Commodity Futures Trading Commission
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Amendments to Swap Data Recordkeeping and Reporting Requirements for Cleared Swaps

The Commodity Futures Trading Commission ("CFTC" or "Commission") adopted amendments to existing swap data reporting rules, as they relate to cleared swaps transactions ("Cleared Swap Reporting Amendments").

Regulatory History: Part 45 Final Rulemaking and 2014 Request for Comment

On December 20, 2011, the Commission adopted Part 45 of the Commission's regulations ("Final Part 45 Rulemaking"). Part 45 implements the requirements of section 21 of the Commodity Exchange Act by setting forth the manner and contents of reporting to swap data repositories ("SDRs"), and requires reporting both when a swap is initially executed, referred to as "creation data," and over the course of the swap's existence, referred to as "continuation data."

As part of the Commission's ongoing efforts to improve swap data quality, Commission staff has continued to evaluate the operation of Part 45, including reporting issues involving cleared swaps. Commission staff's efforts included the formation of an interdivisional working group to identify, and make recommendations to resolve, reporting challenges associated with the provisions adopted in the Final Part 45 Rulemaking. Based in large part on those efforts, the Commission requested comment in March of 2014 on a variety of swap data reporting and recordkeeping provisions. One of the subjects of the request for comment was the manner in which the swap data reporting rules should address cleared swaps.

Amendments will Better Accommodate the Reporting of Cleared Swaps

Under the framework adopted in the Final Part 45 Rulemaking, swap data reporting was premised upon the existence of one continuous swap for reporting and data representation purposes. The Commission has since had additional opportunities to consult with industry and to observe how the Part 45 regulations function in practice with respect to swaps that are cleared, including how the implementation of Part 45 interacts with the implementation of Part 39 of the Commission's regulations, which contains provisions applicable to derivatives clearing organizations ("DCOs").

In particular, § 39.12(b)(6) provides that, upon acceptance of a swap by a DCO for clearing, the original swap is extinguished and replaced by equal and opposite swaps, with the DCO as the counterparty to each such swap. The original swap that is extinguished upon acceptance for clearing is commonly referred to as the "alpha" swap, and the equal and opposite swaps that replace the original swap are commonly referred to as "beta" and "gamma" swaps. Together, these swaps make up a typical cleared swap transaction. The Commission is of the view that the existing Part 45 regulations should be amended to better accommodate the multi-swap framework of § 39.12(b)(6) by explicitly addressing each component of a cleared swap transaction as distinct swaps for purposes of Part 45 reporting. The revisions and additions adopted in this release will provide clarity to swap counterparties and registered entities of their Part 45 reporting obligations with respect to each swap involved in a cleared swap transaction. The Cleared Swap Reporting Amendments are also intended to improve the efficiency of data

collection and maintenance associated with the reporting of swaps involved in a cleared swap transaction. This release adopts as proposed the amendments noticed by the Commission in the Federal Register and published on August 31, 2015.

Newly defined terms

The Cleared Swap Reporting Amendments define the terms "original swap" and "clearing swaps" for use throughout Part 45 in order to help clarify reporting obligations for each swap involved in a cleared swap transaction. An "original swap" is defined as a swap that has been accepted for clearing by a DCO registered with the Commission. Swaps commonly known as alphas fall within this definition. A swap executed on a swap execution facility ("SEF") or designated contract market ("DCM") or off-facility would thus become an "original swap" for purposes of Part 45 by virtue of its acceptance for clearing by a DCO.

The amendments define a "clearing swap" as a swap created pursuant to the rules of a registered DCO that has a registered DCO as a counterparty, including any swap that replaces an original swap that was extinguished upon acceptance of such original swap by the DCO for clearing. The term "clearing swap" thus encompasses: (1) swaps to which the DCO is a counterparty and that replace an original swap (i.e. swaps commonly known as betas and gammas) and (2) all other swaps to which the DCO is a counterparty (even if such swap does not replace an original swap).

Creation data reporting and choice of SDR

The Cleared Swap Reporting Amendments explicitly establish DCOs as the reporting counterparty for "clearing swaps" and require DCOs to report creation data for each "clearing swap" as soon as technologically practicable after acceptance of an "original swap" by a DCO for clearing (in the event that the "clearing swap" replaces an "original swap") or as soon as technologically practicable after execution of the "clearing swap" (in the event that the "clearing swap" does not replace an "original swap"). The existing creation data reporting requirements for swaps other than "clearing swaps" remain largely unchanged.

The amendments provide that for swaps executed on or pursuant to the rules of a SEF/DCM (including swaps that become "original swaps"), the SEF/DCM has the obligation to choose the SDR to which creation data for that swap is reported. For all other swaps (including for off-facility swaps and "clearing swaps"), the reporting counterparty has the obligation to choose the SDR.

The amendments also remove the existing confirmation data reporting requirements for swaps that are intended to be cleared at the time of execution. Under the amended regulations, SEFs/DCMs and reporting counterparties continue to be required to report primary economic terms ("PET") data as part of their creation data reporting, but are no longer required to report confirmation data for swaps that are intended to be submitted to a DCO at the time of execution. Instead, the DCO is required to report both PET and confirmation data for "clearing swaps" as part of its creation data reporting obligations. Requiring an additional set of confirmation data reporting for a terminated "original swap," in addition to PET data, would be unnecessary and provide little benefit.

Continuation data reporting

The Cleared Swap Reporting Amendments require a DCO to report all continuation data for "original swaps," including terminations, to the SDR to which such "original swap" was reported, and require such SDR to accept and record the termination. Under the amended regulations, such continuation data must include the following data fields: (i) the legal entity identifier ("LEI") of the SDR to which each "clearing swap" that replaced a particular "original swap" was reported by the DCO; (ii) the unique swap identifier ("USI") of the "original swap that was replaced by the "clearing swaps"; and (iii) the USIs for each of the "clearing swaps" that replace the "original swap." Together, these fields will help data users link each component of a cleared swap transaction, even if the component parts are reported to different SDRs.

The amendments also remove the existing requirement that an SD/MSP reporting counterparty report daily valuation data for cleared swaps. Following these amendments, the DCO is the only counterparty required to report continuation data, including valuations, for "clearing swaps." Aside from this, the existing continuation data requirements for swaps that qualify as "clearing swaps" (and for uncleared swaps) remain largely unchanged.

Reporting to a single SDR

The Cleared Swap Reporting Amendments require DCOs to report all data (creation and continuation) for a particular "clearing swap" to a single SDR, and to report all creation data for each "clearing swap" that replaces a particular "original swap" (i.e. for the beta and gamma that replace a particular alpha) to a single SDR. This will ensure that all creation data and all continuation data for all "clearing swaps" that can be traced back to the same "original swap" will be reported to the same SDR (although not necessarily the same SDR as the "original swap").

USI creation and transmission

The amendments require a DCO to generate and assign a USI for each "clearing swap" upon, or as soon as technologically practicable after, acceptance of an "original swap" by the DCO for clearing (or execution of a "clearing swap" that does not replace an "original swap"), and prior to reporting the required swap creation data for each "clearing swap." The amended regulations also require a DCO to transmit the USI for a "clearing swap" electronically to the SDR to which the DCO reports required swap creation data for the "clearing swap," as part of that report; and to the DCO's counterparty with respect to that "clearing swap," as soon as technologically practicable after either acceptance of the "original swap" by the DCO for clearing or execution of a "clearing swap" that does not replace an "original swap." These amendments regarding USI creation and transmission by DCOs for "clearing swaps" are consistent with existing Part 45 USI creation and transmission provisions applicable to other registered entities such as SEFs, DCMs, and SDRs, which remain largely unchanged under the amended regulations.

PET fields

The Cleared Swap Reporting Amendments modify certain existing PET data fields and explanatory notes in Appendix 1 to Part 45 and add several new PET data fields to accommodate the adopted clarifications for the reporting of cleared swaps described above.