeeping and Reporting Requirements).

The Commission is proposing to amend the above information collections to accommodate newly proposed and revised information collection requirements for participants in the swaps markets that require approval from OMB under the PRA. The amendments are expected to modify the existing annual burden for complying with certain requirements of parts 43 and 45. Specifically, the Commission is proposing to amend regulation 43.4(c) to incorporate the UPI and product classification system for the other commodity asset class and amending appendix A to part 43 and appendix 1 to part 45 to add additional data elements to be reported by Reporting Entities.

Until the Commission designates a UPI and product classification system for the other commodity asset class, Reporting Entities will use the internal product identifiers or product descriptions used by the SDR for the reporting of swaps in the other commodity asset class. As a result, until the Commission designates a UPI for the other commodity asset class, the burden estimates for the product fields are already accounted for in the current burden estimates for §§ 45.3 and 45.4. To avoid double-counting, the Commission is not revising the burden estimate for the implementation of a UPI and product classification system for the other commodity asset class until the Commission designates a UPI.

The Commission also proposes to amend appendix A to part 43 and appendix 1 to part 45 to require the reporting and public dissemination of certain additional details regarding swap transactions. Appendix A to part 43 describes the fields for which an SDR must publicly disseminate swap transaction and pricing data, and appendix 1 to part 45 lists the swap data elements required to be reported to SDRs. The Commission is proposing to add nineteen data elements from the CDE Technical Guidance 3.0 (of which ten are required to be publicly disseminated) and thirty data elements not included in the CDE Technical Guidance 3.0 (of which eight are required to be publicly disseminated) to the Data Element Appendices. The reporting of these additional data elements will affect the burden estimates for part 43 (Real-Time Public Reporting) and part 45 (Swap Data Recordkeeping and Reporting Requirements).[157]

The Commission is therefore submitting this proposal to the OMB for its review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. Responses to this collection of information by reporting firms pursuant to the parts 43 and 45 regulations would be mandatory. The Commission will protect proprietary information according to the Freedom of Information Act[158] and 17 CFR part 145, "Commission Records and Information." In addition, CEA section 8(a)(1) strictly prohibits the Commission, unless specifically authorized by the CEA, from making public "data and information that would separately disclose the business transactions or market positions of any person and trade secrets or names of customers."[159] The Commission is also required to protect certain information contained in a government system of records according to the Privacy Act of 1974.[160]

1. Part 43: Revisions to Collection 3038-0070 (Real-Time Public Reporting)

Regulation 43.3 requires reporting counterparties, SEFs, and DCMs to send swap transaction and pricing data as described in appendix A of part 43 to SDRs as soon as technologically practicable after execution. Regulation 43.4 requires SDRs to publicly disseminate the swap transaction and pricing data described in appendix A of part 43.

[157] As discussed above in the Cost-Benefit Considerations section, the following cost burden estimations are based on an estimated hourly rate for a mix of computer programmer, compliance officer, and lawyer professionals. Commission staff arrived at an hourly rate of $93.31 using figures from a weighted average of salaries and bonuses contained in the most recent BLS Occupation Employment and Wages Report (May 2022) multiplied by 1.3 to account for overhead and other benefits.
[158] 5 U.S.C. 552.
[159] 7 U.S.C. 12(a)(1).
[160] 5 U.S.C. 552a.

The Commission estimates that the highly automated nature of part 43 reporting virtually eliminates the marginal costs associated with the ongoing recordkeeping or reporting burden for each proposed additional data element to appendix A of part 43. Rather, the costs for the proposed amendments will mostly be incurred to develop, modify, and test existing processes to capture and transmit the proposed additional data elements. Accordingly, the Commission is retaining its previous estimated numbers of reports, burden hours per report, and average burden hour cost under §§ 43.3 and 43.4. However, the Commission does estimate Reporting Entities will incur the following costs to implement the additional new data fields.

Under § 43.3, the Commission estimates that the cost for a Reporting Entity, which includes DCMs, DCOs, SDs, MSPs, non-SD/MSP/DCOs, and SEFs, to modify their systems and to adopt the proposed addition of data elements to appendix A to part 43 could range from $3,000 - $6,000, assuming it takes each Reporting Entity an estimated total of 33 - 67 hours to perform the necessary tasks. There are an estimated 1,729 Reporting Entities. Since the Commission cannot enter a range of estimates, the Commission has averaged its estimates of $3,000 to $6,000 as $4,500 for the 1,729 reporting entities, for a total of $7,780,500 ($4,500 * 1,729 reporting entities). Based on five-year, straight line depreciation, this amounts to annualized total capital/start-up costs for all covered entities of $1,556,100 ($7,780,500 / 5). The estimated cost is based on a number of assumptions that cover tasks required to design, test, and implement an updated data system based on the new swap data elements contained in part 43.

Under § 43.4, the Commission estimates that the cost for an SDR to modify their systems, including their data reporting, ingestion, and validation systems, and maintain those modifications going forward may range from $16,000 - $31,000 per SDR, assuming it takes each Reporting Entity an estimated total of 170 - 330 hours to perform the necessary tasks. There are currently three SDRs. Since the Commission cannot enter a range of estimates, the Commission has averaged its estimates of $16,000 - $31,000 as $23,500 for the three SDRs, for a total of $70,500 ($23,500 * 3 reporting entities). Based on five-year, straight line depreciation, this amounts to annualized total capital/start-up costs for all covered entities of $14,100 ($70,500 / 5). The estimated cost range is based on assumptions that cover the set of tasks required for the SDR to design, test, and implement a data system based on the list of swap data elements contained in part 43.

2. Part 45: Revisions to Collection 3038-0096 (Swap Data Recordkeeping and Reporting Requirements)

Under §§ 45.3 and 45.4, SEFs, DCMs, and reporting counterparties must report swap creation data and swap continuation data as described in the data elements in appendix 1 to part 45 and in the form and manner provided in the technical specification published by the Commission under § 45.15.[161] SDRs are required to accept the data elements from the Reporting Entities and maintain systems to validate swap data.[162] Similar to the discussion above in connection with the burden estimates for part 43, the Commission estimates that the highly automated nature of part 45 reporting virtually eliminates the marginal costs associated with the ongoing reporting or recordkeeping burden for each proposed additional data element to appendix 1 of part 45. Rather, the costs for the proposed amendments will primarily be incurred to develop, modify, and test existing processes to capture and transmit the proposed additional data elements. Accordingly, the Commission is retaining its previous estimated numbers of reports, burden hours per report, and average burden hour costs for reporting and recordkeeping under §§ 45.3 and 45.4. However, the Commission does expect Reporting Entities to

[161] *See* 17 CFR 45.3, 45.4, and 45.15.
[162] *See* 17 CFR 45.4(b), 49.10.

incur the following capital/start-up costs under § 45.3 to implement the additional new data fields.[163]

The Commission estimates that the cost for a Reporting Entity to modify their systems to adopt the proposed addition of data elements to appendix 1 of part 45 could range from $37,000 - $75,000, assuming an estimated total of 400 - 800 hours per reporting to perform the necessary tasks. There are an estimated 1,732 Reporting Entities. Since the Commission cannot enter a range of estimates, the Commission has averaged its estimates of $37,000 - $75,000 as $56,000 for the 1,732 Reporting Entities, for a total of $96,992,000 ($56,000 * 1,732 reporting entities). Based on five-year, straight line depreciation, this amounts to annualized total capital/start-up costs for all covered entities of $19,398,400 ($96,992,000 / 5). The estimated cost range is based on a number of assumptions that cover tasks required to design, test, and implement an updated data system based on the new swap data elements contained in part 45.

Request for Comment

The Commission invites the public and other Federal agencies to comment on any aspect of the proposed information collection requirements discussed above. The Commission will consider public comments on this proposed collection of information in:

(1) Evaluating whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have a practical use;

(2) Evaluating the accuracy of the estimated burden of the proposed collection of information, including the degree to which the methodology and the assumptions that the

[163] The Commission included the estimated capital/start-up costs associated with modification of systems to implement the additional new data fields in appendix 1 to part 45 under § 45.3. To avoid double counting, these estimates also cover any capital/start-up costs under § 45.4 for a Reporting Entity to modify its systems to implement the proposed addition of data elements to appendix 1. As noted above, the Commission is soliciting comments on the revised burden estimates for part 45, including the estimated costs related to the modification or maintenance of systems in order to comply with the proposed amendments.

Commission employed were valid;

(3) Enhancing the quality, utility, and clarity of the information proposed to be collected; and

(4) Minimizing the burden of the proposed information collection requirements on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological information collection techniques, *e.g.*, permitting electronic submission of responses.

Copies of the submission from the Commission to OMB are available from the CFTC Clearance Officer, 1155 21st Street, NW, Washington, DC 20581, (202) 418–5714 or from *https://RegInfo.gov*. Organizations and individuals desiring to submit comments on the proposed information collection requirements should send those comments to:

- The Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, Attn: Desk Officer of the Commodity Futures Trading Commission;
- (202) 395–6566 (fax); or
- *OIRAsubmissions@omb.eop.gov* (email).

Please provide the Commission with a copy of submitted comments so that comments can be summarized and addressed in the final rulemaking, and please refer to the **ADDRESSES** section of this rulemaking for instructions on submitting comments to the Commission. OMB is required to make a decision concerning the proposed information collection requirements between 30 and 60 days after publication of this release in the *Federal Register*. Therefore, a comment to OMB is best assured of receiving full consideration if OMB receives it within 30 calendar days of publication of this release. Nothing in the foregoing affects the deadline enumerated above for public comment to the Commission on the proposed rules.

D. Antitrust Considerations

CEA section 15(b) 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.[164]

The Commission believes that the public interest to be protected by the antitrust laws is generally to protect competition. The Commission requests comment on whether the proposed rules implicate any other specific public interest to be protected by the antitrust laws.

The Commission has considered the proposed rules to determine whether they are anticompetitive and has preliminarily identified no anti-competitive effects. The Commission requests comment on whether the proposed rules are anticompetitive and, if so, how and what the anticompetitive effects are.

Because the Commission has preliminarily determined that the proposed rules are not anticompetitive and have no anticompetitive effects, the Commission has not identified any less anticompetitive means of achieving the purposes of the CEA. To the extent, however, any commenter may disagree with this assessment, the Commission requests comment on whether there are less anticompetitive means of achieving the relevant purposes of the CEA that would otherwise be served by adopting the proposed rules.

List of Subjects

17 CFR Part 43

Consumer protection, Reporting and recordkeeping requirements, Swaps.

17 CFR Part 45

[164] 7 U.S.C. 19(b).

Data recordkeeping requirements, Data reporting requirements, Swaps.

For the reasons stated in the preamble, the Commodity Futures Trading Commission proposes to amend 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 § 43.4 by revising paragraphs (c)(2), (c)(4) introductory text, (c)(4)(i), (c)(4)(ii) introductory text, and (c)(4)(iii) and adding paragraph (c)(5) to read as follows:

§ 43.4 Swap transaction and pricing data to be publicly disseminated in real-time.

* * * * *

(c) * * *

(2) *Actual product description reported to swap data repository.* For all publicly reportable swap transactions in the interest rate, credit, equity, and foreign exchange asset classes, reporting counterparties, swap execution facilities, and designated contract markets shall provide a swap data repository with swap transaction and pricing data that includes an actual description of the underlying asset(s). This requirement is separate from the requirement that a reporting counterparty, swap execution facility, or designated contract market shall report swap data to a swap data repository pursuant to section 2(a)(13)(G) of the Act and 17 CFR chapter I.

* * * * *

(4) *Reporting and public dissemination of the underlying asset(s) for certain swaps in the other commodity asset class.* Reporting counterparties, swap execution facilities, and designated contract markets shall provide a swap data repository, and a swap data repository shall publicly disseminate, swap transaction and pricing data in the other commodity asset class as described in this paragraph.

(i) Reporting counterparties, swap execution facilities, and designated contract markets shall provide a swap data repository, and a swap data repository shall publicly disseminate, swap transaction and pricing data for publicly reportable swap transactions in the other commodity asset class in the manner described in paragraphs (c)(4)(ii) and (iii) of this section.

(ii) The actual underlying asset(s) shall be provided and publicly disseminated for the following publicly reportable swap transactions in the other commodity asset class:

* * * * *

(iii) Reporting counterparties, swap execution facilities, and designated contract markets shall provide a swap data repository the actual underlying assets of swaps in the other commodity asset class that are not described in paragraph (c)(4)(ii) of this section, which shall be publicly disseminated by limiting the geographic detail of the underlying asset(s). The identification of any specific delivery point or pricing point associated with the underlying asset of such other commodity swap shall be publicly disseminated pursuant to appendix E of this part.

* * * * *

(5) *Unique Product Identifiers and Product Classification System.* (i) When a unique product identifier and product classification system has been designated by the Commission to be used in recordkeeping and swap data reporting pursuant to regulation 45.7, reporting counterparties, swap execution facilities, and designated contract markets shall comply with the requirement to provide, and swap data repositories shall comply with any requirement to disseminate, an actual description of the underlying asset(s) by providing or disseminating, as applicable, swap transaction and pricing data that includes a unique product identifier and product classification system designated by the Commission.

(ii) For swaps described in paragraph (c)(4)(iii) of this section, when a unique product identifier and product classification system has been designated by the Commission to be used in recordkeeping and swap data reporting pursuant to regulation 45.7, reporting counterparties, swap execution facilities, and designated contract markets shall comply with the requirement to provide, and swap data repositories shall comply with their requirement to disseminate, a description of the underlying asset(s) that limits geographic detail pursuant to paragraph (c)(4)(iii) of this section by providing or disseminating, as applicable, swap transaction and pricing data that includes a unique product identifier and product classification system designated by the Commission that identifies any specific delivery point or pricing point pursuant to appendix E of this part.

(iii) Notwithstanding the requirements in paragraph (c)(5)(ii) of this section to provide and disseminate a unique product identifier and product classification system that limits geographic detail pursuant to appendix E of this part, reporting counterparties, swap execution facilities, and designated contract markets shall also comply with part 45 reporting obligations by providing to swap data repositories a unique product identifier and product classification system that does not limit the geographic detail of the underlying assets. The requirement established in paragraph (c)(5)(ii) of this section is separate from and in addition to the requirements set out in § 45.7.

* * * * *

3. Revise appendix A to part 43 to read as follows:

Appendix A to Part 43 – Swap Transaction and Pricing Data Elements

Allowable values for data elements are set forth in the technical specification published pursuant to § 43.7(a)(1) providing the form and manner for reporting and publicly disseminating the swap transaction and pricing data elements.

#	Data Element Name	Definition for Data Element
	Category: Clearing	
1	Cleared	Indicator of whether the transaction has been cleared, or is intended to be cleared, by a central counterparty.

14	Mandatory clearing indicator	An indicator of whether the swap transaction is subject to mandatory clearing under the Commission's regulations.
	Category: Custom baskets	
31	Custom basket indicator	Indicator of whether the swap transaction is based on a custom basket.
	Category: Events	
37	Action type	Type of action taken on the transaction or type of end-of-day reporting. Allowable values for action type are subject to removals and additions as set forth in the technical specification and might include, but not be limited to, new, modify, correct, error, terminate, revive, transfer out, valuation, and collateral/margin update.
38	Event type	Explanation or reason for the action being taken on the transaction. Allowable values for event type are subject to removals and additions as set forth in the technical specification and might include, but not be limited to, trade, novation/step-in, post trade risk reduction exercise, early termination, clearing, exercise, allocation, clearing & allocation, credit event, corporate event and transfer.
39	Amendment indicator	Indicator of whether the modification of the transaction reflects newly agreed upon term(s) from the previously negotiated terms.
41	Event timestamp	Date and time of occurrence of the event.
	Category: Notional amounts and quantities	
43	Notional amount	For each leg of the transaction, where applicable: - For OTC derivative transactions negotiated in monetary amounts, amount specified in the contract. - For OTC derivative transactions negotiated in non-monetary amounts, refer to appendix in the swap data technical specification for converting notional amounts for non-monetary amounts.
44	Notional currency	For each leg of the transaction, where applicable: currency in which the notional amount is denominated.
45	Notional amount schedule - notional amount in effect on associated effective date	For each leg of the transaction, where applicable: For OTC derivative transactions negotiated in monetary amounts with a notional amount schedule: • Notional amount which becomes effective on the associated unadjusted effective date.

46	Notional amount schedule - unadjusted effective date of the notional amount	For each leg of the transaction, where applicable: For OTC derivative transactions negotiated in monetary amounts with a notional amount schedule: • Unadjusted date on which the associated notional amount becomes effective.
47	Notional amount schedule - unadjusted end date of the notional amount	For each leg of the transaction, where applicable: For OTC derivative transactions negotiated in monetary amounts with a notional amount schedule: • Unadjusted end date of the notional amount.
48	Call amount	For foreign exchange options, the monetary amount that the option gives the right to buy.
49	Call currency	For foreign exchange options, the currency in which the Call amount is denominated.
50	Put amount	For foreign exchange options, the monetary amount that the option gives the right to sell.
51	Put currency	For foreign exchange options, the currency in which the Put amount is denominated.
52	Notional quantity	For each leg of the swap transaction where applicable, for swap transactions negotiated in non-monetary amounts with fixed notional quantity for each schedule period.
53	Quantity frequency	For each leg of the swap transaction where applicable, the rate at which the quantity is quoted on the swap transaction.
54	Quantity frequency multiplier	For each leg of the swap transaction where applicable, the number of time units for the Quantity frequency.
55	Quantity unit of measure	For each leg of the transaction, where applicable: unit of measure in which the Total notional quantity and Notional quantity are expressed.
56	Total notional quantity	For each leg of the transaction, where applicable: aggregate Notional quantity of the underlying asset for the term of the transaction.
57	Notional quantity schedule - unadjusted date on which the associated notional quantity becomes effective	For each leg of the transaction, where applicable: for OTC derivative transactions negotiated in non-monetary amounts with a Notional quantity schedule • Unadjusted date on which the associated notional quantity becomes effective.
58	Notional quantity schedule - unadjusted end date of the notional quantity	For each leg of the transaction, where applicable: for OTC derivative transactions negotiated in non-monetary amounts with a Notional quantity schedule • Unadjusted end date of the notional quantity.

59	Notional quantity schedule - notional quantity	For each leg of the transaction, where applicable: for OTC derivative transactions negotiated in non-monetary amounts with a Notional quantity schedule • Notional quantity which becomes effective on the associated unadjusted effective date.
	Category: Packages	
69	Package indicator	Indicator of whether the swap transaction is part of a package transaction.
71	Package transaction price	Traded price of the entire package in which the reported derivative transaction is a component.
72	Package transaction price currency	Currency in which the Package transaction price is denominated.
73	Package transaction price notation	Manner in which the Package transaction price is expressed.
74	Package transaction spread	Traded price of the entire package in which the reported derivative transaction is a component of a package transaction. Package transaction price when the price of the package is expressed as a spread, difference between two reference prices.
75	Package transaction spread currency	Currency in which the Package transaction spread is denominated.
76	Package transaction spread notation	Manner in which the Package transaction spread is expressed.
	Category: Payments	
77	Day count convention	For each leg of the transaction, where applicable: day count convention (often also referred to as day count fraction or day count basis or day count method) that determines how interest payments are calculated. It is used to compute the year fraction of the calculation period, and indicates the number of days in the calculation period divided by the number of days in the year.
79	Floating rate reset frequency period	For each floating leg of the swap transaction where applicable, time unit associated with the frequency of resets.
80	Floating rate reset frequency period multiplier	For each floating leg of the swap transaction where applicable, number of time units (as expressed by the Floating rate reset frequency period) that determines the frequency at which periodic payment dates for reset occur.
81	Other payment type	Type of Other payment amount.
82	Other payment amount	Payment amounts with corresponding payment types to accommodate requirements of transaction descriptions from different asset classes.

83	Other payment currency	Currency in which Other payment amount is denominated.
87	Payment frequency period	For each leg of the transaction, where applicable: time unit associated with the frequency of payments.
88	Payment frequency period multiplier	For each leg of the transaction, where applicable: number of time units (as expressed by the Payment frequency period) that determines the frequency at which periodic payment dates occur.
	Category: Prices	
89	Exchange rate	Exchange rate between the two different currencies specified in the OTC derivative transaction agreed by the counterparties at the inception of the transaction, expressed as the rate of exchange from converting the unit currency into the quoted currency.
90	Exchange rate basis	Currency pair and order in which the exchange rate is denominated, expressed as unit currency/quoted currency.
91	Fixed rate	For each leg of the transaction, where applicable: for OTC derivative transactions with periodic payments, per annum rate of the fixed leg(s).
92	Post-priced swap indicator	Indicator of whether the swap transaction satisfies the definition of "post-priced swap" in § 43.2(a).
93	Price	Price specified in the OTC derivative transaction. It does not include fees, taxes or commissions.
94	Price currency	Currency in which the price is denominated.
95	Price notation	Manner in which the price is expressed.
96	Price unit of measure	Unit of measure in which the price is expressed.
97	Price schedule - unadjusted effective date of the price	For OTC derivative transactions with prices varying throughout the life of the transaction: • Unadjusted effective date of the price.
98	Price schedule - unadjusted end date of the price	For OTC derivative transactions with prices varying throughout the life of the transaction: • Unadjusted end date of the price.
99	Price schedule - price	For OTC derivative transactions with prices varying throughout the life of the transaction: • Price in effect between the unadjusted effective date and unadjusted end date inclusive.
100	Spread	For each leg of the transaction, where applicable: For OTC derivative transactions with periodic payments: • Spread on the individual floating leg(s) index reference price, in the case where there is a spread on a floating leg(s); or • Difference between the reference prices of the two floating leg indexes.
101	Spread currency	For each leg of the transaction, where applicable: currency in which the spread is denominated.
102	Spread notation	For each leg of the transaction, where applicable: manner in which the spread is expressed.
103	Strike price	For options other than foreign exchange options, swaptions and similar products, price at which the owner of an option

		can buy or sell the underlying asset of the option. For foreign exchange options, exchange rate at which the option can be exercised, expressed as the rate of exchange from converting the unit currency into the quoted currency. For volatility and variance swaps and similar products, the volatility strike price is reported in this data element.
104	Strike price currency/currency pair	For equity options, commodity options, and similar products, currency in which the strike price is denominated. For foreign exchange options: Currency pair and order in which the strike price is expressed.
105	Strike price notation	Manner in which the strike price is expressed.
106	Strike price schedule – Unadjusted effective date of the strike price	For options, swaptions and similar products with strike prices varying throughout the life of the transaction: • Unadjusted effective date of the strike price.
107	Strike price schedule – Unadjusted end date of the strike price	For options, swaptions and similar products with strike prices varying throughout the life of the transaction: • Unadjusted end date of the strike price.
108	Strike price schedule - strike price	For options, swaptions and similar products with strike prices varying throughout the life of the transaction: • Strike price in effect between the unadjusted effective date and unadjusted end date inclusive.
109	Option premium amount	For options and swaptions of all asset classes, monetary amount paid by the option buyer.
110	Option premium currency	For options and swaptions of all asset classes, currency in which the option premium amount is denominated.
112	First exercise date	First unadjusted date during the exercise period in which an option can be exercised.
113	Option exercise end date	For American or Bermudan exercise type, the last date for exercise.
114	Option exercise frequency period	The frequency of exercise periods.
115	Option exercise frequency period multiplier	The number of time units for the exercise frequency period.
	Category: Product	
121	Index factor	The index version factor or percent, expressed as a decimal value, that multiplied by the Notional amount yields the notional amount covered by the seller of protection for credit default swap.
122	Embedded option type	Type of option or optional provision embedded in a contract.
123	Unique product identifier (UPI)	A unique set of characters that represents a particular OTC derivative.

130	Crypto asset underlying indicator	Indicator of whether the underlying of the derivative is crypto asset.
131	Physical commodity contract indicator	For each leg of the swap transaction where applicable, an indication of whether or not the trade being submitted: (1) references one of the contracts described in appendix B to this part; or (2) is economically related to one of the contracts described in appendix B to this part.
133	Maturity date of the underlier	For each leg of the swap transaction where applicable, in case of swaptions, maturity date of the underlying swap.
	Category: Settlement	
135	Settlement currency	Currency for the cash settlement of the transaction when applicable.
136	Settlement location	Place of settlement of the transaction as stipulated in the contract.
	Category: Transaction related	
138	Non-standardized term indicator	Indicator of whether the swap transaction has one or more additional term(s) or provision(s), other than those disseminated to the public pursuant to part 43, that materially affect(s) the price of the swap transaction.
139	Block trade election indicator	Indicator of whether an election has been made to report the swap transaction as a block transaction by the reporting counterparty or as calculated by either the swap data repository acting on behalf of the reporting counterparty or by using a third party.
140	Large notional off-facility swap election indicator	Indicator of whether an election has been made to report the swap transaction as a large notional off-facility swap by the reporting counterparty or as calculated by either the swap data repository acting on behalf of the reporting counterparty or by using a third party.
141	Effective date	Unadjusted date at which obligations under the OTC derivative transaction come into effect, as included in the confirmation.
142	Expiration date	Unadjusted date at which obligations under the OTC derivative transaction stop being effective, as included in the confirmation.
143	Execution timestamp	Date and time a transaction was originally executed, resulting in the generation of a new UTI. This data element remains unchanged throughout the life of the UTI.
145	Platform identifier	Identifier of the trading facility on which the transaction was executed.
146	SEF or DCM indicator	An indication of whether the swap transaction was executed on or pursuant to the rules of a swap execution facility or designated contract market.
148	Prime brokerage transaction indicator	Indicator of whether the swap transaction satisfies the definition of “mirror swap” or “trigger swap” in § 43.2(a).

4. Revise appendix E to part 43 the introductory text to read as follows:

Appendix E to Part 43 - Other Commodity Geographic Identification for Public Dissemination Pursuant to § 43.4(c)(4)(iii)

To the extent reporting counterparties and swap data repositories are required to report or disseminate underlying assets in the other commodity asset class in a way that limits the geographic detail of the underlying assets pursuant to § 43.4(c)(4)(iii) or (c)(5)(ii), as applicable, information shall be provided or disseminated pursuant to tables E1 and E2 in this appendix. If the underlying asset of a publicly reportable swap transaction described in § 43.4(c)(4)(iii) has a delivery or pricing point that is located in the United States, such information shall be publicly disseminated pursuant to the regions described in table E1 in this appendix. If the underlying asset of a publicly reportable swap transaction described in § 43.4(c)(4)(iii) has a delivery or pricing point that is not located in the United States, such information shall be publicly disseminated pursuant to the countries or sub-regions, or if no country or sub-region, by the other commodity region, described in table E2 in this appendix.

* * * * *

PART 45—SWAP DATA RECORDKEEPING AND REPORTING REQUIREMENTS

5. 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.

6. Amend § 45.7 by:

a. Revising the section heading;

b. Revising paragraph (b)(2);

c. Adding paragraph (b)(3); and

d. Revising paragraph (c)(2).

The revisions and addition read as follows:

§ 45.7 Unique product identifier and product classification system.

* * * * *

(b) * * *

(2) When the Commission determines that such a unique product identifier and product classification system is available, the Commission shall designate the unique product identifier and product classification system to be used in recordkeeping and swap data reporting pursuant to this part, by means of a Commission order that is published in the *Federal Register* and on the Web site of the Commission, as soon as practicable after such determination is made. The order shall include notice of this designation, the contact information of the issuer of such unique product identifiers, and information concerning the procedure and requirements for obtaining unique product identifiers and using the product classification system. The Commission may subject such designation order to conditions that ensure the unique product identifier and product classification system continue to meet the requirements set out in paragraph (a) of this section. The Commission may also set, in such designation order, a date on which such designation shall be effective.

(3) If the Commission determines that a unique product identifier and product classification system, subject to a designation order pursuant to paragraph (b) of this section, does not satisfy the requirements set forth in this section, the Commission may limit, suspend, or withdraw the designation order consistent with the Act after appropriate notice and opportunity to respond.

(c) * * *

(2) In the absence of a designated unique product identifier and product classification system, each registered entity and swap counterparty shall use the internal

product identifier or product description used by the swap data repository to which a swap is reported in all recordkeeping and swap data reporting pursuant to this part.

7. Revise appendix 1 to part 45 to read as follows:

Appendix 1 to Part 45 – Swap Data Elements

Appendix 1 to Part 45 – Swap Data Elements

Allowable values for data elements are set forth in the technical specification published pursuant to § 45.15(b)(1) providing the form and manner for reporting swap data elements.

	Data Element Name	**Definition for Data Element**
	Category: Clearing	
1	Cleared	Indicator of whether the transaction has been cleared, or is intended to be cleared, by a central counterparty.
2	Central counterparty	Identifier of the central counterparty (CCP) that cleared the transaction.
3	Clearing account origin	Indicator of whether the clearing member acted as principal for a house trade or an agent for a customer trade.
4	Clearing member	Identifier of the clearing member through which a derivative transaction was cleared at a central counterparty.
5	Clearing member identifier source	Source used to identify the Clearing member.
6	Clearing swap USIs	The unique swap identifiers (USI) of each clearing swap that replaces the original swap that was submitted for clearing to the derivatives clearing organization, other than the USI for the swap currently being reported (as “USI” data element below).
7	Clearing swap UTIs	The unique transaction identifiers (UTI) of each clearing swap that replaces the original swap that was submitted for clearing to the derivatives clearing organization, other than the UTI for the swap currently being reported (as “UTI” data element below).
8	Original swap USI	The unique swap identifier (USI) of the original swap submitted for clearing to the derivatives clearing organization that is replaced by clearing swaps.
9	Original swap UTI	The unique transaction identifier (UTI) of the original swap submitted for clearing to the derivatives clearing organization that is replaced by clearing swaps.
10	Original swap SDR identifier	Identifier of the swap data repository (SDR) to which the original swap was reported.
11	Clearing receipt timestamp	The date and time, expressed in UTC, the original swap was received by the derivatives clearing organization (DCO) for clearing and recorded by the DCO’s system.
12	Clearing exceptions and	Identifies the type of clearing exception(s) or exemption(s) that the Counterparty 1 has elected.

	Data Element Name	Definition for Data Element
	exemptions – Counterparty 1	
13	Clearing exceptions and exemptions – Counterparty 2	Identifies the type of the clearing exception(s) or exemption(s) that the Counterparty 2 has elected.
14	Mandatory clearing indicator	An indicator of whether the swap transaction is subject to mandatory clearing under the Commission's regulations.
	Category: Counterparty	
15	Counterparty 1 (reporting counterparty)	Identifier of the counterparty to an OTC derivative transaction who is fulfilling its reporting obligation via the report in question. In jurisdictions where both parties must report the transaction, the identifier of Counterparty 1 always identifies the reporting counterparty.
16	Counterparty 1 identifier source	Source used to identify the Counterparty 1.
17	Counterparty 2	Identifier of the second counterparty to an OTC derivative transaction.
18	Counterparty 2 identifier source	Source used to identify the Counterparty 2.
19	Counterparty 1 financial entity indicator	Indicator of whether Counterparty 1 is a financial entity as defined in CEA section 2(h)(7)(C).
20	Counterparty 2 financial entity indicator	Indicator of whether Counterparty 2 is a financial entity as defined in CEA section 2(h)(7)(C).
21	Buyer identifier	Identifier of the counterparty that is the buyer, as determined at the time of the transaction.
22	Seller identifier	Identifier of the counterparty that is the seller, as determined at the time of the transaction.
23	Payer identifier	Identifier of the counterparty of the payer leg as determined at the time of the transaction.
24	Receiver identifier	Identifier of the counterparty of the receiver leg as determined at the time of the transaction.
25	Submitter identifier	Identifier of the entity submitting the data to the swap data repository (SDR).
26	Counterparty 1 Federal entity indicator	Indicator of whether Counterparty 1 is: (1) One of the following entities: a) An entity established pursuant to Federal law, including, but not limited to, the following: i. An "agency" as defined in 5 U.S.C. 551(1), a Federal instrumentality, or a Federal authority; ii. A government corporation (examples: as such term is defined in 5 U.S.C. 103(1) or in 31 U.S.C. 9101); iii. A government-sponsored enterprise (example: as such term is defined in 2 U.S.C. 622(8));

	Data Element Name	Definition for Data Element
		iv. A federally funded research and development center on the master list referenced in 48 CFR 35.017-6; and v. An executive department listed in 5 U.S.C. 101; or b) An entity chartered pursuant to Federal law after formation (example: an organization listed in title 36 of the U.S. Code); or (2) An entity that was established by, or at the direction of, one or more of the entities listed in clause (1), or has an ultimate parent listed in its LEI reference data that is an entity listed in clause (1) or in the first part of this clause (2). Notwithstanding the foregoing, the Counterparty 1 Federal entity indicator data element does not include federally chartered depository institutions.
27	Counterparty 2 Federal entity indicator	Indicator of whether Counterparty 2 is: (1) One of the following entities: a) An entity established pursuant to Federal law, including, but not limited to, the following: i. An "agency" as defined in 5 U.S.C. 551(1), a Federal instrumentality, or a Federal authority; ii. A government corporation (examples: as such term is defined in 5 U.S.C. 103(1) or in 31 U.S.C. 9101); iii. A government-sponsored enterprise (example: as such term is defined in 2 U.S.C. 622(8)); iv. A federally funded research and development center on the master list referenced in 48 CFR 35.017-6; and v. An executive department listed in 5 U.S.C. 101; or b) An entity chartered pursuant to Federal law after formation (example: an organization listed in title 36 of the U.S. Code); or (2) An entity that was established by, or at the direction of, one or more of the entities listed in clause (1), or has an ultimate parent listed in its LEI reference data that is an entity listed in clause (1) or in the first part of this clause (2). Notwithstanding the foregoing, the Counterparty 2 Federal entity indicator data element does not include federally chartered depository institutions.
28	Counterparty 1 designation	Indication of the reporting counterparty's designation.
29	Counterparty 2 designation	Indication of the second counterparty's designation.
30	Counterparty 2 special entity	An indication of whether Counterparty 2 is a special entity as defined in § 23.401(c) of this chapter.
	Category: Custom baskets	
31	Custom basket indicator	Indicator of whether the swap transaction is based on a custom basket.
32	Custom basket code	If the OTC derivative transaction is based on a custom basket, unique code assigned by the structurer of the custom basket to link its constituents.

	Data Element Name	Definition for Data Element
33	Basket constituent identifier	An identifier that represents a constituent of an underlying custom basket, in line with the Underlier ID within the ISO 4914 UPI reference data elements, as maintained by the UPI Service Provider or in line with an identifier that would be reported as an Underlier ID (Other) where the UPI Underlier ID is ‘OTHER’.
34	Basket constituent identifier source	The origin, or publisher, of the associated Basket constituent identifier, in line with the Underlier ID source within the ISO 4914 UPI reference data elements as maintained by the UPI Service Provider or in line with the allowable value that would be reported as an Underlier ID (Other) source where the UPI Underlier ID is ‘OTHER’.
35	Basket constituent unit of measure	Unit of measure in which the number of units of a particular custom basket constituent is expressed.
36	Basket constituent number of units	The number of units of a particular constituent in a custom basket.
	Category: Events	
37	Action type	Type of action taken on the transaction or type of end-of-day reporting. Allowable values for action type are subject to removals and additions as set forth in the technical specification and might include, but not be limited to, new, modify, correct, error, terminate, revive, transfer out, valuation, and collateral/margin update.
38	Event type	Explanation or reason for the action being taken on the transaction. Allowable values for event type are subject to removals and additions as set forth in the technical specification and might include, but not be limited to, trade, novation/step-in, post trade risk reduction exercise, early termination, clearing, exercise, allocation, clearing & allocation, credit event, corporate event and transfer.
39	Amendment indicator	Indicator of whether the modification of the transaction reflects newly agreed upon term(s) from the previously negotiated terms.
40	Event identifier	Unique identifier to link transactions entering into and resulting from an event, which may be, but is not limited to, compression or other post trade risk reduction exercises, credit event, etc. The unique identifier may be assigned by the reporting counterparty or a service provider or CCP providing the service.
41	Event timestamp	Date and time of occurrence of the event.
	Category: Notional amounts and quantities	
42	USD equivalent regulatory notional amount	For the entire swap transaction (not leg by leg), provide the USD equivalent notional amount that represents the entire overall transaction for tracking notional volume.
43	Notional amount	For each leg of the transaction, where applicable: - For OTC derivative transactions negotiated in monetary amounts,

	Data Element Name	Definition for Data Element
		amount specified in the contract. - For OTC derivative transactions negotiated in non-monetary amounts, refer to appendix in the swap data technical specification for converting notional amounts for non-monetary amounts.
44	Notional currency	For each leg of the transaction, where applicable: currency in which the notional amount is denominated.
45	Notional amount schedule - notional amount in effect on associated effective date	For each leg of the transaction, where applicable: For OTC derivative transactions negotiated in monetary amounts with a notional amount schedule: • Notional amount which becomes effective on the associated unadjusted effective date.
46	Notional amount schedule - unadjusted effective date of the notional amount	For each leg of the transaction, where applicable: For OTC derivative transactions negotiated in monetary amounts with a notional amount schedule: • Unadjusted date on which the associated notional amount becomes effective.
47	Notional amount schedule - unadjusted end date of the notional amount	For each leg of the transaction, where applicable: For OTC derivative transactions negotiated in monetary amounts with a notional amount schedule: • Unadjusted end date of the notional amount.
48	Call amount	For foreign exchange options, the monetary amount that the option gives the right to buy.
49	Call currency	For foreign exchange options, the currency in which the Call amount is denominated.
50	Put amount	For foreign exchange options, the monetary amount that the option gives the right to sell.
51	Put currency	For foreign exchange options, the currency in which the Put amount is denominated.
52	Notional quantity	For each leg of the swap transaction where applicable, for swap transactions negotiated in non-monetary amounts with fixed notional quantity for each schedule period.
53	Quantity frequency	For each leg of the swap transaction where applicable, the rate at which the quantity is quoted on the swap transaction.
54	Quantity frequency multiplier	For each leg of the swap transaction where applicable, the number of time units for the Quantity frequency.

	Data Element Name	Definition for Data Element
55	Quantity unit of measure	For each leg of the transaction, where applicable: unit of measure in which the Total notional quantity and Notional quantity are expressed.
56	Total notional quantity	For each leg of the transaction, where applicable: aggregate Notional quantity of the underlying asset for the term of the transaction.
57	Notional quantity schedule - unadjusted date on which the associated notional quantity becomes effective	For each leg of the transaction, where applicable: for OTC derivative transactions negotiated in non-monetary amounts with a Notional quantity schedule • Unadjusted date on which the associated notional quantity becomes effective.
58	Notional quantity schedule - unadjusted end date of the notional quantity	For each leg of the transaction, where applicable: for OTC derivative transactions negotiated in non-monetary amounts with a Notional quantity schedule • Unadjusted end date of the notional quantity.
59	Notional quantity schedule - notional quantity	For each leg of the transaction, where applicable: for OTC derivative transactions negotiated in non-monetary amounts with a Notional quantity schedule • Notional quantity which becomes effective on the associated unadjusted effective date.
60	Notional quantity schedule - days of week	For each leg of the swap transaction where applicable, OTC derivative transactions negotiated in non-monetary amounts with Notional quantity schedule: • Days of the week applicable for the delivery of power.
61	Notional quantity schedule - unadjusted effective date of days of week	For each leg of the swap transaction where applicable, OTC derivative transactions negotiated in non-monetary amounts with Notional quantity schedule: • Unadjusted date on which the associated days of week becomes effective for the delivery of power.
62	Notional quantity schedule - unadjusted end date of days of week	For each leg of the swap transaction where applicable, OTC derivative transactions negotiated in non-monetary amounts with Notional quantity schedule: • Unadjusted end date of the days of week for the delivery of power.
63	Notional quantity schedule - hours from thru	For each leg of the swap transaction where applicable, OTC derivative transactions negotiated in non-monetary amounts with Notional quantity schedule: • Hours from through based in UTC applicable for the delivery of power.
64	Notional quantity schedule - unadjusted effective date of hours from thru	For each leg of the swap transaction where applicable, OTC derivative transactions negotiated in non-monetary amounts with Notional quantity schedule: • Unadjusted date on which the associated hours from thru becomes effective for the delivery of power.
65	Notional quantity schedule - unadjusted end	For each leg of the swap transaction where applicable, OTC derivative transactions negotiated in non-monetary amounts with Notional quantity schedule:

	Data Element Name	Definition for Data Element
	date of hours from thru	• Unadjusted end date of the hours from thru for the delivery of power.
66	Notional quantity schedule - load profile type	For each leg of the swap transaction where applicable, OTC derivative transactions negotiated in non-monetary amounts with Notional quantity schedule: • Load profile type applicable for the delivery of power.
67	Notional quantity schedule - unadjusted effective date of load profile type	For each leg of the swap transaction where applicable, OTC derivative transactions negotiated in non-monetary amounts with Notional quantity schedule: • Unadjusted date on which the associated load profile type becomes effective for the delivery of power.
68	Notional quantity schedule - unadjusted end date of load profile type	For each leg of the swap transaction where applicable, OTC derivative transactions negotiated in non-monetary amounts with Notional quantity schedule: • Unadjusted end date of the load profile type for the delivery of power.
	Category: Packages	
69	Package indicator	Indicator of whether the swap transaction is part of a package transaction.
70	Package identifier	Identifier (determined by the reporting counterparty) in order to connect: • Two or more transactions that are reported separately by the reporting counterparty, but that are negotiated together as the product of a single economic agreement. • Two or more reports pertaining to the same transaction whenever jurisdictional reporting requirement does not allow the transaction to be reported with a single report to TRs. A package may include reportable and non-reportable transactions.
71	Package transaction price	Traded price of the entire package in which the reported derivative transaction is a component.
72	Package transaction price currency	Currency in which the Package transaction price is denominated.
73	Package transaction price notation	Manner in which the Package transaction price is expressed.
74	Package transaction spread	Traded price of the entire package in which the reported derivative transaction is a component of a package transaction. Package transaction price when the price of the package is expressed as a spread, difference between two reference prices.
75	Package transaction spread currency	Currency in which the Package transaction spread is denominated.

	Data Element Name	Definition for Data Element
76	Package transaction spread notation	Manner in which the Package transaction spread is expressed.
	Category: Payments	
77	Day count convention	For each leg of the transaction, where applicable: day count convention (often also referred to as day count fraction or day count basis or day count method) that determines how interest payments are calculated. It is used to compute the year fraction of the calculation period, and indicates the number of days in the calculation period divided by the number of days in the year.
78	Fixing date	Describes the specific date when a non-deliverable forward as well as various types of FX OTC options such as cash-settled options that will "fix" against a particular exchange rate, which will be used to compute the ultimate cash settlement.
79	Floating rate reset frequency period	For each floating leg of the swap transaction where applicable, time unit associated with the frequency of resets.
80	Floating rate reset frequency period multiplier	For each floating leg of the swap transaction where applicable, number of time units (as expressed by the Floating rate reset frequency period) that determines the frequency at which periodic payment dates for reset occur.
81	Other payment type	Type of Other payment amount.
82	Other payment amount	Payment amounts with corresponding payment types to accommodate requirements of transaction descriptions from different asset classes.
83	Other payment currency	Currency in which Other payment amount is denominated.
84	Other payment date	Unadjusted date on which the Other payment amount is paid.
85	Other payment payer	Identifier of the payer of Other payment amount.
86	Other payment receiver	Identifier of the receiver of Other payment amount.
87	Payment frequency period	For each leg of the transaction, where applicable: time unit associated with the frequency of payments.
88	Payment frequency period multiplier	For each leg of the transaction, where applicable: number of time units (as expressed by the Payment frequency period) that determines the frequency at which periodic payment dates occur.
	Category: Prices	
89	Exchange rate	Exchange rate between the two different currencies specified in the OTC derivative transaction agreed by the counterparties at the inception of the transaction, expressed as the rate of exchange from converting the unit currency into the quoted currency.
90	Exchange rate basis	Currency pair and order in which the exchange rate is denominated, expressed as unit currency/quoted currency.

	Data Element Name	Definition for Data Element
91	Fixed rate	For each leg of the transaction, where applicable: for OTC derivative transactions with periodic payments, per annum rate of the fixed leg(s).
92	Post-priced swap indicator	Indicator of whether the swap transaction satisfies the definition of "post-priced swap" in § 43.2(a) of this chapter
93	Price	Price specified in the OTC derivative transaction. It does not include fees, taxes, or commissions.
94	Price currency	Currency in which the price is denominated.
95	Price notation	Manner in which the price is expressed.
96	Price unit of measure	Unit of measure in which the price is expressed.
97	Price schedule - unadjusted effective date of the price	For OTC derivative transactions with prices varying throughout the life of the transaction: • Unadjusted effective date of the price.
98	Price schedule - unadjusted end date of the price	For OTC derivative transactions with prices varying throughout the life of the transaction: • Unadjusted end date of the price.
99	Price schedule - price	For OTC derivative transactions with prices varying throughout the life of the transaction: • Price in effect between the unadjusted effective date and unadjusted end date inclusive.
100	Spread	For each leg of the transaction, where applicable: For OTC derivative transactions with periodic payments: • Spread on the individual floating leg(s) index reference price, in the case where there is a spread on a floating leg(s); or • Difference between the reference prices of the two floating leg indexes.
101	Spread currency	For each leg of the transaction, where applicable: currency in which the spread is denominated.
102	Spread notation	For each leg of the transaction, where applicable: manner in which the spread is expressed.
103	Strike price	For options other than foreign exchange options, swaptions and similar products, price at which the owner of an option can buy or sell the underlying asset of the option. For foreign exchange options, exchange rate at which the option can be exercised, expressed as the rate of exchange from converting the unit currency into the quoted currency. For volatility and variance swaps and similar products, the volatility strike price is reported in this data element.

	Data Element Name	Definition for Data Element
104	Strike price currency/currency pair	For equity options, commodity options, and similar products, currency in which the strike price is denominated. For foreign exchange options: Currency pair and order in which the strike price is expressed.
105	Strike price notation	Manner in which the strike price is expressed.
106	Strike price schedule – Unadjusted effective date of the strike price	For options, swaptions and similar products with strike prices varying throughout the life of the transaction: • Unadjusted effective date of the strike price.
107	Strike price schedule – Unadjusted end date of the strike price	For options, swaptions and similar products with strike prices varying throughout the life of the transaction: • Unadjusted end date of the strike price.
108	Strike price schedule - strike price	For options, swaptions and similar products with strike prices varying throughout the life of the transaction: • Strike price in effect between the unadjusted effective date and unadjusted end date inclusive.
109	Option premium amount	For options and swaptions of all asset classes, monetary amount paid by the option buyer.
110	Option premium currency	For options and swaptions of all asset classes, currency in which the option premium amount is denominated.
111	Option premium payment date	Unadjusted date on which the option premium is paid.
112	First exercise date	First unadjusted date during the exercise period in which an option can be exercised.
113	Option exercise end date	For American or Bermudan exercise type, the last date for exercise.
114	Option exercise frequency period	The frequency of exercise periods.
115	Option exercise frequency period multiplier	The number of time units for the exercise frequency period.
116	Swap pricing method	For each leg of the swap transaction where applicable, the method used to price the floating leg.
117	Pricing date schedule of the swap	For each leg of the swap transaction where applicable, the adjusted date(s) on which the floating leg is priced.
118	Start and end time of the settlement window for the floating leg(s)	For each leg of the swap transaction where applicable, the time settlement window on which the floating leg is priced.
	Category: Product	
119	CDS index attachment point	Defined lower point at which the level of losses in the underlying portfolio reduces the notional of a tranche.

	Data Element Name	Definition for Data Element
120	CDS index detachment point	Defined point beyond which losses in the underlying portfolio no longer reduce the notional of a tranche.
121	Index factor	The index version factor or percent, expressed as a decimal value, that multiplied by the Notional amount yields the notional amount covered by the seller of protection for credit default swap.
122	Embedded option type	Type of option or optional provision embedded in a contract.
123	Unique product identifier (UPI)	A unique set of characters that represents a particular OTC derivative.
124	Physical delivery location	For each leg of the swap transaction where applicable, the specific delivery location associated with the underlying asset for swaps in the other commodity asset class.
125	Pricing index location	For each leg of the swap transaction where applicable, the specific pricing index location associated with the underlying asset for swaps in the other commodity asset class.
126	Underlier ID (Other)	The asset(s), index (indices) or benchmark underlying a contract or, in the case of a foreign exchange derivative, identification of index.
127	Underlier ID (Other) source	The origin, or publisher, of the associated Underlier ID (Other).
128	Underlying asset price source	For an underlying asset or benchmark not traded on a platform, the source of the price used to determine the value or level of the asset or benchmark.
129	Underlying asset trading platform identifier	For a platform traded underlying asset, the platform on which the asset is traded.
130	Crypto asset underlying indicator	Indicator of whether the underlying of the derivative is crypto asset.
131	Physical commodity contract indicator	For each leg of the swap transaction where applicable, an indication of whether or not the trade being submitted: (1) references one of the contracts described in appendix B to part 43; or (2) is economically related to one of the contracts described in appendix B to part 43.
132	Product grade	For each leg of the swap transaction where applicable, the grade of the commodity to be delivered.
133	Maturity date of the underlier	For each leg of the swap transaction where applicable, in case of swaptions, maturity date of the underlying swap.
	Category: Settlement	
134	Final contractual settlement date	Unadjusted date as per the contract, by which all transfer of cash or assets should take place and the counterparties should no longer have any outstanding obligations to each other under that contract.
135	Settlement currency	Currency for the cash settlement of the transaction when applicable.
136	Settlement location	Place of settlement of the transaction as stipulated in the contract.

	Data Element Name	Definition for Data Element
	Category: Transaction related	
137	Allocation indicator	Indicator of whether the swap transaction is intended to be allocated, will not be allocated, or is a post allocation transaction.
138	Non-standardized term indicator	Indicator of whether the swap transaction has one or more additional term(s) or provision(s), other than those disseminated to the public pursuant to part 43, that materially affect(s) the price of the swap transaction.
139	Block trade election indicator	Indicator of whether an election has been made to report the swap transaction as a block transaction by the reporting counterparty or as calculated by either the swap data repository acting on behalf of the reporting counterparty or by using a third party.
140	Large notional off-facility swap election indicator	Indicator of whether an election has been made to report the swap transaction as a large notional off-facility swap by the reporting counterparty or as calculated by either the swap data repository acting on behalf of the reporting counterparty or by using a third party.
141	Effective date	Unadjusted date at which obligations under the OTC derivative transaction come into effect, as included in the confirmation.
142	Expiration date	Unadjusted date at which obligations under the OTC derivative transaction stop being effective, as included in the confirmation.
143	Execution timestamp	Date and time a transaction was originally executed, resulting in the generation of a new UTI. This data element remains unchanged throughout the life of the UTI.
144	Reporting timestamp	Date and time of the submission of the report as reported to the trade repository.
145	Platform identifier	Identifier of the trading facility on which the transaction was executed.
146	SEF or DCM indicator	An indication of whether the swap transaction was executed on or pursuant to the rules of a swap execution facility or designated contract market.
147	SEF or DCM anonymous execution indicator	An indicator of whether the swap transaction was executed anonymously on a SEF or a DCM.
148	Prime brokerage transaction indicator	Indicator of whether the swap transaction satisfies the definition of “mirror swap” or “trigger swap” in § 43.2(a) of this chapter.
149	Prior USI (for one-to-one and one-to-many relations between transactions)	Unique swap identifier (USI) assigned to the predecessor transaction that has given rise to the reported transaction due to a lifecycle event, in a one-to-one relation between transactions or in a one-to-many relation between transactions.
150	Prior UTI (for one-to-one and one-to-many relations between transactions)	UTI assigned to the predecessor transaction that has given rise to the reported transaction due to a lifecycle event, in a one-to-one relation between transactions or in a one-to-many relation between transactions.
151	Unique swap identifier (USI)	The USI is a unique identifier assigned to all swap transactions which identifies the transaction (the swap and its counterparties)

	Data Element Name	Definition for Data Element
		uniquely throughout its duration. It consists of a namespace and a transaction identifier.
152	Unique transaction identifier (UTI)	A unique identifier assigned to all swap transactions which identifies the swap uniquely throughout its lifecycle and used for all recordkeeping and all swap data reporting pursuant to § 45.5.
153	Jurisdiction	The jurisdiction(s) that is requiring the reporting of the swap transaction.
	Category: Transfer	
154	New SDR identifier	Identifier of the new swap data repository where the swap transaction is transferred to.
	Category: Valuation	
155	Next floating reference reset date	The nearest date in the future that the floating reference resets on.
156	Last floating reference value	The most recent sampling of the value of the floating reference to determine cashflow.
157	Last floating reference reset date	The date of the most recent sampling of the floating reference to determine cashflow.
158	Delta	The ratio of the change in the price of an OTC derivative transaction to the change in price of the underlier.
159	Valuation amount	Current value of the outstanding contract without applying any valuation adjustments.
160	Valuation currency	Currency in which the valuation amount is denominated.
161	Valuation method	Source and method used for the valuation of the transaction by the reporting counterparty.
162	Valuation timestamp	Date and time of the last valuation marked to market, provided by the central counterparty (CCP) or calculated using the current or last available market price of the inputs.
	Category: Collateral and margins	
163	Affiliated counterparty for margin and capital indicator	Indicator of whether the current counterparty is deemed an affiliate for U.S. margin and capital rules (as per § 23.159 of this chapter).
164	Collateralization category	Indicator of whether a collateral agreement (or collateral agreements) between the counterparties exists.
165	Initial margin collateral portfolio code	If collateral is reported on a portfolio basis, a unique code assigned by the reporting counterparty to the portfolio that tracks the aggregate initial margin of a set of open swap transactions.

	Data Element Name	Definition for Data Element
166	Portfolio containing non-reportable component indicator	If collateral is reported on a portfolio basis, indicator of whether the collateral portfolio includes swap transactions exempt from reporting.
167	Initial margin posted by the reporting counterparty (post-haircut)	Monetary value of initial margin that has been posted by the reporting counterparty. This refers to the total current value of the initial margin after application of the haircut (if applicable), rather than to its daily change.
168	Initial margin posted by the reporting counterparty (pre-haircut)	Monetary value of initial margin that has been posted by the reporting counterparty. This refers to the total current value of the initial margin, rather than to its daily change.
169	Currency of initial margin posted	Currency in which the initial margin posted is denominated.
170	Initial margin collected by the reporting counterparty (post-haircut)	Monetary value of initial margin that has been collected by the reporting counterparty. This refers to the total current value of the initial margin after application of the haircut (if applicable), rather than to its daily change.
171	Initial margin collected by the reporting counterparty (pre-haircut)	Monetary value of initial margin that has been collected by the reporting counterparty. This refers to the total current value of the initial margin, rather than to its daily change.
172	Currency of initial margin collected	Currency in which the initial margin collected is denominated.
173	Variation margin collateral portfolio code	If collateral is reported on a portfolio basis, a unique code assigned by the reporting counterparty to the portfolio that tracks the aggregate variation margin related to a set of open swap transactions.
174	Variation margin posted by the	Monetary value of the variation margin posted by the reporting counterparty.

	Data Element Name	Definition for Data Element
	reporting counterparty (pre-haircut)	This data element refers to the total current value of the variation margin, cumulated since the first reporting of variation margins posted for the portfolio/transaction.
175	Currency of variation margin posted	Currency in which the variation margin posted is denominated.
176	Variation margin collected by the reporting counterparty (pre-haircut)	Monetary value of the variation margin collected by the reporting counterparty. This refers to the total current value of the variation margin, cumulated since the first reporting of collected variation margins for the portfolio/ transaction.
177	Currency of variation margin collected	Currency in which the variation margin collected is denominated.

Issued in Washington, DC, on December 19, 2023, by the Commission.

Robert Sidman,

Deputy Secretary of the Commission.

NOTE: The following appendices will not appear in the Code of Federal Regulations.

Appendices to Real-Time Public Reporting Requirements and Swap Data Recordkeeping and Reporting Requirements—Voting Summary and Chairman's and Commissioners' Statements

Appendix 1—Voting Summary

On this matter, Chairman Behnam and Commissioners Johnson and Goldsmith Romero voted in the affirmative. Commissioners Mersinger and Pham voted to concur. No Commissioner voted in the negative.

Appendix 2—Statement of Support of Chairman Rostin Behnam

I support the proposed rule to amend certain requirements in the Commission's regulations regarding real-time public reporting and swap data reporting and recordkeeping. Today's action continues my commitment to improve the CFTC's dataset and ensure that the agency is a leader in data management and examination. This effort will bolster the CFTC's ability to monitor micro and macro risk and identify illegal conduct. In addition, today's proposal will promote international harmonization and market resilience, and ensure that the CFTC continues to receive accurate, complete, and high-quality data on swap transactions.

The proposed amendments to Parts 43 and 45 would allow a unique product identifier and product classification system (UPI) to be implemented for the Other Commodity asset class, in accordance with CFTC regulations. The Commission previously issued an order designating a UPI to be used in swap recordkeeping and data reporting for the Interest Rate, Credit, Foreign Exchange, and Equity asset classes, so today's proposal, if finalized, will allow the UPI to be extended to the Other Commodity asset class. The proposed amendments also would modify appendix A to Part 43 and appendix 1 to Part 45 to add certain data elements that will further international harmonization and increase data quality, accuracy, and standardization.

I look forward to hearing the public's comments on the proposed amendments to the regulations and the relevant appendices in Part 43 and 45 of the Commission's regulations. I thank staff in the Division of Market Oversight, Office of the General Counsel, and the Office of the Chief Economist for all of their work on the proposal.

Appendix 3—Statement of Commissioner Kristin N. Johnson

At its peak at the end of 2007, the notional amount outstanding in the credit default swaps market is estimated to have reached a staggering \$61.2 trillion.[1] In 2008, the near collapse of largely bespoke over-the-counter (OTC) swaps market, most notably the credit default swap market, was a precipitating cause of the global financial crisis,[2]

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[1] Bank for International Settlements, *BIS Quarterly Review*, June 2018 at *https://www.bis.org/publ/qtrpdf/r_qt1806b.pdf*.

[2] *See* Financial Crisis Inquiry Commission, Final Report of the National Commission on the Causes of the Financial and Economic Crisis in the United States, at xxiv–xxv, Feb. 25, 2011, *https://www.govinfo.gov/content/pkg/GPO-FCIC/pdf/GPO-FCIC.pdf* (concluding that OTC derivatives

which the U.S. Government Accountability Office estimates resulted in roughly $10 trillion in losses, including large declines in employment and household wealth, reduced tax revenues from lower economic activity, and lost output.[3] An exemption from regulation for OTC swaps trading in bilateral markets obscured massively excessive risk-taking and undermined the integrity of global markets. The lack of reporting requirements for swap transactions left regulators with limited visibility into the OTC swaps market.

In the wake of this economic devastation, the G20 leaders met in Pittsburgh in 2009 and agreed to introduce order, transparency, and supervision in the bespoke, bilateral swaps market to ensure that regulators would never again be blind to emerging risks in this market. President Obama signed the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank) into law on July 21, 2010. In recognition of the importance of having visibility into the swaps market, among many other things Dodd-Frank mandated centralized clearing and exchange-trading of many OTC derivatives, as well as requiring reporting of all swaps to swap data repositories (SDRs), including those not subject to or exempt from the clearing requirement.

As Dodd-Frank recognized, it is imperative that regulators understand the risk in the market in order to effectively regulate it, and empowered the CFTC to regulate swaps.[4] Taking up this mantle, the Commission adopted real-time public reporting and swap data reporting regulations in 2012, which are located in Parts 43 and 45 of the Commission's regulations.[5] Under these regulations, swap counterparties, swap execution

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contributed "significantly" to the crisis by fueling mortgage securitization that provided protection against default, allowing the creation of synthetic collateralized debt obligations, and adding uncertainty when the housing bubble popped due to the derivatives comprising an unseen and unregulated market).

[3] Government Accountability Office, Financial Regulatory Reform: Financial Crisis Losses and Potential Impacts of the Dodd-Frank Act (2013), *https://fraser.stlouisfed.org/title/gao-reports-testimonies-6136/financial-regulatory-reform-622249*.

[4] H.R. 4173 — 111th Congress: Dodd-Frank Wall Street Reform and Consumer Protection Act section 723 (swaps).

[5] *See* 17 CFR parts 43, 45; Final Rule, Real-Time Public Reporting of Swap Transaction Data, 77 FR 1182 (Jan. 9, 2012);

Final Rule, Swap Data Recordkeeping and Reporting Requirements, 77 FR 2136 (Jan. 13, 2012).

facilities, and designated contract markets report publicly reportable swap transactions to SDRs.

The Commission's Division of Market Oversight (DMO), Division of Data (DOD), and Office of the Chief Economist (OCE) are responsible for reviewing the information received from the SDRs and monitoring it for systemic risk, with the goal in part to prevent another collapse from unseen exposure to particular market segments. Due to the nature of derivative contracts, risk can become multiplied several times over, untethered from the exposure to the underlying asset itself. Parts 43 and 45 achieve the necessary visibility for the Commission to effectuate its mandate under Dodd-Frank to monitor the swaps market through this reporting regime. In 2020, the Commission amended parts 43 and 45 to, among other things, streamline the requirements for reporting swaps, require SDRs to validate swap reports, permit the transfer of swap data between SDRs and generally harmonize the swaps data being reported with international guidance.[6]

The new proposed rule furthers the Commission's ongoing duty to effectively monitor the swaps market by promoting international harmonization, implementing unique product identifiers (UPIs) and allowing for geographic masking. The revisions specifically: (1) allow for geographic masking after designation of UPIs for swaps falling within the other commodity asset class, a key revision to avoid reports to SDRs of UPIs that contain detailed geographic information in contravention of Regulation 43.4(c)(4)(iii) and Appendix E to Part 43; (2) add reportable data fields to Appendix A to Part 43 and Appendix 1 to Part 45 from the current 2023 CDE Technical Guidance; and (3) implement non-substantive revisions to the descriptions of the existing reportable data elements in the forgoing appendices to harmonize with changes made at the international

[6] *See* 2020 SDRR Final Rule, 85 FR at 75503, 75504.

level. I am pleased to support this rule that allows us to continue to fulfill our ongoing commitment to protecting U.S. markets through regulatory oversight.

I commend the staff of the Division of Market Oversight, the Division of Data, and the Office of the Chief Economist for bringing to the Commission a thorough and reasoned proposal for further refining swap data reporting obligations. In particular, I would like to thank Isabella Bergstein, Owen Kopon, Alicia Viguri, and Chase Lindsey of DMO; Kate Michel and Robert Stowsky of DOD; and John Roberts and Lee Baker of OCE.

Appendix 4—Statement of Commissioner Goldsmith Romero

The CFTC proposes to strengthen swap dealer reporting requirements for commodity-based swaps—reporting that the CFTC uses for surveillance, oversight, and to avoid systemic risk. Swaps markets contributed to the 2008 financial crisis, and were previously opaque, leaving regulators blind to emerging risks.[1] Dodd Frank Act reforms required swap dealers to report transaction-level data to swap data repositories and the CFTC.

The proposed rule would require more granular data that will promote the Commission's ability to oversee and regulate swap markets. Last week, in remarks that referenced the CFTC's access to transaction-level data on swaps trades reported into registered trade repositories, Treasury Undersecretary of Domestic Finance Nellie Liang discussed the importance of data for financial stability saying, "A key lesson from the global financial crisis is that opacity about critical markets and institutions resulting from lack of high-quality data can contribute to financial instability…Simply put, in a

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[1] During the 2008 Financial Crisis, the lack of aggregated and accessible swap markets data and information precipitated the collapse of Lehman Brothers, AIG, and others.

dynamic, interconnected economy such as ours, regulators cannot effectively safeguard financial stability or respond to crises if they do not have good data…."[2]

Accurate, timely, and high-quality data on swaps is fundamental to transparency, accountability, and the avoidance of systemic risk. The Dodd-Frank Act recognized that transparency is critical to fair and orderly markets, the resilience of swap dealers and other market participants, and the stability of the U.S. financial system.

After a decade since Dodd-Frank Act swap data reporting rules have been in effect, the CFTC is strengthening swap data reporting from both an enforcement and regulatory standpoint. The Commission has brought several recent enforcement actions for violating swap data reporting laws, including against JP Morgan,[3] Goldman Sachs,[4] Bank of America and Merrill Lynch,[5] and BNP Paribas.[6] Their failure to follow the law hurt the Commission's ability to carry out its Dodd-Frank Act mandate to ensure transparency in swap markets and to identify and reduce risks that could become systemic.

The CFTC must continuously guard against post-crisis complacency towards Dodd-Frank rules—rules that promote transparency, accountability, and financial stability. Swap dealers must do the same and are reminded that they need to comply with swap reporting laws or face an enforcement action.

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[2] *See* Remarks by Under Secretary for Domestic Finance Nellie Liang at the Brookings Institution, Dec. 14, 2023, available at, *https://home.treasury.gov/news/press-releases/jy1992*.

[3] *See* Statement of Commissioner Christy Goldsmith Romero in Support of Enforcement Case Against JP Morgan Chase for Violating Reporting & Supervision Rules Designated to Identify Systemic Risk, Sept. 29, 2023, available at, *https://www.cftc.gov/PressRoom/SpeechesTestimony/romerostatement092923d*, and Statement of Commissioner Goldsmith Romero Regarding Enforcement Action Against JP Morgan Chase Bank, N.A., et al., for Swap Data Reporting Failures, July 5, 2022, available at, *https://www.cftc.gov/PressRoom/SpeechesTestimony/romerostatement070522*.

[4] *See* Concurring Statement of CFTC Commissioner Christy Goldsmith Romero on CFTC v. Goldman Sachs Over and Over Again, Sept. 29, 2023, available at, *https://www.cftc.gov/PressRoom/SpeechesTestimony/romerostatement092923c*.

[5] *See* Statement of Commissioner Goldsmith Romero in Support of Enforcement Case Against Bank of America and Merrill Lynch for Violating Reporting & Supervision Rules Designed to Identify Systemic Risk, Sept. 29, 2023, available at, *https://www.cftc.gov/PressRoom/SpeechesTestimony/romerostatement092923b*.

[6] *See* Statement of Commissioner Christy Goldsmith Romero Regarding $6 Million Enforcement Action Against BNP Paribas for Swap Data Reporting and Disclosure Failures and Failure to Supervise, July 5, 2022, available at, *https://www.cftc.gov/PressRoom/SpeechesTestimony/romerostatement070522b*.

On the regulatory side, the CFTC has been involved in international coordination efforts to obtain more granular detail on swap reporting.[7] As a result of that international coordination, on February 16, 2023, the Commission designated unique product identifiers for swap data reporting for credit, equity, foreign exchange, and interest rate swaps.[8]

The updates in this proposed rule would require unique product identifiers for commodity-based swaps, enabling the Commission to receive additional accurate and high-quality swap data. These updates reflect CFTC engagement with swap dealers, swap data repositories, and industry groups about the technical specifications and implementation of unique product identifiers.

For commodity-based swaps, the CFTC proposes to require high-quality data that would expose risk at a granular level. For example, one proposed new reporting field would include custom baskets that can be more bespoke in terms of the product and exposure risks. Another new proposed reporting field would be the "Crypto asset underlying indicator" for commodity swaps. This data would give the CFTC a level of insight that it does not currently have to safeguard against risks. The Financial Stability Oversight Council's 2023 Annual Report issued last week raised risks related to crypto-assets including "the potential for fraud, illicit finance, sanctions evasion, operational failures, liquidity and maturity mismatches, and risks to investors and consumers, as well as contagion within the crypto-asset market."[9]

With these proposed updates, the Commission is furthering its Dodd-Frank mandate that CFTC's regulations promote transparency and financial stability. I thank

[7] The CFTC has coordinated with the Financial Stability Board (FSB), the Committee on Payments and Market Infrastructure and the International Organization of Securities Commissions (CPMI-IOSCO), and the Regulatory Oversight Committee (ROC).
[8] *See* Commission Order Designating the Unique Product Identifier and Product Classification System To Be Used in Recordkeeping and Swap Data Reporting, available at, *https://www.cftc.gov/sites/default/files/2023/02/2023-03661a.pdf*.
[9] *See* FSOC's 2023 Annual Report (Dec. 14, 2023), available at, *https://home.treasury.gov/system/files/261/FSOC2023AnnualReport.pdf*.

the staff for their engagement and work. I encourage commenters to let the CFTC know if there are additional data elements or updates to the CFTC's technical instructions to ensure that the Commission will receive accurate and high-quality data that will enable the CFTC to increase transparency and financial stability.

Appendix 5—Concurring Statement of Commissioner Caroline D. Pham

I concur on the Notice of Proposed Rulemaking on Real-Time Public Reporting Requirements and Swap Data Recordkeeping and Reporting Requirements (Proposed Amendments to Parts 43 and 45 or NPRM) because I have concerns that the Commission is straying from the commitment we made to harmonizing data fields across Financial Stability Board (FSB) member jurisdictions.

I would like to thank Owen Kopon, Alicia Viguri, Isabella Bergstein, and Chase Lindsey for their work on the NPRM. I appreciate their help working with me to make revisions to address some of my concerns, and I enjoyed the productive collaboration.

Swap data reporting is a unique area for me because I was at the Commission after the financial crisis when the Dodd-Frank Act first mandated it, and then became familiar with implementation issues in my roles after the I left the Commission.

I believe the harmonization issue needs to be resolved for me to support a final rule. These issues were covered at the November 6, 2023 Global Markets Advisory Committee (GMAC) meeting, with the GMAC adopting recommendations from the Technical Issues Subcommittee on how to address them and move forward.[1] Therefore, my statement today will begin with my view on how swap data reporting came to this juncture and why it is critical that we get it right, and end with what I would need to see to support a final rule, drawing on the GMAC's recommendations.

[1] *See* Commissioner Pham Announces Agenda for the Upcoming Global Markets Advisory Committee Meeting on November 6 (Nov., 6, 2023) (recommendations are at the link for "Technical Issues Subcommittee Recommendations"), *https://www.cftc.gov/PressRoom/Events/opaeventgmac110623*.

Background

In 2009, the G-20 leaders agreed to improve the resilience of the over-the-counter (OTC) derivatives market by, among other things, agreeing that all OTC derivatives transactions should be reported to trade repositories (TRs).[2] Aggregation of data reported to TRs can help authorities obtain a comprehensive view of the OTC derivatives market, including levels of activity in the market and overall size of counterparty credit exposures.[3]

In 2010, Congress passed the Dodd-Frank Act to implement the G-20 reforms.[4] In 2012, the Commission adopted the Part 43 and Part 45 regulations, requiring SDRs to publicly disseminate swap transaction and pricing data, and swap counterparties to report trade level swap data to SDRs.

While trade reporting implementation progressed in the early years, the lack of harmonization of data formats and data quality issues remained challenging.[5] Prior to the Dodd-Frank Act, swap market participants did not adhere to a standard methodology for electronically representing swap terms. As a result, the Commission provided flexibility in Parts 43 and 45 for SDR reporting to balance its need for data with the uncertainty surrounding standards. The initial swap data elements described the information that should be reported to SDRs in terms of legal requirements, instead of standard definitions, formats, and allowable values.[6]

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[2] G-20 Leaders' Statement, The Pittsburg Summit, September 24-25, 2009.
[3] Financial Stability Board, Feasibility Study on Approaches to Aggregate OTC Derivatives Data (Sept. 19, 2014) at 1, *https://www.fsb.org/wp-content/uploads/r_140919.pdf*.
[4] CEA section 2(a)(13)(B) directs 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. Section 2(a)(13)(G) mandates that all swaps, whether cleared or uncleared, be reported to SDRs. Section 4r further requires that uncleared swaps must be reported to SDRs, and sets forth the reporting obligation for doing so as between swap counterparties. Section 21(b) directs the Commission to prescribe standards for swap data recordkeeping and reporting.
[5] Financial Stability Board, Feasibility Study on Approaches to Aggregate OTC Derivatives Data (Sept. 19, 2014) at 3.
[6] Swap Data Recordkeeping and Reporting Requirements, 77 FR 2136 (Jan. 13, 2012).

With no standard approach for reporting, CFTC staff made assumptions to account for unstandardized data that was difficult to aggregate.[7] Commission staff was also faced with incomplete or missing fields in the SDR data. Market participants reported swaps to SDRs using different methods with varying degrees of success. For instance, many counterparties left fields blank for more complex swap terms, or entered random values to mark fields as filled.

At the same time, the Commission started bringing SDR reporting enforcement cases against swap dealers for failing to report, misreporting, or over-reporting swap data to SDRs.[8] The number of SDR reporting enforcement cases has only grown over time.[9] These cases send a strong message about the importance of accurate trade reporting so the Commission can monitor risk, but large-scale instances of noncompliance also call into question the quality of the data the Commission is using.

It has also been frustrating for market participants that the Commission has failed to communicate use-cases for the significant amounts of reported data that would justify the high cost of reporting. Part 45 was adopted with the understanding that regulatory reporting would fulfill the Commission's "regulatory mandates, including systemic risk mitigation, market monitoring, and market abuse prevention." However, the Commission's messaging around SDR data has only gone from how to use the data to

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[7] For instance, DSIO's 2016 swap dealer de minimis report explained that the SDR data lacked key information necessary to conduct its analysis, including reliable notional data for non-financial commodity swaps, foreign exchange derivatives, and equity swaps. DSIO explained that "[a]ccordingly, staff developed several assumptions and methodologies to approximate potential dealing activity across all five asset classes." Swap Dealer de minimis Exception Final Staff Report: A Report by Staff of the Commodity Futures Trading Commission Pursuant to Regulation 1.3(ggg) (Aug. 15, 2016) at 4-5, *https://www.cftc.gov/sites/default/files/idc/groups/public/@swaps/documents/file/dfreport_sddeminis081516.pdf*.

[8] For instance, in 2018, the Commission sanctioned NatWest Markets, a provisionally registered swap dealer, for under-reporting, over-reporting, and misreporting tens of thousands of transactions to an SDR and failing to report hundreds of thousands of pre-enactment transactions to an SDR in a timely manner. In the Matter of: NatWest Markets Plc, formerly The Royal Bank of Scotland plc, Respondent, Order Instituting Proceedings Pursuant to sections 6(c) and 6(d) of the Commodity Exchange Act, Making Findings and Imposing Remedial Sanctions (Sept. 14, 2018).

[9] *See* CFTC Releases Annual Enforcement Results (Oct. 20, 2022) (highlighting two swap data reporting cases in 2022).

efforts to improve poor data quality.[10] The Commission still has not messaged a coherent strategy for using swap data to monitor risk, conduct surveillance, or ensure compliance with its regulations.

As the Commission adopted and implemented trade reporting requirements, CFTC staff led or participated in a number of international efforts to coordinate the global implementation of trade reporting.[11] When, at the request of the FSB, CPMI and IOSCO established a joint working group to mandate to develop guidance regarding the definition, format and usage of UTI, UPI and other critical OTC derivatives data elements (CDEs), the CFTC co-chaired the effort with the European Central Bank. The joint working group published multiple rounds of consultations on the technical aspects of UTI, UPI, and CDEs. Commenters to these consultations included many CFTC registrants and trade associations.

The CDE Technical Guidance came out of these workstreams, and provided regulatory authorities with uniform definitions, formats, and allowable values that can be used to represent many of the key terms of swaps.[12] Not only would this harmonize SDR data across FSB member jurisdictions, allowing market participants to report swap data to several jurisdictions in the same format, resulting in potential cost-savings, but it would also support the analysis of global systemic risk in swaps markets.

In 2020, the Commission published final rules amending various swap data reporting regulations to adopt the UTI Technical Guidance and CDE Technical Guidance,

[10] In 2017, the Wall Street Journal reported on a CFTC report that criticized the CFTC's swap data quality and use. The Wall Street Journal reported that "[t]he inspector general's warning cited an internal 2016 CFTC report on swaps data showing that significant amounts of information were 'essentially unusable' due to the poor quality of the data."

[11] Swap Data Recordkeeping and Reporting Requirements, 85 FR 75503, 75504-05 (Nov. 25, 2020) (describing the efforts and the Commission's roles).

[12] The most-recent version of the CDE Technical Guidance was released in October 2023. CPMI-IOSCO, Harmonisation of Critical OTC Derivatives Data Elements (other than UTI and UPI), Revised CDE Technical Guidance – Version 3, (Oct. 2023), available at *https://www.leiroc.org/publications/gls/roc_20230929.pdf*.

and align regulations with those of the SEC and ESMA.[13] A primary objective of the 2020 rule amendments was to reduce the number of fields currently reported to the CFTC, and focus on the minimum number of fields that allow the CFTC to perform its oversight functions, rather than capturing every data point on a swap.[14] Indeed, the final 2020 rules streamlined hundreds of different data fields required by the 2012 Part 43 and Part 45 rules into "128 that truly advance the CFTC's regulatory goals."[15]

However, the Proposed Amendments to Parts 43 and 45 threaten to undo the progress made by expanding the data fields from 128 to closer to 200 by adding new data elements, many of which are specific to the CFTC and drive the Commission further away from international harmonization.

The GMAC's Recommendation

I am pleased with many aspects of the Proposed Amendments to Parts 43 and 45. The proposal, for instance, to make the UPI workable for the other commodity asset class is a creative solution to an operational challenge. I commend staff for proposing an idea, and encourage comments on whether it is practical and feasible.

However, I would only be able to support a final rule that incorporates the feedback from the GMAC's recommendations to the Commission for improving trade reporting, especially if supported by commenters.[16] Adding CFTC-specific data fields creates further obstacles and uncertainty for meaningful global aggregation and analysis of trade repository data, and unnecessarily increases compliance costs. As the GMAC

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[13] See Commission 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/idc/groups/public/@lrlettergeneral/documents/letter/17-33.pdf*. Real-Time Public Reporting Requirements, 85 FR 75422 (Nov. 25, 2020); Swap Data Recordkeeping and Reporting Requirements, 85 FR 75503 (Nov. 25, 2020).

[14] See Commission Letter 17–33, Division of Market Oversight Announces Review of Swap Reporting Rules in parts 43, 45, and 49 of Commission Regulations, at 8.

[15] Appendix 2—Statement of Chairman Heath P. Tarbert, Swap Data Recordkeeping and Reporting Requirements, 85 FR 75503 at 75596.

[16] The GMAC recommendation includes: (1) not adopting any CFTC-specific additional fields in the final rule; (2) not adopting the proposed commodities data elements, as there currently is no UPI compliance date for commodities, so adding data fields in the interim will only necessitate later changes; and (3) eliminating the requirement to report UPI attributes.

heard, swap dealers have only just recovered from the significant effort to overhaul their reporting requirements and now are faced with the potential need to implement dozens of additional data fields. The CFTC already requires 47 data fields which are jurisdiction specific. If the NPRM were adopted as is, almost 40% of CFTC's data fields would be jurisdiction-specific, moving the CFTC further away from the opportunity to meaningfully aggregate data across-borders. The NPRM contradicts the efforts of global regulators to harmonize their requirements for global aggregation by establishing CDE and DMO's stated intention to streamline swap data reporting to achieve high quality data. I agree that every additional CFTC-specific field increases the complexity of the requirements and risks a degradation of the quality of the reported data.

I again thank the GMAC and the Technical Issues Subcommittee for their comprehensive recommendation, and look forward to the comments on the Proposed Amendments to Part 43 and 45.

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