

PART 46—SWAP DATA RECORD-KEEPING AND REPORTING REQUIREMENTS: PRE-ENACTMENT AND TRANSITION SWAPS

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APPENDIX 1 TO PART 46—TABLES OF MINIMUM PRIMARY ECONOMIC TERMS DATA FOR PRE-ENACTMENT AND TRANSITION SWAPS

AUTHORITY: Title VII, sections 723 and 729, Pub. L. 111–203, 124 Stat. 1738.

SOURCE: 77 FR 35226, June 12, 2012, unless otherwise noted.

§ 46.1 Definitions.

(a) As used in this part:

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

Compliance date means the applicable date, as specified in part 45 of this chapter, on which a registered entity or swap counterparty subject to the jurisdiction of the Commission is required to commence full compliance with all provisions of this part and with all applicable provisions of part 45 of this chapter, as set forth in the preamble to this part.

Confirmation (confirming) means the consummation (electronically or otherwise) of legally binding documentation (electronic or otherwise) that memorializes the agreement of the parties to

all terms of a swap. A confirmation must be in writing (whether electronic or otherwise) and must legally supersede any previous agreement (electronically or otherwise).

Confirmation data means all of the terms of a swap matched and agreed upon by the counterparties in confirming the swap.

Electronic reporting (“report electronically”) means the reporting of data normalized in data fields as required by the data standard or standards used by the swap data repository to which the data is reported. Except where specifically otherwise provided in this chapter, electronic reporting does not include submission of an image of a document or text file.

Equity swap means any swap that is primarily based on equity securities, including, without limitation: any swap primarily based on one or more broad-based indices of equity securities; and any total return swap on one or more equity indices.

Financial entity has the meaning set forth in CEA section 2(h)(7)(C).

Historical swap means pre-enactment swaps and transition swaps.

Minimum primary economic terms means, with respect to a historical swap, the terms included in the list of minimum primary economic terms for swaps in each swap asset class found in appendix 1 to this part.

Minimum primary economic terms data means all of the data elements necessary to fully report all of the minimum primary economic terms required by this part to be reported for a swap in the swap asset class of the swap in question.

Mixed swap has the meaning set forth in CEA section 1a(47)(D), and refers to an instrument that is in part a swap subject to the jurisdiction of the Commission, and in part a security-based swap subject to the jurisdiction of the SEC.

Multi-asset swap means a swap that does not have one easily identifiable primary underlying notional item, but instead involves multiple underlying notional items within the Commission’s jurisdiction that belong to different asset classes.

Non-SD/MSP/DCO counterparty means a swap counterparty that is not a swap

dealer, major swap participant, or derivatives clearing organization.

Pre-enactment swap means any swap entered into prior to enactment of the Dodd-Frank Act of 2010 (July 21, 2010), the terms of which have not expired as of the date of enactment of that Act.

Reporting counterparty means the counterparty required to report data for a pre-enactment swap or a transition swap pursuant to this part, selected as provided in § 46.5.

Required swap continuation data means all of the data elements that shall be reported during the existence of a swap as required by part 45 of this chapter.

Substitute counterparty identifier means a unique alphanumeric code assigned by a swap data repository to a swap counterparty prior to the Commission designation of a legal entity identifier system on July 23, 2012.

Transition swap means any swap entered into on or after the enactment of the Dodd-Frank Act of 2010 (July 21, 2010) and prior to the applicable compliance date on which a registered entity or swap counterparty subject to the jurisdiction of the Commission is required to commence full compliance with all provisions of this part, as set forth in the preamble to this part.

(b) *Other defined terms.* Terms not defined in this part have the meanings assigned to the terms in § 1.3 of this chapter.

[77 FR 35226, June 12, 2012, as amended at 85 FR 75594, Nov. 25, 2020]

§ 46.2 Recordkeeping for pre-enactment swaps and transition swaps.

(a) *Recordkeeping for pre-enactment and transition swaps in existence on or after April 25, 2011.* Each counterparty subject to the jurisdiction of the Commission that is a counterparty to any pre-enactment swap or transition swap that is in existence on or after April 25, 2011 shall keep the following records concerning each such swap:

(1) *Minimum records required.* Each counterparty shall keep records of all of the minimum primary economic terms data specified in appendix 1 to this part.

(2) *Additional records required to be kept if possessed by a counterparty.* In addition to the minimum records re-

quired pursuant to paragraph (a)(1) of this part, a counterparty that is in possession at any time on or after April 25, 2011 of any of the following documentation shall keep copies thereof:

(i) Any confirmation of the swap executed by the counterparties.

(ii) Any master agreement governing the swap, and any modification or amendment thereof.

(iii) Any credit support agreement, or other agreement between the counterparties having the same function as a credit support agreement, relating to the swap, and any modification or amendment thereof.

(3) *Records created or available after the compliance date.* In addition to the records required to be kept pursuant to paragraphs (a)(1) and (2) of this section, each counterparty to any pre-enactment swap or transition swap that remains in existence on the compliance date shall keep for each such swap, from the compliance date forward, all of the records required to be kept by section 45.2 of this chapter, to the extent that any such records are created by or become available to the counterparty on or after the compliance date.

(4) *Retention form.* Records required to be kept pursuant to this section with respect to historical swaps in existence on or after April 25, 2011, must be kept as required by paragraph (a)(4)(i) or (ii) of this section, as applicable.

(i) Records required to be kept by swap dealers or major swap participants may be kept in electronic form, or kept in paper form if originally created and exclusively maintained in paper form, so long as they are retrievable, and information in them is reportable as required by this part.

(ii) Records required to be kept by non-SD/MSP/DCO counterparties may be kept in either electronic or paper form, so long as they are retrievable, and information in them is reportable, as required by this part.

(b) *Recordkeeping for pre-enactment and transition swaps expired or terminated prior to April 25, 2011.* Each counterparty subject to the jurisdiction of the Commission that is a counterparty to any pre-enactment swap or transition swap that is expired

or terminated prior to April 25, 2011 shall keep the following records concerning each such swap:

(1) *Pre-enactment swaps expired prior to April 25, 2011.* Each counterparty to any pre-enactment swap that expired or was terminated prior to April 25, 2011 shall retain the information and documents relating to the terms of the transaction that were possessed by the counterparty on or after October 14, 2010 (17 CFR 44.00 through 44.02). Such information may be retained in the format in which it existed on or after October 14, 2010, or in such other format as the counterparty chooses to retain it. This paragraph (b)(1) does not require the counterparty to create or retain records of information not in its possession on or after October 14, 2010, or to alter the format, *i.e.*, the method by which the information is organized and stored.

(2) *Transition swaps expired prior to April 25, 2011.* Each counterparty to any transition swap that expired or was terminated prior to April 25, 2011 shall retain the information and documents relating to the terms of the transaction that were possessed by the counterparty on or after December 17, 2010 (17 CFR 44.03). Such information may be retained in the format in which it existed on or after December 17, 2010, or in such other format as the counterparty chooses to retain it. This paragraph (b)(2) does not require the counterparty to create or retain records of information not in its possession on or after December 17, 2010, or to alter the format, *i.e.*, the method by which the information is organized and stored.

(c) *Retention period.* All records required to be kept by this section shall be kept from the applicable dates specified in paragraphs (a) or (b) of this section through the life of the swap, and for a period of at least five years from the final termination of the swap.

(d) *Retrieval.* Records required to be kept pursuant to this section shall be retrievable as follows.

(1) *Retrieval for pre-enactment and transition swaps in existence on or after April 25, 2011.* Records concerning pre-enactment and transition swaps in existence on or after April 25, 2011, shall be retrievable as follows:

(i) Each record required to be kept by a counterparty that is a swap dealer or major swap participant shall be readily accessible via real time electronic access by the counterparty throughout the life of the swap and for two years following the final termination of the swap, and shall be retrievable by the registrant or its affiliates within three business days through the remainder of the period following final termination of the swap during which it is required to be kept.

(ii) Each record required to be kept by a non-SD/MSP/DCO counterparty shall be retrievable by the counterparty within five business days throughout the period during which it is required to be kept.

(2) *Retrieval for pre-enactment and transition swaps expired or terminated prior to April 25, 2011.* Records concerning pre-enactment and transition swaps expired or terminated prior to April 25, 2011, shall be retrievable by the counterparty within five business days throughout the period during which they are required to be kept.

(e) *Inspection.* All records required to be kept pursuant to this section by any registrant or its affiliates or by any counterparty subject to the jurisdiction of the Commission shall be open to inspection upon request by any representative of the Commission, the United States Department of Justice, or the Securities and Exchange Commission, or by any representative of a prudential regulator as authorized by the Commission. Copies of all such records shall be provided, at the expense of the entity or person required to keep the record, to any representative of the Commission upon request. With respect to historical swaps in existence on or after April 25, 2011, copies of records required to be kept by any swap dealer or major swap participant shall be provided either by electronic means, in hard copy, or both, as requested by the Commission, with the sole exception that copies of records originally created and exclusively maintained in paper form may be provided in hard copy only; and copies of records required to be kept by any non-SD/MSP/DCO counterparty shall be provided in the form, whether electronic or paper, in which the records

are kept. With respect to historical swaps expired or terminated prior to April 25, 2011, records shall be provided in the form, whether electronic or paper, in which the records are kept.

[77 FR 35226, June 12, 2012, as amended at 85 FR 75594, Nov. 25, 2020]

§ 46.3 Data reporting for pre-enactment swaps and transition swaps.

(a) *Reporting for pre-enactment and transition swaps in existence on or after April 25, 2011*—(1) *Initial data report.* For each pre-enactment swap or transition swap in existence on or after April 25, 2011, the reporting counterparty shall report electronically to a swap data repository (or to the Commission if no swap data repository for swaps in the asset class in question is available), on the compliance date, the following:

(i) All of the minimum primary economic terms data specified in appendix 1 to this part that were in the possession of the reporting counterparty on or after April 25, 2011;

(ii) The legal entity identifier of the reporting counterparty required pursuant to § 46.4; and

(iii) The following additional identifiers:

(A) The internal counterparty identifier or legal entity identifier used by the reporting counterparty to identify the non-reporting counterparty.

(B) The internal transaction identifier used by the reporting counterparty to identify the swap.

(2) *Reporting of required swap continuation data.* (i) For each uncleared pre-enactment or transition swap in existence on or after April 25, 2011, throughout the existence of the swap following the compliance date, the reporting counterparty must report all required swap continuation data as required by part 45 of this chapter.

(ii) Swap continuation data reporting is not required for a pre-enactment or transition swap in existence on or after April 25, 2011, that has been cleared by a designated clearing organization.

(3) *Data reporting for multi-asset swaps and mixed swaps.* (i) For each pre-enactment or transition swap in existence on or after April 25, 2011, that is a multi-asset swap, all data required to be reported by this part shall be reported to a single swap data repository

that accepts swaps in the asset class treated as the primary asset class involved in the swap by the reporting counterparty making the first report of such data pursuant to this section.

(ii) For each pre-enactment or transition swap in existence on or after April 25, 2011, that is a mixed swap, all data required to be reported pursuant to this part shall be reported to a swap data repository registered with the Commission and to a security-based swap data repository registered with the Securities and Exchange Commission. This requirement may be satisfied by reporting the mixed swap to a swap data repository or security-based swap data repository registered with both Commissions.

(b) *Reporting for pre-enactment and transition swaps expired or terminated prior to April 25, 2011*—(1) *Pre-enactment swaps expired or terminated prior to April 25, 2011.* For each pre-enactment swap which expired or was terminated prior to April 25, 2011, the reporting counterparty shall report to a swap data repository (or to the Commission if no swap data repository for swaps in the asset class in question is available), on the compliance date, such information relating to the terms of the transaction as was in the reporting counterparty's possession on or after October 14, 2010 (17 CFR 44.00 through 44.02). This information may be reported via any method selected by the reporting counterparty.

(2) *Transition swaps expired or terminated prior to April 25, 2011.* For each transition swap which expired or was terminated prior to April 25, 2011, the reporting counterparty shall report to a swap data repository (or to the Commission if no swap data repository for swaps in the asset class in question is available), on the compliance date, such information relating to the terms of the transaction as was in the reporting counterparty's possession on or after December 17, 2010 (17 CFR 44.03). This information may be reported via any method selected by the reporting counterparty.

(c) *Voluntary early submission of initial data report.* For all pre-enactment and transition swaps required to be reported pursuant to this part, the reporting counterparty may make the

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initial data report required by paragraph (a)(1) of this section, or the data report required by paragraph (b) of this section, prior to the applicable compliance date, if a swap data repository accepting swaps in the asset class in question is prepared to accept the report. The obligation to report continuation data as required by paragraph (a)(2) of this section with respect to a swap for which a voluntary early submission is made commences on the applicable compliance date. However, the reporting counterparty may submit continuation data at any time after a voluntary early submission made pursuant to this paragraph, if the swap data repository is prepared to accept such continuation data, and if that repository has registered with the Commission as a swap data repository as of the applicable compliance date.

(d) *Non-duplication of previous reporting.* If the reporting counterparty for a pre-enactment or transition swap has reported any of the information required as paragraphs (a) or (b) of this section to a trade repository prior to the compliance date, and if as of the compliance date that repository has registered with the Commission as a swap data repository, then:

(1) The counterparty shall not be required to report such previously reported information to the swap data repository again;

(2) The counterparty shall be required to report to the swap data repository on the compliance date any information required as part of the initial data report by paragraph (a) of this section that has not been reported prior to the compliance date: and

(3) In the case of pre-enactment and transition swaps in existence on or after April 25, 2011, the initial data report required by paragraph (a) of this section and all subsequent data reporting concerning the swap shall be made to the same swap data repository to which data concerning the swap was first reported prior to the compliance date (or to its successor in the event that it ceases to operate, as provided in part 49 of this chapter).

[77 FR 35226, June 12, 2012, as amended at 85 FR 75594, Nov. 25, 2020]

§ 46.4 Unique identifiers.

The unique identifier requirements for data reporting with respect to pre-enactment or transition swaps shall be as follows:

(a) By the compliance date, the reporting counterparty (as defined by part 45 of this chapter) for each pre-enactment or transition swap in existence on or after April 25, 2011, for which an initial data report is required by this part 46, shall obtain for itself a legal entity identifier as provided in § 45.6 of this chapter (or if the Commission has not yet designated a legal entity identifier system, a substitute counterparty identifier), and shall include its own legal entity identifier (or substitute counterparty identifier) in the initial data report concerning the swap. With respect to the legal entity identifier (or substitute counterparty identifier) of the reporting counterparty, the reporting counterparty and the swap data repository to which the swap is reported shall comply thereafter with all unique identifier requirements of § 45.6 of this chapter.

(b) Within 180 days after the compliance date, the non-reporting counterparty for each pre-enactment or transition swap in existence on or after April 25, 2011, for which an initial data report is required by this part 46, shall obtain a legal entity identifier as provided in § 45.6 of this chapter (or if the Commission has not yet designated a legal entity identifier system, a substitute counterparty identifier as provided in § 45.6(f) of this chapter), and shall provide its legal entity identifier (or substitute counterparty identifier) to the reporting counterparty. Upon receipt of the non-reporting counterparty's legal entity identifier (or substitute counterparty identifier), the reporting counterparty shall provide it to the swap data repository to which swap data for the swap was reported. Thereafter, with respect to the legal entity identifier (or substitute counterparty identifier) of the non-reporting counterparty, the counterparties to the swap and the swap data repository to which it is reported shall comply with all requirements of § 45.6 of this chapter.

(c) The legal entity identifier requirements of parts 46 and 45 of this chapter shall not apply to pre-enactment or transition swaps expired or terminated prior to April 25, 2011.

(d) The unique swap identifier, unique transaction identifier, and unique product identifier requirements of part 45 of this chapter shall not apply to pre-enactment or transition swaps.

[77 FR 35226, June 12, 2012, as amended at 85 FR 75594, Nov. 25, 2020]

§ 46.5 Determination of which counterparty must report.

(a) Determination of which counterparty must report data concerning each pre-enactment or transition swap shall be made as follows:

(1) If only one counterparty is a swap dealer, the swap dealer shall fulfill all counterparty reporting obligations.

(2) If neither party is a swap dealer, and only one counterparty is a major swap participant, the major swap participant shall fulfill all counterparty reporting obligations.

(3) If both counterparties are non-SD/MSP/DCO counterparties, and only one counterparty is a financial entity as defined in CEA section 2(h)(7)(C), the counterparty that is a financial entity shall be the reporting counterparty.

(4) For each pre-enactment swap or transition swap for which both counterparties are swap dealers, or both counterparties are major swap participants, or both counterparties are non-SD/MSP/DCO counterparties that are financial entities as defined in CEA section 2(h)(7)(C), or both counterparties are non-SD/MSP/DCO counterparties and neither counterparty is a financial entity as defined in CEA section 2(h)(7)(C), the counterparties shall agree which counterparty shall fulfill reporting obligations with respect to that swap; and the counterparty so selected shall fulfill all counterparty reporting obligations.

(5) Notwithstanding the provisions of paragraphs (a)(1) through (3) of this section, for pre-enactment or transition swaps for which both counterparties are non-SD/MSP/DCO counterparties, if only one counterparty is a U.S. person, that counterparty shall be the

reporting counterparty and shall fulfill all counterparty reporting obligations.

(b) For pre-enactment and transition swaps in existence as of the compliance date, determination of the reporting counterparty shall be made by applying the provisions of paragraph (a) of this section with respect to the current counterparties to the swap as of the compliance date, regardless of whether either or both were original counterparties to the swap when it was first executed.

(c) For pre-enactment and transition swaps for which reporting is required, but which have expired or been terminated prior to the compliance date, determination of the reporting counterparty shall be made by applying the provisions of paragraph (a) of this section to the counterparties to the swap as of the date of its expiration or termination (except for determination of a counterparty's status as an SD or MSP, which shall be made as of the compliance date), regardless of whether either or both were original counterparties to the swap when it was first executed.

(d) After the initial report required by § 46.3 is made, if a reporting counterparty selected pursuant to this section ceases to be a counterparty to a swap due to an assignment or novation, the reporting counterparty for reporting of required swap continuation data following the assignment or novation shall be selected from the two current counterparties as provided in paragraphs (d)(1) through (4) of this section.

(1) If only one counterparty is a swap dealer, the swap dealer shall be the reporting counterparty and shall fulfill all counterparty reporting obligations.

(2) If neither counterparty is a swap dealer, and only one counterparty is a major swap participant, the major swap participant shall be the reporting counterparty and shall fulfill all counterparty reporting obligations.

(3) If both counterparties are non-SD/MSP/DCO counterparties, and only one counterparty is a U.S. person, that counterparty shall be the reporting counterparty and shall fulfill all counterparty reporting obligations.

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(4) In all other cases, the counterparty that replaced the previous reporting counterparty by reason of the assignment or novation shall be the reporting counterparty, unless otherwise agreed by the counterparties.

[77 FR 35226, June 12, 2012, as amended at 85 FR 75594, Nov. 25, 2020]

§ 46.6 Third-party facilitation of data reporting.

Counterparties required by this part 46 to report data for any pre-enactment or transition swap, while remaining fully responsible for reporting as required by this part 46, may contract with third-party service providers to facilitate reporting.

[77 FR 35226, June 12, 2012, as amended at 85 FR 75594, Nov. 25, 2020]

§ 46.7 Reporting to a single swap data repository.

All data reported for each pre-enactment or transition swap pursuant to this part 46, and all corrections of errors and omissions in previously reported data for the swap, shall be reported to the same swap data repository to which the initial data report concerning the swap is made (or to its successor in the event that it ceases to operate, as provided in part 49 of this chapter).

§ 46.8 Data reporting for swaps in a swap asset class not accepted by any swap data repository.

(a) Should there be a swap asset class for which no swap data repository registered with the Commission currently accepts data for pre-enactment and transition swaps, each registered entity or counterparty required by this part to report any such data with respect to a swap in that asset class must report that same data to the Commission.

(b) Data reported to the Commission pursuant to this section shall be reported at times announced by the Commission. Data reported to the Commission pursuant to this section with respect to pre-enactment and transition swaps in existence on or after April 25, 2011 shall be reported in an electronic format acceptable to the Commission.

(c) Delegation of authority to the Chief Information Officer: The Com-

mission hereby delegates to its Chief Information Officer, until the Commission orders otherwise, the authority set forth in paragraph (c) of this section, to be exercised by the Chief Information Officer or by such other employee or employees of the Commission as may be designated from time to time by the Chief Information Officer. The Chief Information Officer may submit to the Commission for its consideration any matter which has been delegated in this paragraph. Nothing in this paragraph prohibits the Commission, at its election, from exercising the authority delegated in this paragraph. The authority delegated to the Chief Information Officer by paragraph (c) of this section shall include:

(1) With respect to all pre-enactment and transition swaps required to be reported by this part, the authority to determine the dates and times at which data concerning such swaps shall be reported pursuant to this part.

(2) With respect to all pre-enactment swaps or transition swaps in existence on or after April 25, 2011:

(i) The authority to determine the manner, format, coding structure, and electronic data transmission standards and procedures acceptable to the Commission for the purposes of paragraphs (a) and (b) of this section; and

(ii) The authority to determine whether the Commission may permit or require use by registered entities or counterparties in reporting pre-enactment or transition swaps in existence on or after April 25, 2011, of one or more particular data standards (such as FIX, FpML, ISO 20022, or some other standard), in order to accommodate the needs of different communities of users.

(d) The Chief Information Officer shall publish from time to time in the FEDERAL REGISTER and on the Web site of the Commission the dates and times, format, data schema, and electronic data transmission methods and procedures for reporting acceptable to the Commission with respect to reporting data for pre-enactment and transition swaps pursuant to this section.

[77 FR 35226, June 12, 2012, as amended at 85 FR 75594, Nov. 25, 2020]

§ 46.9 Voluntary supplemental reporting.

(a) For purposes of this section, the term *voluntary, supplemental report* means any report of data for a pre-enactment or transition swap to a swap data repository that is not required to be made pursuant to this part or any other part in this chapter.

(b) A voluntary, supplemental report for a pre-enactment or transition swap may be made only by a counterparty to the swap in connection with which the voluntary, supplemental report is made, or by a third-party service provider acting on behalf of a counterparty to the swap.

(c) A voluntary, supplemental report for a pre-enactment or transition swap may be made only after the initial data report for the swap required by section 46.3(a) or the report required by section 46.3(b), as applicable, has been made.

(d) A voluntary, supplemental report for a pre-enactment or transition swap may be made either to the swap data repository to which the initial data report for the swap required by section 46.3(a) or the report required by section 46.3(b), as applicable, has been made, or to a different swap data repository.

(e) A voluntary, supplemental report for a pre-enactment or transition swap must contain:

(1) An indication that the report is a voluntary, supplemental report.

(2) The swap data repository identifier created for the swap by the automated systems of the swap data repository to which the initial data report required by section 46.3(a) or the report required by section 46.3(b), as applicable, has been made.

(3) An indication of the identity of the swap data repository to which the initial data report required by section 46.3(a) or the report required by section 46.3(b), as applicable, has been made, if the voluntary supplemental report is made to a different swap data repository.

(4) If the pre-enactment or transition swap was in existence on or after April 25, 2011, the legal entity identifier (or substitute identifier) of the counterparty making the voluntary, supplemental report.

(5) If applicable, an indication that the voluntary, supplemental report is

made pursuant to the laws or regulations of any jurisdiction outside the United States.

(f) If a counterparty that has made a voluntary, supplemental report discovers any errors in the data for a pre-enactment or a transition swap included in the voluntary, supplemental report, the counterparty must report a correction of each such error to the swap data repository to which the voluntary, supplemental report was made, as soon as technologically practicable after discovery of any such error.

[77 FR 35226, June 12, 2012, as amended at 85 FR 75594, Nov. 25, 2020]

§ 46.10 Required data standards.

In reporting data for a pre-enactment or a transition swap to a swap data repository as required by this part 46, each reporting counterparty shall use the facilities, methods, or data standards provided or required by the swap data repository to which counterparty reports the data. In reporting required swap continuation data as required by this part, each reporting counterparty shall comply with the required data standards set forth in part 45 of this chapter, including those set forth in § 45.13(a) of this chapter.

[77 FR 35226, June 12, 2012, as amended at 85 FR 75594, Nov. 25, 2020]

§ 46.11 Reporting of errors and omissions in previously reported data.

(a) Each swap counterparty required by this part 46 to report data for a pre-enactment or a transition swap shall report any errors and omissions in the data so reported. Corrections of errors or omissions shall be reported as soon as technologically practicable after discovery of any such error or omission.

(b) Each counterparty to a pre-enactment or transition swap that is not the reporting counterparty as determined pursuant to § 46.5, and that discovers any error or omission with respect to any data for a pre-enactment or transition swap reported to a swap data repository for that swap, shall promptly notify the reporting counterparty of each such error or omission. As soon as technologically practicable after receiving such notice, the reporting

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counterparty shall report a correction of each such error or omission to the swap data repository.

this part shall report such corrections in the same format as it reported the erroneous or omitted data.

(c) Each swap counterparty reporting corrections to errors or omissions in data previously reported as required by

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APPENDIX 1 TO PART 46—TABLES OF MINIMUM PRIMARY ECONOMIC TERMS DATA FOR PRE-ENACTMENT AND TRANSITION SWAPS

| EXHIBIT A Minimum Primary Economic Terms Data For Pre-Enactment And Transition Swaps CREDIT SWAPS AND EQUITY SWAPS (Enter N/A for fields that are not applicable) | |
|---|---|
| Data categories and fields | Comment |
| The Legal Entity Identifier of the reporting counterparty | As provided in § 45.6. If no CFTC-designated Legal Entity Identifier for the reporting counterparty is yet available, enter the internal identifier for the reporting counterparty used by the swap data repository. If no repository identifier yet exists, the repository fills in this field after creating its identifier |
| An indication of whether the reporting counterparty is a swap dealer with respect to the swap | Yes/No |
| An indication of whether the reporting counterparty is a major swap participant with respect to the swap | Yes/No |
| If the reporting counterparty is not a swap dealer or a major swap participant with respect to the swap, an indication of whether the reporting counterparty is a financial entity as defined in CEA section 2(h)(7)(C) | Yes/No |
| An indication of whether the reporting counterparty is a U.S. person. | Yes/No |
| The Legal Entity Identifier of the non-reporting party | As provided in § 46.4. This information is only required 180 days after the applicable compliance date |
| If no CFTC-approved Legal Entity Identifier for the non-reporting counterparty is yet available, the internal identifier for the non-reporting counterparty used by the swap data repository | If no repository identifier yet exists, the repository fills in this field after creating its identifier |
| An indication of whether the non-reporting counterparty is a swap dealer with respect to the swap | Yes/No |
| An indication of whether the non-reporting counterparty is a major swap participant with respect to the swap | Yes/No |
| If the non-reporting counterparty is not a swap dealer or a major swap participant with respect to the swap, an indication of whether the non-reporting counterparty is a financial entity as defined in CEA section 2(h)(7)(C) | Yes/No |

| | |
|---|---|
| An indication of whether the non-reporting counterparty is a U.S. person. | Yes/No |
| An indication that the swap is a multi-asset swap | Field values: Yes, Not applicable |
| For a multi-asset class swap, an indication of the primary asset class | Generally, the asset class traded by the desk trading the swap for the reporting counterparty. Field values: credit, equity, FX, rates, other commodity |
| For a multi-asset class swap, an indication of the secondary asset class(es) | Field values: credit, equity, FX, rates, other commodity |
| An indication that the swap is a mixed swap | Field values: Yes, Not applicable |
| For a mixed swap reported to two non-dually-registered swap data repositories, the identity of the other swap data repository (if any) to which the swap is or will be reported | |
| An indication of the counterparty purchasing protection | Field values: LEI if available, or substitute identifier as above if LEI is not yet available |
| An indication of the counterparty selling protection | Field values: LEI if available, or substitute identifier as above if LEI is not yet available |
| Information identifying the reference entity | The entity that is the subject of the protection being purchased and sold in the swap. Field values: LEI if available, or substitute identifier as above if LEI is not yet available, or name |
| Contract type | E.g., swap, swaption, forward, option, basis swap, index swap, basket swap |
| Execution timestamp | The date of the trade. If the time of the trade was recorded when the trade was executed and is known to the reporting counterparty, also include the time of the trade |
| Execution venue | The venue on or pursuant to the rules of which the swap was executed. Field values: name or identifier (if available) of the venue, or "off-facility" if not so executed |
| Start date | The date on which the swap starts or goes into effect |
| Maturity, termination or end date | The date on which the swap expires |
| The price | E.g., strike price, initial price, spread |
| The notional amount, and the currency in which the notional amount is expressed | |
| The amount and currency (or currencies) of any up-front payment | |
| Payment frequency of the reporting counterparty | A description of the payment stream of the reporting counterparty, e.g., coupon |
| Payment frequency of the non-reporting counterparty | A description of the payment stream of the non-reporting counterparty, e.g., coupon |
| Clearing indicator | Yes/No indication of whether the swap was or will be cleared by a derivatives clearing organization |
| Clearing venue | If the swap was or will be cleared, the identifier (if available) or name of the derivatives clearing organization |

| EXHIBIT B Minimum Primary Economic Terms Data For Pre-Enactment And Transition Swaps FOREIGN EXCHANGE TRANSACTIONS (OTHER THAN CROSS-CURRENCY SWAPS) (Enter N/A for fields that are not applicable) | |
|---|---|
| Data fields | Comments |
| The Legal Entity Identifier of the reporting counterparty | As provided in § 45.6. If no CFTC-designated Legal Entity Identifier for the reporting counterparty is yet available, enter the internal identifier for the reporting counterparty used by the swap data repository. If no repository identifier yet exists, the repository fills in this field after creating its identifier |
| An indication of whether the reporting counterparty is a swap dealer with respect to the swap | Yes/No |
| An indication of whether the reporting counterparty is a major swap participant with respect to the swap | Yes/No |
| If the reporting counterparty is not a swap dealer or a major swap participant with respect to the swap, an indication of whether the reporting counterparty is a financial entity as defined in CEA section 2(h)(7)(C) | Yes/No |
| An indication of whether the reporting counterparty is a U.S. person | Yes/No |
| The Legal Entity Identifier of the non-reporting party | As provided in § 46.4. This information is only required 180 days after the applicable compliance date |
| If no CFTC-approved Legal Entity Identifier for the non-reporting counterparty is yet available, the internal identifier for the non-reporting counterparty used by the swap data repository | If no repository identifier yet exists, the repository fills in this field after creating its identifier |
| An indication of whether the non-reporting counterparty is a swap dealer with respect to the swap | Yes/No |
| An indication of whether the non-reporting counterparty is a major swap participant with respect to the swap | Yes/No |
| If the non-reporting counterparty is not a swap dealer or a major swap participant with respect to the swap, an indication of whether the non-reporting counterparty is a financial entity as defined in CEA section 2(h)(7)(C) | Yes/No |
| An indication of whether the non-reporting counterparty is a U.S. person. | Yes/No |
| An indication that the swap is a multi-asset swap | Field values: Yes, Not applicable |
| For a multi-asset class swap, an indication of the primary asset class | Generally, the asset class traded by the desk trading the swap for the reporting counterparty. Field values: credit, equity, FX, rates, other commodity |

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| For a multi-asset class swap, an indication of the secondary asset class(es) | Field values: credit, equity, FX, rates, other commodity |
| An indication that the swap is a mixed swap | Field values: Yes, Not applicable |
| For a mixed swap reported to two non-dually-registered swap data repositories, the identity of the other swap data repository (if any) to which the swap is or will be reported | |
| Contract type | E.g., forward, non-deliverable forward (NDF), non-deliverable option (NDO), vanilla option, simple exotic option, complex exotic option |
| Execution timestamp | The date of the trade. If the time of the trade was recorded when the trade was executed and is known to the reporting counterparty, also include the time of the trade |
| Execution venue | The venue on or pursuant to the rules of which the swap was executed. Field values: name or identifier (if available) of the venue, or "off-facility" if not so executed |
| Currency 1 | ISO code |
| Currency 2 | ISO code |
| Notional amount 1 | For currency 1 |
| Notional amount 2 | For currency 2 |
| Exchange rate | Contractual rate of exchange of the currencies |
| Delivery type | Physical (deliverable) or cash (non-deliverable) |
| Settlement or expiration date | Settlement date, or for an option the contract expiration date |
| Clearing indicator | Yes/No indication of whether the swap was or will be cleared by a derivatives clearing organization |
| Clearing venue | If the swap was or will be cleared, the identifier (if available) or name of the derivatives clearing organization |

| EXHIBIT C Minimum Primary Economic Terms Data For Pre-Enactment And Transition Swaps INTEREST RATE SWAPS (INCLUDING CROSS-CURRENCY SWAPS) (Enter N/A for fields that are not applicable) | |
|---|---|
| Data field | Comment |
| The Legal Entity Identifier of the reporting counterparty | As provided in § 45.6. If no CFTC-designated Legal Entity Identifier for the reporting counterparty is yet available, enter the internal identifier for the reporting counterparty used by the swap data repository. If no repository identifier yet exists, the repository fills in this field after creating its identifier |
| An indication of whether the reporting counterparty is a swap dealer with respect to the swap | Yes/No |
| An indication of whether the reporting counterparty is a major swap participant with respect to the swap | Yes/No |
| If the reporting counterparty is not a swap dealer or a major swap participant with respect to the swap, an indication of whether the reporting counterparty is a financial entity as defined in CEA section 2(h)(7)(C) | Yes/No |
| An indication of whether the reporting counterparty is a U.S. person. | Yes/No |
| The Legal Entity Identifier of the non-reporting counterparty | As provided in § 46.4. This information is only required 180 days after the applicable compliance date |
| If no CFTC-approved Legal Entity Identifier for the non-reporting counterparty is yet available, the internal identifier for the non-reporting counterparty used by the swap data repository | If no repository identifier yet exists, the repository fills in this field after creating its identifier |
| An indication of whether the non-reporting counterparty is a swap dealer with respect to the swap | Yes/No |
| An indication of whether the non-reporting counterparty is a major swap participant with respect to the swap | Yes/No |
| If the non-reporting counterparty is not a swap dealer or a major swap participant with respect to the swap, an indication of whether the non-reporting counterparty is a financial entity as defined in CEA section 2(h)(7)(C) | Yes/No |
| An indication of whether the non-reporting counterparty is a U.S. person. | Yes/No |
| An indication that the swap is a multi-asset swap | Field values: Yes, Not applicable |
| For a multi-asset class swap, an indication of the primary asset class | Generally, the asset class traded by the desk trading the swap for the reporting counterparty. Field values: credit, equity, FX, rates, other commodity |
| For a multi-asset class swap, an indication of the secondary asset class(es) | Field values: credit, equity, FX, rates, other commodity |

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| An indication that the swap is a mixed swap | Field values: Yes, Not applicable |
| For a mixed swap reported to two non-dually-registered swap data repositories, the identity of the other swap data repository (if any) to which the swap is or will be reported | |
| Contract type | E.g., swap, swaption, option, basis swap, index swap |
| Execution timestamp | The date of the trade. If the time of the trade was recorded when the trade was executed and is known to the reporting counterparty, also include the time of the trade |
| Execution venue | The venue on or pursuant to the rules of which the swap was executed. Field values: name or identifier (if available) of the venue, or "off-facility" if not so executed |
| Start date | The date on which the swap starts or goes into effect |
| Maturity, termination or end date | The date on which the swap expires or ends |
| Day count convention | |
| Notional amount (leg 1) | The current active notional amount |
| Notional currency (leg 1) | ISO code |
| Notional amount (leg 2) | The current active notional amount |
| Notional currency (leg 2) | ISO code |
| Payer (fixed rate) | Is the reporting party a fixed rate payer? Yes/No/Not applicable |
| Payer (floating rate leg 1) | If two floating legs, the payer for leg 1 |
| Payer (floating rate leg 2) | If two floating legs, the payer for leg 2 |
| Direction | For swaps: whether the principal is paying or receiving the fixed rate. For float-to-float and fixed-to-fixed swaps: indicate N/A. For non-swap instruments and swaptions: indicate the instrument that was bought or sold. |
| Option type | E.g., put, call, straddle |
| Fixed rate | |
| Fixed rate day count fraction | E.g., actual 360 |
| Floating rate payment frequency | |
| Floating rate reset frequency | |
| Floating rate index name/rate period | E.g., USD-Libor-BBA |
| Clearing indicator | Yes/No indication of whether the swap was or will be cleared by a derivatives clearing organization |
| Clearing venue | Identifier (if available) or name of the derivatives clearing organization |

| EXHIBIT D Minimum Primary Economic Terms Data For Pre-Enactment And Transition Swaps OTHER COMMODITY SWAPS (Enter N/A for fields that are not applicable) | |
|---|---|
| Data field | Comment |
| The Legal Entity Identifier of the reporting counterparty | As provided in § 45.6. If no CFTC-designated Legal Entity Identifier for the reporting counterparty is yet available, enter the internal identifier for the reporting counterparty used by the swap data repository. If no repository identifier yet exists, the repository fills in this field after creating its identifier |
| An indication of whether the reporting counterparty is a swap dealer with respect to the swap | Yes/No |
| An indication of whether the reporting counterparty is a major swap participant with respect to the swap | Yes/No |
| If the reporting counterparty is not a swap dealer or a major swap participant with respect to the swap, an indication of whether the reporting counterparty* is a financial entity as defined in CEA section 2(h)(7)(C) | Yes/No |
| An indication of whether the reporting counterparty is a U.S. person. | Yes/No |
| The Legal Entity Identifier of the non-reporting party | As provided in § 46.4. This information is only required 180 days after the applicable compliance date |
| If no CFTC-approved Legal Entity Identifier for the non-reporting counterparty is yet available, the internal identifier for the non-reporting counterparty used by the swap data repository | If no repository identifier yet exists, the repository fills in this field after creating its identifier |
| An indication of whether the non-reporting counterparty is a swap dealer with respect to the swap | Yes/No |
| An indication of whether the non-reporting counterparty is a major swap participant with respect to the swap | Yes/No |
| If the non-reporting counterparty is not a swap dealer or a major swap participant with respect to the swap, an indication of whether the non-reporting counterparty is a financial entity as defined in CEA section 2(h)(7)(C) | Yes/No |
| An indication of whether the non-reporting counterparty is a U.S. person. | Yes/No |
| An indication that the swap is a multi-asset swap | Field values: Yes, Not applicable |
| For a multi-asset class swap, an indication of the primary asset class | Generally, the asset class traded by the desk trading the swap for the reporting counterparty. Field values: credit, equity, FX, rates, other commodity |
| For a multi-asset class swap, an indication of the secondary asset class(es) | Field values: credit, equity, FX, rates, other commodity |

| | |
|---|---|
| An indication that the swap is a mixed swap | Field values: Yes, Not applicable |
| For a mixed swap reported to two non-dually-registered swap data repositories, the identity of the other swap data repository (if any) to which the swap is or will be reported | |
| Contract type | <u>E.g.</u> , swap, swaption, option, basis swap, index swap |
| Execution timestamp | The date of the trade. If the time of the trade was recorded when the trade was executed and is known to the reporting counterparty, also include the time of the trade |
| Execution venue | The venue on or pursuant to the rules of which the swap was executed. Field values: name or identifier (if available) of the venue, or “off-facility” if not so executed |
| Start date | The date on which the swap commences or goes into effect (<u>e.g.</u> , in physical oil, the pricing start date) |
| Maturity, termination, or end date | The date on which the swap expires or ends (<u>e.g.</u> , in physical oil, the pricing end date) |
| Buyer | The counterparty purchasing the product: <u>e.g.</u> , the payer of the fixed price (for a swap), or the payer of the floating price on the underlying swap (for a put swaption), or the payer of the fixed price on the underlying swap (for a call swaption). Field values: LEI if available, or substitute identifier as above if LEI is not yet available |
| Seller | The counterparty offering the product: <u>e.g.</u> , the payer of the floating price (for a swap), the payer of the fixed price on the underlying swap (for a put swaption), or the payer of the floating price on the underlying swap (for a call swaption). Field values: LEI if available, or substitute identifier as above if LEI is not yet available |
| Quantity unit | The unit of measure applicable for the quantity on the swap. <u>E.g.</u> , barrels, bushels, gallons, pounds, tons |
| Quantity | The amount of the commodity (the number of quantity units) quoted on the swap |
| Quantity frequency | The rate at which the quantity is quoted on the swap. <u>E.g.</u> , hourly, daily, weekly, monthly |
| Total quantity | The quantity of the commodity for the entire term of the swap |
| Settlement method | Physical delivery or cash |
| Price | The price of the swap. For options, the strike price |
| Price unit | The unit of measure applicable for the price of the swap |
| Price currency | ISO code |

| | |
|------------------------------|---|
| Buyer pay index | The published price as paid by the buyer (if applicable). For swaptions, applies to the underlying swap |
| Buyer pay averaging method | The averaging method used to calculate the index of the buyer pay index. For swaptions, applies to the underlying swap |
| Seller pay index | The published price as paid by the seller (if applicable). For swaptions, applies to the underlying swap |
| Seller pay averaging method | The averaging method used to calculate the index of the seller pay index. For swaptions, applies to the underlying swap |
| Grade | If applicable, the grade of the commodity to be delivered, e.g., the grade of oil or refined product |
| Option type | Descriptor for the type of option transaction. E.g., put, call, straddle |
| Option style | E.g., American, European, European Daily, European Monthly, Asian |
| Option premium | The total amount paid by the option buyer |
| Hours from through | For electric power, the hours of the day for which the swap is effective |
| Hours from through time zone | For electric power, the time zone prevailing for the hours during which electricity is transmitted |
| Days of week | For electric power, the profile applicable for the delivery of power |
| Load type | For electric power, the load profile for the delivery of power |
| Clearing indicator | Yes/No indication of whether the swap will be cleared by a derivatives clearing organization |
| Clearing venue | Identifier (if available) or name of the derivatives clearing organization |

PART 48—REGISTRATION OF FOREIGN BOARDS OF TRADE

Sec.

- 48.1 Scope.
- 48.2 Definitions.
- 48.3 Registration required.
- 48.4 Registration eligibility and scope.
- 48.5 Registration procedures.
- 48.6 Foreign boards of trade providing direct access pursuant to existing no-action relief.
- 48.7 Requirements for registration.
- 48.8 Conditions of registration.
- 48.9 Revocation of registration.
- 48.10 Additional contracts.
- 48.11 Delegation of authority.

APPENDIX TO PART 48—FORM FBOT

AUTHORITY: 7 U.S.C. 5, 6 and 12a, unless otherwise noted.

SOURCE: 76 FR 80698, Dec. 23, 2011, unless otherwise noted.

§ 48.1 Scope.

The provisions of this part apply to any foreign board of trade that is registered, required to be registered, or applying to become registered with the Commission in order to provide its identified members or other participants located in the United States with direct access to its electronic trading and order matching system.

§ 48.2 Definitions.

For purposes of this part:

(a) *Foreign board of trade*. Foreign board of trade means any board of trade, exchange or market located outside the United States, its territories or possessions, whether incorporated or unincorporated.

(b) *Foreign board of trade eligible to be registered*. A foreign board of trade eligible to be registered means a foreign