

counterparty changes its status as well as for any outstanding uncleared swap entered into after the applicable compliance date under paragraph (a) of this section and before the counterparty changed its status.

§§ 23.162–23.199 [Reserved]

**Subpart F—Reporting, Record-keeping, and Daily Trading Records Requirements for Swap Dealers and Major Swap Participants**

SOURCE: 77 FR 20202, Apr. 3, 2012, unless otherwise noted.

**§ 23.200 Definitions.**

For purposes of subpart F, the following terms shall be defined as provided.

(a) *Business trading unit* means any department, division, group, or personnel of a swap dealer or major swap participant or any of its affiliates, whether or not identified as such, that performs, or exercises supervisory authority over the performance of, any pricing (excluding price verification for risk management purposes), trading, sales, purchasing, marketing, advertising, solicitation, structuring, or brokerage activities on behalf of a registrant.

(b) *Clearing unit* means any department, division, group, or personnel of a registrant or any of its affiliates, whether or not identified as such, that performs any proprietary or customer clearing activities on behalf of a registrant.

(c) *Complaint* means any formal or informal complaint, grievance, criticism, or concern communicated to the swap dealer or major swap participant in any format relating to, arising from, or in connection with, any trading conduct or behavior or with the swap dealer or major swap participant's performance (or failure to perform) any of its regulatory obligations, and includes any and all observations, comments, remarks, interpretations, clarifications, notes, and examinations as to such conduct or behavior communicated or documented by the complainant, swap dealer, or major swap participant.

(d) *Executed* means the completion of the execution process.

(e) *Execution* means, with respect to a swap, an agreement by the parties (whether orally, in writing, electronically, or otherwise) to the terms of a swap that legally binds the parties to such swap terms under applicable law.

(f) *Governing body*. This term means:

- (1) A board of directors;
- (2) A body performing a function similar to a board of directors;
- (3) Any committee of a board or body; or

(4) The chief executive officer of a registrant, or any such board, body, committee, or officer of a division of a registrant, provided that the registrant's swaps activities for which registration with the Commission is required are wholly contained in a separately identifiable division.

(g) *Prudential regulator* has the meaning given to such term in section 1a(39) of the Commodity Exchange Act and includes the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Farm Credit Association, and the Federal Housing Finance Agency, as applicable to the swap dealer or major swap participant.

(h) *Registered entity* has the meaning given to such term in section 1a(40) of the Commodity Exchange Act, and includes boards of trade designated as contract markets, derivatives clearing organizations, swap execution facilities, and swap data repositories.

(i) *Related cash or forward transaction* means a purchase or sale for immediate or deferred physical shipment or delivery of an asset related to a swap where the swap and the related cash or forward transaction are used to hedge, mitigate the risk of, or offset one another.

(j) *Swaps activities* means, with respect to a registrant, such registrant's activities related to swaps and any product used to hedge such swaps, including, but not limited to, futures, options, other swaps or security-based swaps, debt or equity securities, foreign currency, physical commodities, and other derivatives.

(k) *Swap confirmation* means the consummation (electronically or otherwise) of legally binding documentation (electronic or otherwise) that memorializes the agreement of the parties to all the terms of the swap. A confirmation must be in writing (whether electronic or otherwise) and must legally supersede any previous agreement (electronically or otherwise).

**§ 23.201 Required records.**

(a) *Transaction and position records.* Each swap dealer and major swap participant shall keep full, complete, and systematic records, together with all pertinent data and memoranda, of all its swaps activities. Such records shall include:

(1) *Transaction records.* Records of each transaction, including all documents on which transaction information is originally recorded. Such records shall be kept in a form and manner identifiable and searchable by transaction and by counterparty, and shall include:

(i) All documents customarily generated in accordance with market practice that demonstrate the existence and nature of an order or transaction, including, but not limited to, records of all orders (filled, unfilled, or cancelled); correspondence; journals; memoranda; ledgers; confirmations; risk disclosure documents; statements of purchase and sale; contracts; invoices; warehouse receipts; documents of title; and

(ii) The daily trading records required to be kept in accordance with § 23.202.

(2) *Position records.* Records of each position held by each swap dealer and major swap participant, identified by product and counterparty, including records reflecting whether each position is “long” or “short” and whether the position is cleared. Position records shall be linked to transaction records in a manner that permits identification of the transactions that established the position.

(3) *Records of transactions executed on a swap execution facility or designated contract market or cleared by a derivatives clearing organization.* Records of each transaction executed on a swap execution facility or designated con-

tract market or cleared by a derivatives clearing organization maintained in compliance with the Act and Commission regulations.

(b) *Business records.* Each swap dealer and major swap participant shall keep full, complete, and systematic records of all activities related to its business as a swap dealer or major swap participant, including but not limited to:

(1) *Governance.* (i) Minutes of meetings of the governing body and relevant committee minutes, including handouts and presentation materials;

(ii) Organizational charts for its governing body and relevant committees, business trading unit, clearing unit, risk management unit, and all other relevant units or divisions;

(iii) Biographies or resumes of managers, senior supervisors, officers, and directors;

(iv) Job descriptions for manager, senior supervisor, officer, and director positions, including job responsibilities and scope of authority;

(v) Internal and external audit, risk management, compliance, and consultant reports (including management responses); and

(vi) Business and strategic plans for the business trading unit.

(2) *Financial records.* (i) Records reflecting all assets and liabilities, income and expenses, and capital accounts as required by the Act and Commission regulations; and

(ii) All other financial records required to be kept under the Act and Commission regulations.

(3) *Complaints.* (i) A record of each complaint received by the swap dealer or major swap participant concerning any partner, member, officer, employee, or agent. The record shall include the complainant’s name, address, and account number; the date the complaint was received; the name of all persons identified in the complaint; a description of the nature of the complaint; the disposition of the complaint, and the date the complaint was resolved.

(ii) A record indicating that each counterparty of the swap dealer or major swap participant has been provided with a notice containing the physical address, email or other widely

available electronic address, and telephone number of the department of the swap dealer or major swap participant to which any complaints may be directed.

(4) *Marketing and sales materials.* All marketing and sales presentations, advertisements, literature, and communications, and a record documenting that the swap dealer or major swap participant has complied with, or adopted policies and procedures reasonably designed to establish compliance with, all applicable Federal requirements, Commission regulations, and the rules of any self-regulatory organization of which the swap dealer or major swap participant is a member.

(c) *Records of data reported to a swap data repository.* With respect to each swap, each swap dealer and major swap participant shall identify, retain, and produce for inspection all information and data required to be reported in accordance with part 45 of this chapter, along with a record of the date and time the swap dealer or major swap participant made the report.

(d) *Records of real-time reporting data.* Each swap dealer and major swap participant shall identify, retain, and produce for inspection all information and data required to be reported in accordance with part 43 of this chapter, along with a record of the date and time the swap dealer or major swap participant made the report.

**§ 23.202 Daily trading records.**

(a) *Daily trading records for swaps.* Each swap dealer and major swap participant shall make and keep daily trading records of all swaps it executes, including all documents on which transaction information is originally recorded. Each swap dealer and major swap participant shall ensure that its records include all information necessary to conduct a comprehensive and accurate trade reconstruction for each swap. Each swap dealer and major swap participant shall maintain each transaction record in a manner identifiable and searchable by transaction and counterparty.

(1) *Pre-execution trade information.* Each swap dealer and major swap participant shall make and keep pre-execution trade information, including, at

a minimum, records of all oral and written communications provided or received concerning quotes, solicitations, bids, offers, instructions, trading, and prices, that lead to the execution of a swap, whether communicated by telephone, voicemail, facsimile, instant messaging, chat rooms, electronic mail, mobile device, or other digital or electronic media. Such records shall include, but are not limited to:

(i) Reliable timing data for the initiation of the trade that would permit complete and accurate trade reconstruction; and

(ii) A record of the date and time, to the nearest minute, using Coordinated Universal Time (UTC), by timestamp or other timing device, for each quotation provided to, or received from, the counterparty prior to execution.

(2) *Execution trade information.* Each swap dealer and major swap participant shall make and keep trade execution records, including:

(i) All terms of each swap, including all terms regarding payment or settlement instructions, initial and variation margin requirements, option premiums, payment dates, and any other cash flows;

(ii) The trade ticket for each swap (which, together with the time of execution of each swap, shall be immediately recorded electronically for further processing);

(iii) The unique swap identifier, as required by § 45.4(a), for each swap;

(iv) A record of the date and time of execution of each swap, to the nearest minute, using Coordinated Universal Time (UTC), by timestamp or other timing device;

(v) The name of the counterparty with which each such swap was executed, including its unique counterparty identifier, as required by § 45.4(b);

(vi) The date and title of the agreement to which each swap is subject, including but not limited to, any swap trading relationship documentation and credit support arrangements;

(vii) The product name of each swap, including its unique product identifier, as required by § 45.4(c);

(viii) The price at which the swap was executed;

(ix) Fees or commissions and other expenses, identified by transaction; and

(x) Any other information relevant to the swap.

(3) *Post-execution trade information.* Each swap dealer and major swap participant shall make and keep records of post-execution trade information containing an itemized record of all relevant post-trade processing and events.

(i) Records of post-trade processing and events shall include all of the following, as applicable:

- (A) Confirmation;
- (B) Termination;
- (C) Novation;
- (D) Amendment;
- (E) Assignment;
- (F) Netting;
- (G) Compression;
- (H) Reconciliation;
- (I) Valuation;
- (J) Margining;
- (K) Collateralization; and
- (L) Central clearing.

(ii) Each swap dealer and major swap participant shall make and keep a record of all swap confirmations, along with the date and time, to the nearest minute, using Coordinated Universal Time (UTC), by timestamp or other timing device; and

(iii) Each swap dealer and major swap participant shall make and keep a record of each swap portfolio reconciliation, including the number of portfolio reconciliation discrepancies and the number of swap valuation disputes (including the time-to-resolution of each valuation dispute and the age of outstanding valuation disputes, categorized by transaction and counterparty);

(iv) Each swap dealer and major swap participant shall make and keep a record of each swap portfolio compression exercise in which it participates, including the dates of the compression, the swaps included in the compression, the identity of the counterparties participating in the exercise, the results of the compression, and the name of the third-party entity performing the compression, if any; and

(v) Each swap dealer and major swap participant shall make and keep a record of each swap that it centrally

clears, categorized by transaction and counterparty.

(4) *Ledgers.* Each swap dealer and major swap participant shall make and keep ledgers (or other records) reflecting the following:

(i) Payments and interest received;

(ii) Moneys borrowed and moneys loaned;

(iii) The daily calculation of the value of each outstanding swap;

(iv) The daily calculation of current and potential future exposure for each counterparty;

(v) The daily calculation of initial margin to be posted by the swap dealer or major swap participant for each counterparty and the daily calculation of initial margin to be posted by each counterparty;

(vi) The daily calculation of variation margin payable to or receivable from each counterparty;

(vii) The daily calculation of the value of all collateral, before and after haircuts, held by or posted by the swap dealer or major swap participant;

(viii) All transfers of collateral, including any substitutions of collateral, identifying in sufficient detail the amounts and types of collateral transferred; and

(ix) All charges against and credits to each counterparty's account, including funds deposited, withdrawn, or transferred, and charges or credits resulting from losses or gains on transactions.

(b) *Daily trading records for related cash and forward transactions.* Each swap dealer and major swap participant shall make and keep daily trading records of all related cash or forward transactions it executes, including all documents on which the related cash or forward transaction information is originally recorded. Each swap dealer and major swap participant shall ensure that its records include all information necessary to conduct a comprehensive and accurate trade reconstruction for each related cash or forward transaction. Each swap dealer and major swap participant shall maintain each transaction record in a manner identifiable and searchable by transaction and by counterparty. Such records shall include, but are not limited to:

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(1) A record of all oral and written communications provided or received concerning quotes, solicitations, bids, offers, instructions, trading, and prices, that lead to the conclusion of a related cash or forward transaction, whether communicated by telephone, voicemail, facsimile, instant messaging, chat rooms, electronic mail, mobile device, or other digital or electronic media;

(2) Reliable timing data for the initiation of the transaction that would permit complete and accurate trade reconstruction;

(3) A record of the date and time, to the nearest minute, using Coordinated Universal Time (UTC), by timestamp or other timing device, for each quotation provided to, or received from, the counterparty prior to execution;

(4) A record of the date and time of execution of each related cash or forward transaction, to the nearest minute, using Coordinated Universal Time (UTC), by timestamp or other timing device;

(5) All terms of each related cash or forward transaction;

(6) The price at which the related cash or forward transaction was executed; and

(7) A record of the daily calculation of the value of the related cash or forward transaction and any other relevant financial information.

**§ 23.203 Records; retention and inspection.**

(a) *Location of records*—(1) *Records*. All records required to be kept by a swap dealer or major swap participant by the Act and by Commission regulations shall be kept at the principal place of business of the swap dealer or major swap participant or such other principal office as shall be designated by the swap dealer or major swap participant. If the principal place of business is outside of the United States, its territories or possessions, then upon the request of a Commission representative, the swap dealer or major swap participant must provide such records as requested at the place in the United States, its territories, or possessions designated by the representative within 72 hours after receiving the request.

(2) *Contact information*. Each swap dealer and major swap participant shall maintain for each of its offices a listing, by name or title, of each person at that office who, without delay, can explain the types of records the swap dealer or major swap participant maintains at that office and the information contained in those records.

(b) *Record retention*. (1) The records required to be maintained by this chapter shall be maintained in accordance with the provisions of § 1.31, except as provided in paragraphs (b)(2) and (3) of this section. All records required to be kept by the Act and by Commission regulations shall be kept for a period of five years from the date the record was made and shall be readily accessible during the first two (2) years of the five-year period. All such records shall be open to inspection by any representative of the Commission, the United States Department of Justice, or any applicable prudential regulator. Records relating to swaps defined in section 1a(47)(A)(v) shall be open to inspection by any representative of the Commission, the United States Department of Justice, the Securities and Exchange Commission, or any applicable prudential regulator.

(2) Records of any swap or related cash or forward transaction shall be kept until the termination, maturity, expiration, transfer, assignment, or novation date of the transaction, and for a period of five years after such date. Such records shall be readily accessible until the termination, maturity, expiration, transfer, assignment, or novation date of the transaction and during the first two years of the 5-year period following such date. Provided, however, that records of oral communications communicated by telephone, voicemail, mobile device, or other digital or electronic media pursuant to § 23.202(a)(1) and (b)(1) shall be kept for a period of one year. All such records shall be open to inspection by any representative of the Commission, the United States Department of Justice, or any applicable prudential regulator. Records relating to swaps defined in section 1a(47)(A)(v) shall be open to inspection by any representative of the

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Commission, the United States Department of Justice, the Securities and Exchange Commission, or any applicable prudential regulator.

(3) Records of any swap data reported in accordance with part 45 of this chapter shall be maintained in accordance with the requirements of §45.2 of this chapter.

### § 23.204 Reports to swap data repositories.

(a) *Reporting of swap transaction data to swap data repositories.* Each swap dealer and major swap participant shall report all information and data in accordance with part 45 of this chapter.

(b) *Electronic reporting of swap transaction data.* Each swap dealer and major swap participant shall have the electronic systems and procedures necessary to transmit electronically all information and data required to be reported in accordance with part 45 of this chapter.

### § 23.205 Real-time public reporting.

(a) *Real-time public reporting of swap transaction and pricing data.* Each swap dealer and major swap participant shall report all information and swap transaction and pricing data required to be reported in accordance with the real-time public recording requirements in part 43 of this chapter.

(b) *Electronic reporting of swap transaction data.* Each swap dealer and major swap participant shall have the electronic systems and procedures necessary to transmit electronically all information and data required to be reported in accordance with part 43 of this chapter.

### § 23.206 Delegation of authority to the Director of the Division of Swap Dealer and Intermediary Oversight to establish an alternative compliance schedule to comply with daily trading records.

(a) The Commission hereby delegates to the Director of the Division of Swap Dealer and Intermediary Oversight or such other employee or employees as the Director may designate from time to time, the authority to establish an alternative compliance schedule for requirements of §23.202 that are found to be technologically or economically impracticable for an affected swap dealer

or major swap participant that seeks, in good faith, to comply with the requirements of §23.202 within a reasonable time period beyond the date on which compliance by such swap dealer or major swap participant is otherwise required.

(b) A request for an alternative compliance schedule under this section shall be acted upon by the Director of the Division of Swap Dealer and Intermediary Oversight within 30 days from the time such a request is received, or it shall be deemed approved.

(c) Relief granted under this section shall not cause a registrant to be out of compliance or deemed in violation of any registration requirements.

(d) Notwithstanding any other provision of this section, in any case in which a Commission employee delegated authority under this section believes it appropriate, he or she may submit to the Commission for its consideration the question of whether an alternative compliance schedule should be established. Nothing in this section shall be deemed to prohibit the Commission, at its election, from exercising the authority delegated in this section.

## Subpart H—Business Conduct Standards for Swap Dealers and Major Swap Participants Dealing With Counterparties, Including Special Entities

SOURCE: 77 FR 9822, Feb. 17, 2012, unless otherwise noted.

### § 23.400 Scope.

The sections of this subpart shall apply to swap dealers and, unless otherwise indicated, major swap participants. These rules are not intended to limit or restrict the applicability of other provisions of the Act and rules and regulations thereunder, or other applicable laws, rules and regulations. The provisions of this subpart shall apply in connection with transactions in swaps as well as in connection with swaps that are offered but not entered into.