

Swap Transaction Reporting Requirements

This Q&A addresses swap transaction reporting requirements under Commodity Futures Trading Commission (“CFTC”) Regulations, Parts 43, 45 and 46.

Real-Time Reporting Requirements under Part 43

Swap transaction and pricing data is required to be reported to a U.S.-registered swap data repository (“SDR”) in real time pursuant to CFTC Regulations, Part 43. Real-time data is publicly disseminated on an anonymous basis for price discovery and market transparency purposes. The following is an overview of reporting requirements and responsibilities for real-time reporting.

1. Who does Part 43 apply to?

Part 43 applies to swap counterparties and intermediaries including designated contract markets (“DCMs”); swap execution facilities (“SEFs”); derivatives clearing organizations (“DCOs”); SDRs; swap dealers and major swap participants (“swap entities”).

2. What swaps are subject to reporting?

All swaps, other than foreign exchange (FX) swaps and deliverable forward contracts, are subject to reporting under Part 43.¹

3. What transactions are reportable?

In general, all cleared and uncleared, risk-based independent counterparty trades are reportable.

The following swap transactions are not reportable: transactions that are not arms-length or do not result in a change in market risk between the parties, transactions conducted pursuant to portfolio compression exercises and internal swaps between affiliates that are wholly-owned subsidiaries of the same parent entity with the exception of any “covered transaction” under Section 23A or Section 23B of the Federal Reserve Act (“inter-affiliate swaps”).²

¹ FX swaps and deliverable FX forwards have been exempted from regulation as swaps by the Department of the Treasury. (Exempt products are limited to those that are physically settled through the exchange of currencies; other FX products, including currency swaps and non-deliverable forwards (NDFs), are regulated as swaps.) FX swaps and FX forwards are nonetheless subject to SDR reporting under CFTC Regulations, Part 45, and business conduct and anti-evasion requirements.

² Generally, Sections 23A and 23B limit the extent to which a bank may engage in “covered transactions” with an affiliate. A covered transaction includes a loan to an affiliate, an asset purchase from an affiliate, a guarantee for the benefit of an affiliate or similar *bona fide* commercial transactions with an affiliate.

4. What information must be reported?

The information specified in Table A1 of Appendix A to Part 43, to the extent relevant.³ The additional information specified in Table A2 of Appendix A must be reported for options, swaptions and swaps with embedded options.

Any subsequent termination, assignment, novation, amendment or other event that would affect the price of a reportable swap also is reportable.

5. When must the information be reported?

Real-time data must be reported to a SDR as soon as technologically practicable after execution.⁴

Public dissemination of information regarding block trades (swaps having a notional or principal amount at or above the minimum block size for the relevant asset class) is subject to a time delay (generally 15 or 30 minutes).⁵

6. Which party is responsible for reporting the transaction?

Swap transactions performed on a DCM or SEF are reportable by the DCM or SEF. Off-facility swaps are reportable in accordance with the hierarchy established in Part 43 as follows:

- If only one counterparty is a swap dealer or major swap participant, the swap dealer or major swap participant reports.
- If one counterparty is a swap dealer and the other counterparty is a major swap participant, the swap dealer reports.
- If both counterparties are swap dealers or major swap participants, the counterparties must agree which counterparty will report.⁶
- If neither counterparty is a swap entity, the counterparties must agree which counterparty will report.

³ Specified information may be masked for certain transactions, e.g., the exact notional amount of a large swap (the notional may be reported as an amount in excess of the relevant cap size).

⁴ The term “as soon as technologically practicable” means as soon as possible, taking into consideration the technological capabilities of the reporting party.

⁵ Times may be longer for non-swap entity reporting counterparties.

⁶ Swap entities, in conjunction with the International Swaps and Derivatives Association (“ISDA”), have developed a set of rules to determine who will report where both counterparties have the same hierarchical status. The “Reporting Party Rules” establish a reporting convention for each asset class.

The Part 43 reporting responsibilities of swap dealers and other financial institutions, both domestic and foreign, in connection with off-facility, uncleared swaps are identified here:

[Trade Reporting Responsibilities for Bilateral Swaps under CFTC Regulations Parts 43 and 45: U.S. Swap Dealers and other Financial Entities](#)

[Trade Reporting Responsibilities for Bilateral Swaps under CFTC Regulations Parts 43 and 45: Non-U.S. Swap Dealers and other Financial Entities](#)

7. Where is the information reported?

The requisite information must be reported to a SDR for the relevant asset class. The following entities are currently provisionally registered as SDRs for the identified swap categories:⁷

- DTCC Data Repository (DDR) – all asset classes (interest rate, credit, equity, FX and commodity).
- Chicago Mercantile Exchange (CME) – all asset classes except equity.
- ICE Trade Vault (ICE) – credit, FX and commodity asset classes.
- Bloomberg Swap Data Repository (BSDR) – all asset classes.

8. How is the information reported?

The information should be reported electronically in data fields in the format and manner specified by the SDR to which the data is reported.

A reporting counterparty may report information to the SDR directly or through a third party.

9. How does the CFTC's Cross-Border Guidance affect real-time reporting obligations under Part 43?

In general, the CFTC's swap regulations do not apply to activities outside the United States unless those activities have a direct and significant connection with activities in, or effect on, U.S. commerce. Accordingly, bilateral swap transactions involving two non-U.S. counterparties that are not effected in the U.S. ordinarily should not be reportable.⁸ Different considerations apply where one or both of the counterparties is guaranteed

⁷ Notwithstanding the "provisional" designation, the SDRs are fully operational with respect to the asset classes indicated.

⁸ See the CFTC's *Interpretive Guidance and Policy Statement Regarding Compliance with Certain Swap Regulations*, 78 FR 45292 (July 26, 2013) (the "Cross-Border Guidance").

by or is an affiliate conduit of a U.S. person.⁹ In certain instances, a non-U.S. reporting party may be able to comply with reporting requirements through substituted compliance in its local jurisdiction.¹⁰

SDR Reporting Requirements For New and Historical Swaps under Parts 45 and 46

Swap creation data, continuation data and data regarding historical swaps is required to be reported to a SDR pursuant to CFTC Regulations, Parts 45 and 46. SDR data is available to the CFTC and other financial regulators for market monitoring and other purposes. The following is an overview of relevant reporting requirements and responsibilities for SDR reporting and historical reporting.

1. Who do Parts 45 and 46 apply to?

CFTC Regulation, Part 45 applies to DCMs, SEFs, DCOs, SDRs, swap entities and other swap counterparties.

CFTC Regulation, Part 46 applies to swap entities and other swap counterparties.¹¹

2. What swaps are subject to the reporting requirement?

All swaps, including FX swaps and deliverable forward contracts, are subject to reporting under Parts 45 and 46.

3. What transactions are reportable?

All cleared and uncleared swaps, including inter-affiliate transactions, are reportable under Parts 45 and 46.¹²

Swaps entered into prior to the enactment of the Dodd-Frank Wall Street Reform and Consumer Protection Act on July 21, 2010, the terms of which had not expired as of that date (“pre-enactment swaps”) and swaps entered into on or after July 21, 2010, and prior to April 10, 2013 (“transition swaps”), are reportable for purposes of Part 46.

⁹ See the *Cross-Border Guidance* for the meaning of the term “U.S. person.”

¹⁰ Substituted compliance for Part 43 reporting is not yet available for any jurisdiction.

¹¹ The CFTC declined to require execution facilities or DCOs to report historical swaps that were platform executed or cleared prior to April 10, 2013. The burden of reporting historical swaps remains with swap counterparties.

¹² The CFTC staff has, however, granted no-action relief to non-swap entity reporting counterparties with respect to the reporting of swaps with affiliated entities, subject to the conditions set out in the relief. See *CFTC Letter No. 13-09* (Apr. 5, 2013).

4. What information must be reported?

Creation data, which consists of the *primary economic terms (PET) data* and *confirmation data*, and *continuation data*, which consists of *life cycle event data* and *valuation data*, must be reported for purposes of Part 45.

The asset class specific information contained in Exhibit A, B, C or D of Appendix 1 to Part 45 must be reported with respect to *PET data*.

All of the terms of the swap matched and agreed upon by the counterparties in confirming the swap must be reported with respect to *confirmation data*.

Any event that would result in a change to *PET data* including, without limitation, a counterparty change resulting from an assignment or novation, a partial or full termination of the swap, a change to the end date for the swap, a change in the cash flows or rates originally reported, or a corporate action affecting a security or securities on which the swap is based (e.g., a merger, stock split or bankruptcy) must be reported as *life cycle event data*.

All of the data necessary to fully describe the daily mark of a swap must be reported as *valuation data*.¹³

All of the asset class specific *PET data* specified in Exhibit A, B, C or D of Appendix 1 to Part 46 must be reported for each pre-enactment swap or transition swap for purposes of Part 46.¹⁴

Swap continuation data must be reported during the life of the swap for each historical swap that was in existence on or after April 25, 2011.

The Legal Entity Identifier (LEI) (previously known as a CFTC Interim Compliant Identifier (CICI)) of the reporting and non-reporting counterparties generally is required to be included on reports made under Parts 45 and 46.¹⁵

¹³ For non-swap entity reporting counterparties, only the current daily mark of the transaction as of the last day of the quarter is required to be reported.

¹⁴ For each pre-enactment or transition swap in existence on or after April 25, 2011, the information required is limited to the information that was in the possession of the reporting counterparty on or after April 25, 2011 (together with counterparty and internal transaction identifiers). For each pre-enactment swap that expired or was terminated prior to April 25, 2011, the requisite information is limited to that which was in the possession of the reporting counterparty on or after October 14, 2010. For each transition swap that expired or was terminated prior to April 25, 2011, the requisite information is limited to that which was in the possession of the reporting counterparty on or after December 17, 2010.

¹⁵ No counterparty identifiers are required to be included on reports of historical swaps that terminated prior to April 25, 2011. Time-limited no-action relief (extended several times) has been issued by the CFTC staff permitting certain identifying information to be masked with respect to counterparties in the jurisdictions enumerated in the relief (France, Korea, Luxembourg, People's Republic of China, Switzerland, Taiwan, Belgium, India, Algeria, Singapore, Bahrain, Argentina, Hungary, Samoa, Austria and Pakistan) pending resolution of privacy, secrecy and blocking law concerns with respect to those jurisdictions. See *CFTC Letter No. 15-01* (Jan. 8, 2015).

5. When must the information be reported?

Part 45 data must be reported in accordance with the timeframes established in Rule 45.3 (for *creation data*) and Rule 45.4 (for *continuation data*), which vary based on the information reported and the party responsible for conducting the reporting.

PET data regarding Part 46 historical swaps was reportable on the compliance date applicable to the reporting counterparty.¹⁶ *Continuation data* (*life cycle event data* and *valuation data*) for live swaps is reportable in accordance with the timeframes established under Part 45.

6. Which party is responsible for reporting the transaction?

For purposes of Part 45 reporting, where the swap is platform-executed, the SEF or DCM must report the *PET data* and *confirmation data*, unless the swap is cleared in which case the *confirmation data* is reportable by the DCO.

If the swap is cleared, the DCO must report the *continuation data*. If the swap is not cleared, the *continuation data* must be reported by the reporting counterparty determined in accordance with the following hierarchy established by Part 45:

- If only one counterparty is a swap dealer, the swap dealer reports.
- If neither counterparty is a swap dealer, and only one counterparty is a major swap participant, the major swap participant reports.
- If both counterparties are non-swap entities, and only one counterparty is a financial entity, the financial entity reports.
- If both counterparties are (i) a swap dealer, (ii) a major swap participant, (iii) a non-swap entity that is a financial entity or (iv) a non-swap entity that is not a financial entity, then the counterparties must agree which party shall report.¹⁷
- Notwithstanding any of the foregoing, if both counterparties are non-swap entities and only one counterparty is a U.S. person, the U.S. person reports.
- Notwithstanding any of the foregoing, if neither counterparty is a U.S. person, the counterparties must agree which counterparty shall report.¹⁸

¹⁶ In general, PET data for all historical swaps was required to be reported by U.S. reporting parties by end 2013. Various exemptive and no-action relief has been granted to non-U.S. reporting parties with respect to swaps with other non-U.S. counterparties.

¹⁷ The counterparties must make the agreement after receiving notification to that effect from the platform, and not later than the end of the first business day following the date of execution of the swap. After the agreement is reached, the reporting counterparty must report to the SDR that it is the reporting counterparty.

¹⁸ See *supra* n.17.

For off-facility swaps subject to mandatory clearing, the reporting counterparty determined in accordance with the above hierarchy must report the *PET data*, and the DCO must report the *confirmation data* and *continuation data*.

For off-facility swaps executed in the U.S. that are not subject to mandatory clearing or voluntarily submitted for clearing, the reporting counterparty determined in accordance with the above hierarchy must report all *creation data* and *continuation data*.

The Part 45 reporting responsibilities of swap dealers and other financial institutions, both domestic and foreign, in connection with off-facility, uncleared swaps are identified here:

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For purposes of Part 46 reporting, the reporting counterparty is determined in accordance with the following hierarchy established by Part 46:¹⁹

- If only one counterparty is a swap dealer, the swap dealer reports.
- If neither party is a swap dealer, and only one counterparty is a major swap participant, the major swap participant
- If both counterparties are non-swap entities, and only one counterparty is a financial entity, the financial entity reports; unless only one of the counterparties is a U.S. person, in which case the U.S. person reports.
- If both counterparties are (i) a swap dealer, (ii) a major swap participant, (iii) a non-swap entity that is a financial entity or (iv) a non-swap entity that is not a financial entity, then the counterparties must agree which party shall report.

7. Where is the information reported?

Information under Parts 45 and 46 must be reported to a SDR for the relevant asset class.

8. How is the information reported?

PET data should be reported electronically normalized in data fields in the format and manner specified by the SDR.²⁰

¹⁹ The reporting counterparty is not required to report continuation data for any historical swap in existence on or after April 25, 2011, that has been cleared by a DCO.

Life cycle event data and *valuation data* should be reported in the format and manner specified by the SDR.

A reporting party may report information to the SDR directly or through a third party.

9. How does the CFTC's Cross-Border Guidance affect SDR reporting obligations under Parts 45 and 46?

In general, swap regulations do not apply to activities outside the United States unless those activities have a direct and significant connection with activities in, or effect on, U.S. commerce. Accordingly, bilateral swaps between two non-U.S. counterparties that are not effected in the U.S. should not be reportable unless one or both parties is a swap entity subject to registration in the United States.²¹ Different considerations apply where one or both of the parties is a guaranteed affiliate or an affiliate conduit of a U.S. person.

In certain instances, a non-U.S. reporting counterparty may be able to comply with reporting requirements through substituted compliance.²²

CFTC rules regarding swap reporting are subject to amendment from time to time and persons complying with CFTC requirements may do so pursuant to pertinent staff no-action relief, which is beyond the scope of this overview.

We would be pleased to assist you in structuring your business operations to comply with CFTC requirements and relevant relief.

Please contact us if you have any questions regarding the matters addressed in this overview.

²⁰ Information regarding historical swaps that expired or were terminated prior to April 25, 2011, may be reported via any method selected by the reporting counterparty.

²¹ See the *Cross-Border Guidance*.

²² Substituted compliance for SDR reporting is not yet available for any jurisdiction. The CFTC has indicated that substituted compliance would generally be available for SDR reporting only if the Commission has direct access to all of the data elements that are reported to a foreign trade repository.